

# Legal Reconstruction of Suspect Investigation Based on Pancasila Justice Values

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## Abstract

This research aims to analyze the weaknesses of the current regulations for examining suspects in Indonesia currently and to find the legal reconstruction for investigating suspects based on Pancasila values of justice. The research method used is sociological legal research or empirical legal research, using the constructivism paradigm. The approach method used in this research is social legal research. This research uses primary data and secondary data. Data collection techniques through literature study, interviews, and questionnaires. The collected data was analyzed qualitatively. The research results show that the weaknesses in the legal substance of the regulations regarding the examination of suspects, namely: the Criminal Procedure Code has not regulated the legal consequences of deviations from suspects' rights to be free to provide information about investigators and the results of investigations, the Criminal Procedure Code has not regulated supervision of investigators' actions, including in examining suspects, and the Criminal Procedure Code has not regulated alleged irregularities in the examination of suspects. as the object of pretrial examination. Weaknesses in the legal structure, namely weak supervision of investigative institutions over the investigation process, limited regional police institutions in providing free legal aid, and the absence of a police budget to provide interpreters and translators for suspects, and weaknesses in legal culture, namely violations of the rights of suspects. suspects' rights, investigative engineering, individual investigators involved in bribery, and investigators who do not understand local culture. Therefore, It is necessary to reconstruct the values of justice and norms in the regulations for examining suspects so that they are based on the Pancasila values of justice. The value of Pancasila justice, especially Principle 2 of Just and Civilized Humanity, must be reflected in the provisions for examining suspects so that suspects are truly made into subjects who have dignity and respect that must be respected by investigators and protected by the state. Meanwhile, the reconstruction of norms in the regulations for examining suspects so that they are based on Pancasila values of justice, namely improvements to Articles 52, 117, 77, 79, and Article 81 of the Criminal Procedure Code.

**Keywords:** Legal Reconstruction, Suspect Investigation, Justice Value.

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## INTRODUCTION

In order for investigators to be permitted to arrest, detain, search, and confiscate, the conditions specified by the Criminal Procedure Code must first be fulfilled, then the arrest, detention search and confiscation can be carried out. The conditions for arrest are regulated in Articles 17, 18, and 19 of the Criminal Procedure Code, the conditions for searches are regulated in Articles 33, 34, and 36 of the Criminal Procedure Code, the conditions for detention are regulated in Article 21 of the Criminal Procedure Code, while the conditions for confiscation are contained in article 38, 41, 42, and 43 of the Criminal Procedure Code.

There is a guarantee of human rights, suspects and defendants during the judicial process are protected by law (Toebagus, 2022). Guarantees of human rights and protection of the human rights of someone involved in the judicial process are contained in the Criminal Procedure Code (articles 50, s/d 68, 72, 79, 80, 81, 95, and article 97 of the Criminal Procedure Code). The Criminal Procedure Code has also laid the foundation for the principle of "legality" and an audit approach at all levels, with an "acquisitor" system. Placing suspects and defendants at every level of examination as human beings who have human rights and dignity. The examination is an activity to obtain information, clarity, and identity of suspects and/or witnesses and/or evidence or elements of the criminal act that occurred so that the

position and role of a person or evidence in the criminal act becomes clear and is stated in the examination report. Those authorized to carry out examinations are investigators and assistant investigators.

Although there are reasons that can justify the authority of law enforcement officials to limit human rights relating to procedural law in Indonesia, respect for human rights in the sense of upholding justice must not be abandoned by law enforcement officials (Widodo, 2018).

However, in reality, there are still investigative regulations that are not based on the Pancasila values of justice, namely that there are still investigating individuals who still practice violence against suspects. Indriyanto Seno Adji stated that such behavior has become a culture, especially in investigations to obtain confessions from suspects. The practice of violence violates human rights and continues to this day, due to weak supervision in the examination or interrogation process, suspects are not accompanied by legal advisors, and complaints or objections to these acts of violence have not been regulated as pre-trial objects (Firganefi, 2023).

Then, the juridical problem, apart from not having regulated the examination of suspects as a pre-trial object, the Criminal Procedure Code also does not regulate the juridical consequences for investigators and the cases they handle who use violence against suspects to obtain confessions and investigators who do not or fail to convey the suspect's rights.

The Criminal Procedure Code also does not provide the same legal assistance for suspects who are incapable, which is punishable by imprisonment for less than 5 years (Article 56 of the Criminal Procedure Code) even though legal assistance is a constitutional right for incapable people (Article 28 D of the 1945 Constitution). The urgency of providing legal aid services to marginalized communities refers to the lack of access to justice for the community.

The Criminal Procedure Code also does not regulate objections/complaints regarding alleged illegal wiretapping as a pre-trial object. Considering that the act of wiretapping is also prone to violating someone's right to privacy. The Criminal Procedure Code also does not regulate the execution of corporations. In fact, before the existence of Law Number 1 of 2023 concerning the Criminal Code, material criminal law had long been known and regulated as legal subjects for criminals other than individuals, namely corporations. Unfortunately, the Criminal Procedure Code has not yet regulated the execution of corporations.

Investigation regulations that also harm justice are related to the confiscation of evidence that does not belong to the suspect but that the suspect rents from a

third party or leasing company. In Law Number 41 of 1999 concerning Forestry, evidence of illegal logging must be confiscated by the state so that third parties are not given the opportunity to raise objections either before or after their property is confiscated by the state.

Furthermore, the Criminal Procedure Code also does not regulate adequate protection for witnesses and victims. The existence of Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 apparently only protects certain witnesses and victims and determines the form of protection from the LPSK. Therefore, the lack of witness protection in the Criminal Procedure Code and the limited protection of witnesses protected by the LPSK can create fear and doubt for witnesses in assisting investigators in uncovering a criminal incident. Then there is a restorative justice/peace resolution for certain criminal acts, apart from reducing long and lengthy legal processes, it also provides protection to victims. Unfortunately, restorative justice has not been regulated in a law that comprehensively regulates restorative justice at every level of examination, therefore new regulations at the level of the law or KUHAP are needed to regulate it.

The public's ignorance of their rights during the investigation process and the absence of clear rules regarding sanctions for investigators who commit violence and the legal consequences for the cases handled, result in suspects being vulnerable to becoming objects of violence during examination or interrogation.

Based on the background above, the author is interested in conducting research with the title "**Legal Reconstruction of Suspect Investigation Based on Pancasila Justice Values**". Where the problem studied are further organized into research with the following main problem:

1. What are the weaknesses of The Suspect Investigation Regulation in Indonesia currently?
2. How Is the Legal Reconstruction of the Suspect Investigation Regulation Based on the Value of Pancasila Justice?

## **METHOD OF RESEARCH**

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

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. Weaknesses of the Suspect Investigation Regulation in Indonesia Currently

Basically, Article 52 and Article 117 of the Criminal Procedure Code determine that suspects must be free and without pressure from anyone and in any form in providing information. The regulations for examining suspects as regulated in Article 52 and Article 117 (1) of the Criminal Procedure Code are not yet based on the values of Pancasila justice because they are not yet equipped with the legal consequences of deviating from suspects' rights for investigators and the results of investigations, as a result, until now there are still violations of suspects' rights in practice (Alimkulov, 2023).

Apart from that, the application of the provisions of Article 56 paragraph (1) of the Criminal Procedure Code is not always smooth, in fact, it tends to be ignored by investigators. Violations after violations often occur in judicial practice in Indonesia (Widodo, 2019). Many police officers arrest suspects and then at the scene of the incident the suspect is immediately questioned/interrogated, without first reminding them of their rights as a suspect (Miranda Warning).

Many police officers recommend that suspects do not need to use legal counsel, with the pretext of expediting the investigation process, so that suspects are conditioned in such a way by making a statement that they are not willing to be accompanied by legal counsel,

and quite a few investigators think that with a statement from the suspect that they are not willing to be accompanied by a legal advisor although it is a suspect's human right, so investigators no longer feel the need to fulfill their obligation to appoint a legal advisor for the suspect as required by article 56 paragraph (1) of the Criminal Procedure Code.

The reason could also be that there are no legal advisors who are willing to be appointed free of charge to accompany the suspect, so many investigators ignore their obligations as mandated in Article 56 paragraph (1) of the Criminal Procedure Code. Apart from that, there is no Police Institution budget allocated to provide legal advice for suspects.

The provisions of Article 56 of the Criminal Procedure Code require financial capability and the threat of alleged punishment. If this provision is ignored, it will result in the Public Prosecutor's demands not being accepted or result in the investigation being invalid.

The provisions of this article do not provide any sanctions if a violation occurs. Investigators tend not to maximize investigations, sometimes suspects are simply left without clarity and certainty such as being presented to the public prosecutor. Developing a case and collecting evidence is often the reason for justifying the investigator's actions.

Furthermore, the Criminal Procedure Code does not yet regulate supervision of the actions of investigators, including in examining suspects, even though the authority of investigators in examining suspects is very vulnerable to violations of the rights of suspects, especially suspects who do not receive legal assistance.

The Criminal Procedure Code also does not regulate alleged irregularities in the examination of suspects as objects of pre-trial examination. In Article 1 number 10 of the Criminal Procedure Code, it is known that Pretrial is the authority of the district court to examine and decide according to the method regulated in this law, regarding:

- a. Whether or not an arrest and/or detention is valid at the request of the suspect or his family or another party under the suspect's authority;
- b. Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice;
- c. A request for compensation or rehabilitation by the suspect or his family or another party on his behalf whose case has not been submitted to court.

The pretrial objects above do not regulate or test whether there were irregularities or violations of the suspect's rights during the examination before investigators.

Then, horizontal supervision in the Criminal Procedure Code is an implementation of coercive measures, which always involve coercive deprivation of human rights. In fact, the essence of law enforcement is to protect human rights (HAM), so it is appropriate that efforts are taken to forcefully take away human rights so that they are not excessive and are carried out proportionally in accordance with the initial objective of the coercive effort itself.

The National Police, including National Police investigators, have the function and authority to carry out investigations accompanied by coercive measures, so this cannot be separated from functional supervision carried out by special bodies or institutions established by law. As an example of an institution overseeing the police, a National Police Commission (Kopolnas) was formed in accordance with the mandate of Article 38 letter c of Law Number 2 of 2002 concerning the Police, whose duties include: "Receive suggestions and complaints from the public regarding police performance and convey them to the President". Apart from that, within the National Police (POLRI) itself, there is a General Supervision Inspectorate Unit (Irwasum) and a Professional and Security Division Unit (PROPAM) whose function is to enforce the ethics of Polri members in their profession and carry out their duties (Hasim, 2022).

Even though there is internal supervision within the POLRI, there is no direct supervision directed at investigators during investigations, including no mechanism for monitoring investigators when examining suspects.

In this case, there needs to be supervision or control over law enforcement officials in carrying out coercive measures. Automatically, supervision or control over each law enforcement officer (judge, prosecutor, and police) is attached to the institution where the law enforcement officer is based. This is called vertical supervision because it is carried out in stages by each law enforcement superior. However, it is felt that this supervision is not strong enough because it really depends on the seriousness and internal will of the institution itself without the possibility of external intervention. Because horizontal supervision is needed between law enforcement officers.

## 2. Legal Reconstruction of the Suspect Investigation Regulation Based on The Value of Pancasila Justice

The legal reconstruction that the author can provide in a limited way concerning suspect investigations is closely related to several notes on the renewal of the Criminal Procedure Code and the existence of the Judge Commissioner institution as a representation of the protection and respect for human rights, especially suspects/defendants, namely:

- a. That expansive investigative authority over institutions still requires integrated investigation, at least a sub-coordination with the National Police.
- b. Whereas the confirmation of the renewal of principles in the July 2008 Draft Criminal Procedure Code, among others, is the strictness of the Legality Principle whose existence is based on law in the formal sense ("*wet*"); the existence of a "*Promptly*" Detained investigation process for 5 days as mandated by the ICCPR (the United States determines 2x24 hours), eliminating the institution of "*Pre-Prosecution*" or Pre-Prosecution through the concept of "*An Ajar of the Door*" by providing additional investigative authority for the Public Prosecutor in if the file is incomplete; The principle of opportunity (not the principle of legality) is still applied which is not absolute in the prosecution system, but by introducing the institution of Judge Commissioners to provide balance/limitation on the amount of investigative and prosecutorial authority of the Prosecutor (as *dominus litis*) which is deviant which according Andi Hamzah (1986) as malice or abuse of prosecution; Renewing the principle of Evidence by introducing the "*Judge's Observation*" (Judicial Notice) evidence and expanding the Letter evidence to include electronic and optical meanings, as well as eliminating Instructional evidence that is not recognized in the universal evidence system; The existence of an Extra Ordinary of Legal Endeavor through the principle of "*On Logische Assumtie*" as one of the reasons for Judicial Review, apart from *Novum*, is to avoid conflicting Court decisions on cases related to the deeling principle which are submitted separately.
- c. the institution of Commissioner Judges (Investigative or Pre-Trial Judges) is no longer something new because this institution is already known in the Indonesian Criminal Law System (Formil) through the *Op de Strafvoording Reglement*, even though in the era when the *Herziene Indische Reglement* came into force, this institution had no regulations. Likewise, the role of the Investigating Judge is known in several countries such as the United States, the Netherlands, Italy, France, Spain, and other countries. The desire to have a Judge Commissioner institution again emerged through the Oemar Seno Adji Concept in Luhut (2009) which experienced a shift (even a total change) in a different meaning because the institution which was then introduced by the House of Representatives and the Government was "*Pre-Judicial*".
- d. Whereas the "Pre-Trial" institution of Commissioner Judges is known through Article 111 of the Draft Criminal Procedure Code 2007 as in the Habeas Corpus format, including not only the authority of the Examining Judge (testing in the context of supervision), but also the authority of the

Investigating Judge (carrying out executive actions, such as whether an arrest is legal, detention, but not interpreted as the judge conducting/leading the investigation). These two authorities (examining judge and investigating judge) resemble the concept of Commissioner Judge in the Initial Draft of the Criminal Procedure Code so that they can provide certainty that there is a representation for the protection of human rights, especially suspects/defendants (even witnesses) who often experience a process of irregularities (torture and violence). In the initial phases of investigation, including the detention process with its extensive control function, namely carrying out substantial research on whether there are deviations from detention requirements, confiscation regarding exclusionary rules, and illegal phase investigation mechanisms.

Therefore, based on the above, the Pancasila value of justice, especially Principle 2 of Fair and Civilized Humanity, must be reflected in the provisions for examining suspects, so that suspects are truly made into subjects who have dignity and respect that must be respected by investigators and protected by the state. Meanwhile, the reconstruction of norms in the regulations for examining suspects so that they are based on Pancasila values of justice, namely improvements to Articles 52, 117, 77, 79, and Article 81 of the Criminal Procedure Code.

## CONCLUSION

1. There are weaknesses in the legal substance of the regulations regarding the examination of suspects, namely: the Criminal Procedure Code has not regulated the legal consequences of irregularities in suspects' rights to be free to provide information about investigators and the results of investigations, the Criminal Procedure Code has not regulated supervision of investigators' actions, including in examining suspects, and the Criminal Procedure Code has not regulated alleged irregularities in the examination of suspects. as the object of pretrial examination. Weaknesses in the legal structure, namely weak supervision of investigative institutions over the investigation process, limited regional police institutions in providing free legal aid, and the absence of a police budget to provide interpreters and translators for suspects, and weaknesses in legal culture, namely violations of the rights of suspects. suspects' rights, investigative engineering, individual investigators involved in bribery, and investigators who do not understand local culture.
2. It is necessary to reconstruct the values of justice and norms in the regulations for examining suspects to be based on the Pancasila values of

justice. The value of Pancasila justice, especially Principle 2 of Fair and Civilized Humanity must be reflected in the provisions for examining suspects so that suspects are truly made into subjects with dignity and respect that must be respected by investigators and protected by the state. Meanwhile, the reconstruction of norms in the regulations for examining suspects so that they are based on Pancasila values of justice, namely improvements to Articles 52, 117, 77, 79, and Article 81 of the Criminal Procedure Code.

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