

Legal Reconstruction of Investigation Warrant Submission Arrangements on Suspect Based on Justice Value

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Abstract

Notification of Commencement of Investigation is a letter issued by an investigator addressed to the public prosecutor which aims to notify an investigation into a case. The Public Prosecutor will respond to the Letter of Notification of the Commencement of the Investigation by appointing a Research Prosecutor to follow the investigation process. This study discusses the problem of regulatory weaknesses in the delivery of an order to commence an investigation to the current reported party and efforts to reconstruct the arrangements in submitting an order to begin an investigation to the reported party based on the value of justice. The approach method in this research is socio-legal research. The results of the study found that there was a weakness in the regulation in submitting an order to commence the investigation of the Constitutional Court within 7 (seven) working days. There is no apparent sanction for the investigator if, after 7 (seven) days, the notification letter for the commencement of the investigation is submitted to the reported party. Thus the complainant feels that his rights as a citizen have been degraded. Reconstruction of arrangements in the delivery of the warrant for the start of an investigation to the reported justice based on the non-involvement of the reporting party and the reported party in submitting the Notification of Commencement of Investigation and also regarding the deadline for submission and there are no sanctions for investigators who are late in submitting the Notice of Commencement of Investigation to the public prosecutor, reporter and reported.

Keywords: Reconstruction, Arrangement, Investigation, Reported Party.

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INTRODUCTION

The State of Indonesia is a state of law. This is stated in article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which is the constitution of the state of Indonesia. As a state of law, law enforcement must be appropriately upheld to create order in society. Law enforcement in Indonesia is currently, in some cases, still implementing the teachings of positivism. This theory of positivism was introduced by Hans Kelsen, namely pure Legal Theory, where theory put forward by Hans Kelsen; it is explained that the law must be freed from non-judicial elements, or in other words, the law contained no non-judicial elements. Law is a rule that contains related obligations, prohibitions, sanctions, and orders (Aldyan & Negi, 2022).

Notification of Commencement of Investigation is a letter issued by investigators addressed to the public prosecutor which aims to notify an investigation into a case (Zikry, 2016). The Public

Prosecutor will respond to the Letter of Notification of the Commencement of the Investigation by appointing a Research Prosecutor to follow the investigation process.

Notification of the start of the investigation is the first step for the public prosecutor to carry out pre-prosecution activities which are mean functional coordination between the investigator and the public prosecutor as the case controller (Dominus lists), while the pre-prosecution activity itself is the act of the public prosecutor to follow the progress of the investigation after receiving notification of the commencement of the investigation from the investigator, studying or researching the completeness of the case files as a result of the investigation received from the investigator as well as providing instructions to be completed by investigators to be able to determine whether the case file is complete or not (Maulizar, Dahlan, & Jafar, 2019).

At the start of an investigation, the public prosecutor cannot know about the investigation being carried out by the investigator, and of course, this results in the pre-prosecution flow of the public prosecutor not being able to keep up with the progress of the investigation and also makes the coordination between the investigator and the public prosecutor not optimal.

From the process flow when the Notice of Commencement of Investigation is received and has implications for the appointment of a research prosecutor and the emergence of administrative actions by the prosecutor such as the issuance of P18/P19. So the issuance of a notice of the start of an investigation has another function as a prelude to the formation of functional coordination between the investigator and the public prosecutor so that the Notification of the Commencement of the Investigation, is the first entry point for the public prosecutor to oversee the course of an investigation in a case, this is in line with the concept of limiting investigative powers.

Supervision of investigations in the Criminal Procedure Code is implicitly contained in Articles 109 and Article 110. The act of Notifying the start of an investigation in the Criminal Procedure Code has the objective of being able to lay the foundations for functional cooperation and coordination and is a means of oversight. Horizontally between related law enforcement agencies, to realize the process of handling criminal cases that are carried out quickly, simply, and at a low cost.

Provisions regarding the time for issuance of the Notice of Commencement of Investigation by the Police to be subsequently submitted to the prosecutor's office, are regulated in Article 109 paragraph (1) of the Criminal Procedure Code: "In this case, the investigator has started to investigate an event which constitutes a criminal act, that matter to the public prosecutor" The meaning of "begin to carry out an investigation" is based on the implementation guidelines number 3 in the attachment to the Decree of the Minister of Justice No. M. 14 - PW.07.03/1983 is when an investigator makes "forced measures" in the form of pro-Justicia summons, arrest, detention, or confiscation, for the first time then this is considered a condition for issuing a Notice of Commencement of Investigation, as for the nature of the issuance of a Letter Notification of Commencement of Investigation, is mandatory for the police (Harahap, 2014).

The basis that can categorize the issuance of a Notification of Commencement of Investigation as an Obligation is:

1. Whereas with the principle of the functional difference between the prosecutor as the public prosecutor and the police as the investigator as well as the existence of the principle of

surveillance and correlation between institutions as well as the principle of supervision and correlation between law enforcement institutions in the Criminal Procedure Code, then it is strengthened with the aim of legal certainty which wants to be achieved by the Criminal Procedure Code. Thus, this requires the provision of a Notice of Commencement of Investigation, as an obligation because if it is not an obligation it will result in a voluntary attitude to submit or not submit a Notice of Commencement of Investigation.

2. That there is the opinion of the Supreme Court as outlined in the Fatwa from the work of MARI-Dapkeh with KPT. 15 to 19 February 1982 stating that the notification of investigators to the public prosecutor in the series of provisions of Article 109 paragraph (1) of the Criminal Procedure Code is an obligation on the basis that the notification is a series of imperative judicial tasks.

The Constitutional Court in this matter as in the ruling No. 130PUU – XII/2015 has also determined that the phrase "investigation of notification of that matter to the public prosecutor" is contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted by the investigator as obligated to notify and submit a Notice of Commencement Investigation of the Public Prosecutor, the reported party, and the victim/reporter within 7 days after the issuance of the Investigation Warrant. As for the content in the SPDP, it still refers to Article 25 paragraph (2) of the Chief of Police Regulation Number 14 of 2012 which reads: "Notification of the Commencement of Investigation shall contain at least:

1. The basis for the investigation is in the form of a police report and an investigation warrant;
2. Time to start the investigation;
3. The type of case, the article suspected, and a brief description of the criminal act being investigated;
4. Identity of the suspect (if the identity of the suspect is already known);
5. Identity of the official who signed the Notice of Commencement of Investigation."

The Warrant for the Commencement of Investigation into the principle of criminal procedural law is an important part of the decipherment of basic values in criminal procedural law. In the following, the relationship between the Notice of Commencement of Investigation and the court's seven principles of criminal procedural law in considering its decision will be explained. The intended criminal procedural law principles are Equal treatment of everyone before the law without discriminating in treatment.

The issuance of the Notice of Commencement of Investigation is a sign of the Investigator's commitment to the suspect or reported party to give the same attitude to everyone who is proceeding with the criminal procedure law. As soon as the suspect/reported person knows he is involved in the investigation process, he will prepare a defence and the necessary legal assistance. In line with this understanding, this principle contains an important meaning of the right to information for the parties involved in the investigation process: the reported party, the reporter, and the public prosecutor. Equality here means not only for the suspect/reporter but for the reporter and public prosecutor so that each party has equality before the law as individuals with dignity.

So far, in the provisions contained in Article 109 paragraph (1) of the Criminal Procedure Code, the issuance of a Notice of Commencement of Investigation has only been given to the Public Prosecutor, not to the suspect/reported or the victim. This condition rules out the principle of equal treatment of a person in public because it seems that the criminal justice system is closed. This condition seems to place investigators and public prosecutors as parties who have taken over all existing cases even though the victim/reporter also needs clear information on the development of the ongoing legal process. Likewise, suspects/reported persons who are not provided with information related to this matter will experience legal uncertainty which will lead to justice due to the ambiguity of their status.

The Court has made a very significant legal breakthrough because of this condition by creating a new norm that a Notice of Commencement of Investigation must be given to the Public Prosecutor, Suspect/Reported, and Victim/Reporter in the hope of obtaining equality in terms of legal treatment during the criminal justice process. The Court in its decision seemed to consider decisions that are legal *justice*, moral *justice*, and time-social *justice* (Anwar, 2010).

Basically, *moral justice*, the Court instead provided a very deep understanding of the meaning of the Notice of Commencement of Investigation for the judicial process which does not only have procedural importance but fulfils human rights. From the side of social *justice*, the Court has considered the legal interests involved in the Notice of Commencement of Investigation not only for the Public Prosecutor but for the Victims and Suspects. Mahatma is also inseparable from the understanding of the purpose of making Article 109 paragraph (1) of the Criminal Procedure Code which emphasizes the importance of the basis for Notification of the Commencement of Investigation originating from the authority of the Investigator in balance with the Public Prosecutor to speed up the trial (*Legal justice*). Based on this understanding, the Court is no longer trapped in considering its decision in the paradigm of procedural justice but prioritizes

substantive justice that is needed by the community, not just the applicant (Sudaryanto, 2012). The Court's decision to revise Article 109 paragraph (1) of the Criminal Procedure Code is considered to have fulfilled the principle of giving equal treatment not only to public prosecutors but to the suspect/reported and victim/reporter to create a balance and clarity of information.

Based on the explanation above, a study was carried out with the title "Legal Reconstruction of Investigation Warrant Submission Arrangements on Suspect Based on Justice Value".

This problem is what the author urges to study further in research with the following issues:

1. What are the weaknesses in the arrangement in submitting an order to commence an investigation to the current reported party?
2. How is the reconstruction of the arrangement in submitting an order for the commencement of an investigation to the reported party based on the value of justice?

METHOD OF RESEARCH

The paradigm that is used in the research is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or scientific knowledge (Faisal, 2010). Paradigm also looked at the science of society as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005), which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The source of research used in this study is:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is key instrument that is the researcher himself who plans, collects, and interprets the data (Moleong, 2022).

Still, it is also possible to carry out an analysis using inductive reasoning for cases of election dispute resolution after the election and vote counting has been documented in the form of study results, records, and research results. And in this study, the researchers used deductive and inductive analysis so that the data obtained could be processed optimally (Hardiyanti, *et al.*, 2022).

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Regulatory Weaknesses in Submission of Warrant for Commencement of Investigation to the Reported Party at this time

Indonesia is a constitutional state, see Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, even so, the existence of a law does not mean that it can negate human rights without a clear basis and must be regulated in law. In essence, human rights can only be limited and temporary. The integration between law and the fulfilment of human rights is poured into the criminal law principles that apply in the criminal procedural law itself. There are at least 2 important things from the legal principle, which is to be a guide in making and implementing, and even evaluating criminal provisions.

The norms regulated in Article 109 Paragraph (1) of the Criminal Procedure Code appear to be inconsistent with the norms regulated in Article 109 Paragraph (2) of the Criminal Procedure Code which states, "If an investigator stops the investigation because he does not there is sufficient evidence or the event turns out to be not a crime or the investigation is terminated for the sake of law, the investigator informs the public prosecutor, the suspect or his family about this." The inconsistency in question is that the suspect was not notified when the investigation began, but the suspect was notified when the investigation was stopped. This norm greatly deprives the human rights attached to the suspect. How can a suspect prepare himself to defend himself when the suspect does not know when the investigation against him will begin, but suddenly the suspect knows that the investigation against him has ended?

As an example, this can be seen in the alleged criminal case against Tri Rismaharini, who at that time was the Mayor of Surabaya. Reports of alleged criminal acts began on January 21, 2015, investigations began on May 28, 2015, and termination of the investigation (Notification of Termination of Investigation) was dated September 26, 2015. The confusion then arose when the East Java High Prosecutor's Office received a letter of

Notification of Termination of Investigation (SP3)) together with the East Java Police Investigator's Notice of Commencement of Investigation (Hermawan, 2022).

In the criminal justice system in Indonesia, when investigators start carrying out investigative activities with an Investigation Order (Sprindik). That the Sprindik is internal, meaning that it is only known by the official who made the Sprindik and the officer assigned to carry out the investigation. Whereas apart from that, the Criminal Procedure Code expressly provides procedures for its implementation by notifying the public prosecutor when the investigation has begun, see Article 109 paragraph (1) of the Criminal Procedure Code. The weakness of the Criminal Procedure Code related to investigations is that there is no known time limit for notification of the start of an investigation from the investigator to the public prosecutor. Even more fatal, the Criminal Procedure Code also does not pay attention to aspects of human rights owned by people who are strongly suspected of having committed a crime (suspect), because the order Article 109 Paragraph (1) of the Criminal Procedure Code only mentions the prosecutor. In general, investigators are notified of the start of an investigation, and even the reporting party is not part of the parties referred to in Article 109 Paragraph (1) of the Criminal Procedure Code. This also illustrates that the public prosecutor is not given space to be active in the investigations carried out by investigators, as stipulated in the Criminal Procedure Code.

For these reasons, normatively the Criminal Procedure Code does not accommodate the interests of fulfilling justice for the parties concerned in a criminal case, namely the complainant, the suspect, and the public prosecutor. This is of course contrary to legal principles which prioritize the values of justice and certainty which are firmly adhered to in the legal system in Indonesia.

The existence of a Notice of Commencement of Investigation, which is linked to the principle of criminal procedural law, is an important part of the decipherment of basic values in criminal procedural law. One of the important things about the issuance of the Notice of Commencement of Investigation is regarding the preparation of the suspect in future self-defence as well as clarity of information related to the alleged crime against him. The fact that has happened so far is that the Notification Letter of the Commencement of Investigation has only been delivered after the investigation has been going on for a long time, meaning that so far there has been no regulation regarding the grace period for investigators to give the Public Prosecutor a Notice of Commencement of Investigation.

None of the Criminal Procedure Code and other laws and regulations relating to investigations

provides technical arrangements regarding how long a Notice of Commencement of Investigation will take to reach the suspect if it has been issued. The absence of a time limit in statutory regulations has cornered the state as an institution that violates the human rights of its citizens.

2. Reconstruction of Arrangements in Submission of Warrant for Commencement of Investigation to the Reported Party Based on the Value of Justice

A criminal case that has already been issued with an Investigation Commencement Warrant from the Police to the Prosecutor's Office and in its development according to the Attorney General's assessment of the case has met the requirements for prosecution. Still, in the middle of the road, the Police suddenly issued an SP3 (Determination Letter for Termination of Investigation) against this case, for the sake of upholding law and justice should be the final effort taken by the Attorney General's Office to carry out a pre-trial lawsuit against the Police to the District Court. Likewise, if a case has been stated as sufficient evidence by the Prosecutor's Office or the case has been transferred from the Police to the Prosecutor's Office, but in the middle of the road the Prosecutor's Office suddenly issues an SP3 (Letter of Determination of Termination of Prosecution), then for the sake of upholding law and justice the Police can carry out a lawsuit Pre-trial against the Prosecutor's Office to the District Court.

The second factor that becomes an obstacle in this writing is the factor of law enforcement. The low effort and integrity of police investigators in creating legal certainty related to the submission of Notification of Commencement of Investigation to public prosecutors, reporters/victims, and reported parties can be seen in pre-trial cases as decided in Case Number 04/Pid. Pra/2017/PN. KLa at the Kalinda District Court (South Lampung Regency) and Case Number 07/Pid. Pra/2019/PN. Bpp at the Balikpapan District Court. In this case, the two pre-trial decisions revealed the arbitrary actions of the investigator who deliberately delayed the delivery of the Notice of Commencement of Investigation (exceeding the time limit of 7 days from the start of the investigation), even though it was already known that the deadline for submitting the Notice of Commencement of Investigation was 7 days after its issuance Sprindik based on Constitutional Court Decision Number 130/PUU-XII/2015.

The pre-trial decision rejecting the plaintiff's lawsuit certainly does not have any effect on going criminal cases. Even so, the authors see that the pre-trial filing turned out to be quite effective in punishing investigators who were negligent or neglectful of the obligation to submit a Notification of Commencement of Investigation. Whatever pre-trial matters have an impact on the movement of teams from the professional

and security sectors at the Regional Police institutions as well as teams from Internal Security (Pamina) at the Resort Police institutions to examine investigators involved in pre-trial cases.

The discovery of these two inhibiting factors will certainly influence the functioning of the criminal justice system as described by Romli Atmasasmita, which includes a normative approach, a social approach, and an administrative approach. In terms of the administrative approach, the position of the Notice of Commencement of Investigation position is the main door for connecting coordination between investigators and public prosecutors related to investigations carried out by investigators. The normative approach is related to the obligation of the investigator to convey the matter of the commencement of the investigation through a Notification Letter of the Commencement of Investigation to the public prosecutor. It is called a social approach because the Constitutional Court Decision Number 130/PUU- XIII/2015 which requires investigators to submit Notification Letters of Commencement of Investigation to public prosecutors, reporters/victims, and the reported party, it provokes community participation to help supervise the operation of the criminal justice system in social control function. This is important to prevent arbitrary actions, unlawful acts, and unprofessional investigators from carrying out investigations.

The court's considerations as the basis for the decision on Article 109 Paragraph (1) of the Criminal Procedure Code shows that the Court is not trapped in the use of grammatical interpretation but use a combination of Systematic, Sociological, and Substantial interpretation methods. Systematic interpretation is defined as an understanding of legal provisions as a whole system of legislation, Sociological interpretation is defined as an understanding of legal provisions based on the meaning of laws for societal purposes while Substantive interpretation understands the primary intent of the legal provisions made (Said, 2012). Each of these interpretations appears as follows:

- a. Systematic Interpretation, used by the court at its first consideration in understanding the existence of the Notice of Commencement of Investigation as stipulated in Article 109 Paragraph (1) of the Criminal Procedure Code as part of the Pre-Prosecution Process as specified in Article 14 of the Criminal Procedure Code;
- b. Sociological interpretation, it turns out that the court does not only understand the text of Article 109 Paragraph (1) of the Criminal Procedure Code but also understands the developments and needs of an already developed society in fulfilling legal certainty which is part of human rights;

- c. Substantive Interpretation, it can be seen that when the court dared to take logical considerations, if the Notification of the Commencement of Investigation is important than it should be obligated to 3 (three) parties by setting a time limit of 7 (seven) days.

Of the nine types of human rights regulated in the 1945 Constitution of the Republic of Indonesia, suspects receive full human rights protection. The existence of SPDP is very important for suspects to obtain adequate fulfillment of human rights. It is said to be adequate because by Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the human rights of a suspect can be limited by law. The legal basis of Article 109 Paragraph (1) of the Criminal Procedure Code is the answer key in protecting human rights as well as limiting the human rights of suspects.

The existence of an Investigation Commencement Warrant allows the suspect to maintain a decent life for himself, avoid discriminatory treatment by law enforcement officials and obtain information certainty regarding the legal basis and position of the case he is facing. On the other hand, the Warrant for the Commencement of Investigation restricts suspects from freely acting because they are involved in legal proceedings related to being brought up by the legal process to the investigation stage.

For reporters or victims, the Warrant for the Commencement of Investigation fulfills Human Rights at least in terms of guaranteed legal certainty, clear information about the criminal law process, and applicable legal provisions. The complainant/victim gets information certainty related to the criminal case he submitted so that he can contribute to the law enforcement process.

Warrant for Commencement of Investigation according to Article 6 paragraph (1) of Law no. 3 of 2014 concerning Standard Operating Procedures for Carrying out Criminal Investigations, is a letter of notification of the commencement of an investigation from the investigator to the Public Prosecutor, which is made and sent after the issuance of an investigation order. A Notification Letter for the Commencement of Investigation is drawn up and sent to the Prosecutor's Office if the police report received constitutes a crime, that is, sufficient preliminary evidence has been obtained and the examination has begun.

Investigators carry out investigations after an Investigation Commencement Order has been issued, which a letter is issued by an investigator addressed to the public prosecutor which aims to convey that an investigation is being carried out on a case. The Public Prosecutor will answer the Warrant for the Commencement of the Investigation by appointing a Research Prosecutor to participate in the investigation

process. The public prosecutor without an Investigation Commencement Warrant cannot know about the investigation that is being carried out by the investigator, causing the pre-prosecution flow of the public prosecutor to be unable to follow the progress of the investigation and also making the process of coordination actions between the investigator and the public prosecutor not optimal.

The issuance of an Investigation Commencement Warrant has a function as the beginning of the birth of the coordination of the functional relationship between investigators and public prosecutors so that the Investigation Commencement Warrant is a door for the public prosecutor to oversee the course of the investigation process in a case, this is in line with the concept of limiting powers in investigations. Supervision of the implementation of investigations in the Criminal Procedure Code is regulated in Article 109 and Article 110 of the Criminal Procedure Code.

The act of starting the implementation of an investigation in the Criminal Procedure Code has the aim of laying the foundations for cooperation and functional cooperation and is a means of carrying out horizontal supervision between law enforcers concerned, to realize the process of handling a criminal case which is carried out quickly simple and low cost.

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. The weakness in the regulation in submitting an order to commence an investigation to the reported party at this time regards the power to compel the period granted by the Constitutional Court decision to be no later than 7 (seven) working days. There are no clear sanctions for investigators within 7 (seven) working days. There are no clear sanctions for investigators if, after 7 (seven) days, the order for the commencement of investigation has passed to the reported party. Thus the complainant feels that his rights as a citizen have been degraded.
2. Reconstruction of the arrangements in submitting an order for the commencement of an investigation to the reported party based on the value of justice by reconstructing Article 109 of the Criminal Procedure Code which reads "(1) If an investigator has started to investigate an event which constitutes a criminal act, the investigator notifies the prosecutor about this general". This article has weaknesses in that the reporting party and the reported party are not involved in submitting the Investigation Commencement Order and the time limit for submission. There are no sanctions for investigators who are late in

submitting the Investigation Commencement Warrant to the public prosecutor, the reporter, and the reported party. Therefore it is reconstructed into "Article 109 of the Criminal Procedure Code paragraph (1) If an investigator has started to investigate an event which constitutes a crime, the investigator notifies the public prosecutor, the reporter and the reported party about this, (2) Submission of Letters Order to Commence Investigation to the public prosecutor, reporter and reported party no later than 7 (seven) working days, and (3) If it does not comply with the provisions in paragraphs (1) and (2) it does not, then the Order to Commence Investigation is considered no longer valid.

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