



SUBMISSION OF COPY OF DETERMINATION ORDER REGARDING THE PROVISIONAL DISCONTINUATION OF CIVIL SERVANTS

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Abstrak

Law Number 5 of 2014 concerning State Civil Apparatus stipulates that Civil Servants (PNS) who are detained because they are designated as criminal suspects are temporarily dismissed as PNS, but Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) only requires that a copy of the warrant for further detention or detention or a judge's decision be given to the family of the suspect. This study aims to determine and explain the impact of the absence of provisions in the Criminal Procedure Code regarding copies of detention orders to the Civil Service Supervisory Officer on the temporary dismissal of Civil Servants who are detained because they are designated as suspects. The approach method used in this research is normative juridical. The results of this study indicate that the absence of provisions in the Criminal Procedure Code regarding copies of detention warrants to Civil Service Supervisors related to Civil Servants who are detained because they are designated as suspects causes the issuance of Temporary Dismissal Decrees is often late.

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I. INTRODUCTION

Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) is a legal product of the Indonesian nation to replace the Het Herzeine Inlandsch Reglement (Staatblad of 1941 Number 44) (Sukinta, 1997), which is a product of colonial law, where The law has provided protection for human rights, the dignity and worth of the entire Indonesian nation without distinguishing them based on groups that commonly apply in colonial law (Listiyanto, 2017).

The birth of the Criminal Procedure Code is actually a progress for Indonesia as an independent nation that aspires to legal development in accordance with the values and personality of the Indonesian nation itself. However, as a nation that continues to develop, it is a must to constantly renew legal provisions that are no longer in accordance with the actual conditions of the people, in this case one of them is the Criminal Procedure Code (Sidharta, B Arief, 1999; 8).

Since it was first enacted until now, the KUHP has been around forty years and is a long enough period to see, explore, and understand the strengths and weaknesses in its implementation. Over a long period of time, of course, the development of community social life which is also closely

related to legal needs has occurred a lot, so that in general the Criminal Procedure Code can be concluded that it is no longer in accordance with changes in the constitutional system and legal developments in society so that it needs to be replaced with a new criminal procedure law. (RUUKUHAP, 2021). As described in the general explanation of the Draft Criminal Procedure Code, that the occurrence of economic, social and legal changes, especially in the field of transportation and communication due to technological advances, has made the world feel smaller.

Renewal of criminal procedural law in Indonesia is needed to improve legislation that has multiple interpretations, disharmony and overlaps (Nawawi A, Barda, 2009). The Criminal Procedure Code, which is still the procedure for administering criminal procedural law (formal criminal law) in Indonesia, applies to all persons subject to public justice, including those who work as Civil Servants. Civil servants who are expected to be role models in social life are required to always obey and obey applicable laws (Marbun, SF, 2000). Civil servants, like other citizens, have the same position before the law. If a civil servant is involved in a criminal case, it must be processed accordingly. and without prejudice to the provisions regulated in criminal legislation,

The state regulates a Civil Servant who is entangled in a criminal case in Law Number 5 of 2014 concerning State Civil Apparatus (hereinafter referred to as the ASN Law), where Article 88 paragraph (1) of the ASN Law states that "Civil servants who are detained for determined as a criminal act, temporarily dismissed" (ASN Law No. 5, 2014). Then it is described in Article 280 of Government Regulation Number 11 of 2017 concerning Management of Civil Servants and Government Regulation Number 17 of 2020 concerning Amendments to Government Regulation Number 11 of 2017 (hereinafter referred to as PP Management of Civil Servants) that "temporary dismissal takes effect from the date of detention (PP No. 17, 2020) until released by a warrant to terminate the investigation or prosecution,

Temporary Dismissal of Civil Servants based on PP on PNS Management is "dismissal which results in PNS losing their status as PNS for a while". Temporary dismissal of civil servants is different from temporary release from positions regulated in Government Regulation Number 53 of 2010 concerning Civil Servant Discipline (PP Disciplinary Civil Servants), where the temporary dismissal is applied solely because the civil servant concerned is detained as a suspect in a criminal act, not because of an alleged violation. discipline. Examination and imposition of disciplinary penalties for civil servants who are involved in a crime will only be carried out if the civil servant concerned is sentenced based on a court decision that has permanent legal force.

Regulation of the State Civil Service Agency Number 3 of 2020 concerning Technical Instructions for Dismissal of Civil Servants states in Article 40 that "the detention of a civil servant who is determined to be a crime is proven by a detention order from an authorized official" and then this evidence is also included in the preamble to the Decree on Temporary Dismissal. namely number, date of letter, name of suspect, occupation, and reason for detention. (BKN Regulation No.3, 2020)

The problems that then arise in the temporary suspension of the detained civil servants because they are designated as criminal suspects are related to the detention order which is used as the basis for the issuance of the Temporary Dismissal Decree. This is due to the absence of provisions requiring a copy of a detention order to be issued to the agency or institution or company where a suspect works in the Criminal Procedure Code (Law No. 8, 1981). Even in the Draft Law on the Criminal Procedure Code, up to now there is no setting for a copy of a detention order to be found for a civil servant supervisor in charge of a civil servant who was detained because it was determined as a crime. but has arranged a copy to the unit commander in the event that the suspect or defendant detained is a member of the Indonesian National Army who commits a general crime (RUUKUHAP, 2020). Failure to provide a copy of the detention order to the staffing officer will delay the issuance of the Temporary Dismissal Decree which in the end will cause the income of the detained civil servant to be paid in full and cannot be replaced with temporary dismissal money (50 percent of the income received each month) until the issuance of the decree. Temporary Dismissal (BKN Regulation No. 3, 2020). So the final implication is that it is detrimental to state finances. Failure to provide a copy of the detention order to the staffing officer will delay the issuance of the Temporary Dismissal Decree which in the end will cause the income of the detained civil servant to be paid in full and cannot be replaced with temporary dismissal money (50 percent of the income received each month) until the issuance of the decree. Temporary Dismissal (BKN Regulation No. 3, 2020). So the final implication is that it is detrimental to state finances. Failure to provide a copy of the detention order to the staffing officer will delay the issuance of the Temporary Dismissal Decree which in the end will cause the income of the detained civil servant to be paid in full and cannot be replaced with temporary dismissal money (50 percent of the income received each month) until the issuance of the decree. Temporary Dismissal (BKN Regulation No. 3, 2020). So the final implication is that it is detrimental to state finances.

This study aims to determine and explain the impact of the absence of provisions in the Criminal Procedure Code regarding copies of detention orders to the Civil Service Supervisory Officer on the temporary dismissal of Civil Servants who are detained because they are designated as suspects.

In accordance with the purpose of this research, which is to examine how the juridical impact of the absence of provisions in the Criminal Procedure Code regarding copies of detention orders to civil service supervisors for the temporary dismissal of civil servants who are detained because they are designated as suspects, then as an analytical tool in answering existing problems, the Legal System Theory will be used. .

The word "system" comes from the word "systema" which was adopted from Greek which means "as a whole consisting of various parts" (Suherman, A Maman, 2004). created (HS, Salim, 2010). The system in The New Webster International Dictionary 1980 means "something that is

organized, intact and complex, and there is no need to argue the difference between the system and subsystems, because the subsystem is part of the system itself ". interpreted as "a collection of parts or components that are interconnected on a regular basis and form a single unit." (Prodjohamidjojo, Martiman, 1983)

D. Keuning has compiled a system from various expert opinions, including: Ludwig Von Bertalanffy said "a system is a complex element of the interaction of elements". AD Hall and RE Fagen refer to a system as "a collection of objects that work together between objects and attributes". Kennet Berrien said the system is "a collection of components that interact with each other, (a system is a set of components, interacting with each other)". Richard A. Johnson, James E. Resonweig and Fremont E. Kast said "a system has a number of components that are designed to achieve certain goals according to the plan". (Suherman, A Maman, 2004).

The system according to R. Subekti is "an orderly arrangement, a whole consisting of interrelated parts, arranged according to a pattern, the result of a thought to achieve a goal". The system according to Sudikno Mertokusumo is "a unit consisting of elements that interact with each other and work together to achieve goals". (Syahrani, Ridwan, 2008; 169)

System show various elements/components that make up system in a single unit and interact with each other in reach purpose. JH Merryman, said, "Legal system is an operating set of legal institutions, procedures, and rules", (Suherman, A Maman, 2004). meaning, In this theory the legal system is an "operational instrument that includes institutions, procedures, and legal rules". The system referred to here is the legal system, that in the legal world there are system. Without a system, it is impossible for law enforcement to be implemented, therefore all elements in the law must work together in one unit to achieve legal purposes.

Legal System Theory first developed in Germany by Niklas Luhhman, while in the Netherlands by MC Burken. Niklas Luhhman developed a system theory with an autopoietic concept, referring to the difference (diversity) of the functions of the components in a system. system. Niklas Luhhman says that "the basic elements that make up the system itself including its internal structure are then organized into its own boundaries". Niklas Luhhman's view is still closed in a system he calls a closed system. Although the system is closed, in fact the system has a relationship with the environment. The legal system will be meaningless and useless if it cannot be felt and implemented in the midst Public. So that came the Functional Systems Theory in the legal system. (HS, Salim, 2010).

J. Ter Heide who put forward the theory of functional law, said that "the functioning of the law can be interpreted as the articulation of a fixed relationship between a number of variables". Furthermore, he explained that "a stable relationship is defined as $B=FPE$, meaning that the letter B is the behavior of the jury, judges, and lawmakers, while the letter F is in a relationship that involves various legal rules, and E is a concrete environment". (HS, Salim, 2010). If this theory is elaborated further, it seems that this theory wants to show the law in terms of its function and use. Legal experts,

judges and legislators must provide benefits to society large. Thus, the theory of the legal system must be related to the social environment in which the law exists enforced.

Meanwhile JH Merryman describes the meaning of the legal system in the Federal State, namely:

“A legal system is a set of operating institutions, rules, and legal procedures. In this sense there is one federal legal system and fifty states in the United States, separate legal systems in each of the other countries and there are still other different legal systems in organizations such as the European economic Community and the United Nations”

This view shows that "the legal system is an operational device that includes institutions, procedures and legal rules". Furthermore, it is explained that "in this context there is one country, namely the federal state (USA) with fifty legal systems in the states, where the legal system in each country is separate and there are different legal systems such as in European community organizations and the United Nations".

Lili Rasjidi and IB Wyasa Putra more specifically view the legal system by saying that "the legal system is a large unified system consisting of small subsystems, namely the education subsystem, the formation and application of law, and so on, which is essentially a system of separate ones." This shows the legal system as a complex system that requires keen rigor to understand the integrity of the process. This small subsystem is divided into three groups by Lawrence M Friedman, namely "consisting of structure, substance and legal culture". According to Friedman, that "the legal system includes the substance, structure, and legal culture".

According to Lawrence M Friedman, "the three elements in US law are composed of the legal structure, followed by the substance and legal culture". The three components, further Friedman, describe "how the legal system is structured substantively, what the legal system does, how the legal system runs it, and in turn will see the level of legal awareness". Thoughts and forces outside the law make the legal system stop and move. These three elements can be used to describe what the legal system does.

The effectiveness of the law can be understood from Friedman's statement that "thoughts and forces outside the legal machine that can make the legal system stop or move, the law will run or not (stop) caused by legal thought and power, implementing legal obligations, in this case including law enforcement officials and all Public".

II. RESEARCH METHOD

The approach method used in this research is normative juridical, namely the law is conceptualized as a norm, principle, rule or dogma. The normative juridical approach is also known as the doctrinal approach or normative legal research. The normative juridical research stage is carried

out through a review of the literature (library study). However, if needed, interviews can be conducted to complete the literature study. (Ilyas et al., 2017).

The author would like to examine the rules contained in Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), Law Number 5 of 2014 concerning State Civil Apparatus, Government Regulation Number 11 of 2017 concerning Management of Civil Servants, Government Regulation Number 17 Year 2020 concerning Amendments to Government Regulation Number 11 of 2017, Regulation of the State Civil Service Agency Number 3 of 2020 concerning Technical Instructions for Dismissal of Civil Servants regarding the issue of submitting copies of detention orders to institutions where civil servants work who are detained because they are designated as criminal suspects. This research is in the form of content analysis, research that is an in-depth discussion of the content of printed or written information where this legal research tries to localize all related legal materials in the form of documents, decisions and related discussions recorded on propositions related to the theme of this research. (Ade Saptomo, 2009).

Data collection techniques are carried out through analyzing data that can be obtained from laws and regulations, textbooks, journals, research results, bibliographies, encyclopedias, cumulative indexes and others. This technique can be done through detailed, systematic and focused grouping and recording of library documents. Then can be done Interpretation (Gramatical, Authentic, and Systematic) and Legal Construction (Analogy and Argumentum Acontrario). (Ilyas et al., 2017).

The legal materials used in this research are primary legal materials and secondary legal materials that can be obtained through tracing several legal materials, namely primary, secondary and tertiary legal materials. Furthermore, the legal materials are obtained by reading, identifying, researching, studying, and analyzing official documents, literatures, research reports, and other reading sources. In this study, primary legal materials were also used by conducting unstructured interviews and discussions related to this research.

Based on the data that has been obtained through the literature study and field research, then data processing will be carried out, namely activities to make systematics on written legal materials. Analysis of the data was carried out qualitatively, namely the analysis in the form of descriptive analytical and prescriptive analysis which started from a systematic juridical analysis. (Ilyas et al., 2017).

The analysis was carried out to select and sort the data to obtain a complete understanding of the submission of a copy of the detention order to the institution where the civil servant was working who was detained because he was designated as a suspect in a criminal act. The data that has been obtained will be analyzed qualitatively (Anselm Strauss, 2009) to arrive at a conclusion, so that the main problems that will be studied in this study will be answered.

III. RESULTS AND DISCUSSION

Civil Servants (PNS) as ASN in every action are bound by employment law and other laws in Indonesia. If a civil servant is involved in a criminal act, in addition to being processed under the Criminal Code and the Criminal Procedure Code, it is also processed according to the employment laws and regulations. Article 88 paragraph (1) of the ASN Law states that "PNS who are detained because they are designated as criminal suspects are subject to temporary suspension". Government Regulation Number 17 of 2020 states "Temporary dismissal takes effect from the time the civil servant is detained", but the issuance of the temporary dismissal decree is often delayed because information on the existence of a detained civil servant was received too late by the agency in charge of the civil service sector, namely the Regional Personnel Agency (BKD/BKPSDM/BKPP) or the Bureau of Civil Service. Personnel (vertical agency staffing unit). One of the reasons is that there is no provision in the Criminal Procedure Code regarding a copy of the arrest warrant to the suspect's Personnel Development Officer in the event that the suspect is a civil servant. Article 21 of the Criminal Procedure Code only stipulates that a copy of the detention order is given to the suspect's family.

Based on the results of interviews with several civil servants who handled the temporary dismissal of civil servants, it was found that so far information on the existence of detained civil servants was obtained from news in newspapers or information circulating among the public. This situation applies to all criminal acts. For example, when news of the arrest of a criminal act with the status of a civil servant in Service A status circulated among the public, the staff contacted the service, the agency then searched all units under it to find out the truth of the information and convey it to the personnel. After receiving sufficient information, the staff will visit the police station where the suspect is being held to confirm and bring an official letter of request to obtain a copy of the arrest warrant. Searching is easier when the information is obtained from newspapers, because it is clear where the arrests were made and the origin of the police team who made the arrests. In addition, in several cases it was also found that the superiors of the detained civil servants did not report to the competent authorities for humanitarian reasons, namely so that the families of the detained civil servants could still receive salaries to meet their daily needs until the verdict was given. This was because the boss did not know that there were rules regarding the provision of temporary dismissal money. In addition, in several cases it was also found that the superiors of the detained civil servants did not report to the competent authorities for humanitarian reasons, namely so that the families of the detained civil servants could still receive salaries to meet their daily needs until the verdict was given. This was because the boss did not know that there were rules regarding the provision of temporary dismissal money. In addition, in several cases it was also found that the superiors of the detained civil servants did not report to the competent authorities for humanitarian reasons, namely so that the families of the detained civil servants could still receive salaries to meet their daily needs until the

verdict was given. This was because the boss did not know that there were rules regarding the provision of temporary dismissal money.

Detention as regulated in Article 20 of the Criminal Procedure Code is the authority of the investigator or assistant investigator on the orders of the investigator for the purpose of the investigation. The officer of the Supervision of Police Investigator who was interviewed stated that a copy of the detention order was given to the competent Civil Service Guidance Officer for a civil servant who was detained because he was designated a suspect in a criminal act not regulated in the Criminal Procedure Code, but in fact the investigator must still notify the supervisor of the civil servant concerned in the form of a Notification on the Progress of Results. Investigation (SP2HP). This SP2HP is not in the form of a copy of the arrest warrant (not part of the dossier), but is in the form of an ordinary administrative letter.

The Regulation of the Head of the State Police of the Republic of Indonesia Number 21 of 2011 concerning the Investigation Information System states that "The Notification on the Progress of Investigation Results (SP2HP) is a letter given to the reporter/complainant regarding the progress of the investigation results which is signed by the investigator's superior".

Notifications related to the existence of a detained civil servant are usually submitted to the office/service where the detained civil servant is on duty. Especially in corruption cases handled by the Aceh Police, although no suspects have been named, usually SP2HP is still sent a copy to the Regional Secretary. However, if it is needed for the personnel administration process, a copy (photocopy) of the detention order can be given to the staffing party as long as there is an official request letter from the agency or official in charge of the detained civil servant. However, after being investigated, it turns out that in the submission of SP2HP to the leadership or superiors of the detained civil servants, the delivery time is not regulated, so it will depend on the knowledge of each investigator.

The Attorney General's Office, which has the authority to investigate certain criminal acts based on the law, and often handles corruption cases, also has its own internal regulations regarding public information. In Article 14 paragraph (1) of the Regulation of the Attorney General of the Republic of Indonesia Number: Per-032/A/Ja/08/2010 concerning Public Information Services at the Attorney General's Office of the Republic of Indonesia, it is stated that "one of the categories of information that must be available at all times at the Prosecutor's Office includes a letter - letters relating to the handling of civil, criminal and state administrative cases at the Prosecutor's Office. Then it is explained in the explanation of the regulation that "what is meant by letters related to the activities of handling criminal and civil cases at the Prosecutor's Office, including among others, are Detention Orders".

Requests for public information can be made directly through the officer at the information desk or indirectly by mail, where before obtaining the desired information, you are required to first fill

out an application form or make an application letter. However, from the results of interviews with investigating prosecutors, it is known that requests for copies of detention warrants are usually made directly to the investigating prosecutor who handles cases by submitting an official request letter from the authorized official for the detained civil servant. In addition, because the case being investigated is a corruption case, even without notification to the Civil Service Supervisory Officer, of course, the staffing party already knows from the news in the newspaper.

The facts obtained in the research as described above will then be analyzed using the Legal System Theory proposed by Lawrence M. Friedman. Friedman states that "the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure (structure of law), legal substance (substance of the law) and legal culture (legal culture)". (Friedman, Lawrence M, 2001).

1. Legal Structure

The legal structure according to Friedman consists of elements of the number and level of courts, jurisdiction, and appeal procedures from court to court. Structure also means how the legislative arrangements, the authority of the president, the rules carried out by the police agency and so on. So the legal structure consists of existing legal institutions for the implementation of existing legal instruments.

Related to this research, in addition to law enforcement elements in the criminal realm such as the Police, the Prosecutor's Office and so on, the Personnel Board in the Regency/City and Provincial Governments or in the Civil Service Bureau at the Central Agency is an element of law enforcement in the personnel realm. The Personnel Agency or Bureau in question is a work unit in charge of staffing in every government agency and is responsible to the Civil Service Supervisory Officer. The Civil Service Agency or Bureau handles the temporary dismissal of civil servants based on their respective jurisdictions, depending on the employment status of the detained civil servants. So that in the case of temporary suspension of civil servants who are detained because they are designated as criminal suspects, it can be said that both in the field of criminal law and civil service law, the elements of law enforcement are sufficient.

2. Legal Substance

Friedman argues that legal substance is another aspect of the legal system. Substance is the rules, norms, and patterns of human behavior that are real in the system. So the substance of the law is the legislation that applies and has binding power and as a guide for law enforcement officials.

All existing laws and regulations in Indonesia are interrelated and intertwined which form a national legal system, so that the substance of a statutory regulation will affect the implementation of other regulations related to it. The Criminal Procedure Code as a procedure for implementing criminal procedural law in Indonesia applies to all people who are under the

jurisdiction of the general court, including those who work as Civil Servants. The substance (regulation) in the Criminal Procedure Code and government regulations regarding the implementation of the Criminal Procedure Code does not only affect the implementation of the criminal procedure law, but also the implementation of other interrelated or interrelated rules.

The substance of the copy of the detention order in the Criminal Procedure Code only requires that a copy of the detention order or further detention or a judge's determination be given to the suspect's family, but on the other hand, in the enforcement of employment regulations, a detention order is required as the legal basis for issuing a temporary dismissal of a civil servant who is detained because he is designated as a civil servant. criminal suspect. The absence of regulation in the Criminal Procedure Code is certainly an obstacle in enforcing the civil service law.

3. Legal Culture

Regarding legal culture or culture, it is human behavior (including the attitude of law enforcement officers) towards the law and the legal system. According to Friedman, "without the support of legal culture by the people involved in the system and society, no matter how good the legal structure is to carry out the established legal rules, no matter how good the quality of the legal substance that is made, law enforcement will not be able to run effectively". The high level of legal awareness of the community will create a good legal culture and change the public's view of the law. Without a legal culture the legal system itself will be powerless, Friedman likens it to "like a dead fish lying in a basket, not like a living fish swimming in the sea". Every country, every society or community always has its own attitude and opinion about the law (legal culture). (Friedman, Lawrence M, 2001).

Regarding legal culture in this study, it was also found that there was a low legal awareness of officials who were superiors of civil servants who were detained because they were designated as criminal suspects, this was seen from the fact that there were superiors of civil servants who knew information about the detention of their subordinates or even received SP2HP from police investigators but not forward the report to the personnel agency. This lack of legal awareness is not only due to ignorance of the rules for granting temporary dismissal money, but also for humanitarian reasons so that the families of detained civil servants can receive their usual income from civil servants. Of course, this cannot be justified at all when viewed from the aspect of justice, because when compared to cases where the criminal suspect is not a civil servant.

Based on the elaboration of the results of the research and analysis with the legal system theory above, it can be concluded that the legal substance that regulates copies of detention orders to the competent personnel agencies for PNS who are detained because they are designated as criminal suspects is urgently needed in the issuance of the Temporary Dismissal

Decree in order to prevent state financial losses. if later in a court decision that has permanent legal force, the detained civil servant is found guilty.

IV. CONCLUSION

The absence of regulation in the Criminal Procedure Code regarding a copy of the detention order to the Civil Service Guidance Officer in the case of a civil servant who is detained because he is designated as a suspect in a criminal act, causes the issuance of a temporary dismissal decree which is often delayed. The civil service can obtain a detention warrant through an official request to the National Police investigator or the Investigating Prosecutor, but is constrained by the difficulty of obtaining information on the existence of a detained civil servant, and also often the superior of the detained civil servant does not report it to the competent official at the Civil Service Agency even though he already knows from his family. PNS who were detained or received SP2HP from the police.

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