

**THE UNCLEAR STATUS OF THE SUSPECT IN THE
INVESTIGATION STAGE: CASE STUDY OF THE EXTENSION OF
THE COOPERATION AGREEMENT ON THE MANAGEMENT
AND OPERATION OF THE JAKARTA INTERNATIONAL
CONTAINER TERMINAL**

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Abstract

Unclear status of the suspect in the investigation stage for the suspect even though it is not yet legally available that he is found guilty: What is the cause of the unclear status of the suspect at the investigation stage (case study of extension of the Cooperation Agreement for the Management and Operation of the Jakarta International (JICT) Terminal? or what are the legal consequence and what actions must be taken for the pending case at the investigation stage (adjudication) the purpose of the study is to find out the cause of the unclear status of the suspect at investigation stage and to find out and clarify the legal consequences and actions to be taken on cases that are hanging at investigation stage (adjudication) by someone who has unclear suspect status on himself. The legal research methodology is a dogmatic study or doctrinal research. The cause of the unclear status of the suspect in the extension of the JICT Operation and Management Cooperation Agreement, the value of state losses as a result of the investigation reported by BPK, 1b. Remain in doubt. The Attorney General does not believe that there is a state loss in the JICT, Management Contract

Extension All Procedure according to the rules have been carried out by suspect. The legal consequences for unclear status of the suspect are very detrimental to the suspect and injure the basic right of citizens to legal certainty and justice, 3b. The abuse of authority of the apparatus results in human right violations.3c. The legal action to be taken by the suspect is. Protection may be requested through a pre-trial which guarantees the rights of the suspect in accordance with his dignity as a human being. The termination of the investigation of the suspect may refer to the provisions of article 76 of the regulation of the National Police Chief No. 14 of 2012 concerning the management of criminal cases.

Ketidakjelasan status tersangka dalam tahap penyidikan (pra ajudikasi), membawa konsekuensi hukum tersendiri bagi tersangka walaupun secara yuridis belum ada kepastian dinyatakan bersalah: Apakah penyebab ketidakjelasan status tersangka pada tahap penyidikan (studi kasus Perpanjangan Perjanjian Kerjasama Pengelolaan dan Pengoperasian Jakarta International Center Terminal (JICT)? atau Apakah akibat hukum dan tindakan apa yang harus dilakukan atas perkara yang menggantung di tahap penyidikan (ajudikasi). Tujuan penelitian adalah, untuk mengetahui penyebab ketidakjelasan status tersangka dan untuk mengetahui dan memperjelas akibat hukum dan tindakan yang harus dilakukan atas perkara yang menggantung di tahap penyidikan (ajudikasi). Penelitian ini adalah penelitian hukum dengan studi dogmatik atau doctrinal research. Hasil penelitian menunjukkan bahwa penyebab ketidakjelasan status tersangka pada kasus Perpanjangan Perjanjian Kerjasama Pengelolaan dan Pengoperasian JICT, masih diragukan nilai kerugian negara hasil investigatif yang dilaporkan oleh BPK. Jaksa Agung tidak meyakini adanya kerugian negara dalam perpanjangan kontrak pengelolaan JICT. Semua prosedur sesuai aturan telah dilakukan oleh tersangka. Akibat hukum atas ketidakjelasan status tersangka sangat merugikan tersangka dan mencederai hak dasar warga negara untuk kepastian hukum dan keadilan. Atas penyalahgunaan wewenang aparat tersebut, berakibat pelanggaran hak asasi manusia (HAM). Tindakan hukum yang harus dilakukan oleh tersangka adalah dapat dimintakan perlindungan melalui pranata pra peradilan yang akan menjamin hak-hak tersangka sesuai dengan harkat dan martabatnya sebagai manusia atas penghentian penyidikan, tersangka dapat mengacu pada aturan Ketentuan Pasal 76 Peraturan Kapolri No. 14 Tahun 2012 tentang Manajemen Perkara Pidana.

Keywords: Unclear suspect status, investigation, law enforcement

INTRODUCTION

In an expressive way, Indonesia is a state of law (article 1 paragraph (1) of the 1945 Constitution). The quality of law enforcement is still static (stagnant), there are many disparities in decisions, on the one hand, because in general the differences in legal knowledge look very different, even though fair law enforcement is a necessity to accommodate certainty, justice and benefit. Law enforcement is often said to be "sharp down, blunt up", now experiencing changes along with humans who develop in the public sphere that law enforcement is sharp upwards appearing to support the government or there is a culture of "*ewuh pakewuh*" in our law enforcement (which has a negative impact) which is a pebble that must be avoided in law enforcement, because it will interfere with professional and into the integrity of law enforcement and destroying the order of the impartial system by prioritizing the principle of equality before the law. [Setiawan, 2021: 8]

The authority granted by the Criminal Procedure Code to investigators provides flexibility of authority on the grounds that the action taken is an act of necessity. The interpretation of the authority lies entirely with the investigator. In the investigation process, there is no provision that regulates the maximum time limit for determining the status of a suspect starting from the investigation to delegating the case to trial, so that the status of a suspect depends on the investigation process. The power to use excessive authority, for example, can be seen in the formulation of Article 5

paragraph (1) letter a point 4 of the Criminal Procedure Code which states that investigators can take other actions according to law and are responsible. This provision causes legal uncertainty which is guaranteed in Article 28 D and Article 28 G of the 1945 Constitution.

Indonesia adheres to a state law model that places the position of Indonesian citizens as having the right to recognition of guarantees of legal protection and certainty as well as fair and impartial treatment (Article 28 D paragraph (1) and has the right to be protected and free from torture for degrading treatment according to Article 28 G paragraphs (1) and (2) of the 1945 Constitution.

The suspect has the right to be tried on the basis of a quick, simple and low-cost trial (Article 2 paragraph (4), the principle of non-discrimination (Article 4 paragraph (1), the principle of presumption of innocence (Article 8 paragraph (1), the right to rehabilitation if there is an error in the arrest and detention and the suspect receives legal assistance Article 56.

To achieve the suspect's human rights objectives, defendants and convicts have built a criminal justice system, carried out on the basis of the right due process, namely that every criminal law enforcer must comply with the law. with the requirements of the constitution and obey the law. Articles of the Criminal Procedure Code that comply with the rights of suspects are contained in Articles 50 to 68 and 95. This means that there must be a balance between law enforcement and the protection of a person's human rights who are heard by the perpetrators of the crime (suspects).

The investigation process as part of the criminal justice sub-system has the authority and power to seek justice, but in practice investigators become violators of the rights of suspects. This is due to the large amount of authority granted by the law, so that it can lead to legal interpretations and conflicts between the authority and rights of the suspect during the court process. Problems that arise are the flexibility of the investigator's authority and the absence of a time limit in the investigation process, causing legal uncertainty which is guaranteed in Articles 28D and 28G of the 1945 Constitution.

According to R Soesilo, to be able to determine a regulation based on knowledge of criminal law, investigators identify an event based on knowledge of criminal law. According to R Soesilo, in the Criminal Investigation section, the investigations can be distinguished as follows:

- a. Investigation in the broadest sense, which includes, investigation, investigation and examination which is at the same time a series of actions and continuously there is no basis for initiation and completion;
- b. Investigators in a narrow sense, namely all actions that are a form of repressive police criminal investigation which is the beginning and examination of criminal cases. [Soesilo, 1996]

According to M. Yahya Harahap, prior to carrying out an investigation, an investigation was carried out with the aim and purpose of collecting preliminary evidence or sufficient evidence so that a follow-up investigation could be carried out. investigators by collecting other evidence related to the criminal act being investigated. These first actions are followed by other actions deemed necessary, to ensure that people who are actually

proven to have committed a crime can be brought to justice. If it is at this stage of the investigation that the investigator is obliged to find the suspect. [Harahap, 2006: 101]

Based on Article 1 Number 2 of the Criminal Procedure Code, an investigation is a series of actions by an investigator in terms of and according to the method regulated by law to seek and collect evidence, which with evidence makes clear the criminal act that occurred and in order to find the suspect. In practice, this provision can create legal uncertainty which is a guarantee in Article 28 D paragraph (1) of the 1945 Constitution, and can cause arbitrariness so that it is contrary to the general principle of "due process of law" which is a characteristic of a constitutional state (Article 1 paragraph 3 1945 Constitution).

An investigation is carried out before an investigation seeks and finds an event that is suspected of being a criminal act. Investigators will conduct an examination of whether or not a criminal act has occurred based on the information obtained by the criminal act accompanied by the collection of evidence to strengthen the alleged occurrence of a criminal act. Then based on this evidence, the investigation process was developed in terms of finding the perpetrators suspected of committing the crime.

Mohammad Faisal Salam said that the investigation was a very important action because it was carried out on the incident and then improved. an investigation, with the aim of collecting evidence with which the crime becomes clear, then proceed with summoning or arresting the people involved in the case. That's when the investigation can be carried out based on the results of the investigation. In the act of investigation, progress

is placed on the defendant "searching and finding" an event that is considered or heard as a crime. While at the investigation stage the emphasis is on the act of "searching and collecting evidence". This means that the collection of related materials to support the belief that the criminal act did occur must be carried out by carefully considering the meaning of the real legal will. [Hartono, 2010: 32]

According to Lilik Mulyadi, the definition of the definition (*begrips bepalingen*) is in accordance with the context of Article 1 point 2 of the Criminal Procedure Code, the dimensions of the investigation begin when a crime occurs, so that through the investigation process begins when a crime occurs, so that through the investigation process, information should be obtained about the following aspects: aspects as follows: a. The crime that has been committed, b. The place where the crime was committed (*locus delicti*), c. The way the crime was committed, d). With what crime was committed, d. The background until the crime was committed and f). Who is the culprit? [Mulyadi, 2020: 55]

Based on the provisions in the Criminal Procedure Code, the status of a suspect determined by the investigator depends on how long the investigation process is carried out by the investigator. Meanwhile, the period of the investigation process does not have clear provisions and limits the time in the investigation process.

Talking about criminal acts of corruption/gratification in relation to state losses and the state economy is an effort in the context of law enforcement and human rights (HAM) [Nawawi, t.t: 8]. The realization of a

nation's life that is free from corruption/gratification, of course, cannot be separated and is supported by sustainable cultural values. [Nelson, 2020: 13]

The rise of issues related to irregularities in the management of state finances among state and government officials, even those carried out by the business world, allows the government itself to create new problems related to legal issues over allegations against someone suspected of having committed corruption and gratification. For this matter, a person who is suspected/suspected and has been in the process of being investigated and investigated for a long period of time results in the hanging of a suspect status on a person for the alleged case. This condition creates uncertainty about the suspect's status, and there are indications of the suspect's human rights violation against him.

The length of the investigation process in the criminal justice system is related to the parameters to measure the reasonableness of the time needed to process someone at a stage in the criminal justice system, especially in the pre-adjudication (investigation) stage. If we observe the unclear status of the suspect above, it will contradict one of the principles in our criminal law, namely the principle of a simple, fast and low-cost trial. In fact, we often see, every process, at every stage, both pre-adjudication, adjudication and post-adjudication (SPP) in Indonesia takes a long time and is certainly difficult to understand.

This paper examines the cause of the unclear status of the suspect at the pre-trial stage of the investigation against a person accused of a criminal case (case study of the Extension of the Jakarta International Center Terminal (JICT) Management and Operation Cooperation Agreement and

what are the legal consequences and what actions should be taken against a case that hangs at the investigation stage (adjudication) by someone who has unclear status of a suspect against him?

METHODOLOGY

The type of research used is normative legal research. This normative legal research aims to find principles or doctrines in applicable positive law, so this research is often also called dogmatic studies or doctrinal research, given that the object of research is positive law to be sought, the underlying legal principle or doctrine, this research will be greatly influenced by the conception used in viewing positive law [Irwansyah, 2020: 107], KUHAP, Constitutional Court Decisions (MK) and Special Criminal Law (Related Corruption/Gratification) [Asikin, 2003: 107]. If positive law is conceptualized as a written rule issued by an authorized person, then the principle sought is only written legislation [Asikin, 2003: 108].

DISCUSSION

Problems

The meaning of protection is the expectation that every subject who supports rights and obligations in legal traffic waits for protection. In fact, sometimes expectations (*das sollen*) and reality (*das sein*) are not directly proportional so that many individuals/corporations/legal entities who desire legal protection become disappointed and frustrated. which apparently leaves a lot of problems that still need to be addressed, not only

for individuals/individuals but also regarding the legal entity they represent if they act on behalf of the business entity. [Muntaha, 2018: 62]

The position of the suspect on the alleged criminal act that is alleged against him in the legal service is in an equal position in the sense that between the suspect and the police/prosecutor in certain circumstances is not at the same level as legal subjects supporting rights and obligations, but often occurs in fact, the suspect is in object position because a person/legal entity/corporation requires legal services from the apparatus and institutions that have the authority to do so. so that in providing legal services, institutions/police/prosecutors institutions as well as law enforcement officers in the pre-adjudication stage, are two sides of money that cannot be separated from each other.

In the situation/position of the suspect as an object, the legal position of the suspect and the police/prosecutor is no longer a mutualistic symbiosis, but rather on the relationship between workers and employers, giving rise to an unfavorable relationship that the interests of a person who is a suspect in legal services is highly dependent on the will of the individual. the law enforcement officer who represents his agency is not in the authority according to the rules that have been legalized by positive law which is the basis for processing a criminal case.the problem of legal services is a human right (HAM), as described in the Criminal Procedure Code (KUHAP), which must be realized as mandated in Pancasila and the 1945 Constitution of the Republic of Indonesia.

Whereas- A person's rights must be respected and realized without looking at the suspect's position as an object or the suspect's social status in

demanding his rights in legal services for cases suspected of him with the rules of the game that have been regulated by law, but in reality the seeker of justice in in seeking clarity on the status of the suspect in the alleged case and the protection of human rights, feeling disappointed due to the ambiguity of the case and the status it bears in the pre-adjudication stage, and even tends to violate the rules of the game that have been regulated in the applicable legislation. (One of these rules, we can see in Article 40 of Law No. 19 of 2019).

Article 7 paragraph (3) Joint Decree of the Head of the Indonesian National Police (Jakarta), In the criminal justice system, especially the pre-adjudication (investigation and investigation) stage, the investigator and the appointed Investigating Prosecutor must cooperate with each other to speed up the investigation process. Every process in the criminal justice system must still refer to the principles in our criminal procedural law, namely the principles of justice which are simple, fast and low cost.

In relation to what has been stated above, Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power in Indonesia, states: "Judicials are carried out in a simple, fast, and low-cost manner. Furthermore, Article 4 paragraph (2) of the Law on Judicial Power states that: "Investigators assist justice seekers and try to overcome all limitations and efforts to achieve a simple, fast and low-cost trial. In the Elucidation of Article 2 paragraph (4) of the Law on Judicial Power, it is explained "in the settlement of cases at every stage, both the pre-adjudication, adjudication and post-adjudication stages, it does not neglect accuracy and precision in seeking truth and justice."

However, in fact, law enforcement (in this case corruption or gratification) is less effective and takes a long time (as seen in the cases analyzed in the pre-adjudication stage) which results in the hanging of the case and the unclear status of the person accused of the case below).

In September 2020, investigators at the Deputy Attorney General for Special Crimes (Jampidsus), began investigating the case of "extension of the Jakarta International Center Terminal Management and Operation Cooperation Agreement". President Director of PT. Pelabuhan Indonesia II (Persero) in 2009-2015 was investigated in the case of alleged Corruption in the Extension of Contract Management for the Jakarta International Container Terminal (JICT) at Tanjung Priok Port, Jakarta (This is based on the recommendation of legal monitoring by members of the DPR on PT. Pelindo in 2017).

Extension of the Cooperation Agreement for the Management and Operation of the Jakarta International Container Terminal (JICT) (Container Terminal in Tanjung Priok) which is managed by PT. Pelindo and Hutchison Indonesia (which is headquartered in Hong Kong).

Allegedly "not in accordance with regulations and detrimental to the state), then the Special Committee (pansus) requested an investigative audit from the Supreme Audit Agency (BPK). The audit results stated "The JICT Management Cooperation Contract is indicated to be detrimental to the state with a value of Rp. 4.08 trillion.

The indication of state losses stems from the difference in the advance payment for the lease that should have been received by Pelindo II from the company PT. Hutchison Ports Indonesia. In the extension of this

contract, it is deemed not to consider the option PT. Pelindo II manages its own terminal.

Case Analysis

Losses and contract extensions claimed by the Special Committee (Pansus), actually cannot be ascertained. A member of the Supreme Audit Agency (BPK) stated that “the institution has submitted a Contract Extension Monitoring Report to the Special Committee in 2017.

The BPK results, apart from being brought to the Attorney General's Office, the DPR's Special Committee brought the audit results to the Corruption Eradication Commission (KPK) in July 2017. The DPR's Special Committee for Questions regarding Pelindo II, to follow up on the findings, will meet with the KPK. However, the KPK did not follow up on the DPR report on the grounds that the loss had not yet occurred (The new extension realization contract took effect in 2019).

The Prosecutor's Office has not named a suspect, the issue of the case of extending the JICT management contract is currently at the investigation stage (with the reason that it is only at the witness examination stage). The corruption investigation shifted to allegations of gratification, because the Attorney General's Office did not believe there was any loss to the state in the extension of the JICT management contract.

The suspect denied that the calculation of state losses in the BPK report was wrong, because BPK wrote down the financial benefits that would be received by PT. Pelindo II if the contract is extended only includes the distribution of dividends for the 2014-2038 period in accordance with the

percentage of share ownership in PT. JICT and downpayment of rental fees. (Though according to the suspect, the contract extension also includes profits from returning the management of JICT's terminal II to PT. Pelindo II.

The capacity of the terminal will increase to 300 thousand twenty-foot equivalent (TEU) per year. Here it is estimated that PT. Pelindo will generate a net profit of around US\$ 10 million every year. If JICT manages itself, it is estimated that the income earned by PT. Pelindo II will not be as large as in the BPK report. The report states that PT. Pelindo II will receive additional rental fees from other parties in the period 2019-2038. This money will not be available if PT. Pelindo manages the terminal itself.

BPK calculates the income from rental fees in option until 2038 reaches US\$ 624.4 million (this needs to be corrected), because if it is managed independently, no one will pay the rent anymore (meaning the same figure it is stated that BPK may not exist). The amount of JICT's revenue in 2014-2038 calculated by BPK in that period even though PT. Pelindo was still cooperating with other parties to manage JICT (this also needs to be corrected).

The BPK report states that PT. Pelindo II is assumed to receive data on JICT leases from other parties in the amount of US\$ 277.9 million. in fact, PT. Pelindo II collected a rental fee of US\$ 181.15 million in the same period because there were still ties of cooperation in the old contract.

The BPK report contains an absolute difference in the amount that is smaller than the value calculated by BPK in its report of Rp. US\$ 96.75 million. PT. Pelindo must pay a contract termination penalty of Rp. US\$ 58

million to PT. Hutchison in 2018. This point was not listed from the results of the BPK investigative audit. With this calculation, the estimated state loss reached US\$4 306 million (in fact it never happened). The suspect denied that there was a state loss due to the results of BPK's calculations in his report (objection to the results of the BPK audit). The suspect claimed that the state benefited nearly US\$300 million.

The Investigation Stage

The Chairman of the Corruption Eradication Commission (KPK), on December 15, 2015, has signed an "Investigation Letter" by reporting the components of the investigative audit of the Supreme Audit Agency (BPK) regarding the potential state losses caused by PT. Pelindo II, and has two pieces of evidence to ensnare the suspect and (KPK has examined 18 witnesses and experts and audited BPK and the Government).

For almost a year the case has been ignored at all and the KPK has not examined new evidence in a corruption case that has allegedly cost the state up to tens of billions of rupiah.

The delay in law enforcement in the above case is due to several reasons:

- a. There is no indication of state losses on the agreement to extend the cooperation in the management and operation of JICT;
- b. There is still doubt about the value of state losses resulting from the investigation reported by the BPK;
- c. The Attorney General does not believe that there will be state losses in the extension of the JICT management contract;

- d. Former President Director of PT. Pelabuhan Indonesia (Pelindo II), with the status of a suspect in submitting evidence to the KPK by providing data relating to the extension of the cooperation contract for the management and operation of JICT on his computer and cell phone, (however, the one who examined was not the investigator but the KPK auditor);
- e. The suspect filed an application for protection and Legal Certainty to the KPK Supervisory Board as well as to the Indonesian Ombudsman and to Komnas HAM. (all procedures have been followed according to the rules). [Tempo, 2021]

Steps taken by the suspect:

- a. The suspect is adamant that he has not committed a crime of corruption/gratification;
- b. With four examinations per October/November 2020, the suspect has fulfilled the actual procedure, by asking the Development Authority and Supervisory Agency (BPKP), from the legal aspect to the Junior Attorney General's Office for Civil and State Administration.
- c. The reason the suspect asked for a contract extension was based on all suggestions from BPKP and the Prosecutor's Office with all the negotiation processes already firm (check and recheck with BPKP), with consideration of a profit of US\$ 202 million, the bid figure was considered good after being brought to the Ministry of SOEs.
- d. Finally, the suspect made a contract extension letter.

- e. PT. JICT or Pelindo II (Persero) and Hutchison Part Jakarta Ptc. Limited (HPJ) has carried out a transparent, open process and followed the applicable rules and procedures.
- f. Hutchison Parts Jakarta (HPJ) Ptc. Limited (HP) has also carried out the correct process, which means being transparent, open and following the applicable rules and procedures;

Based on this description, the hanging of the case and the unclear status of the suspect at the pre-adjudication (investigation) stage above, viewed from a legal perspective, can be analyzed as follows:

Article 109 paragraph (1) of the Criminal Procedure Code (UU No. 8 of 1981). The unclear status of the suspect at the pre-adjudication stage at the Police and at the Prosecutor's Office has implications for the rights of the suspect who are harmed and creates legal uncertainty in the criminal justice system (SPP).

Analysis

The police and the prosecutor's office must be the protectors and protectors of the community, able to realize a common perception and action for the sake of creating conditions of security and public order and upholding the law. Including in dealing with crime, to maintain security and social order, upholding the law as a public servant should be carried out optimally. It should be in preventing and dealing with various social problems that occur in people's lives, still referring to applicable procedures and rules (positive law), and remaining guided by improving the quality of modern, easy, cheap, fast, consistent and sustainable public services.

In fact, there has been a shift in the order of values/culture, neglect of honesty values, diminishing culture of shame, disorientation of honor,

the development of hedonism, neglect of basic human rights, as well as loss of trust in law and law enforcement. Police and prosecutors related to law enforcement, in realizing their role, through a number of powers, authorities, competencies they have, must consider empirical realities and appropriate norms. The police and the prosecutor's office must truly understand that legal certainty is not sufficient to regulate traffic in the interests of the community, so that the factors of expediency and justice and compassion for others should be the basis for seeing the application of legal certainty so that legal functions can be more humane. [Hazlit, 2003: 18]

The police and prosecutors as state instruments, guards and enforcers of regulations in a complex society are faced with substantial challenges to enforce the law, but the police and prosecutors in enforcing the law must be on a neutral side, not favoritism and act professionally. An orderly and peaceful life is a reflection of the implementation of fair law enforcement which is the true goal of law.

Should be (*das sollen*) in the laws and regulations in proceedings, if the investigation process has been completed and has exceeded the time in the legislation, the investigation process must be stopped (this is related to human rights and the rules in the KPK Law No. 19 of 2019) Article 40' paragraph (1). The Corruption Eradication Commission (KPK) may stop the investigation and prosecution of cases of criminal acts of corruption whose investigation and prosecution are not completed within a maximum period of 2 (two) years, paragraph (2). no later than 1 (one) week from the issuance of the order to terminate the investigation and prosecution, paragraph (3), the termination of the investigation and prosecution as referred to in

paragraph (1) must be announced by the Corruption Eradication Commission to the public. The termination is by notification to the investigator and the public prosecutor as well as his family (Article 6 paragraph (1) of the Criminal Procedure Code).

Based on the facts and rules above, the unclear status and cases that hang over the above case, the causes can be explained below:

- a. Reports to the KPK Supervisory Board in an effort to seek legal protection and certainty, the KPK argues that the case is still being investigated, and waiting for a follow-up audit (within a time limit that has not been clearly determined);
- b. Reports to Komnas HAM (related to confiscated human rights), it is recommended that a sufficient report be submitted to the KPK Supervisory Board;
- c. Report to the Ombudsman of the Republic of Indonesia (They are still asking the BPK and others).

In relation to the problems above, the Director of Investigation of the Attorney General said: The investigation into the Pelindo II case has taken too long, it remains only to determine whether there is a kickback for personal interests or not. [Hazlit, 2003: 63]

In the General Explanation Point 3c of the Criminal Procedure Code, in a criminal justice system (SPP) process, law enforcement officers at every stage in the SPP must heed the principle of presumption of innocence against someone whose guilt is not clear (the principle of presumption of innocence) to protect and respect the rights of suspects against the arbitrary power of law enforcement officers.

The suspect is a legal subject with rights. John Rawls realizes that respecting rights is the most important act, which stems from fundamental principles, namely the principles that give moral reasons that are decisive. [Duo, 2011: 13]

Article 1 number 14 of the Criminal Procedure Code (KUHAP) means a suspect is a person who, because of consideration of his circumstances, based on preliminary evidence, should be suspected of a criminal act. In the Regulation of the National Police Chief Number 12 of 2009 concerning Supervision and Control, Application of Criminal Cases within the Indonesian National Police, it is stated:

- a. The status of a suspect can only be assigned by an investigator to a person before the results of the investigation carried out obtain sufficient preliminary evidence, namely at least 2 (two) types of evidence;
- b. To determine sufficient initial evidence, namely at least 2 (two) types of evidence, as stated in paragraph (1) is determined through a case title.

From the Regulation of the National Police Chief, to determine a person as a suspect must go through a process first and the determination of a suspect must be carried out professionally and transparently, so that there is no abuse of authority and furthermore it is not merely a tendency to make someone a suspect. then the path that must be taken by the suspect is to submit an application for these conditions to the pre-trial.

The legal action taken by the suspect is, of course, guided by the Decision of the Constitutional Court (MK) No. 21/PUU XII/2014[28] which adds a limitative provision in Article 77 of the Criminal Procedure Code (KUHAP) regarding whether or not a person's suspect status is

legal. This extension of the determination of a person's suspect status must be included in the pre-trial authority (Constitutional Court Decision (MK) This has implications for the issue of ambiguity and differences in interpretation in when only law enforcement officers (especially judges) (solution by issuing the Constitutional Court Decision No. 21/PUU-XII/2014). Especially the legitimacy of the issue of determining "suspect status" against a person.

Based on the above problem, it is based on the principle of "Due Process of Law" which postulates: "A person must not be revoked or deprived of their rights to life, liberty and property without notification and opportunity to defend their rights guaranteed by the constitution. [Hayat, 2017: 2]

The principle of "Due Process of Law" is a means for someone who is illegally arrested, detained or determined to be a suspect in his or her bag, the right to hear information on why they were arrested/detained). The principle of "Due Process of Law is the implementation of pre-trial which can cause the government to give a fair legal role from every pre-trial process (especially at the investigation stage) including the determination of status because it has clear evidence and legal basis.

The legal considerations are that the determination of the suspect is part of the role of the investigation, is a deprivation of human rights (HAM), consequently the determination of the suspect/unclear suspect status should be an object that can be requested for protection through pre-trial institutions.

Regarding the above case, the protection of a person with the status of a suspect (unclearness of a person who is stopped at the investigation/pre-adjudication stage) due to a mistake by law enforcement officials or related bodies or due to arbitrary actions of investigators which can be suspected to have occurred due to errors by the institution or apparatus. law enforcement agencies related to the case, the solution is pre-trial institutions (which can examine and decide). [Raya, 2021]

In the implementation of the protection of human rights (in this case the rights of the suspect in the investigation process), the Criminal Procedure Code puts in a position and a position that must pay attention to human rights which are used as one of the main foundations and animate the Criminal Procedure Code, and must pay attention to the principle of "equal before the law" and the principle of "presumption of innocence", so that the human rights of a person (suspect) must be respected, and their dignity and worth are upheld.

Behind all these rules in the Criminal Procedure Code, there is an opportunity that may arise or the occurrence of an excessive use of authority, especially if we look at the rules contained in Article 5 (1) letter 4 of the Criminal Procedure Code [33], which formulates: "Investigators can take action another according to the law that is responsible"(other actions here have meanings that are not detailed, meaning vague or unclear), which can be interpreted with millions of meanings, so that the discretion of investigators who act not according to applicable rules is an act justified by law. [Harahap, 2006: 106]

Article 4 paragraph (2) of the Law on Judicial Power, requires that the implementation of law enforcement must be guided by the principles of quick, simple, low-cost and uncomplicated justice. The delay in the settlement of criminal cases that is intentional by law enforcement officers is a violation of the rights of freedom of the suspect. We can see this in the ICCPR in Article 9 paragraph (3), which states: "The examination must be carried out as soon as possible. Consequently, the implementation of a maximum period of detention/determination of a suspect at the investigation stage (pre-adjudication) which is inefficient has violated the suspect's right to freedom.

The Constitutional Court (MK) made this decision taking into account Article 1 paragraph (3) of the 1945 Constitution, which states that: Indonesia is a state of law, so the principles of " Due Process of Law" must be upheld because of all the behavior of law enforcement agencies in order to respect one's human rights, which was later and reaffirmed through the Decision of the Constitutional Court (MK) Number: 65/PUU-IX/2011, which on page 30 states "...the philosophy of holding a pre-trial institution which in fact guarantees the rights of the suspect/defendant in accordance with their dignity as human beings.

Legal uncertainty which is a guarantee in the rules contained in Article 28D paragraph (1) of the 1945 Constitution which can lead to arbitrariness, so that it may conflict with the general principles of "due process of law" The characteristics of a legal state like Indonesia (Article 1 paragraph (3) of the 1945 Constitution).

The decision of the Constitutional Court 21/PUU-XII/2014 which revamped the pre-trial object by making the determination of the suspect as one of the pre-trial objects that previously did not exist in the KUHAP, is to create a new norm that is not the authority of the Constitutional Court (MK) but has the authority to form laws. Therefore, the stipulation of the suspect as a pre-trial object in Article 77a of the Criminal Procedure Code (KUHAP) does not make this provision unconstitutional. Because if the determination of the suspect is deemed to be able to respect and protect the suspect's human rights, then such an idea may be included in the provisions of the law by the legislators in accordance with their authority. In other words, the determination of a suspect against a person can be tested in the pre-trial trial forum. The decision is a horizontal oversight of the activities of investigators.

CONCLUSION

From the description above, the cause of the unclear status of the suspect in the case of Extension of the JICT Management and Operation Cooperation Agreement is the questionable value of state losses resulting from the investigative report by BPK; The Attorney General does not believe that there will be state losses in the extension of the JICT management contract; and All procedures according to the rules have been carried out by the suspect.

From the substance there are weaknesses in the rules: First, Article 1 letter 4 of the Criminal Procedure Code: Investigators can take other actions according to the law that are responsible ("other actions", this norm is vague, multiple interpretations). Second, the decision of the Constitutional Court

(MK), gives a concrete decision on Articles 14, 17, and 21 of the Criminal Procedure Code, which basically stipulates a suspect in a person, at least two pieces of evidence must be met. (This decision also does not provide a limit on the length of time a person holds the status of a suspect).

The legal consequences for the ambiguity and the actions that must be taken are: the legal consequences for the unclear status of the suspect and the hanging of the suspected case against the suspect in the investigation stage (pre-adjudication), greatly harming the suspect and injuring the basic rights of citizens for legal certainty and justice; for the abuse of the authority of the apparatus, resulting in violations of human rights, especially the suspect's right to seek justice.

Legal action that must be taken by the suspect due to the unclear status and hanging case, can be requested for protection through pre-trial institutions that will guarantee the rights of the suspect in accordance with his dignity as a human being; temporarily upon termination of the investigation, the suspect may refer to the provisions of Article 76 of the Regulation of the National Police Chief No. 14 of 2012 concerning Management of Criminal Cases, which formulates: there is not enough evidence, the incident is not a criminal act; the criminal act has obtained a judge's decision which has obtained a judge's decision that has permanent legal force (*ne bis in idem*). [W]

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