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Noodweere: A Challenge of Justice for Investigators

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Abstract: This study aims to analyze the primary considerations for the police to determine the victim of abuse as a suspect in a crime related to *noodweer*, as well as to examine the legal remedies that can be taken in determining him as a suspect for the alleged crime of persecution that was carried out by force. This type of research is normative-empirical legal research. The approach used is the Statute Approach; and the case approach. The results of the research show that the primary considerations of investigators in determining someone to become a suspect, even if the person concerned is a victim in the crime of persecution, are determined by the results of the *visum et repertum* and two sufficient pieces of evidence and two witnesses. A person who is arrested/detained after being named as a suspect can carry out a pre-trial if the act of arrest/detention is deemed illegal, and violates the provisions of the applicable laws and regulations.

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1. Introduction

Crime and criminals are classic problems in people's lives that have never disappeared in human history. Evil exists like night and day, moon and stars, disease and health. In fact, the problem of crime cannot be simply dismissed except in utopian expressions. Victims of crime do not know place, space and time. The development of crime raises various public opinions regarding law enforcement policies by law enforcement officials. But crime figures may become mythicalized by young criminals who admire the crimes they commit.[1]

The model and variety of crimes have never shifted far from time to time. Take for example the crime of murder. Since the time of Adam and Siti Hawa, this crime has occurred in the history of human life. The first murder case that befell mankind was carried out by Qabil, namely the first son of the Prophet Adam and Siti Hawa against his younger brother named Habil. The essence of the problem is very simple, namely, Qabil's jealousy or jealousy towards Abel because according to God's will, Abil gets a mate or (wife), namely Labudzah who is beautiful in appearance. Qabil did not want to accept an arranged marriage with the cross system, because he felt he had more right to marry Labudzah who was born with twins than Takmilah, Abel's twin brother, who was provided by God to be his life partner.[2]

That was the beginning of a long record of "black history" of criminal acts by mankind. Until now, the crime of murder or other crimes always occurs until the world ends. The perpetrators of crime (criminals) who easily modify all forms of crime according to their wishes. Regarding contract killers, for example, in Indonesia this is not a term that is foreign to society. If the police are not observant in handling it, then the mastermind (perpetrator) of this crime could have escaped from the "hands of the law". It's strange that the perpetrators of crimes that can be caught by the police and tried in court are actually the "bubbers" who are given a certain amount of money to kill or commit a crime ordered by their employer for a certain interest. Public opinion also emerged that the main perpetrators of crimes were not easily caught by the police. If this situation continues to develop, it will be troublesome for the work of law enforcement officials themselves due to the ease with which intellectual actors escape from the "chasing" of state legal accountability. Ironically, when he was caught by the police, he was never punished and thrown behind bars in prison, because he was protected by irresponsible officials.[3]

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[1] Teguh Sulistiya., Dkk, *Hukum Pidana, Horizon Baru Pasca Reformasi* (Jakarta: PT. Raja Grafindo Persada, 2012)., 34
[2] *Ibid.*
[3] *Ibid.*, 35

The important thing in a rule of law is the existence of respect for and commitment to upholding human rights and guarantees that all citizens have equal status before the law (equality before the law). Article 27 Paragraph (1) of the 1945 Constitution confirms:

"All citizens have the same position before law and government and are obliged to uphold that law and government without exception."

This is also in accordance with the goals of the Republic of Indonesia, which means that there is protection for the community and there are guaranteed community rights in every aspect of their life. This is of course in line with the rule of law concept coined by FJ Stahl, one of which is "providing recognition and protection of human rights.[4]

Therefore, the essence of the rule of law in the material sense is that there is a guarantee for members of the community to obtain social justice, namely a condition where members of the community feel reasonable respect from other groups; while each group does not feel disadvantaged by the activities of other groups. According to AV Dicey, several characteristics of a rule of law are called the rule of law, namely; supremacy of law; equality before the law; and due process of law.[5]

Ideally, such principles should not only be contained in the 1945 Constitution and legislation. But what is more important and especially is in the implementation or implementation. Law enforcement practices are often colored by things that are contrary to these principles. For example the persecution of suspects to pursue confessions of intimidation, fabrication of cases, extortion, extortion and so on. Then on the part of the victims they also feel that their rights have been neglected, including weak indictments, light charges, not knowing the progress of case handling, not receiving compensation and not fulfilling other rights.[6]

In the process of law enforcement (criminal justice) which is based on criminal law and criminal procedure, the state through its organs has the right or authority to impose a sentence (ius puniendi). Here if a crime occurs, the perpetrator will be prosecuted through the judicial process by imposing criminal sanctions. Victims of crime and society are automatically represented by the State by way of trial and imposing a sentence commensurate with the actions of the accused.

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[4] Puluhulawa, Moh Rusdiyanto U., Jufryanto Puluhulawa, and Moh Fahrurrozie Hidayatullah Nur Musa., "Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Penganiayaan Menggunakan Panah Wayer Oleh Anak Di Kota Gorontalo.," *Jurnal Yuridis.* 6, No. 2 (2019): 93–117., 94-95

[5] Lisnawaty Badu Ahmad., "Purifikasi Pemberian Amnesti Dan Abolisi: Suatu Ikhtiar Penyempurnaan Undang Undang Dasar 1945.," *Jurnal Ius Civile.* 5, No. 2 (2021): 93–110., 104-105

[6] Bambang Waluyo, *Viktimologi, Perlindungan Korban Dan Saksi* (Jakarta: Sinar Grafika, 2012)., 1-2

Unlike in the past, victims or their families can immediately ask for compensation or retaliation from the perpetrators.[7] Over time, this notion was abandoned. Victims of crimes/crimes cannot immediately take their rights without going through a legal process. This is the consequence of the rule of law, settlement of victims' rights must also go through a legal process. When the victim directly asks for or takes (forcibly) the rights of the suspect or defendant it can be called extortion, revenge or as vigilante. At the beginning of certain criminal proceedings, the person concerned submits/makes a report or complaint. The perpetrators of criminal acts are then processed through investigations, investigations, prosecutions, examinations, decisions, and implementation of decisions. In this process, the victim can become a witness who usually incriminates the defendant. Actually, based on Article 98 to Article 101 of the Criminal Procedure Code, the victim and other people who have been harmed can claim compensation,[8]

Even though the law has accommodated all the interests and rights of victims of crime, in practice this has not been implemented optimally by law enforcers.[9]This can be proven by the ambiguity of law enforcement in its enforcement. Where in one of the cases raised by the author in this research proposal, the victim, who should have been a witness who could incriminate the perpetrator, was instead made a suspect and sentenced to the same sentence as the main perpetrator.[10]

As an example of a case that the author found in the field, there was one case of abuse committed by a suspect with the initials (IA) against the victim with the initials (TS). The incident began when the victim TS returned from the garden where he worked on a motorbike at around 17.00 WITA, driving the vehicle at a speed of between 20-25 km/hour which is relatively low, due to the rocky road contours. That afternoon the victim passed in front of the perpetrator on a motorbike, and then the perpetrator shouted at the victim to slow down his vehicle. However, the victim ignored the screams of the perpetrator because he felt that he was not disturbing the perpetrator or other road users because the victim was traveling at a relatively low speed because of the rocky and uneven road contours.

Feeling ignored by the victim who did not stop the vehicle, the perpetrator followed the victim to his destination, where the victim headed for his uncle's house, which was still in the same village as the perpetrator. Arriving at the victim's uncle, the perpetrator shouted and challenged the victim to fight. Long

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[7] *Ibid.*, 2
[8] *Ibid.*, 3
[9] Aniza Lakoro, Lisnawaty W. Badu, dan Nuvazria Achir, "Lemahnya Kepolisian Dalam Penanganan Tindak Pidana Perjudian Togel Online.," *Jurnal Legalitas.* 13, No. 1 (2020): 31–50., 35
[10] Edward James Sinaga., "Layanan Hukum Legislasi Dalam Upaya Memberikan Kepastian Hukum.," *Jurnal Penelitian Hukum De Jure 19*. 3, No. 1 (2019): 85–96., 87

story short, the perpetrator beat the victim who was resting at the victim's uncle's house until he was battered and passed out without giving the victim a chance to fight back. After the victim fainted and was powerless, the perpetrator left the victim who was lying down after the victim's uncle came.

After the incident of abuse, the victim was immediately taken by her parents to make a report or complaint to the local police on the same day. In this complaint the victim was immediately taken for a post mortem and received a report along with the results of the post mortem from the local health center. After the report, the police immediately summoned the perpetrator to ask for information regarding the victim's report in the process of investigating the case. As time went on, the examination and the evidence that had been obtained by the police, the perpetrator was then named a suspect by the police and further investigation was carried out.

Because he felt he had been squeezed and named a suspect in the abuse case, four days after being reported by the victim, the perpetrator also made a counter-report accompanied by a post mortem bite mark on his waist. Because of the alternative report from the perpetrator, the victim, who had been used as an incriminating witness in his own report, was also made a suspect in the same case by the police as a result of a counter report submitted by the perpetrator. In fact, if examined more deeply, even though there was resistance from the victim which resulted in the perpetrator being injured, the victim should have done this as an effort to defend himself from the perpetrator's attack.

As a result, in this case of maltreatment, the victim, who should only defend himself in the midst of his powerlessness against the main perpetrator's attack, was both made the perpetrator or the accused and finally was sentenced to the same criminal sanction at the same time. Where each of them has served a sentence for the crime of persecution based on the demands of the public prosecutor who ensnared the perpetrator and the victim who was made the perpetrator, with Article 351 Paragraph (1) of the Criminal Code, and has undergone a court decision with a prison sentence of 4 (four) months which reduced detention time during the trial process.

Criminal sanctions that have been imposed on victims who have been made suspects in different decisions certainly leave gaps in law and implementation of law enforcement in society because Article 49 of the Criminal Code very clearly stipulates that:

"(1) Whoever commits an act, which he is forced to do to defend himself or someone else, to defend his own honor or property or that of another person, rather than an attack that violates rights and threatens immediately at that moment, may not be punished.

(2) Exceeding the limits of defense which is very necessary, if the act is suddenly committed because the feeling is shaken immediately at that moment, it cannot be punished.

Based on the article above, the victim should not be made a suspect in the actions he committed because he was forced to defend himself from other people's attacks. [11] However, this does not apply to victims raised in the problems described above. Thus the position of justice in law enforcement seems to be a formality in this case.

This is of concern to the authors to examine whether the police's considerations determine the victim of abuse as a suspect in a crime related to noodweer, as well as to examine the legal remedies that can be taken by the victim in determining him as a suspect for the alleged crime of persecution that was carried out by force.

2. Research methods

This type of research is normative-empirical legal research. The approaches used by researchers in compiling this research are, among others: Statute Approach; and the case approach.[12]Data collection techniques in this study there are several ways of data collection techniques used by researchers, namely data collection techniques through document studies, data collection techniques through interviews, data collection techniques, and data collection techniques by observation.[13]The legal materials used in this study were obtained from searches through literature studies, namely collecting various legal materials, both in the form of laws and regulations, literature, scientific papers, results of previous research, documents, opinions of legal practitioners, journals, and various relevant books related to this thesis.[14]

3. Basis for Police Considerations Determining Victims as Suspects in Crimes Related to Noodweer

As we know, the function of the police in general is as a law enforcement apparatus, which in fact is known and known by the general public as a security apparatus which in its capacity is to protect and protect the community. However, what is rarely known by the public, especially the general public, is that apart from being a law enforcement officer, the police also have the function of state government, especially in the field of maintaining security and public order.

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[11] Lisnawaty W. Badu dan Apripari., "Menggagas Tindak Pidana Militer Sebagai Kompetensi Absolut Peradilan Militer Dalam Perkara Pidana.," *Jurnal Legalitas.* 12, No. 1 (2019): 57–77., 63

[12] Novendri M. Nggilu. Yayuk Rizki Hulukati, Dian Ekawaty Ismail, "Penyalahgunaan Narkotika Oleh Pegawai Negeri Sipil Dilihat Dari Perspektif Kajian Kriminologi.," *Jurnal Legalitas.* 13, No. 1 (2020): 16–30., 18

[13] *Ibid.*, 66

[14] Zainudin Ali., *Metode Penelitian Hukum.* (Jakarta: Sinar Grafika, 2013)., 105

The purpose of the existence of a police institution is of course to uphold the law, provide protection to the community, provide protection and service to the community in order to realize security and order in the community itself. Order and law enforcement and protection of the community against disturbances that come from outside or within the community itself cannot be separated from the role and function of the state security apparatus, namely the police. Therefore, by carrying this heavy burden and responsibility, the police should provide the best service for the nation and state, in which there are people with various diversity.

Thus, in connection with the brief description above, the role and function of the police is very important and strategic in providing protection and legal certainty in the midst of society, so that people can be properly educated and directed. However, even though the police are given great authority in terms of law enforcement, it does not mean that every effort and action by the police will be considered absolutely correct and can be accepted by society without question. Because in reality, even though the police have tried their best to provide the best, it still creates a polemic for people who feel they are not being treated fairly when dealing with the law.

A small example of community dissatisfaction who still question the duties and functions of the police in carrying out legal remedies against the community when they stumble on a case or face the law, as raised by the authors in this study. Where in the initial observations the researchers found that there was public dissatisfaction with the legal process that had entangled them, even though the person in question had finished serving the sentence that had been imposed on him.

This is evident in cases related to noodweer involving TS and IA as parties to the crime of persecution. Where in a criminal case involving both of them, TS as the victim reported IA for the abuse committed against the victim. However, IA as the perpetrator also reported the victim to the authorities, so that both reports were received by the police and each was investigated separately in the same case. This resulted in both parties becoming victims as well as perpetrators in the criminal case, which was published in separate Minutes of Examination, so that they became two case files in the same case.

As a result of this case both of them became convicts, giving rise to many questions and doubts for the public, especially the parties involved in the criminal case, and also the family. This leaves a question mark for the family, because the legal status that should provide certainty for parties who feel aggrieved instead raises doubts caused by the complainant being made a suspect by the police in the same case and at the same time. Therefore, to clarify the main issues outlined in the problem formulation, the researcher conducted direct interviews with the local police, namely the Pulubala Sector Police who had handled the case of the criminal act of persecution,

In connection with the case of the crime of persecution which is used as a reference for the case in this study, the author tries to dig and explore information directly through investigators in the Pulubala sector as the party who has conducted the investigation in the case.

Through the results of interviews conducted by the author with Wahab T. Ase as an investigator in the Pulubala sector area, the author found that the basis for the investigator's consideration of making the victim a suspect was that there were reports complained of by parties who felt aggrieved and accompanied by sufficient initial evidence to make the reported suspect a suspect. This is what the investigators conveyed in the interview, when it was confirmed by the author what was the basis for the investigator's consideration of making the victim a suspect in this case. In the interview concerned stated that:

> "As police, we must not reject complaints or reports from the public. Whatever the form of the report, we are obliged to accept it first, then we will investigate whether we can examine the report or not. To determine whether a matter can be investigated or not, it must be accompanied by evidence and witnesses, where witnesses must be presented at least two people.[15]

Based on the information from the investigators above, it is clear that the police cannot reject reports or complaints from the public without prior investigation. This is of course not the will of the police alone but is based on the applicable regulations, as mandated in Article 15 of the Chief of Police Regulation No. 14 of 2011 on the Police Code of Ethics. The article states that every member of the Police is prohibited from:

- Refuse or ignore requests for help, assistance, or reports and complaints from the public within the scope of their duties, functions and authorities,
- Looking for community faults that are contrary to statutory provisions,
- Spreading fake news or conveying inappropriate news that can unsettle the public,
- Issue words, gestures or actions with the intention of obtaining rewards or personal benefits, in providing community services,
- Behave, speak and act arbitrarily,
- Making it difficult for people who need protection, protection and service,
- Doing acts that can humiliate women's honor when carrying out police actions,
- Charge additional costs in providing services beyond the provisions of laws and regulations.[16]

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[15] "Interview on June 3 2022 with Wahab T. Ase as Head of Criminal Investigation Unit for Pulubala Sector"

[16] "Pasal 15 Peraturan Kapolri No. 14 Tahun 2011 Tentang Kode Etik Profesi Polri"

Based on the provisions of the article above, it is very clear that the prohibition against rejecting complaints or public reports is mandated in the Perkap. However, in receiving reports or complaints, the police also have the right not to make police reports on complaints or reports from residents, if it is felt that the complaint or report is not worthy of being made a police report, after an assessment has been carried out.

The legal basis for the right of the police not to make police reports on complaints or reports from residents as mentioned above, has been set forth in Article 3 letter b of the Chief of Police Regulation No. 6 of 2019 ON Investigation of Criminal Acts, which reads:

"In the SPKT/SPK that receive reports/complaints, investigators/assistant investigators are assigned to:

a. Conduct a preliminary study to assess whether or not a police report is appropriate,[17]

The article above shows that when receiving complaints or reports from the public, it is not absolute for the police to make a police report. This means that the police can still reject the report by not making a police report, if during the study no elements of a crime were found supported by sufficient evidence and witnesses for the incident reported.

So according to the writer's opinion, regarding the cases experienced by TS and AI as the case references in this study, the police should have made more mature considerations in determining the victim to be a suspect in the same case. Because based on the events of the crime committed, the reporter should be categorized as making a forced defense. Because the place where the abuse occurred was at the house of the victim's uncle, so it can be ascertained that the victim was only opposed by visiting his residence, so it was appropriate for the victim to fight back in self-defence. So that in the event of this crime, the victim should not be punished for resisting the attack carried out by the perpetrator.

Therefore, in order to further clarify and explore the basic considerations of the police, in this case investigators who have named the victim as a suspect, the author again conducts interviews with investigators in the Pulubala sector as the party handling the case.

In the interview conducted by the author, after confirmation of the most basic matters, which became the police's consideration for the status of the suspect pinned on the victim who had previously reported, the investigator stated that:

[17] "Pasal 3 Huruf b Peraturan Kapolri No. 6 Tahun 2019 Tentang Penyidikan Tindak Pidana"

"The basis for our consideration is of course not carried out by simply making things up or finding fault with the reported party, but through careful consideration which is supported by evidence and witnesses and reinforced by the results of the post mortem et repertum test from the local medical department, where wounds or injuries have been found. scars caused by the reported actions."[18]

From the information above, the position of the visum et repertum is sufficient to influence a person to be named a suspect, apart from two witnesses and sufficient evidence. This shows that there are legal loopholes that could have been made by the parties to trap the perpetrators of engineering results in the same case, so it does not rule out the possibility that the reporter who should be the victim can be made a suspect when reported back by the previous reported party, if the police are not observant in conduct an investigation or review of the reports of interested parties or those who feel aggrieved.[19]

This was proven in the case that ensnared TS as the initial reporter on the case raised in this study, reported back by his opponent AI who was reported 4 (four) days earlier as the perpetrator of the crime or was reported. As the examination progressed on the reported party, in this case AI, the person concerned also reported TS, who was originally the victim, became the reported party 4 (four) days later, only with the capital of the post mortem et repertum results on the bite marks that the victim allegedly committed against him when the crime occurred.

Ironically, the AI perpetrator's report on TS, which only had the result of post mortem et repertum "BITES", which could not be clearly identified as the perpetrator's bite marks, was used as the basis for consideration by the police, in this case investigators, to make TS, who was previously a victim, in this case also made a suspect. by investigators in the same case. This of course leaves a lot of questions about the investigator's decision to determine the victim to be the new suspect in the title of the case. Even though it is very clear in Article 49 of the Criminal Code it is very clear that:

Paragraph (1)

"Whoever commits an act he is forced to do to defend himself or another person, to defend his honor or property or that of another person, rather than an attack that violates rights and threatens immediately at that moment, may not be punished."[20]

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[18] "Interview on June 3 2022 with Wahab T. Ase as Head of the Criminal Investigation Unit for the Pulubala Sector."
[19] Hartono., *Penyidikan Dan Penegakan Hukum Pidana Melalui Pendekatan Hukum Progresif.* (Jakarta: Sinar Grafika, 2012)., 36
[20] "Pasal 49 KUHP"

Based on the mandate of the article above, the victim should not be punished when he fights against the crime of maltreatment against himself in terms of self-defense and honor. Because this is part of noodweer (forced defense), which is very clearly emphasized in Article 49 paragraph (1) may not be punished. Furthermore, in paragraph (2) of the article, it is also stated that:

"Exceeding the line of defense which is very necessary, if the act is suddenly committed because the feelings are shaken immediately at that moment, it cannot be punished."

Paragraph (2) of the article above further emphasizes that this cannot be punished because the perpetrator resisted in defending himself because he was pressured and really needed to do this because of the shock that befell him. So this based on the mandate of the law should not be punished.

Furthermore, after examining the meaning of the article above, on the same occasion, the author also asked whether or not reports or complaints from the public could be rejected, the investigator said that this should not be done by the police, on the grounds that all people have the same right to receive service and treatment before the law. So there is no reason for the police to reject the report. This is of course in accordance with the mandate of the Chief of Police Regulation No. 6 of 2019. However, in this case the police also have the right not to make a police report on the case being complained of when after an assessment is carried out it is not feasible to be escalated to the investigation and investigation stage.

Related to this, the author directly confirms the cases raised in this research, what is the benchmark for the police's confidence in carrying out the case so that the status of the victim who is made the reported becomes a suspect. On this occasion the investigator reiterated that:

"In addition to the two valid pieces of evidence and also two witnesses, the results of the post-mortem examination showed scars from the complainant who ordered the reported status to be upgraded to the investigation stage to become a suspect. We will leave the rest to prove this to the prosecutor. If the prosecutor accepts the results of the BAP, it means that the case or case is indeed worthy of prosecution. However, if the prosecutor feels that there is insufficient evidence and witnesses, of course they will be rejected and cannot proceed to the prosecution stage."[21]

From the information submitted by the investigator above, it shows that the authority to determine a person to become a suspect is not only absolute at the police level, but also that the prosecutor's office plays a role in assessing and determining whether a person deserves to be named a suspect or not in the case

[21] "Interview on 4 June 2022 with Wahab T. Ase as Head of Criminal Investigation Unit"

involving him. This can be seen in the statement of the investigator who stated that the prosecutor has more right to judge whether the case can be continued or rejected.

Thus, it can be ensured that the process of investigating and determining someone who is made a suspect at the police level, is not final and will definitely be prosecuted. However, the results of the police examination and investigation will be assessed and re-screened by the prosecutor's office to reconfirm whether a person named as a suspect in the examination report submitted by the police is appropriate and meets the requirements, or not for further prosecution at the next stage. judicial process, to provide legal certainty to the parties involved.

4. Legal Remedies That Can Be Done by the Victim in His Designation as a Suspect

The legal remedy that can be taken by a person related to the determination of a suspect or detention against him is by conducting a pretrial. According to Article 1 point 10 of the Criminal Procedure Code that pretrial is the authority of the district court to examine and decide based on the method stipulated in this law, regarding:

1. Whether or not an arrest and/or detention is legal at the request of the suspect or his family or another party under the authority of the suspect;
2. Whether or not the termination of the investigation or the termination of the prosecution is valid at the request for the sake of upholding law and justice;
3. Requests for compensation or rehabilitation by the suspect or his family or other parties on his behalf whose case was not brought to court.[22]

The article above shows that pretrial is the full authority of the court of first instance or district court, which is given to examine and decide whether an arrest or detention is legal or not for a suspect, or to stop an investigation or even to stop prosecution efforts which will be carried out by the authorities in this case. the prosecutor's office, which is given by the State the authority to prosecute.

In connection with pretrial efforts, Article 77 paragraph 2 of the Criminal Procedure Code states that: "Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution. Pretrial efforts are not limited to discussing whether or not an arrest or detention is legal, because legally the provisions governing pretrial also concern demands for compensation including compensation for "other actions".[23]

[22] "Pasal 1 Butir 10 KUHAP"
[23] "Pasal 77 Ayat (2) KUHAP"

In the elucidation of Article 95 paragraph 1 of the Criminal Procedure Code which states that: "A suspect, defendant or convict has the right to demand compensation for being arrested, detained, prosecuted and tried or subject to other actions, without reasons based on law or due to errors regarding the person or the law applied. ".[24]

Thus, if we look at the contents of the article and its explanation as described above, we can ensure that pretrial does not only concern whether or not an arrest or detention of a suspect is legal, or efforts to stop investigations or prosecutions, but also concerns requests for compensation and rehabilitation because an error resulting from an arrest or detention, or termination of an investigation and prosecution, due to a mistake regarding the person or the law applied.

Since the enactment of the Criminal Procedure Code in 1981, pretrial practice was initially projected as a means of supervision used to test the legitimacy of a coercive measure. For example, regarding the arrest and detention of suspects, it is now considered to be purely administrative oversight. This is caused by whether the arrest and detention are legal or not, sufficiently proven by law enforcement. Criminal Procedure Code which emphasizes that the purpose of pretrial is to uphold law, justice and truth through horizontal supervision. The essence of the judiciary is in overseeing acts of coercion carried out by investigators or public prosecutors against suspects, so that these actions are actually carried out in accordance with the provisions of the law, and are proportional based on the provisions of the law and are not actions that are contrary to the law.

Thus, if the suspect feels that the arrest or detention was carried out incorrectly and illegally, then the suspect can file a pretrial which should be accommodated in law for the realization of a person's human rights or privacy. The purpose of this pretrial is of course to place rights and obligations between the examiner and the examinee. So that there is no indication that law enforcement officials only place suspects as objects that absolutely can only be examined without defense.

The application of asa aqusatoir in criminal procedural law is to ensure legal protection and basic interests, where the law provides the means and space to claim violating rights in the pretrial setting. So that investigators who are burdened with the authority to carry out tasks as stipulated in Article 5 of the Criminal Procedure Code Paragraph (1b), if in carrying out these tasks carry out actions that are contrary to the law, the district court will assess whether the investigator's actions are outside or contrary to the provisions of the law regulated in the Criminal Procedure Code.

[24] "Penjelasan Pasal 95 Ayat (1) KUHAP"

Thus, it can be seen that the law has given authority or authority to the district court to conduct pretrial examinations as stated in Article 77 of the Criminal Procedure Code, where pretrial trials are carried out by a single judge, appointed by the head of the district court and assisted by a clerk.

5. Conclusion

The basic considerations of investigators in determining someone to become a suspect, even if the person concerned is a victim in the criminal act of persecution, is determined by the results of the post mortem et repertum as well as two sufficient pieces of evidence and two witnesses. Thus, in the writer's opinion, there are still legal loopholes that may ensnare innocent people, simply because of a lack of foresight in carrying out investigations and investigations.

A person who is arrested or detained after being named a suspect can take legal action through pre-trial if the act of arrest or detention is deemed illegal and violates the provisions of the applicable laws and regulations. Because the purpose of pretrial is to guarantee certainty for the realization of human rights to obtain rights that are violated based on the applicable legal rules.

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