

## Consequences Of Police Investigations for Investigation Errors That Cause Someone to Become a Suspect/Defendant

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### Abstract

*The police who serve as investigators carry out the investigation process and the police who serve as investigators carry out the investigation. The process of inquiry and investigation is a very important thing in criminal procedural law, because in its implementation it often has to touch on the degree and/or dignity of the individual under suspicion, therefore one of the important mottos in criminal procedural law is that the essence of investigating criminal cases is to clear up the problem, to pursue the perpetrator of the crime, while preventing innocent people from acting inappropriately. Regarding the authority of investigators, of course there are efforts that can be made by the reported party if he has been named a suspect or other efforts that can be taken by the reported party if an Inquiries/investigation error occurs.*

**Keywords** police, inquiries, investigation.

### INTRODUCTION

The National Police of the Republic of Indonesia (POLRI) is one of the law enforcement officers in Indonesia. The role of POLRI is as law enforcement, basically related to eradicating criminal acts in Indonesia. This is regulated in Indonesia in Article 13 of Law of the Republic of Indonesia No. 2 of 2002 concerning the Unitary State Police of the Republic of Indonesia explains the main duties of the National Police, namely:

1. Maintain public security and order;
2. Enforce the law and;
3. Providing protection, protection and service to the community.

The eradication of criminal acts committed by the Police can be seen in the authority they have, both in the investigative and investigative processes. Of these 2 (two) authorities, investigation is the most important authority. This is because in the investigation process a person suspected of having committed a criminal act can be made a suspect based on 2 (two) pieces of evidence and fulfill the elements of the criminal act allegedly committed by him. Furthermore, if a person has been made a suspect, the case file will be handed over to the Public Prosecutor, then if there is no pre-prosecution then the case file will be handed over to the district court for trial/prosecution by the Public Prosecutor and the suspect's status changes to defendant.

This process is of course based on the completeness of the files or 2 (two) pieces of evidence and fulfilling the elements of a criminal act allegedly committed by a person suspected of committing a criminal act so that he is declared a suspect. This means that police investigators who are part of the integrated criminal justice system in carrying out investigations have cleared up the problem, to pursue the perpetrator of the crime, while at the same time preventing innocent people from taking inappropriate actions. Therefore, a person who has been declared a suspect then becomes a defendant and in the end the judge's



decision at the district court acquits the defendant, whether the decision is in the form of release from all legal charges (onslagh Van Alle rechtsvervolging) or an acquittal decision (vrijspraak) and the decision is confirmed by the Supreme Court in the end the status The suspect or defendant who has been attached to someone can be said to be the responsibility of the police investigator because there were errors in the investigation. This step to hold police investigators accountable is an effort that can be taken by parties who have been given the status of suspect or defendant and are ultimately sentenced to an onslag or vrijspraak decision.

## **LITERATURE REVIEW**

### **Police**

The police force is a body of officers representing the civil authority of the government. The police are responsible for maintaining order and security in government and society, enforcing the law, and preventing arrests, selecting, and carrying out investigations into criminal activities under criminal and civil law.

### **Inquiries**

In the Criminal Procedure Code (KUHP), investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out. Police who are authorized to carry out investigations are referred to as investigators. From this definition, it can be said that an investigation is the initial stage of the process of discovering incidents that are suspected of being criminal acts. An investigation is an action that the police must take to initiate a criminal justice process. Based on their authority, the police can assess and determine whether an incident is a criminal act or not. If it is considered a criminal offense, the police will carry out an investigation. Investigation becomes a filter for events, whether an investigation can be carried out on him or not. The results of the investigation will be the basis for investigators in determining the necessary actions and evidence that must be collected. In Article 11 of the National Police Chief's Regulation (Perkap) Number 6 of 2019 concerning Criminal Investigation, an investigation is carried out if: a suspect and/or evidence has not been found; case development; and/or evidence has not been met. In this way, an investigation will make it clearer what criminal acts have been committed and who is responsible for them. suspects and/or evidence have not been found; case development; and/or evidence has not been met. In this way, an investigation will make it clearer what criminal acts have been committed and who is responsible for them. suspects and/or evidence have not been found; case development; and/or evidence has not been met. In this way, an investigation will make it clearer what criminal acts have been committed and who is responsible for them.

### **Investigation**

In the Criminal Procedure Code, investigation is a series of investigative actions to search for and collect evidence which will shed light on the criminal act that occurred and

in order to find the suspect. Police who are authorized to carry out investigative duties are called investigators. Investigation is the next stage of the investigation. When conducting criminal investigations, the police are given the authority to use coercive measures to complete the investigation. These coercive measures include summons, arrest, detention, search, confiscation and examination of mail. These efforts are made to provide evidence that is deemed sufficient for the purposes of the prosecution and trial of the case.

## METHOD

This research is of the normative legal type with descriptive analytical research characteristics. The research data used is secondary data in the form of primary legal materials: statutory regulations, Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Secondary legal materials include books and other literature related to this research, tertiary legal materials: dictionaries and so on. Apart from that, interviews will also be conducted with informants which will be carried out in a directed manner (directive interviews). The selection of informants was carried out by prioritizing aspects of competence in their fields which were thought to be full of the required information. In this case, those deemed appropriate are Advocate at Daniel Tan & Partners.

The data collection technique was carried out using library research with data analysis carried out qualitatively.

## RESULTS AND DISCUSSION

### **Legal efforts that a person can take after being identified as a suspect by police investigators**

Investigators in Indonesia are not only limited to the Police, but there are other investigators, namely officials from agencies that are authorized by law to carry out investigations, namely the Prosecutor's Office, the Corruption Eradication Commission (KPK), the National Narcotics Agency (BNN), and investigators. Civil Servants (PPNS) where investigators can determine whether someone suspected of committing a criminal act is a suspect. Someone as a suspect is of course based on sufficient preliminary evidence. This means that the determination of a person as a suspect must be based on sufficient initial evidence, namely at least 2 (two) pieces of evidence.

Determining someone to be a suspect, which is the action of an investigator, especially a police investigator, can take legal action in the form of a pre-trial proceeding to a district court with relative authority. Pretrial is regulated from Article 77 of the Criminal Procedure Code to Article 83 of the Criminal Procedure Code. The pretrial objects can basically be seen in Article 77 of the Criminal Procedure Code means the scope of pretrial, namely:

- a. Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal,
- b. Compensation and/or rehabilitation for someone whose criminal case is stopped at the investigation or prosecution level.



However, once there is Constitutional Court decision no. 21/PUU-XII/2014, the pretrial object is not only limited to the 2 (two) things above but also includes several types of action against someone suspected of committing a criminal act, namely:

- a. Determination of the suspect;
- b. Search;
- c. Foreclosure.

Pretrial filings in Indonesia are carried out through several stages, as follows:

- a. The application is addressed to the Chairman of the District Court where sEvery application that wishes to be submitted for pre-trial examination is addressed to the chairman of the District Court which covers the jurisdiction of the place where the arrest, detention, search or confiscation was carried out or other objects in accordance with Constitutional Court Decision No. 21/PUU-XII/2014, or submitted to the Chairman of the District Court where the investigator or public prosecutor who terminated the investigation or prosecution is based. Furthermore, After the Registrar receives the application and the court fee is paid, it is registered with a number that is different from the other case numbers.
- b. Appointment of a single judge where after the application is registered, the Chairman of the Nageri Court appoints a single judge and clerk. This is in accordance with Article 78 paragraph (2) of the Criminal Procedure Code, which reads: "Pretrial is presided over by a single judge appointed by the Chairman of the District Court assisted by a Registrar."
- c. The date of trial and examination is determined no later than 3 (three) days after the sole judge is appointed by the Chairman of the District Court and the examination is completed no later than 7 (seven) days after the summons of the parties is carried out correctly in accordance with statutory regulations. This is in accordance with Article 82 paragraph (1) letters a and c, which reads: "Pre-trial examination procedures for matters as intended in Article 79, Article 80 and Article 81 are determined as follows:
  - 1) Within 3 (three) days after receiving the request, the appointed judge sets a trial date.
  - 2) "The examination is carried out quickly and no later than 7 (seven) days the judge must have handed down his decision."
- d. The content of the decision, which contains a pre-trial determination, also contains the basic reasons for the legal considerations and must contain a ruling. The instructions that must be included in the determination are adjusted to the reason for the inspection request. The reason for the request is the basis for the content of the decision. Amar is not in line with the reasons for the request, leaving the path determined by law. This is in accordance with Article 82 paragraph (2) of the Criminal Procedure Code, which reads: "The judge's decision in the pre-trial examination regarding the matters referred to in Article 79, Article 80 and Article 81 must clearly contain the basis and reasons."

Pretrial decisions can basically be appealed to the high court. This is in accordance with Article 83 of the Criminal Procedure Code, which reads:

- (1) Pretrial determinations in cases as intended in Article 79, Article 80 and Article 81 cannot be appealed.

- (2) Excluded from the provisions of paragraph (1) are pre-trial decisions that determine the invalidity of the termination of an investigation or prosecution, for which a final decision can be requested from the high court in the relevant jurisdiction..

Appeals permitted by the Criminal Procedure Code above are no longer permitted. This is because Article 83 paragraph (2) of the Criminal Procedure Code has been revoked by the Constitutional Court through Constitutional Court Decision No. 65/PUU-IX/2011 where Article 83 paragraph (2) of the Criminal Procedure Code is deemed to conflict with Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads: "Everyone has the right to recognition, guaranteed protection and fair legal certainty. and equal treatment before the law."

The conflict that occurs is due to the existence of Article 83 paragraph (2) of the Criminal Procedure Code which differentiates a person's rights in the eyes of the law, including suspects/defendants, investigators and public prosecutors because only the public prosecutor and investigators can file an appeal. As a result, granting the right of appeal only to public prosecutors and investigators as regulated in Article 83 paragraph (2) of the Criminal Procedure Code is contrary to the 1945 Constitution of the Republic of Indonesia.

Furthermore, pre-trial appeals are also prohibited. This refers to Article 45A letter a of Law no. 5 of 2004 concerning Amendments to Law no. 14 of 1985 concerning the Supreme Court, reads: "This law is limited in application. "Excluded cases as intended in paragraph (1), consist of: Decisions regarding pretrial..."

The prohibition against cassation of pretrial proceedings before it is regulated in Article 45A letter a of Law no. 5 of 2004 concerning Amendments to Law no. 14 of 1985 concerning the Supreme Court has been clearly stated in Supreme Court Decision No. 227K/KR/1982 dated 29 March 1983. This decision can be adapted from several considerations, as follows:

- a. The Supreme Court is of the opinion that a cassation request is not possible for pre-trial decisions because the requirement to speed up pre-trial cases will not be fulfilled if a cassation examination is possible.
- b. The authority of the District Court exercised by pre-trial is intended only as a horizontal supervisory authority over the actions of other law enforcement officials.
- c. Article 244 of the Criminal Procedure Code does not open up the possibility of carrying out a cassation examination of pre-trial decisions because the cassation examination regulated by Article 244 of the Criminal Procedure Code only concerns criminal case decisions that are actually examined and decided by the District Court or a court other than the Supreme Court.
- d. According to criminal procedural law, both the parties and the examination procedures are different in nature and position when compared to pretrial examinations.

Pre-trial cases are also prohibited from being submitted for judicial review. This is regulated in accordance with Supreme Court Regulation no. 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decisions. Referring to the description above, pre-trial





trials can only be carried out or applications can be submitted only at the first level or the local District Court.

### **Police Responsibility for Investigation Mistakes So that a Person Has Been Named a Defendant**

The police or police are one of the law enforcers known in the criminal justice system in Indonesia. The presence of the police is in accordance with Article 16 paragraph (1) Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia above has clearly outlined the authority of the police in the criminal law space. This authority is the implementation of the police as investigators and investigators of criminal acts.

The police who serve as investigators carry out the investigation process and the police who serve as investigators carry out the investigation. The process of inquiry and investigation is a very important thing in criminal procedural law, because in its implementation it often has to touch on the degree and/or dignity of the individual under suspicion, therefore one of the important mottos in criminal procedural law is that the essence of investigating criminal cases is to clear up the problem, to pursue the perpetrator of the crime, while preventing innocent people from acting inappropriately.

Police who serve as investigators have the authority, including:

- a. Because the obligation has the authority:
  - 1) Receiving a report or complaint from someone regarding a criminal act;
  - 2) Search for information and evidence;
  - 3) Ordering a suspected person to stop and asking for and checking personal identification;
  - 4) Carry out other responsible actions according to law.
- b. On the orders of investigators, they can take action in the form of:
  - 1) Arrest, prohibition from leaving the place, search and detention;
  - 2) Inspection and confiscation of letters;
  - 3) Taking fingerprints and photographing a person;
  - 4) Bring and present someone to investigators.

Furthermore, the police who serve as investigators have the following powers:

- a. Receiving a report or complaint from someone regarding a criminal act;
- b. Take the first action at the scene;
- c. Ordering a suspect to stop and checking the suspect's personal identification;
- d. Carrying out arrests, detention, searches and confiscations;
- e. Carrying out inspection and confiscation of letters;
- f. Taking fingerprints and photographing a person;
- g. Summoning people to be heard and examined as suspects or witnesses;
- h. Bringing in the necessary experts in connection with the case examination;
- i. Holding an end to the investigation;
- j. Carry out other responsible actions according to law.

The investigation process is also known as assistant investigator. An auxiliary investigator is a police official of the Republic of Indonesia who, because he is given certain authority, can carry out investigative tasks as regulated by law. The authority of the assistant investigator in the investigation process is as follows:

- a. Receiving a report or complaint from someone regarding a criminal act;
- b. Take the first action at the scene;
- c. Ordering a suspect to stop and checking the suspect's personal identification;
- d. Carry out arrests, searches and confiscations;
- e. Carrying out inspection and confiscation of letters;
- f. Taking fingerprints and photographing a person;
- g. Summoning people to be heard and examined as suspects or witnesses;
- h. Bringing in the necessary experts in connection with the case examination;
- i. Holding an end to the investigation;
- j. Carry out other legally responsible actions.

The authority of an assistant investigator is the same as that of an investigator (Article 7 paragraph (1) of the Criminal Procedure Code), except regarding detention which must be granted by delegation of authority from the investigator (Article 11 of the Criminal Procedure Code). Likewise, if the assistant investigator has exercised his authority, the assistant investigator will immediately make an official report and hand over the case files to the investigator, except for cases with short examination procedures which can be handed over directly to the public prosecutor (Article 12 of the Criminal Procedure Code).

The duties of the police as investigators and investigators which are part of criminal procedural law activities certainly cannot be separated from the criminal justice system. The criminal justice system outlined by the Criminal Procedure Code is an integrated criminal justice system. This integrated system is placed on the basis of the principle of functional differentiation between law enforcement officers in accordance with the stages of the authority process given by law to each law enforcement party, specifically the police. Police authority in the criminal justice system is regulated in the Criminal Procedure Code and Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia.

The position of the police in the criminal justice system is a collection of functions where the presence of the police in this function is in a law enforcement position. The function of law enforcement by the police aims objectively if viewed from an disciplinary approach and can be seen from 2 (two) sides, namely:

- a. Actual law enforcement, including:
  - 1) investigations,
  - 2) Arrest-detention,

Meanwhile, the court and sentencing process is the authority of the public prosecutor and judge.

- b. The preventive effect is expected to prevent people or society from committing criminal acts.

Based on the description above, it is clear that the compliance system adopted by criminal justice is very dependent on the police because after regulations or laws are formed,



the implementers will determine whether these regulations are implemented or not. As a result, leading to a successful or unsuccessful criminal trial process (declaring the defendant guilty or dismissing him) really depends on the investigation by the police.

The actions of the police in carrying out investigations as described above do not rule out the possibility of making investigative errors resulting in incorrectly determining the status of a reported person as a suspect. The explanation of Sub D section 1 above has outlined where the status of a reported person is determined to be subject to legal action in the form of pre-trial. However, if someone fails in the pre-trial process, of course the criminal justice process will continue and it does not rule out the possibility that a suspect who has become a defendant in court will be sentenced in the form of an acquittal or release from all charges.

The conditions mentioned above will certainly have an impact. With the cancellation, the status of a suspect or the status of a deceased defendant has an impact on the actions of the police who have carried out investigations and inquiries. This means that the police are the ones who unmask the criminal act, where in this process the police carry out an inquiry and inquiry so that 2 (two) pieces of evidence (sufficient preliminary evidence) are found which are closely related to the elements of the criminal act which is suspected of being committed by the reported person. This or the emergence of police responsibility with the loss of the status of a suspect or accused of a crime reported is due to several reasons, as follows:

- a. Every legal subject has the right to report/ complain about a criminal act as stated in Article 108 paragraph (1) of the Criminal Procedure Code unless the report or complaint submitted is known to be false (Article 317 paragraph (1) of the Criminal Code). This means that the reporter/complainant makes a report/complaint with absolutely no evidence whatsoever and is clearly only intended to offend someone's honor or good name without any evidence or manipulates the evidence so that someone reported/accused as if they have committed a mistake can be suspected of committing a crime. false report. However, this assessment is the burden of the investigators/investigators to assess it,
- b. Furthermore, the investigator/police investigator has the burden of the investigation/investigation because based on the report referred to the investigator/investigator carries out a series of inquiry and investigation activities then if a criminal incident is found and there is sufficient initial evidence (2 pieces of evidence) then the investigator submits it to the Public Prosecutor to carry out prosecution and filing an indictment by the public prosecutor (to determine the existence of a criminal incident and sufficient preliminary evidence of course the investigator is guided by the Regulation of the Head of the National Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts which regulates Case Titles).

Referring to the explanation above, the effort made by the reported party regarding the investigator/investigator's mistakes was to complain to the investigator handling the case in question to the Police Professional Division (PROPAM). If a criminal incident occurs and there is sufficient preliminary evidence and the case file is declared P21 (file handed over



for prosecution) carried out by a police investigator, then the reported party should report to the investigator stating that the incident in question is a criminal act and there is sufficient preliminary evidence.

## CONCLUSION

1. The legal remedy that a person can take after being identified as a suspect by police investigators is to carry out a pretrial.
2. The responsibility of the police for investigative errors resulting in someone being named a defendant is administrative in nature because the person can report it to the police PROPAM.

## REFERENCES

- Abdussalam, R., Evaluasi Pelaksanaan Sistem Peradilan Pidana Di Indonesia, Jakarta: Dinas Hukum Polri, 1996.
- Fuady, Munir, Aliran Hukum Kritis (Paradigma Ketidakberdayaan Hukum), Bandung: PT. Citra Aditya Bakti, 2003.
- Hamzah, Andi, Pengantar Hukum Acara Pidana Indonesia, Jakarta: Ghalia Indonesia, 1983.
- Harahap, M. Yahya, Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penyidikan), Jakarta: Sinar Grafika, 2006.
- , Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi Dan Peninjauan Kembali, Jakarta: Sinar Grafika, 2006.
- Husin, Kadri dan Budi Rizki Husin. 2016. Sistem Peradilan Pidana di Indonesia. Jakarta: Sinar Grafika.
- Ibrahim, Jhonny, Teori Metodologi Penelitian Hukum Normatif, Surabaya: Bayu Media, 2005.
- Kitab Undang-Undang Hukum Acara Pidana (KUHP)
- Majelis Permusyawaratan Rakyat Republik Indonesia, Panduan Pemasyarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Sesuai Dengan Urutan Bab, Pasal Dan Ayat, Jakarta: Sekretariat Jenderal MPR RI, 2010.
- m.hukumonline.com/berita/baca/lt4f9ff3cb4fbf8/mk-cabut-aturan-banding-praperadilan, diakses 03 Maret 2021
- Nainggolan, Jenggel, Keabsahan Penetapan Status Tersangka Oleh Penyidik Kepolisian (Studi Putusan Praperadilan No. 39/Pra.Pid/2016/PN.Mdn), Medan : Tesis Pasca Sarjana Ilmu Hukum USU, 2018.
- Peraturan Kapolri Nomor 6 Tahun 2019 Tentang Penyidikan Tindak Pidana.
- Soemitro, Ronny Hanitijo, Metodologi Penelitian Hukum Dan Jurumateri, Jakarta: Ghalia Indonesia, 1994.
- Sofyan, Andi, Hukum Acara Pidana Suatu Pengantar, Yogyakarta: Rangkang Education, 2013.
- Undang-Undang No. 2 Tahun 2002 Tentang Kepolisian Negara Republik Indonesia



Waluyo, Bambang, Sistem Pembuktian Dalam Peradilan Indonesia, Jakarta: Sinar Grafika, 1992.

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