

JURIDICAL REVIEW OF THE PROVISIONS OF THE TIME LIMIT FOR INVESTIGATION OF GENERAL CRIMES AGAINST THE PROTECTION OF THE RIGHTS OF SUSPECTS



Alan Sahlan¹, Agus Dimiyati², Sutiyono Suwondo³

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¹²³Faculty of Law, Gunung Jati Swadaya University

Author's Correspondence:

Abstract. The phenomenon of criminal law enforcement today is increasingly losing direction and is even considered to have reached its lowest point, the justice-seeking community complains about the criminal investigation process (general) which is convoluted, protracted and there is even no end to the solution, this situation clearly does not provide legal certainty, justice and benefits in law enforcement, moreover there will be violations of the rights of suspects, one of the causes of this situation is the absence of The provisions of the investigation time limit (norm vacuum), which gives the investigator the opportunity to abuse his authority. Therefore, the purpose of this study is to find out the provisions of the time limit for the investigation of general crimes related to the protection of the human rights of suspects in the Criminal Procedure Code (KUHAP) and to analyze the setting of the time limit for the investigation of general crimes in the criminal procedure law that will be dated. The research method used in this study is using the type of normative legal research with the approach used in this study being the statute approach and the conceptual approach, with the research specification being descriptive analytical, while the legal material collection technique used in this study is by using document studies. namely documents obtained from the Jatanrasa Unit of the Sumber Police. Based on the results of the study, it shows that there is no provision that regulates the time limit for the investigation of the suspect from the beginning of the investigation to the transfer of the trial case, so that the status of the suspect depends on the investigation process. The absence of a time limit in the investigation of suspects causes legal uncertainty guaranteed by Articles 28D and 281 paragraph (2) of the 1945 Constitution, therefore in the Draft Criminal Code there is a regulation of the time limit for investigation as stipulated in article 48 of the RUUKUHAP. Paragraph (1) and Paragraph (3).

Keywords: investigation time, human rights of suspects, ius contitutum and ius constituendum.

INTRODUCTION

The Criminal Procedure Code (KUHAP) as stipulated in Law Number 8 of 1981 (Statute Book of the Republic of Indonesia Number 76 of 1981) is more than thirty-seven years old, as a general guideline in handling criminal cases in general has regulated the duties and obligations of law enforcement officials as well as rights for citizens involved in criminal law

matters, in the Criminal Procedure Code (KUHAP) it is regulated regarding the stages of handling cases which are divided into the stages of Investigation, Prosecution, Trial Examination, Legal Remedies and the Execution/Implementation of Verdicts stages, as well as the law enforcement officials who are on duty at each stage of handling cases.¹

The division of duties of law enforcement officials in carrying out their functions, duties and authorities is expressly divided in the Criminal Code, including Investigators are authorized to conduct investigations, Prosecutors/Public Prosecutors are authorized to conduct pre-prosecution and prosecution, carry out determinations and implement court decisions, Judges are given the authority to adjudicate/examine and decide cases, while Correctional Institutions are given the authority to provide guidance to criminal offenders. Then with the birth of Law No. 18 of 2003 concerning Advocates (Statute Book No. 49 of 2003), in addition to the existence of law enforcement officials as mentioned in the Criminal Procedure Code, based on the provisions of Article 5 paragraph (1) of Law No. 18 of 2003 "Avokat has the status of an independent law enforcer and ... "So that law enforcement agencies have added one more, namely Advocates/Legal Advisors who have the duty and authority to provide legal assistance to suspects/defendants.²

The purpose of the Criminal Procedure Law is to seek and obtain or at least approach the material truth, namely the most complete truth of a criminal case by applying the provisions of the Criminal Procedure Law honestly and appropriately, with the aim of finding out who the perpetrator can be accused of committing an offense and then requesting an examination and decision from the court to find out whether it is proven that a criminal act has been committed and whether the person who The indictment is blameworthy. The general objectives of this paper are: 1. To find out and analyze how the provisions of the time limit for investigating general crimes are related to the protection of the human rights of suspects in the Criminal Procedure Code (KUHAP). 2. To research and analyze the obstacles faced by investigators by setting a time limit for investigating general crimes. Paying attention to the various legal problems that occur in the process of handling criminal cases at the investigation stage, it is enough to attract the author's attention to raise the title,

¹<http://ardiarmandanufurhapid.blogspot.co.id/> accessed on February 2, 2018 at 17.00 WIB

² Constitution of the Republic of Indonesia 1945, Law No. 8 of 1981 calm the Criminal Code, UUNo. 39 of 1999 concerning Human Rights, Law. Law No. 2 of 2002 concerning the Police of the Republic of Indonesia, Law No. 14 of 1970, Law No. 4 of 2004, Law No. 48 of 2009 concerning Judicial Power, Law No. 18 of 2003 concerning Advocates; Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.; Law No. 16 of 2011 calms down legal aid; Law No. 12 of 2005 concerning the Ratification II of CPR; Government Regulation No. 27 of 1983 in conjunction with Government Regulation No. 58 of 2010 concerning the Implementation of the Criminal Procedure Code

"Juridical Review of the Provisions of the Time Limit for Investigation of General Crimes Towards the Protection of Suspects' Rights".

Literature Review

Deadline for Investigation of General Crimes Every criminal act that occurs has a grace period for the expiration of the prosecution in accordance with the threat of punishment formulated in the law, therefore the investigation process plays an important role for the success of the prosecution and must take into account the time so that the delay in completing the investigation does not result in the case expiring the prosecution period. In addition, the existence of a time limit for the case handling process at the investigation stage will provide legal certainty for the case being handled, both from the perspective of law enforcement officials not having arrears in handling stacked cases, and from the perspective of the justice seeker community quickly knowing the direction of handling the case.

Every event that occurs on earth has a grace period of a certain time, the need to determine the grace period is to ensure that an event occurs, after the event occurs, what next steps will be taken. According to the Great Dictionary of the Indonesian Language, *tenggang* (time) means "time limit", the time limit needed by an event is short, some are long. Meanwhile, what is meant by "Time" according to the Complete Dictionary of the Indonesian Language is: "The entire series of times when a process, deed, or situation is or takes place. In this case, the time scale is the interval between two states/events, or it can be the length of time an event lasts; duration (a specific moment); a certain time to do something".¹⁶ reviews

The Criminal Code (KUHP) and the Criminal Procedure Code do not give a limit on what is called time, but nevertheless in the Criminal Code there is a formulation of the meaning of "a day" and "a month" and "night", namely: ¹⁷ Provisions of Article 97 of the Criminal Code: What is said to be a day is a period of twenty-four hours. ³

Provisions of Article 97 of the Criminal Code: One month is a period of thirty days. Article 98 of the Criminal Code: what is said to be night is the period between sunset and sunrise. The time limit associated with the investigation of a general criminal case is the grace period needed to complete the investigation of a general criminal case, for example for a month, meaning that the investigation of a general criminal case must be completed within thirty days.

³ R. Soesilo, 1994, *The Criminal Code (KUHP) and Its Complete Commentaries Article by Article*, Reprint, Politeia, Bogor, pp. 103-104.

Research Methods

The research method is divided into five stages, namely:

1. **The approach method** in this study uses a normative approach because the data used as an object is secondary data of the problems found, namely the existence of legal gaps in criminal procedure legislation, then studied by conducting research on the juridical impact on the current laws and regulations related to the actions of law enforcement officials, especially in the context of criminal investigations
2. **Research Specification** The specifications in this study are *descriptive-analytical* in this study The author tries to describe the state of the object being studied in detail, namely the legal vacuum in the criminal procedure law legislation against the investigation time limit for the suspect
3. **Sources of Legal Materials** In legal research methods, there are known to be several types of data sources, namely primary data sources and secondary data sources. In this paper, the author conducts research normatively, so that the material needed is secondary data, namely library research. Secondary legal data based on their binding strength, can be distinguished:
 - a. Primary Legal Materials are binding legal materials in the form of laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law No. 8 of 1981 on the Criminal Procedure Code, Law No. 39 of 1999 on Human Rights, Law. Law No. 2 of 2002 concerning the Police of the Republic of Indonesia, Law No. 14 of 1970, Law No. 4 of 2004, Law No. 48 of 2009 concerning Judicial Power, Law No. 18 of 2003 concerning Advocates; Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.; Law No. 16 of 2011 calms down legal aid; Law No. 12 of 2005 concerning the Ratification II of CPR; Government Regulation No. 27 of 1983 in conjunction with Government Regulation No. 58 of 2010 concerning the Implementation of Criminal Procedure Code 2, and others.
 - b. Secondary legal materials are legal materials that provide explanations of primary legal materials such as books on legal science related to the writing of this thesis, scientific works, draft laws, and also the results of a research.
3. Tertiary legal materials, such as articles, magazines, newspapers, the internet, dictionaries, and encyclopedias.

4. **Legal Materials Collection Technique** The legal material collection technique used in this study is by using a Document Study. namely documents obtained from the Jatanras Unit of the Sumber Police.
5. **The Processing Analysis and Analysis** techniques of legal materials in this study are by Qualitative Analysis where the legal materials obtained are processed into a series of words that are monographic or in the form of cases are not arranged into a classification structure so that the sample is more non-probabilistic. Primary and secondary legal materials are systematically arranged, the materials are then analyzed by techniques:
 - a. Descriptive, that is, the description is written as it is to a condition or position of a legal or non-legal proposition.
 - b. Interpretive, namely by explaining the use of interpretation in existing legal sciences both now and in the future.
 - c. Evaluative, assessing a viewpoint, statement of norm formulation in primary and secondary legal materials.
 - d. Argumentative, which is an assessment based on reasons that are legal reasoning. So as to produce an accurate research according to the decision to support scientific papers.

DISCUSSION

A. Provisions for the time limit for investigation of general crimes related to the protection of the rights of suspects in the Criminal Procedure Code (KUHAP).

Police Deadline for Following Up on Criminal Reports As is known, the Police here act as Investigators. Investigators are state police officials of the Republic of Indonesia or certain civil servants who are given special authority by law to conduct investigations. whether there is a rule in the Criminal Code regarding the time limit for the Police to follow up on the report, then the answer is none. However, in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 14 of 2012 concerning the Management of Criminal Investigation ("Perkapolri 14/2012") it is stated that the time for completing the investigation is based on the weight of the case.⁵⁰ The length or speed of the investigation at the Cirebon Police depends on the difficulty of the case investigation is determined based on the following criteria: 4 a. The simple case is the criteria: 1. sufficient witnesses; 2. sufficient evidence; 3. the suspect is already known or arrested; and ⁴.

The handling process is relatively fast. b. Medium cases, the criteria: 1. sufficient witnesses; 2. there is evidence of clues that lead to the involvement of the suspect; 3. The

4. Lama ataupun cepatnya penyidikan di Polresta Cirebon tergantung pada tingkat kesulitan penyidikan perkara ditentukan berdasarkan kriteria identity and whereabouts of the suspect are known and easy to arrest; 4. the suspect is not part of the perpetrator of organized crime; 5. the suspect is not disturbed by his health condition; and 6. No expert testimony is required, but if needed, members are easily obtained. c.

Confidential matters, the criteria:

1. the witness did not know directly about the crime that occurred;
2. the suspect has not been identified or has been disturbed or has a certain position;
3. the suspect is protected by a certain group or part of the perpetrators of organized crime;
4. evidence directly related to the case is difficult to obtain;
5. expert testimony is needed that can support the disclosure of the case;
6. special equipment is needed in handling the case;
7. the criminal acts committed occurred in several places; and
8. requires sufficient investigation time.

d. Very difficult matters, the criteria:

9. No witnesses have been found who are directly related to the crime;
10. the witness is not yet known;
11. the witness or suspect is abroad;
12. Crime Scenes in several countries/across countries;
13. The suspect is abroad and there is no extradition agreement;
14. the evidence is abroad and cannot be confiscated;
15. The suspect has not been identified or has been disturbed or has a certain position; and
16. requires a relatively long investigation time.

The handling of cases according to these criteria is determined as follows:

- a. the level of the National Police Headquarters and the Regional Police handles difficult and very difficult cases;
- b. the Police level handles simple, medium and difficult cases; and
- c. the Police level handles simple and medium cases.

So there are no rules in the Criminal Code regarding the time limit (expiration) of the Police to follow up on reports. However, in Perkapolri 14/2012 it is stated that the time for

completing the investigation is based on the weight of the case as we described above. For information, in criminal law cases, expiration is regulated to file complaints, prosecutions, criminal proceedings and other legal remedies, but is not set to expire to follow up on reports. According to Article 74 of the Criminal Code, the expiration period for filing a complaint with the police is: ⁵

- a. 6 (six) months after the person who has the right to complain knows the act committed, if he is in Indonesia;
- b. 9 (nine) months after the person who has the right to complain knows that the act was committed, if he is abroad. Meanwhile, the authority to demand a criminal deletion due to expiration in the following cases:
 1. regarding all violations and crimes committed with printing after 1 (one) year;
 2. Regarding crimes threatened with fines, imprisonment, or imprisonment for a maximum of 3 (three) years, after 6 (six) years;
 3. Regarding crimes that are threatened with imprisonment for more than 3 (three) years, after 12 years;
 4. Regarding crimes that are threatened with the death penalty or life imprisonment, after 18 years. Efforts If the Report Is Not Followed Up if the Police do not follow up on the report, or if there is dissatisfaction with the results of the investigation, then a Public Complaint can be submitted.

Public complaints ("Dumas") are complaints from the public, Government Agencies, or other parties orally or in writing containing information, complaints, dissatisfaction, or irregularities in the performance of the National Police that require further handling and resolution.⁵⁵

Dumas can be delivered directly or indirectly. Dumas can be directly or indirectly submitted by agencies, the community, or members of the National Police, on:

- a. complaints or dissatisfaction with the services of members of the National Police in the performance of their duties;
- b. deviations in the behavior of members of the National Police related to violations of discipline, code of ethics, and criminal acts;
- c. suggestions, contributions of thoughts, constructive criticism that are useful for improving the performance and services of the National Police;
- d. requests for clarification or clarity on the handling of cases handled by the National Police or police actions; and

- e. complaints or dissatisfaction with administrative punishment decisions for civil servants at the National Police.

Dumas **directly**, is a complaint submitted by the complainant directly through a.

⁵ According to Article 74 of the Criminal Code

Dumas Service Center; and b. every Civil Servant in the National Police. Dumas indirectly, is a complaint submitted by the complainant through:

- a. letter;
- b. Drum Post 7777 or Dumas post box of the National Police Headquarters or in each regional unit;
- c. the National Police website and e-mail;
- d. telephone, facsimile or SMS;
- e. mass media and social networks;
- f. Dumas letter through Government Agencies:

The absence of a time limit for the investigation of general crimes regulated in the Criminal Procedure Code has resulted in many protracted case resolutions, violations of a number of suspects' rights and the inability to apply the principle of quick and simple case settlement and low cost and this situation will certainly not be able to provide legal certainty, a sense of justice and the benefits of the law itself. Regarding this situation, concrete steps are needed to overcome it so that the public's trust in law enforcement efforts, the protection of human rights (suspects) and even the human rights of the community, especially for those who are witnesses (koban) and witnesses in general. Because of their existence as witnesses, it is not uncommon to receive threats from certain parties.

B. Obstacles Faced by Investigators with the Setting of Time Limits for Investigation of General Crimes

The existence of Law Number 8 of 1981 in legal life in Indonesia has ushered in a new era, namely the era of national law awakening that prioritizes the protection of the human rights of suspects in the mechanism of the criminal justice system. The protection of the suspect's human rights is expected to be implemented since the suspect is arrested, detained, prosecuted and tried in front of a court session. In addition to the protection of the human rights of suspects, there is also a hope that law enforcement based on the law will provide free and responsible

judicial power to judges in examining and deciding a criminal case. The above expectations can only be realized if the law enforcement orientation is based on a system approach.

In the criminal justice system, two models are known, namely the criminal control model (CCM) and the due process model (DPM). The birth of Law Number 8 of 1981 is a compromise of the two models. Due process models prioritize effectiveness. To achieve the effectiveness in question, a selection institution is needed. In the Criminal Procedure Code, the institution is known as pre-trial, pre-prosecution. The criminal control model (CCM) prioritizes efficiency, meaning that law enforcement is based on the principle of speed and completeness. This model in the Criminal Code is known through the principle of fast, simple and low-cost justice. The concretization of this principle is formulated norms whose formulation nature is hypothetical in several articles in the Criminal Code with the words "immediately" and the words "mandatory".

In the course of its history, the Criminal Code has been enforced for almost 31 years, many weaknesses have been found. 1) The formulation of unclear norms, for example, the words "immediately" have no time limit for how long, what are the sanctions if they are not implemented, then what are the legal consequences of the "mandatory" words for the case or what are the sanctions for law enforcement officials, if the obligation is not implemented. The formulation of unclear norms is still widely found, especially related to investigations carried out by investigators. 2) The weaknesses of the Criminal Procedure Code can be seen from the selection body, for example: pretrial, pretrial judges have only tested from the formal aspect but not the material aspect. 3) Pre-prosecution so far the Criminal Procedure Code does not limit the number of times the flow of cases back and forth between investigators and public prosecutors, so that the length of the back and forth flow 4) This case seems to show that law enforcement officials are less professional.

Looking at the weaknesses that exist in the Criminal Code so far, so that it is more perfect, it is time to "revise the Criminal Procedure Code". The revision refers to both the norm and the implementing apparatus, especially the qualifications of investigators in relation to investigation duties. On the other hand, there is a desire for the HAP Bill drafting team to change the existing system or model, towards the crime control model (CCM) by giving rise to the "Institution of Judges and Commissioners". The question is, will we start from scratch again or will we improve the weaknesses of the existing system and study it has been going on for almost 31 years in a better direction. Therefore, the author will examine this issue from the aspect of investigation according to the Criminal Code.

Conclusion

Based on the results of the in-depth discussion and analysis of the issues raised in this scientific paper, the following conclusions can be drawn: 1. The setting of the time limit for investigation of suspects in the Criminal Procedure Code (KUHAP) has not regulated the time limit for the investigation of criminal acts (general), this situation brings the result of legal uncertainty and provides an opportunity for law enforcement officials (investigators) to act arbitrarily and there are often violations of the rights of suspects in the investigation process. There are no specific provisions that regulate the time limit for determining suspect status. The status of the suspect depends on the investigation process. The absence of a time limit in determining the suspect causes legal uncertainty guaranteed in Articles 28D and 281 paragraph (2) of the 1945 Constitution. 2. The setting of the time limit for future investigation of general crimes is regulated in the Criminal Procedure Procedure Draft where the provisions of article 48 of the Criminal Procedure Ordinance. Paragraph (1) states that a suspect, whether arrested or detained within 24 hours, is entitled to an examination by investigators. If the person concerned is detained by the prosecutor, then no later than 14 days after the detention, the prosecutor must make an indictment. The indictment must also be read to the suspect. No later than seven days after the indictment is read, the case file must be transferred to the court. Paragraph (3) of the same article also gives a maximum time limit of 14 days from the time the file is handed over, the court must already conduct an examination. The drafting team deliberately includes the provisions of this time limit. The reason is to keep away the possibility of hanging out the fate of someone who is suspected or charged with committing a crime. Do not let the suspect be ignored by procrastinating the examination time so that it is felt that there is no legal certainty.

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