

**PRE-TRIAL LEGALEFFORTS DUE TO THE ESTABLISHMENT OF THE
SUSPECTIVE CRIMINALACTIONS OF THE CORRUPTION
ERADICATION COMMISSION (KPK)**

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ABSTRACT

Violating the provisions of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, the alleged perpetrators must be carried out due process. law enforcement to prove that the party can be proven guilty or innocent, which is carried out based on formal legal provisions, namely Law Number 8 of 1981 concerning the Criminal Procedure Code or abbreviated as KUHAP. One of the legal efforts to ratify or not determine the suspect is through pretrial legal efforts.

The research problems are; 1. What is the legal action of the KPK investigators based on the Criminal Procedure Code in determining the suspect as the perpetrator of a corruption crime? The research method is carried out through the Approach Method, namely; normative juridical research.

The results of this study, that; The competence of the KPK's authority, according to Law Number 30 of 2002 concerning the Corruption Eradication Commission, is substantively responsible for operations in terms of carrying out legal actions for investigating and prosecuting perpetrators of criminal acts of corruption, based on Article 6 point c, Article 7 point a, Article 8 paragraph (2), Article 10, Article 11, Article 12 and Article 62 related to the provisions of the procedural law of actions and legal remedies.

Upon the determination of the suspect as the perpetrator of a criminal act of corruption, the person concerned shall carry out Pretrial Legal Efforts. The decision of the pre-trial lawsuit was granted and the determination of the suspect was declared legally flawed. For this reason, it is recommended that in order to avoid the possibility of arbitrariness in legal action by KPK investigators in conducting investigations that end in the determination of suspects, the KPK Supervisory Board should be active in conducting supervision and providing sanctions against investigators if the suspect is proven to be illegal and legally flawed.

Keywords: Legal Effort, Pre-Trial of the Suspect



INTRODUCTION

In the new order era and entering the reform era, legal protection and respect for human rights are sometimes faced with the fact of negligence in law enforcement, especially when entering the stages of the criminal justice system process. So that it is not uncommon for wrongful behavior to occur by law enforcers, and not infrequently members of the community who are considered to have committed a criminal act are then found not guilty in the judicial process. Law enforcement is an effort that is intentionally made to realize the ideals of law to create justice and peace in the life of society, nation, and state. It is by Indonesia's national development goals, namely to achieve a just and prosperous Indonesian society, both materially and spiritually, based on Pancasila and the 1945 Constitution (Yudisial, 2012).

Indonesia as a state of the law has guaranteed all its citizens the same position in law and government and is obliged to uphold the law and government with no exceptions (Itasari, 2020). To create a law that is just, it must be implemented comprehensively through the Criminal Justice System institution with the concept of an "Integrated Criminal Justice System" which views the process of resolving criminal cases as a series of units, starting from the stages of the investigation, prosecution, case termination to settlement in the Correctional Institution.

Criminal procedural law is a law that regulates and provides limits that can be carried out by the state in the process of investigation, investigation to the judicial process with standard methods to enforce the law and protect individual rights during the legal process (Pade, 2017).

The legal action of investigators by KPK investigators against perpetrators of criminal acts of corruption is a means to prove the existence of a criminal act or the absence of a criminal act, which is regulated based on the Criminal Procedure Code or the Criminal Procedure Code (Yanto, 2017). Criminal procedural law is a rule of law to protect citizens from arbitrary treatment by law enforcement officials for allegedly committing criminal acts. In particular, the criminal procedure law is designed to protect and enforce the constitutional rights of suspects and defendants at the start of an investigation, investigation, or judicial process until the execution of a sentence or execution, including actions and legal remedies taken by KPK investigators (Samaha, 2016).

The procedural law applies standard legal procedures that are by the sense of justice and justice itself, including the possibility of Pre-Trial legal remedies being carried out by the community. Pretrial is the authority of the district court to examine and decide according to the method regulated in this Law, regarding: (Sugiyanto & Djauhari, 2018)

- a. Whether or not an arrest and or detention is legal at the request of the suspect or his family, or other parties on the suspect's power;

- b. Whether or not the termination of an investigation or prosecution is legal at the request of upholding law and justice;
- c. Requests for compensation or rehabilitation by the suspect or his family, or other parties on their behalf whose cases have not been brought to court”.

The Criminal Procedure Code does not only regulate the legal basis for law enforcers in carrying out their functions and authorities in upholding justice, but also protects legal subjects in fighting for their rights under human dignity . Suspects or defendants as legal subjects in legal actions carried out by the KPK must also get the maximum legal protection guarantee for all the rights they have, which is carried out based on the principle of the presumption of innocence.

The problems raised in this paper are; What are the legal actions of KPK investigators based on the Criminal Procedure Code in determining the suspect in the corruption case? and, What are the pretrial legal remedies for the determination of the suspect in the criminal act of corruption by the KPK commission investigators?

RESEARCH METHOD

The research is descriptive research with a statutory approach, namely an approach using legislation and regulations, and a conceptual approach that refers to the existing legal doctrines.

The approach used in this research, namely the approach to legislation, and various policies made. In this context, the provisions that will be reviewed and reviewead are several national legal instruments and regional policies,¹² while to analyze the authors use a conceptual approach and a case approach (Marzuki & SH, 2020).

The data to be used in this study are categorized into secondary data obtained through library materials, which include (Soekanto & Mamudji, 2011).

RESULT AND DISCUSSION

Philosophically, criminal procedural law no longer views suspects or defendants as legal objects but as legal subjects . This is reflected in the guarantee of the protection of the rights of the suspect or defendant which is explicitly stated in the articles in the Criminal Procedure Code and has been under the purpose of the criminal procedure law itself, namely seeking material truth in the process of examining criminal cases (Monang Siahaan, 2017).

In elaborating the principles of humanity in Pancasila and the 1945 Constitution which is fully implied in the Criminal Procedure Code, the suspect is no longer an "object" but a "subject" who has rights and obligations to claim compensation or rehabilitation if the officer makes a wrong arrest, wrongful arrest, wrongful prosecution and wrong law.

These principles are an obligation to be obeyed in law enforcement, without exception, including by the Corruption Eradication Commission or KPK which is authorized to take legal actions and remedies against perpetrators of corruption.

Based on Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), the Corruption Eradication Commission (KPK) is

substantially given the authority, task, and function in eradicating corruption in Indonesia. The scope of authority and function of the KPK is legal legitimacy in the name of state power, related to the system of eradicating criminal acts of corruption based on the legality of the provisions of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). The essence of the principle of legality is, authority is the ability to take legal action and legal remedies.

Implementing authorities and functions based on statutory provisions is a behavior that must be accounted for in the interests of legal purposes, which have the core, legal benefits, legal certainty, and justice. Likewise, the authority and function of the KPK institution should be regulated by Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). According to Law Number 30 of 2002 concerning the Corruption Eradication Commission, the authority for performance relations related to the Investigation and Prosecution of the KPK can coordinate and supervise the institutions of the Police and the Prosecutor's Office, regulated in the following articles.

According to article 6 of Law Number 30 of 2002:

The Corruption Eradication Commission has the following duties:

- a. coordination with institutions authorized to eradicate corruption;
- b. supervision of institutions authorized to eradicate corruption;
- c. conduct investigations, investigations, and prosecutions of corruption crimes;
- d. take measures to prevent corruption, and
- e. monitor the implementation of state government.

Based on Article 7, in carrying out the coordination task as referred to in Article 6 letter a, the Corruption Eradication Commission has the authority to:

- a. coordinate investigations, investigations, and prosecutions of corruption crimes;
- b. establish a reporting system in corruption eradication activities;
- c. request information on activities to eradicate corruption from the relevant agencies;
- d. conduct hearings or meetings with institutions authorized to eradicate corruption, and
- e. request reports from relevant agencies regarding the prevention of corruption.

Then according to Article 8

- (1) In carrying out the supervisory duties as referred to in Article 6 letter b, the Corruption Eradication Commission has the authority to supervise, research, or review the agencies carrying out their duties and authorities related to the eradication of criminal acts of corruption, and agencies carrying out public services.
- (2) In carrying out the authority as referred to in paragraph (1), the Corruption Eradication Commission has the authority to also take over the investigation or prosecution of perpetrators of corruption crimes that are being carried out by the police or the prosecutor's office.

- (3) If the Corruption Eradication Commission takes over the investigation or prosecution, the police or the prosecutor's office is obliged to hand over the suspect and all case files along with evidence and other documents required within a period of 14 (fourteen) working days from the date of receipt of the Commission's request. Corruption Eradication.
- (4) The handover as referred to in paragraph (3) is carried out by making and signing the official report of the handover so that all duties and authorities of the police or the prosecutor's office at the time of the handover are transferred to the Corruption Eradication Commission.

Based on Article 9 the takeover of the investigation and prosecution as referred to in Article 8, is carried out by the Corruption Eradication Commission for the following reasons:

- a. Public reports regarding corruption are not followed up;
- b. The process of handling corruption crimes is protracted or delayed without justifiable reasons;
- c. The handling of corruption is aimed at protecting the real perpetrators of corruption;
- d. Handling corruption crimes contains elements of corruption;
- e. Barriers to handling corruption crimes due to interference from the executive, judiciary, or legislature; or
- f. Another situation is in which according to the consideration of the police or the prosecutor's office, the handling of corruption is difficult to carry out properly and can be accounted for.

The acts of investigative authority carried out by the KPK are technically carried out based on the provisions of the Criminal Procedure Code. The legal actions taken by KPK investigators are in the form of the authority to take legal actions, namely arrest, detention, search, confiscation, as well as examinations as well as making an examination report (BAP).

The special crime of "corruption", is regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The authority of the investigative function carried out by KPK investigators is regulated in the Criminal Procedure Code based on article 6 paragraph (1) point a.

Another legal fact is that there are often cases where law enforcers carry out their duties and authorities irresponsibly and violate the law. This can be proven by the determination of the suspect who did not go through the mechanism of fulfilling legal evidence based on Article 184 of the Criminal Procedure Code.

The determination of a suspect by an investigator should be guided by the fulfillment of a minimum of two pieces of evidence plus the judge's belief in two valid pieces of evidence by the contents of Article 183 of the Criminal Procedure Code. This means that each determination of a suspect is based on the fulfillment of two pieces of evidence that have been found by investigators.

Based on the two pieces of evidence, a person is then determined to be a suspect, the legal facts will be tested by the judge. Furthermore, if the judge believes the truth of the two pieces of evidence, the judge's decision will sentence the suspect to be found guilty and sentenced to punishment. On the other hand, if the two pieces of evidence do not prove to be true, the judge in deciding will declare the defendant not guilty and decide to be free from prosecution.

The means to achieve justice can be carried out by the suspect through Pre-Trial legal efforts. Pretrial if interpreted in terminology or separated between the words pre and judiciary. Pre means before, while the judiciary is the process of law enforcement in seeking justice in an institution called the court (adjudication). If so, pretrial is more defined as the same term as prejudgment. Whereas prejudgment is more at the level of investigation, investigation, and after that, the case file is transferred to the court by the public prosecutor in the form of a requisitor who enters the court area.

According to (Hamzah, 1994), a pretrial is to focus on pretrial as a preliminary examination carried out by judges on the authority of investigators and public prosecutors.

The existence and presence of a pretrial institution, namely as an authorized institution, has the function of adjudicating or assessing the legality of detention, confiscation, termination of the investigation, and termination of prosecution. The existence of pretrial institutions, to enforce the law, justice, and truth through horizontal supervision (vide: Article 80 of the Criminal Procedure Code). So pretrial is a means of controlling and supervising the actions of the police and the prosecutor's office against errors in the investigation/prosecution process (in arrest, detention, search, and confiscation). The error was either an undue process of law or an in-person error that occurred during the arrest/detention.

Pretrial based on Article 78 paragraph (1) of the Criminal Procedure Code is an institution that carries out the authority of the district court as referred to in Article 77 of the Criminal Procedure Code, as well as a means of control over KPK law enforcers in determining someone as a suspect.

Thus the KPK investigators can become the object of the defendant in the Pre-Trial case carried out by the suspect, who considers that there has been a deviation according to the procedure regulated by the Criminal Procedure Code.

CONCLUSION

The Corruption Eradication Commission, as one of the institutions that have the authority to investigate and prosecute perpetrators of criminal acts of corruption, is legitimized based on Law Number 30 of 2002 concerning the Corruption Eradication Commission. criminal acts of corruption, based on Article 6 point c, Article 7 point a, Article 8 paragraph (2), Article 10, Article 11, Article 12, and Article 62 related to the legal provisions of the procedure for actions and legal remedies. Furthermore, technically in carrying out legal actions and remedies, they are obliged to comply with the Criminal Procedure Code.

One of the manifestations of the protection of human rights listed in the Criminal Procedure Code is the existence of a pre-trial institution for every citizen who is arrested, detained, and prosecuted without a valid (sufficient) reason based on the provisions of the law, in this case, the Criminal Procedure Code Article 1 point 10 of the Criminal Procedure Code. , that: Pretrial is the authority of the district court to examine and decide according to the method regulated in Law Number 8 of 1981, including among others: 1) Whether or not an arrest and or detention is legal at the request of the suspect or his family or other parties with the power of the suspect. 2) Whether or not the termination of the investigation or the termination of the prosecution is legal at the request of upholding law and justice. 3) Requests for compensation or rehabilitation by the suspect or his family or other parties on behalf of their proxies whose cases have not been brought to court.

This breakthrough in law and good law is a new way of looking at the function and role of law in national development in Indonesia. Thus, the law not only has a normative aspect that is measured by its certainty but also has a value aspect that is a dynamic part of the aspirations of the people who are developing and up to date. If the law is treated conservatively or only maintains the status quo, it will produce laws that are not aspirational to the development of people's lives or are not good.

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