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Study of the assessment of suspension of detention in practice Indonesian criminal justice

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Abstract
Talking about the suspension of detention cannot be separated from the issue of guarantees and guarantors as per Article 31 paragraph (1) of the Criminal Procedure Code and Government Regulation No. 27 of 1983, however, the criteria for whether or not a suspension of detention can be granted depends on the policy of law enforcement such as investigators, public prosecutors and judges in interpreting legal norms due to the ambiguity of the legal norms contained in them, thus giving rise to subjectivity in granting a suspension of detention. The type of research used by the author is a normative research type with a normative juridical research method with the approach used being a statutory approach and carried out through a literature study with a qualitative analysis of legal materials, namely explaining and concluding the legal materials that have been collected by the author. The results of the research show that in the Criminal Procedure Code and the Implementing Regulations of the Criminal Procedure Code there are no regulations regarding the criteria for the amount of bail and the requirements for guarantors.

Keywords: Bail assessment, suspension of detention, suspect/defendant

Introduction

Freedom is one of the civil rights granted to everyone from birth. As human rights developed, freedom was often equated with liberty. This is because freedom is the first component of human rights, later abbreviated as HAM. Karel Vasak initiated the generational stages with the aim of dividing the development of human rights based on the time period in which aspects of human life developed. Freedom has been granted to humans since birth. Even as an absolute or inviolable right, this right cannot be violated or diminished [1].

Everyone experiences discomfort when their freedom of movement is restricted. If your activities are hampered and you don't have much room to move, it will impact your overall health. You should also try to find ways to avoid these restrictions. Any individual who intentionally and unlawfully deprives someone of their freedom is threatened with criminal sanctions, according to Article 333 paragraph (1) of the Material Criminal Code. The Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter known as the 1945 Constitution of the Republic of Indonesia) explicitly states that freedom is the right of every nation. This shows that the nation is a collection of people who have the right to freedom of action, movement, and participation in all aspects of their lives.

Criminal justice requires time to complete the duties and functions of law enforcement at every stage of the process. During the initial stages of the judicial process at the investigation level, investigators need time to initiate coercive measures, which include actions such as detention, detention, searches, seizures, and document inspections, until the investigators' performance results are completed, known as the BAP (Examination Report). To facilitate the examination, investigators require the suspect to be detained.

During that time. During detention, the suspect or his/her family members, or through their attorneys, as stipulated in the Criminal Procedure Code, have the opportunity and opportunity to request a suspension of detention. The investigator determines whether the request for suspension of detention will be granted or not. This must meet the requirements stipulated in the Implementing Regulation of the Criminal Procedure Code No. 27 of 1983, in conjunction with the Criminal Procedure Code. Furthermore, after the investigator submits the police report (BAP) to the prosecutor, who then hands over the suspect and the evidence, the prosecutor has the authority to detain.

This also means that you can accept the request for suspension of detention. The prosecutor has the decision to decide whether the request is accepted or rejected.
Once the prosecutor's indictment is submitted to the court for consideration and a decision, the responsibility for handling the case against the suspect shifts to the court's jurisdiction. The suspect's status changes to that of a defendant. Once the case reaches the trial stage, the authority to arrest someone becomes the judge's responsibility. Therefore, if a defendant is detained and wishes to request a suspension of detention, the defendant, his lawyer, or a family member may request a suspension of detention under the same conditions as before. There is a difference in this suspension of detention at the time of HIR Stb. Th 1941 No. 44/Herzien Inlandsch Reglementstarting to apply, the criminal procedure law that was in effect before the Criminal Procedure Code, suspension of detention can only be granted by judges, investigators and public prosecutors who are not authorized to suspend detention [2].
Law enforcers such as investigators, public prosecutors and judges need to interpret legal norms as stated in Article 31 paragraph (1) of the Criminal Procedure Code and Government Regulation No. 27 of 1983 Articles 35 and 36 relating to guarantees and guarantors of people in detention suspensions in their capacity to assess whether a request for detention suspension can be granted or rejected using subjective assessments [6].
Request of the suspect or defendant. Regarding the legal phenomenon of the ambiguity of formal and substantive conditions stated and implied in criminal law and its enforcement regulations at the time of suspension of detention, the author will conduct an analysis. Therefore, the scope of the problem that will be studied in this written analysis is: (1) Are there criteria that regulate the limits on the amount of bail and the regulation of people as a condition for requesting suspension of detention in criminal justice? and (2) What is the form of legal responsibility of the guarantor if the detainee escapes?

2. Research Method
This writing uses a normative research type, namely referring to legal norms contained in statutory regulations which aims to find legal problems that arise from the contents of the law [3]. The type of approach used is a legislative approach with the technique of collecting legal materials through literature studies by analyzing literature sources from legal regulations, books and scientific publications.

3. Discussion
A. Study and Analysis Regarding the Existence or Absence of Criteria Regulating the Limits on the Amount of Bail and the Regulation of Persons as Conditions for Requesting Suspension of Detention.
For applicants, a postponement is possible detention for using collateral in the form of money or personal guarantee as guarantor, according to the provisions of the Criminal Procedure Code. The agreement must clearly indicate the type of guarantee, and the amount must be determined by an authorized official with the provisions as regulated in Article 35 of PP No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, namely:
1. The bail money for the suspension of detention determined by the authorized official according to the level of examination is deposited with the clerk of the district court
2. If the suspect or defendant runs away and after 3 (three) months the bail money is not found, it becomes the property of the state and is deposited into the state treasury.

There are no clear provisions regarding the value of the money used as collateral. Therefore, the authorized official, based on the level of the investigation, determines the value. The amount of the collateral will be determined by the authorized official, depending on the level of the investigation. The authorized officials referred to in this article are:
1. Investigators at the investigation level
2. Public Prosecutor at the prosecution level
3. Judges at the court examination level

After that, the bail money is deposited at the district court office and if the suspect/defendant escapes and is not found after three months, then the bail money becomes the property of the state and is deposited into the treasury. However, if the suspect/defendant is caught after three months, then the bail money cannot be obtained back, while for suspects/defendants who do not escape, after the case is completed and the decision has permanent legal force, the bail money will be returned to him.
Regarding the amount of bail for pretrial detention, neither the Criminal Procedure Code nor the Implementing Regulations of the Criminal Procedure Code Number 27 of 1982 regulate it. If a suspect/defendant has submitted a request for a suspension of detention to an investigator, public prosecutor, or judge, the amount of bail is determined by the authorized officer at each stage of the judicial process, whether during the investigation, prosecution, or court examination. There is no legal certainty governing the amount of bail that must be deposited due to the unclear regulations. Because the authorized officer has his own discretion regarding the determination of bail. Likewise, the law in this case the Criminal Procedure Code and the implementing provisions of the Criminal Procedure Code do not regulate where the applicant does not have bail money. In addition, there are no regulations regarding whether a suspect/ defendant can apply for a suspension of detention.
This depends on the type of crime committed. There are also no regulations regarding the availability of bail for prisoners who escape before the three-month period ends. However, if the three-month bail period ends, the money becomes the property of and is deposited in the state treasury.
According to the authority theory, officials with the authority to detain at all levels of investigation are distributively bound by the authority to grant permission for suspension of detention and directly determine the amount of bail. Because there is no certainty regarding the amount of bail, as well as the requirements and limitations of guarantors, such as the person in charge, the Criminal Procedure Code, and its implementing regulations, legal construction is needed to ensure the regulation of bail and guarantors in suspension of detention.
If bail is granted to individuals, there must clearly be criteria related to the social status and identity of the surety. This is done to prevent the detainee from abandoning his or her responsibilities after the bail is granted, and the suspect or defendant may flee, or if the amount of bail is

disproportionate to the damage caused by the crime committed by the suspect or defendant.

Even more tragically, if a prisoner escapes for more than three months and the guarantor is unable to pay the appropriate amount of compensation according to the level of investigation, the state will suffer losses. Furthermore, if the guarantor lacks assets that can be confiscated or auctioned off with the proceeds deposited into the state treasury, the state will again suffer losses due to the guarantor's fault.

B. Study and analysis of the forms of legal responsibility of guarantors if a prisoner escapes

Any violation of material criminal law committed by an individual will be prosecuted in accordance with formal criminal law or criminal procedure law. The Criminal Code that is still in force today is a legacy of the Dutch colonial era, adopted based on the principle of concordance with Law No. 73 of 1958, which was later amended and supplemented by Law No. 1 of 1946 concerning the Criminal Code, with its official name- Wetboek Van Strafrecht Voor Nederlandsch-Indie, changed toWetboek Van Strafrecht, which is commonly called the Criminal Code or abbreviated as KUHP.

Regarding the relationship between the provisions of one article of the Criminal Code and detention, which is often considered the same as freedom, it actually has a different connotation etymologically. The Criminal Code article states that detention is an act of depriving someone of their freedom. It would be more appropriate to use the language or words depriving someone of their freedom. Article 333 paragraph (1) of the Criminal Code explains that it is prohibited for anyone to deprive someone of their freedom unlawfully and will be subject to a prison sentence of up to eight years, and even if qualified with another criminal act, the sentence can reach 12 years.4

According to the aforementioned provisions of the Criminal Code, it is prohibited for anyone to revoke or restrict a person's freedom of movement. The freedom in question (referred to in the article as deprivation of liberty) occurs when detention during a judicial process is technically deemed to violate substantive criminal law or the Criminal Code itself. Detaining someone unlawfully constitutes a violation of substantive criminal law. Therefore, regarding the prohibition of detention under the Criminal Code, the substance of suspended detention should be regulated materially in the future Criminal Code, with the formulation of appropriate Criminal Code offenses.

Connected with the essential restraint of human freedom that is fully guaranteed by law universally, of course, it is very inappropriate if it is done without a clear, definite basis and clear purpose why a person's freedom of movement is restricted. The origin of the concept of freedom that is connected with independence comes from the period of the French revolution in 1776, which was marked by the slogan Liberty, Equalite, Fraternity (Liberty, Equality, and Fraternity) as a form of resistance against the absolutist power of the government under Napoleon Bonaparte.

In the United States, the first President, Abraham Lincoln, reaffirmed the meaning of liberty and freedom by opposing slavery. Therefore, the detention of suspects or defendants actually contradicts the principle of human liberty, which should provide freedom to move about life without restriction.

At all levels of justice, escape is always a possibility for detainees. This is because their sense of freedom is restricted whenever suspects/defendants seek loopholes and ways to circumvent restrictions imposed by the negligence of the officers guarding their cells.

In case of detention or suspension to If a suspect/defendant is granted bail, the only guarantee for a suspended detention is a guarantor. If a detainee escapes and is not found within three months or does not turn themselves in, new problems will arise. They will be liable under both civil and criminal law. A guarantor cannot replace the criminal responsibility of an escaped detainee.

With regard to civil liability, Articles 35-36 of the Implementing Regulations of the Criminal Procedure Code stipulate that if a detainee escapes and is not found within 3 (three) months, the guarantor must deposit a sum of money with the state through the court clerk. This is done in accordance with an agreement between the detaining official and the detainee's guarantor. Furthermore, if the guarantor's assets or property are not voluntarily provided, they can be auctioned. The proceeds of the auction, amounting to the agreed amount, are handed over to the clerk of the local district court.

If a person's guarantor doesn't have any property that can be sold to meet the obligation to pay in lieu of the escaped detainee, this will cause problems. If a request for a suspension of detention is not accompanied by a monetary guarantee, the state will still suffer losses. This is because

From an administrative legal perspective, the guarantor's responsibility is not regulated in the Criminal Procedure Code, thus causing a legal vacuum.

The guarantor in a criminal suspension of detention does not address civil liability, thus significantly increasing the risk of state losses due to a prisoner's escape. This is because the guarantor's position and responsibilities are also weak. From a human rights perspective, the state cannot force a guarantor who is unable to fulfill his civil obligations to replace an escaped prisoner with criminal liability.

If such an action is carried out, it would violate the principles of substantive and distributive justice. Substantive justice is essentially justice that conforms to its true content or meaning, while distributive justice essentially gives someone their due share and responsibility. Essentially, regarding the escape of a prisoner, the prisoner himself remains legally responsible, while the guarantor must bear full and maximum legal responsibility. The cause also lies in the weaknesses of the legislation governing this matter, such as the lack of clarity or even the absence of regulations governing it.

3. Closing

4.1 Conclusion

1. Neither the Criminal Procedure Code nor the Implementing Regulation of the Criminal Procedure Code No. 27 of 1983 regulates the criteria regarding the limits on the nominal value of the amount in the form of money and the terms and conditions for guarantors in the form of individuals, in the suspension of detention from the investigation level to the trial. The amount of money as collateral is determined through an agreement between the detention officials at each level of examination by requesting a suspension of detention. Thus, there is an empty norm in the basis for regulating the suspension of detention, which requires standardization or construction of

norms by the legislative body together with the executive for future solutions.

2. Form of legal responsibility of the guarantor If the suspension of detention uses a guarantee in the form of a person and the detainee escapes, the guarantor cannot be prosecuted under criminal law because in criminal law, a person cannot be burdened with responsibility as a substitute for another person involved in a criminal case. In criminal law, there is a principle of absolute liability where the perpetrator of the crime is responsible before the law. The guarantor in the form of a person related to the suspension of detention is limited to only being burdened with civil liability, but this is not absolute. If the guarantor does not have assets to be used as compensation for the escape of the detainee, the guarantor cannot be forced to fulfill his obligations. This shows that neither the Criminal Procedure Code nor the Implementing Regulation of the Criminal Procedure Code Number 27 of 1983 does not regulate this matter, so it can be considered an empty legal norm.

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