

Reconstruction of the Interpretation of Detention by Law Enforcer Based on Pancasila Justice Value

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Abstract

The problem in this study is to find weaknesses of the interpretation of detention by law enforcer in the Indonesian criminal justice system and how to reconstruct it based on the value of Pancasila justice. The approach method used in this study is socio-legal research which relies on the data obtained in the field that are compared to relevant literature and existing laws. The conclusion of this study is that the construction of the interpretation of detention by Law Enforcer is currently not based on the value of justice based on Pancasila, namely detention on the one hand is an authority given by law based on the principle of legality to investigators, investigators on orders of investigators, public prosecutors and judges, but on the other hand, it deals with the deprivation of the liberty of the suspect and the accused. The weaknesses of the interpretation of detention by the apparatus are that the detention of suspects or defendants can weaken socio-economic development as it is not mutually exclusive, but overlapping each other, therefore, the Ideal Reconstruction of the Interpretation of Detention by Law Enforcement Officials in a Criminal Justice System Based on Justice Values Based on Pancasila is to add, with amend, add to, or improve the articles that contain rules or provisions regarding detention.

Keywords: Reconstruction, Apparatus, Detention, Reconstruction.

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INTRODUCTION

In the legal system in Indonesia, for the purposes of investigation, investigators or assistant investigators are authorized to make arrests. And for the purposes of prosecution, the prosecutor is authorized to carry out further detention and detention, as well as for the purposes of examination in court, the judge is also authorized to make detention which can only be carried out against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient preliminary evidence as regulated in Article 24 to Article 29 of the Criminal Procedure Code.

If certain conditions occur, it is not possible to fulfill a normal detention period and an extension of detention in Article 24, Article 25, Article 26, Article 27, and Article 28 of the Criminal Procedure Code, the Criminal Procedure Code provides provisions for a term exception. Detention time. With that exception, the detention may be extended so that it exceeds the 400 (four hundred) day time limit. The extension of the detention is regulated in Article 29 of the Criminal

Procedure Code, carried out for the purpose of examination based on proper and unavoidable reasons. There are 2 (two) reasons that form the basis for the extension of detention, namely [1]:

1. The suspect or defendant suffers from serious physical or mental disorders as evidenced by a doctor's certificate, or;
2. The case being investigated is punishable by imprisonment of nine years or more.

Extension of detention may be granted by the authorities based on a request from the official who requires an extension of detention for a maximum of 30 (thirty) days and in the event that detention is still required it can be extended for a maximum of 30 (thirty) days as referred to in Article 29 paragraph (2) the Criminal Procedure Code. In paragraph (3) Article 29 of the Criminal Procedure Code, it is also stated that the extension of the detention is based on a request and an examination report at the investigation and prosecution level, the extension of detention is given by the head of the district court, then the examination at

the District Court is given by the head of the high court, then the appeal examination is given by the Supreme Court and the cessation examination is given by the chairman of the Supreme Court.

The use of authority to extend detention is carried out in stages and full of responsibility. It is possible for the suspect or defendant to be released from the detention room before the end of the detention period if the purpose of the examination has been fulfilled. After 60 days, even though the case has not been examined or decided, the suspect or defendant must be released from the detention room for the sake of the law. This is regulated in the provisions of Article 29 paragraph (4) and paragraph (5) of the Criminal Procedure Code.

In accordance with the extension of detention as referred to in Article 29 paragraph (7) of the Criminal Procedure Code, a suspect or defendant may file an objection. An objection is submitted to the head of the high court in the event that an extension of detention is granted at the level of investigation and prosecution, while an extension of detention at the level of examination in a district court and an appeal examination is submitted to the chairman of the Supreme Court.

Regarding the effort to force detention is an important aspect in criminal procedural law that must be considered by law enforcement officers, because detention is a form of temporarily limiting a person's freedom that can be carried out by investigators, prosecutors, or judges during the examination process, so it must be carried out according to the provisions of the law. Criminal procedure law regarding the legal conditions of detention [2].

In this regard, in the context of reforming the criminal justice system in Indonesia, the orientation of the criminal justice system has changed from focusing on prohibited acts and perpetrators of crime (crime, and offender-oriented), to shift to action, suspects, and victims-oriented (crime, offender, and victim-oriented) as a necessity. In this regard, the practice of forgiveness in the settlement of criminal cases has basically been found in various cultural treasures of various traditional societies. Thus, a study of the practice of criminal justice that accommodates forgiveness as the main joint of restorative justice based on socio-cultural values and legal aspirations that live in society is a necessity. This necessity, with reference to the opinion of Barda Nawawi Arief [3], is due to the fact that the national legal system should not only support national development and the needs of international relations, but must also be sourced and not ignoring the legal values and aspirations that live and develop in society as The legal values that live in the community can be sourced or extracted from the values of customary law and religious law values although this principle seem to

did not exists in the field of detention committed by the law enforcer. This problem is what urges the author to study it further in a research with the main problem as follows:

1. What are the weaknesses of the interpretation of detention by Law Enforcer in the Indonesian Criminal Justice System?
2. How is the reconstruction of the interpretation of detention by Law Enforcer based on the value of Pancasila justice?

METHOD OF RESEARCH

This type of research is a kind of empirical juridical, or referred by field research that examines the provisions of applicable law and what happens in reality in society [4]. Juridical empirical research is legal research on the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society [5]. Or in other words, a research conducted on the actual situation or real conditions that occur in the community with the intention of knowing and finding the facts and data needed, after the required data has been collected then leads to the identification of the problem which in turn leads to problem solving.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of The Interpretation of Detention by Law Enforcer in The Indonesian Criminal Justice System

The weakness of the system of detaining suspects by law enforcers, according to the author, stems from a problem that the detention of suspects or defendants has a negative impact on the suspect or the defendant himself. Let alone the detention of a suspect or defendant who does not achieve justice, even the detention of a suspect or defendant with justice also has a negative impact. It's just that the detention of a suspect or defendant brings justice, besides having a negative impact; it also brings benefits to the suspect or the defendant himself. In this regard, the negative impact of detention on suspects or defendants that does not achieve justice includes [6]:

- a) The suspect or defendant loses the opportunity to work.
- b) The suspect or defendant is exposed to factors that encourage crime.
- c) Suspects or defendants are vulnerable to torture, extortion, and disease.
- d) Suspects or defendants who had worked lost their jobs.
- e) Suspects or defendants are forced to neglect their children's education and are even forced to sell assets because they are sold to finance their lives and face cases faced by the suspect or defendant.
- f) Stigma as a bad person (criminal) is attached to the suspect or defendant in front of the public.

For the State, each detention of a suspect or defendant means increased expenditure (direct costs), reduced income (indirect costs), and diminishing resources for other programs (opportunity costs).

The direct costs of detention to the State include the operation of detention facilities (including guards and prison administrators). In general, the construction costs of very large prisons are often not planned for the detention of suspects or defendants because prisoners who have been sentenced (convicts) are considered as potential inmates. States can seek to reduce the cost of holding suspects or defendants by placing ten detainees in a cell designed for four, providing little or poor quality food, and reducing security and medical services. Such action will indeed reduce the marginal cost of holding a suspect or defendant significantly, but it is clearly a violation of human rights.

The cost of hearing a criminal case for the state is generally higher for pretrial detainees than for defendants who are paroled. Detained defendants have to go through a greater number of trials than defendants who are not detained, and the state must bear all costs associated with these trials, including transportation costs for the detainee and the guards accompanying him from the detention house to the court building. Whereas defendants who are not detained pending trial must pay for their own transportation costs and do not travel with guards.

To make rational policy decisions without an accurate understanding of the economic costs of these policies compared to the alternatives is not easy. This means that there is no attempt at all to quantify the greater indirect costs to society and the state of lost productivity, reduced tax payments, or disease transmitted from prison to society when prisoners are finally released.

In order to calculate the true cost of detaining a suspect or defendant, it is necessary to consider the full impact of excessive detention of a suspect or defendant not only on the detainees but also on their families and communities. It is necessary to study the costs of making limited efforts to calculate indirect costs that only emphasizing social security payments lost as a result of the detention of suspects or defendants, as well as a number of health care costs.

The cost of detaining a suspect or accused may be spent on health services or policy or education arrangements. Likewise, the money spent by detainees, their families, and the community for the detention of suspects or defendants is also not used in other ways.

Furthermore, in relation to the detention authority, investigators play an important role in building a positive impression of the Indonesian

National Police (*Polri*) in the community. So that the expertise of investigators in handling a criminal case, control of the field, mastery of legislation, and finding evidence that makes light of a criminal case that is being handled, to submitting all case files and suspects to the Prosecutor (JPU) is a big task that needs guidance. The guidelines in question are the values of Pancasila and as part of the demands of the times; investigators are also expected to be able to optimize the use of technology in carrying out investigative tasks, especially in order to provide satisfaction and openness of service to the community.

Comprehensive criminal law enforcement can be said to be a process of enforcing material criminal law that seeks the truth of prohibited acts suspected of perpetrators, both those contained in the Criminal Code and laws outside the Criminal Code. Every act that fulfills the formulation of the Act can be accounted for regardless of the objective factor why the act was carried out and only looks at the elements of the Act, so it can be interpreted that criminal law is rigid because it only leans towards the Act. Structurally, it relates to law enforcement agencies/apparatuses that enforce the law. Today's law enforcement officers, for example, judges, are still constrained by a positivist paradigm that only relies on written elements that can be imposed on perpetrators. The judge in making his decision cannot do a rule-breaking decision in order to achieve substantial justice.

However, in the law enforcement process, including in the investigation process, it is mostly based on positive law or statutory regulations [7]. Whereas as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that the Indonesian state is a state of law. Indonesia has a state foundation and a basic philosophy of the nation, namely Pancasila. Where Pancasila colors the entire life of the nation and state, including the development of national criminal law. The values of Pancasila are the basis for national policy and law enforcement.

The consequences for the position of the Prosecutor's Office if certain actions are carried out by two or more State powers (between the executive and the judiciary) if not based on the basic principles of checks and balances, will have logical consequences, namely the existence of uncontrolled powers in suppressing other powers. This practice is part of the weakness of the Prosecutor's position. The judicial position of the Public Prosecutor's Office which is mixed (mix position) has implications for the problems that the author analyzes as follows:

- a. Intervention of political interests against the Prosecutor
- b. The presence of an unprofessional attitude
- c. The presence of arbitrariness in elections.

At least these various kinds of weaknesses have become dominant issues within the body of the Prosecutor's Office in carrying out the prosecution function. In the provisions of the Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated in Article 19 Paragraph (2) that the Attorney General is appointed and dismissed by the President. If hierarchically the Attorney General is under the President while the President himself is born from a political background, then it cannot be denied and it is possible that every decision of the Attorney General will be painted by political interests.

2. Reconstruction of the Interpretation of Detention by Law Enforcer Based On the Value of Pancasila Justice

As an effort to find a solution to the weakness of the position of the Prosecutor's Office in carrying out the prosecution function, the pattern that has been built in every state institution in carrying out the function of social justice for all Indonesian people that has only been emphasized on the strong influence of the flow of legal positivism which closes the space needs to be reconstructed first, to provide room for rereading the typological condition of the community's needs for legal issues. On the other hand, the nature of exploitation of power states which is dogmatic only on claims by the ruler's orders becomes a symbol which in the end makes the state less neutral in describing the role of social justice and this, of course, can be seen in the laws and regulations that form the basis for carrying out the functions of a state institution.

The image and power of justice contained in the Prosecutor's Office, in accordance with the mandate of the Pancasila, the fifth precept, must first be built through efforts to provide the Prosecutor's position ideally. The existence of an ideal position of the Prosecutor's Office indirectly indicates that the Prosecutor's Office must be able to place an impartial nature of the institution in carrying out its roles and functions.

In relation to the constitutional position, for example, when compared to the People's Republic of China, for example [8]. The position of the Prosecutor's Office is not under the auspices of the executive. China as a communist-based country in its constitution places the Attorney General's Office in judicial power. This position, in the author's analysis, accommodates the independence of the Prosecutor's Office in playing its role. In fact, corruption can be said to be successful not because of the death penalty, but the judicial system, both run by the court and the Prosecutor's Office, runs optimally.

What happened in China was different from what happened in Malaysia, which bears some resemblance to Indonesia. The position of the Attorney

General's Office in Malaysia or what is known as A-G (Attorney General/Prosecutor General) is under the auspices of the executive. The A-G's are often accused of being partial to executives or offering too much respect to executives. Next, in the United States, although the position of the Attorney General is in the executive branch, in the election of the Attorney General, the President of the United States must still consult the choice of the Attorney General to the American Congress. Prosecutors in America are referred to as the Department of Justice with the term "Attorney General"[9].

Referring to the conditions of other countries, ideally, in Indonesia, the courage to place the Prosecutor's Office by placing the independence of carrying out its duties and functions above the interests of power is contained in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (2) which states that Sovereignty is in the hands of the people and implemented according to the 1945 Constitution of the Republic of Indonesia must be put forward. This principle must then exist in every role carried out by the Prosecutor's Office, which in essence is that the Prosecutor's Office in playing its role cannot be separated from other forms of independence to submit and obey the sovereignty of the people. The capacity of the government is only as a form and form of coordination or in other words bridging the existence of the people's sovereignty by being carried out through the independence of the Prosecutor's Office.

However, in practice, the role and position of the Prosecutor's Office have different interpretations in carrying out its authority. Every Attorney General who, by acclamation, has a strategic role has in fact had a significant impact on the form of the Prosecutor's Office that so far has existed in carrying out its functions. The main form that occurs is the powerlessness in exercising authority.

Therefore, based on the description above, the reconstruction as intended by the author is as follows:

- a. Article 21 paragraph (1) of the Criminal Procedure Code, needs to be reconstructed into: "*The ideal value of Article 21 paragraph (1) of the Criminal Procedure Code is the value of justice based on the 1st, 2nd, and the 5th Pancasila precepts with the aim of providing protection to suspects or defendants, victims, law enforcement officers who carry out detentions, the community, and to avoid the arrogance of law enforcement officials who are authorized to make detentions*".
- b. Article 21 paragraph (4) of the Criminal Procedure Code needs to be reconstructed by adding one more paragraph which contains the application of a restraining order, namely a court order to restrict someone from doing something or ordering someone to refrain from certain activities.

- c. Article 23 paragraph (1) of the Criminal Procedure Code needs to be reconstructed into: *“The authority to transfer the type of detention should be in the hands of independent law enforcement officers (law enforcement officers who do not handle the case). In this case, the author recommends the commissioner judge as a law enforcement officer who has the authority to determine whether or not detention is necessary”*.
- d. Article 24 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 24 paragraph (2) of the Criminal Procedure Code the length of detention at the investigation level can be extended for 10 days. So the total detention period in the investigation stage is 30 days (In Article 24 paragraph (1) 20 days, and an extension of 10 days). In view of the National Police's Rule Number 6 of 2019 concerning the investigation of criminal acts in Article 14 paragraph (1), namely the SPDP is sent to the public prosecutor, the reporter/victim, and the reported party within 7 (seven) days after the issuance of the Investigation Order”*.
- e. Article 25 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 25 paragraph (2) of the Criminal Procedure Code for detention by the public prosecutor can not be extended. So the detention period by the prosecutor is a maximum of 20 days.”*
- f. Article 26 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 26 paragraph (2) of the Criminal Procedure Code for detention by a judge cannot be extended. This means that the detention period by the judge is a maximum of 30 days”*.
- g. Article 27 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 27 paragraph (2) of the Criminal Procedure Code is that there is no extension of detention by the head of the high court. So the detention period by the judge is a maximum of 30 days”*.
- h. Article 28 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 27 paragraph (2) of the Criminal Procedure Code for detention by a judge of the Supreme Court can not be extended. So the detention period by the judge is a maximum of 50 days”*.
- i. Article 29 paragraph (1) letter a of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 31 paragraph (1) of the Criminal Procedure Code is that the authority to suspend detention should be in the hands of independent law enforcement officers (law enforcement officials who do not handle the case). In this case, the author recommends the commissioner judge as a law enforcement officer who has the authority to determine whether or not detention is necessary”*.
- j. Article 31 paragraph (2) of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 31 paragraph (2) of the Criminal Procedure Code is that the authority to suspend detention should be in the hands of independent law enforcement officers (law enforcement officials who do not handle the case). In this case, the author recommends the commissioner judge as a law enforcement officer who has the authority to determine whether or not detention is necessary”*.
- k. Article 77 of the Criminal Procedure Code needs to be reconstructed into: *“The ideal value of Article 77 of the Criminal Procedure Code regarding pre-trial, should not only be about: points a and b, but also related to the provisions of whether or not detention is necessary in order to avoid the arrogance of the authorized law enforcement officers”*.
- l. Furthermore, the authors submitted a reconstruction proposal in the form of additional articles regarding commissioner judges to be included in the Criminal Procedure Code, as follows:
- i. The commissioner judge is a judge who has the authority to assess the process of investigation, prosecution, and other authorities determined by law.
1. The Commissioner Judge has the authority to decide:
 - i. Whether or not the detention of a suspect or defendant by law enforcement officers is necessary;
 - ii. Has the authority to decide on the suspension of detention;
 - iii. Termination of investigation or termination of the prosecution that is contrary to the law.
- Detention of a suspect or defendant is a form of deprivation of one's freedom of movement. The detention raises a conflict between two principles, namely the right to move a person is a human right that must be respected and the interests of public order must be maintained for the people or society.
- The Officials that are authorized to conduct detention are state apparatus which consists of investigators, public prosecutors, and judges. The law enforcers are obliged to enforce the law that is violated. These law enforcers have the right (authority) to take any measures permitted by the regulations, including detaining suspects or defendants. But on the other hand, law enforcers are also obliged to respect the rights of suspects or defendants, including the human rights of suspects or defendants.
- There are two parties who face each other in law enforcement, namely law enforcement and someone who is suspected or charged with violating the law. Both parties are human beings who have rights and

obligations as Indonesian citizens, so that both parties must be balanced in carrying out detention.

In the case of detention of a suspect or defendant, it must be based on divine (religious) values, human values, and justice values. These three values are contained in Pancasila, especially the first, second, and fifth precepts, and are also contained in the body of the 1945 Constitution, especially Article 27 paragraph (1) (values of justice), Article 28 A to Article 28 J (human values), and Article 29 (divine/religious values). Detention should be carried out in a balanced manner between the interests of investigation, examination, and trial, with interests related to the rights of the suspect or defendant as a dignified human being [10]. Detention must be carried out on the basis of the balance of the nature of human nature as a mono-pluralist creature as the philosophy of Pancasila which is based on an attitude of balance between kinship but not only excludes the individual. Therefore, in order for the law to function properly as a protector and protector of the community, the law should always be able to adapt to the development and dynamics of society.

CONCLUSION

1. The Weaknesses in the Interpretation of detention by the authorities are that the current interpretation of detention of suspects or defendants can weaken socio-economic development, as they are not mutually exclusive, but overlap and strengthen each other. Thus, detaining large numbers of people is not only costly to the state but also has negative financial and social impacts on detainees, their families, and society at large. Reducing the excessive use of detention of suspects or defendants can promote socio-economic development at the family and community levels, especially in developing countries where the difference between a stable life and the ability to survive is often very thin. In a situation where countries are struggling with poverty alleviation strategies and making difficult decisions about where to invest limited resources, direct spending on undue imprisonment should not be ignored. The weakness of the prosecution provisions adopted by the Prosecutor's Office of the Republic of Indonesia is in terms of the Mandatory Prosecutorial System because in this system the prosecutor handles a case only based on existing evidence so that the prosecutor cannot directly handle a case such as conducting investigations, arrests. Search, confiscation, and examination of victims and witnesses.
2. The reconstruction as intended by the author is as follows: (a). Article 21 paragraph (1) of the

Criminal Procedure Code, (b). Article 21 paragraph (4) KUHAP, (c). Article 23 paragraph (1) KUHAP, (d). Article 24 paragraph (2) of the Criminal Procedure Code, (e). Article 25 paragraph (2) of the Criminal Procedure Code, (f). Article 26 paragraph (2) of the Criminal Procedure Code, (g). Article 27 paragraph (2) of the Criminal Procedure Code, (h). Article 28 paragraph (2) of the Criminal Procedure Code, (i). Article 29 paragraph (1) letter a KUHAP, (j). Article 31 paragraph (2) of the Criminal Procedure Code, (k). Article 77 of the Criminal Procedure Code, (l). Furthermore, the authors also presented a reconstruction proposal in the form of an additional article regarding commissioner judges to be included in the Criminal Procedure Code.

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