

HUMAN RIGHTS VIEWS ON SUSPECTS' LEGAL EFFORTS TO OBTAIN EXAMINATION MINUTES

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Abstract

Human rights are an important aspect of law enforcement as intended by the International Covenant on Civil and Political Rights ratified by the UN which also applies in Indonesia. This provision was then adopted into the Criminal Procedure Code (KUHP), especially in Article 72 which gives the suspect and his legal counsel the right to obtain a copy of the examination report which is important for defendants. Through a normative legal research method with a legal and contextual approach, this study analyzes Article 72 from the perspective of civil and political rights. The results showed that the absence of clear consequences for investigators who do not comply can weaken the suspect's rights in legal defense. Therefore, it is necessary to strengthen legal provisions so that investigators are required to provide this important document, to ensure transparency and justice in future law enforcement.

Keywords: Human rights; Legal remedies; Police investigation report.

Abstrak

Hak asasi manusia merupakan aspek penting dalam penegakan hukum sebagaimana maksud Kovenan Internasional tentang Hak-Hak Sipil dan Politik yang diratifikasi oleh PBB yang juga berlaku di Indonesia. Ketentuan ini kemudian diadopsi ke dalam Kitab Undang-Undang Hukum Acara Pidana (KUHP), khususnya dalam Pasal 72 yang memberikan hak kepada tersangka dan penasihat hukumnya untuk memperoleh salinan turunan berita acara pemeriksaan yang penting dalam pembelaan hukum. Melalui metode penelitian hukum normatif dengan pendekatan hukum dan konteks, studi ini menganalisis Pasal 72 dari perspektif hak sipil dan politik. Hasil memperlihatkan bahwa tidak adanya konsekuensi yang jelas bagi penyidik yang tidak patuh dapat melemahkan hak tersangka dalam pembelaan hukum. Oleh karena itu, diperlukan penguatan ketentuan hukum agar penyidik wajib memberikan dokumen penting ini, demi menjamin transparansi dan keadilan dalam penegakan hukum ke depannya.

Kata Kunci: Hak Asasi Manusia; Upaya hukum; Berita acara pemeriksaan polisi.

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INTRODUCTION

In the area of legal science, two systems can be implemented. The "accusation" system, which means (accusing) considering a suspect, namely the party charged as a subject vis-à-vis another charging party, namely the police or prosecutor's office, in such a way that the two parties each have the same rights in value, and the judge is above the two parties to resolve the question of criminal cases between them according to the applicable criminal law regulations.¹

To establish justice and balance (checks and balances) in law enforcement, legal counsel or defense relies on its subjective viewpoint, which reflects the interests of suspects and defendants, and its subjective assessments. However, to maintain ethical validity, legal advice must provide an objective judgment of the court proceedings.² According to Article 8 paragraph 1 of the Criminal Procedure Code, investigators have the authority to make minutes in this case following applicable regulations, without prejudice to other provisions as stated in Article 75 of the Criminal Procedure Code and the implementation of the police's duties and powers as stated in Paragraphs (1) and (2). An investigator must uphold the applicable law.³

Although the legal advisor has discretion in dealing with the suspect or accused, he must not misuse his authority. The law does not define what constitutes abuse. The author believes that the legal advisor must adhere to the previously mentioned code of ethics for legal advisors, which states that he must uphold the Pancasila, Pancasila, law, and justice. He/she shall not, for example, advise the suspect to make mistakes or to seem to be insane to avoid prosecution, as stated in Article 44 of the Criminal Code. Furthermore, a legal counsel must protect his client's confidential information. For example, he may not reveal his client's confession to the opposing side (public prosecutor).⁴

Human rights must be considered in human-values-based law enforcement, according to the International Covenant on Civil and Political Rights. The UN General Assembly ratified this agreement on December 16, 1966, and it entered into force in Indonesia on March 23, 1976. This is stated in Law Number 1 of 1981 concerning the criminal procedural law book, especially those that are the focus of researchers. According to Article 72 of KUHAP, investigators are required to submit a copy of the investigation report, but in its application, abuse of power still occurs, as in the case of Jessica Kumala Wongso, where her lawyer was not given a copy of the investigation report.

The research is urgent because it will give legal clarity to suspects or their legal advisors in receiving derivative examination results, which will be utilized to create defense materials. This research was undertaken in 2018 as a comparison to the existence of a journal called The Role of Case Investigation Reports (BAP) in the Criminal Justice Process, which was published in April 2021.⁵ If the confession of the suspect or defendant is included in the minutes of examination (BAP), which contains the statements and confessions of the suspect made by the investigator in the police investigation process to fulfill the rights of the suspect, a derivative of the minutes is given to the suspect or his legal

¹ Djoko Prakoso, *Alat Bukti Dan Kekuatan Pembuktian Di Dalam Proses Pidana* (Surabaya: Liberty, 1988), 25.

² Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2006), 86.

³ Faisal Dahlan, Hambali Thalib, and Hasbuddin Khalid, "Perlindungan Hak Asasi Tersangka Ang Mengalami Kekerasan Pada Tahap Penyidikan," *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024): 134.

⁴ *Ibid*, 88.

⁵ Erick Malombeke, Daniel F. Aling, and Roy Ronny Lembong, "Peranan Berita Acara Pemeriksaan Perkara (BAP) Dalam Proses Peradilan Pidana," *Lex Administratum* IX, no. 4 (2021): 148–149.

advisor for the benefit of the defense, as further explanation is contained in Article 72 of the Criminal Procedure Code, which reads The purpose of this study is to identify and analyze a suspect's legal efforts to get the Minutes of Examination (BAP) in light of Human Rights considerations.

METHOD

Researchers utilize normative legal research in this legal writing, which is a sort of research that involves the examination of library materials such as books, literature, laws and regulations, and the like that are relevant or related to the topics under consideration. The methodologies used in this study are statute-based and conceptual. The statutory approach aims to clarify issues concerning the consistency of the philosophical basis, ontological basis, and ratio legis/legal logic with the problems (legal issues) at hand, whereas the conceptual approach aims to obtain clarity and scientific justification based on legal concepts derived from legal principles and case approaches.⁶

RESULT AND DISCUSSION

1. Suspects' Rights under the Criminal Procedure and Human Rights Systems

a. Suspect Rights in Criminal Procedure Codes

According to Article 1 Point 14 of the Code of Criminal Procedure (KUHAP), a suspect is "a person who, based on preliminary evidence, should be suspected of committing a criminal offence." J.C.T. Simorangkir defines a suspect as "a person who has been suspected of committing a criminal offence and is still in the preliminary examination stage to consider whether this suspect has sufficient grounds to be examined at trial."⁷ Darwan Prints defines a suspect as "someone who is suspected of being the perpetrator of a criminal offence" (in this situation, the suspect cannot be stated to be guilty or not).⁸ A right is anything that is granted to a suspect, defendant, convict, or sentenced person, and if this right is violated, the suspect, defendant, convict, or sentenced person's human rights are violated or not respected.⁹ Essentially, a right is something that is granted to a suspect, defendant, and convicted or sentenced person. If this right is violated, the suspect, defendant, and convicted or sentenced person's human rights are violated or not respected. For this reason, the rights of suspects, defendants, and those who have been convicted or sentenced must be safeguarded, appreciated, and maintained to maintain human rights protection.

The rights of the suspect are a manifestation of human rights that every human being has equality before the law, or equality before the law, which has been regulated in the Criminal Procedure Code regarding the rights of the suspect, which is the focus of the author in this study, namely the right of the suspect to obtain a copy of the derivative of the minutes of the examination contained in Article 72 of the Criminal Procedure Code. A suspect's rights are frequently curtailed during the investigative process, including imprisonment, interrogation, and waiting for the legal process to proceed to the trial stage. The rights of any person listed as a suspect in a court case must nonetheless represent a proper balance between the authorities' authority and each person's rights.¹⁰

⁶ Muhammad Hadin Muhjad and Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer* (Yogyakarta: Genta Publishing, 2006), 47.

⁷ J.C.T. Simorangkir, *Kamus Hukum* (Jakarta: Penerbit Aksara Baru, 1983), 178.

⁸ Darwan Prints, *Hukum Acara Pidana (Suatu Pengantar)* (Jakarta: Penerbit Djambatan Kerja Sama dengan Yayasan LBH, 1989), 13.

⁹ Nurbaiti Syarif, Januri Januri, and Eva Lestari Dolok Saribu, "Perlindungan Hak-Hak Tersangka Melalui Asas Praduga Tidak Bersalah (Presumption of Innocent) Dalam Sistem Peradilan Pidana," *Audi Et AP: Jurnal Penelitian Hukum* 3, no. 02 (2024): 113.

¹⁰ Ichwan Setiawan, Ridho Fitriantoro, and Ibnu Mubarak, "Pembatasan Hak-Hak Tersangka Dan Terdakwa Dalam Tindak Pidana Narkoba: Keseimbangan Antara Kepentingan Negara Dan Hak Asasi Manusia," *Decisio: Law Journal* 1, no. 1 (2024): 26.

According to the author, the investigator must offer the suspect and his legal adviser the right to a derivative of the suspect's investigation minutes. The urgency of the derivative of the investigation minutes plays a key function as a guardian of the law, where it is an important condiment in the suspect's defense note, which is essentially an implementation of human rights, particularly civil and political rights.

b. Rights of Suspects According to Human Rights

The birth of the fulfillment of the rights of suspects is closely related to the existence of civil and political human rights (Ham Sipol), namely the signing of the International Covenant on Civil and Political Rights Established by General Assembly Resolution 2200 A (XXI) Dated December 16, 1966, Open for signing, Ratification and Accession which obliges the states parties to the convention as stated in Article 1 paragraph (3), namely: "The States Parties to the present Covenant, including those responsible for the administration of Non-Self-Governing Territories and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right by the provisions of the Charter of the United Nations."

Human rights are universal ideals that have been acknowledged as inherent in humanity since conception. Human rights are a critical concern in how people interact in a country.¹¹ In principle, the 1945 Constitution's Articles 27 Paragraph (1) and 28D Paragraph (1) clearly state suspects' rights to equality before the law. In addition to these rules, which are complementary in the hierarchy of laws and regulations, provisions governing human rights require special attention.¹² According to the author, the forerunner of the realization of the rights of suspects now contained in the Criminal Procedure Code, made in 1981, cannot be separated from the realization of this international civil and political convention, which was established in 1966, as for several articles of the international civil and political convention that are included in the criminal procedure code, namely:

Explanation in Article 9:

- 1) Everyone is entitled to personal liberty and security. No one shall be arbitrarily arrested or detained. No one shall be deprived of his liberty except on legitimate grounds and by legal procedures.
- 2) Every person arrested shall be informed at the time of his arrest and shall be informed as soon as possible of the charges against him.
- 3) Every person arrested or detained on a criminal charge shall be brought promptly before a court or other official authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time, or to release. It is not a general rule that persons awaiting trial shall be detained, but release may be granted on bail to appear at the hearing, at any stage of the trial, and the execution of the judgment, if so decided.
- 4) Anyone deprived of liberty by arrest or detention is entitled to a hearing before a court, the purpose of which is to enable the court without delay to determine the lawfulness of the arrest, and to order his release if the detention is unlawful.
- 5) Any person who has been the victim of unlawful arrest or detention shall be entitled to compensation.

¹¹ Dwi Prasetyo and Ratna Herawati, "Tinjauan Sistem Peradilan Pidana Dalam Konteks Penegakan Hukum Dan Perlindungan Hak Asasi Manusia Terhadap Tersangka Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 411.

¹² Luh Made Mutiasari, I Nyoman Gede Sugiarta, and Luh Putu Suryani, "Perlindungan Hak Asasi Manusia Dalam Mempertontonkan Tersangka Pada Konferensi Pers," *Jurnal Konstruksi Hukum* 3, no. 1 (2022): 224.

Explanation in Article 10:

- 1) Every person deprived of liberty shall be treated humanely and with respect for the inherent dignity of the human person.
- 2) Suspects, except in very special circumstances, should be separated from convicted persons, and treated differently according to their status as persons who have not been convicted.
- 3) Minor defendants should be separated from adults and brought before the court as soon as possible.
- 4) The correctional system should have the primary goal of correction and rehabilitation in its treatment of prisoners. Minor offenders should be separated from adults and treated according to their age and legal status.

According to Article 72 of the Criminal Procedure Code, upon the request of the suspect or his legal adviser, the official concerned must produce a copy of the examination minutes for the benefit of his defence. According to this article, the suspect or his legal advisor is required to obtain a derivative of the minutes of the examination for the benefit of his defence. The Criminal Procedure Code prioritizes the suspect's human rights. This topic is extremely important, particularly in terms of legal advice preparing the suspect's defence in court. The presence of examination minutes is an implementation of civil and political human rights based on the equality of human degrees before the law, also known as the Principle of Equality Before The Law in the criminal justice system, which states that everyone has an equal position before the law.

If it is related to the provision of derivatives of the minutes of the examination of suspects with the fulfillment of civil and political human rights, according to the author, it cannot be separated from the provisions of Article 19 paragraph (2) of the International Covenant on Civil and Political Rights, namely "Everyone has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and thoughts of any kind, regardless of restrictions orally, in writing, or in printed form, works of art or through other media of his choice". If seen from the sentence quote, namely "freedom to express opinions; this right includes the freedom to seek information and thoughts of any kind" it can be seen here that the derivative of the suspect's examination report is information for legal counsel to carry out the defense of the suspect when analogous to an incident, namely "a thief will not dare to enter a house without knowing the condition of the house first if he has mastered and knows the condition of the house so that he can easily carry out his actions".

So, in a sense, the presence of an examination report is critical in terms of defending the suspect because the derivative of the examination report serves as the first step in the process of defending the suspect by legal counsel to create pro-justice "for the sake of justice". As a result, the relationship between Article 72 of the Criminal Procedure Code and Article 19 paragraph (2) of the International Covenant on Civil and Political Rights demonstrates the incorporation of human rights into the Criminal Procedure Code's regulation.

2. Legal Remedies for Suspects If Police Investigators Do Not Submit the Investigation Report

The "Accusatoir" principle, as applied in the Criminal Procedure Code, emphasizes that a judicial system must be built on equal position and degree in the law, namely in law enforcement. The parties who become law enforcers ("Law Enforcer") and the suspect are in the same position and degree to attain justice, which is the primary goal of the legal procedure. In a state of law (rechtsstaat), the state respects and defends all individuals' human rights. The recognition of individual rights by the state is implied in all people's equality before the law. In a state of law, everyone must be treated similarly

before the law (equality before the law); yet, equality before the law must be tempered with equal treatment.

Access to legal advice is a basic right that everyone has, and it is one of the components of universal access to justice. No one in a state of law should be refused access to an advocate or public defender because of their religious background, descent, race, political beliefs, socioeconomic status, skin color, or gender. Furthermore, W. Friedmann believed that the acceptance of equal treatment before the law is linked to the respect of individual freedom. As a result, everyone has the right to seek legal protection and designate one or more advocates or public defenders to represent them. The presence of an advocate's defense of a suspect or defendant dealing with a state with complete tools ensures a balance in the judicial process (*Audi et al team partem*) and justice for all. About justice Immanuel Kant stated: "If justice is lost, there is no reason for a person to live longer on earth."

Kant's remark demonstrates how vital justice is for human life, as the law is frequently thought to be directed at obtaining justice. In the case that the investigator does not provide a derivative of the examination report, the suspect may take the following steps:

a. Report to Superiors

If the investigator does not wish to submit a derivative of the examination minutes to the legal advisor, the first step, according to the author, is to report to the superior, which in this case refers to the investigator as the person in charge who holds the highest position as the person in charge of an examination. The legal basis for superiors' duty is established by Article 7 paragraph (2) of the Regulation of the Chief of the Indonesian National Police (PERKAP) No.14 of 2011, which reads:

- 1) Exhibiting servant leadership, exemplary leadership, being a consultant who can solve problems (solution), and assuring the quality of subordinate performance and unity (quality assurance);
- 2) Follow-up and resolve obstacles to tasks reported by subordinates according to their level of authority; and
- 3) Immediately resolve allegations of violations committed by subordinates.

If the supervisor in question also refuses to provide the same excuse or statement as the investigator who was ordered, it will continue to the next stage.

b. Report to Security and Professional Unit (Propam)

If the investigator does not want to submit a derivative of the minutes of the examination to the legal counsel, the next effort is to report to the program section on the basis that the investigator concerned in the examination refuses to submit a derivative of the minutes of the examination, so here it is connected with social ethics that the investigator concerned has obstructed law enforcement, which adheres to the principle of *Accusatoir* that everyone is subject. The legal basis for the code of ethics is regulated in Article 15 Letter (a) of PERKAP No.14 of 2011, which reads "Every member of the police is prohibited from refusing or ignoring requests for help, assistance, or reports and complaints from the public which are the scope of their duties, functions, and authority" and regarding the obligations of propam in enforcing the code of ethics contained in Article 17 paragraph (1) of the Regulation of the Chief of the Republic. Enforcement of the KEPP is carried out by:

- 1) Propam Polri in the field of Professional Responsibility;
- 2) KKEP;
- 3) Appeals Commission;
- 4) Carrying out the legal function of the National Police;
- 5) HR Police Station; and

6) Police Propam in the field of personnel rehabilitation.

If the reporting attempt in the propam section does not modify the investigator's decision not to produce a derivative of the investigation report, under Article 72 of the Criminal Procedure Code. The author's next endeavor is pretrial.

c. Pre-Trial Justice

After the aforementioned efforts fail, the author attempts to assess the efforts of legal counsel if the investigator does not offer the examination minutes, especially by pretrial efforts observed from the pretrial authority first according to Article 77 of the Criminal Procedure Code, which reads as follows:

- 1) Whether or not the arrest, detention, termination of investigation, or termination of prosecution is valid.
- 2) Compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

Coupled with the Constitutional Court's ruling on the object of pretrial, namely:

- 1) Determination of Suspects;
- 2) Rummage;
- 3) Seizure.

According to Article 77 of KUHAP, the pretrial authority is responsible for examining and deciding on the validity of arrest, detention, termination of investigation, or termination of prosecution, as well as claims for compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level, by the provisions outlined in this law. Based on the preceding authority, the author contends that to obtain a derivative of the investigation report within the scope of the examination, the pretrial does not have the authority to process the investigation at the police level, and thus the pretrial effort must proceed to the next stage, namely the trial process.¹³

So, based on the existing cases, we can conclude that Article 72 of the Criminal Procedure Code, which governs the rules for submitting the minutes of examination, is only a supplement at this time, with no clear sanctions governing investigators who fail to submit the minutes of examination to the suspect or his legal counsel. While this is beneficial to the suspect's defense, it will undoubtedly affect the verdict (sentence) imposed later.

3. *Sanctions for Investigators Who Do Not Submit Derivatives of Minutes of Investigation*

Based on the norms examined by the author, there is no way for the KUHAP facility to accommodate the discontent of legal counsel who is not submitted by his client's BAP. Article 72 of the Criminal Procedure Code only specifies that it is necessary; no sanctions are specifically indicated. It becomes a quandary when a rule (norm) lacks sanction, as it appears that the norm is just a complement, without knowing what its primary purpose and benefits are. Starting with the description above, it is extremely difficult to require that the KUHAP regime provide possibilities for legal counsel who have not been provided the suspect's BAP to take specific legal steps because there is no norm to control it. Antasari, the former KPK chairman, disputes the draft KUHAP. The quality of investigations into alleged criminal acts must be improved. As a result, detectives must approach each inquiry with caution. To achieve this purpose, punishments against investigators who make mistakes in handling cases, such as fines and physical punishment, must be included in the Criminal Procedure Code.

¹³ Iskandar Iskandar, "Pre - Trial Justice Dalam Sistem Peradilan Pidana Untuk Perlindungan Hak-Hak Tersangka," *MAQASIDI Jurnal Syariah dan Hukum* 3, no. 1 (2023): 19.

Antasari Azhar, former Chairman of the Corruption Eradication Commission (KPK), stated this when requested for contributions to the List of Issues (DIM) of the Criminal Procedure Code and Criminal Procedure Code in Commission III of the House of Representatives.¹⁴

Antasari highlighted that the RKUHAP should be used to regulate law enforcement officers, not suspects or defendants. According to Antasari, because there is no legislative clarity governing sanctions for law enforcement agents, infractions occur frequently when carrying out criminal justice practices. Especially human rights violations, which occur in every investigation. According to Antasari, the practice of abuse of power stems from the lack of legal consequences for law enforcement agents who fail to follow the terms of the criminal procedure legislation. As a result, violence during investigations is common. As a result, there must be laws in place that punish investigators, particularly those who fail to completely and explicitly inform suspects of their right to legal counsel. Antasari proposed that legal procedures be established for law enforcement officers to ensure an orderly, fair, and human rights-compliant inquiry process. Juridical provisions range from administrative to criminal punishment. This must be done so that law enforcement officers, particularly investigators, do not arbitrarily target suspects.

Based on the news excerpt, there are still many sanctions that have not been regulated in the Criminal Procedure Code, thus in carrying out the defense function, legal counsel who requests a derivative of the suspect's examination report experiences obstacles. Namely, when the legal advisor representing the rights of the suspect requests a derivative of the minutes of the examination, the investigator as the holder of the authority for the minutes does not submit it, so the sanctions for the investigator's actions are still not regulated regarding the witnesses given, be it administrative, criminal, or code of ethics sanctions.

CONCLUSION

The existence of Article 72 Kuhap itself raises a question mark; the word wajib here does not provide strict sanctions for investigators who refuse to submit a derivative of the examination minutes, so the suspect's right to a copy of the derivative of the examination minutes is frequently ignored. The presence of this article is examined through the lens of political civil rights, namely highlighting a person's fundamental right to justice and fair treatment before the law. To the official or investigator who has the authority to make a derivative of the minutes of examination, transmit the derivative to the suspect or his legal counsel since the derivative is for the benefit of his defense. To ensure legal certainty and preserve the suspect's human rights.

In this debate, the author states that when a derivative report on the suspect's inquiry is not produced, the suspect or his legal advisor can take the following legal actions: First, report to their superiors; if these attempts do not yield results, continue reporting the situation to Propam. When these two steps do not produce results, the final option is to pursue pre-trial legal action. The Criminal Procedure Code is a driving force behind the functioning of law, particularly criminal law, which provides the fundamental elements of a criminal offense. The creation of the Criminal Procedure Code as a formal basis for a regulation must be linked to a causal or cause-and-effect relationship. If the law is enacted without sanctions, it is analogous to a tiger without teeth.

¹⁴ Anonim, "RKUHAP Perlu Memuat Sanksi Bagi Penyidik," *Hukum Online Online*, last modified 2013, accessed July 2, 2024, <http://www.hukumonline.com/berita/baca/lt51b82d61dbfa2/rkuhap-perlu-memuat-sanksi-bagi-penyidik>.

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