

## Juridical Analysis Of Suspect Determination Procedures Police Investigators Against Criminal Offenders (Research Study In Barelang Police)

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**ABSTRACT.** The determination of a suspect must be in accordance with applicable legal provisions based on 2 (two) valid pieces of evidence, namely witness statements obtained by the investigator, expert statements obtained by the investigator, letters, and instructions for each piece of evidence obtained by the investigator through an in-depth examination. The investigator's coercive actions must be carried out responsibly according to the law and legal provisions so that arbitrary actions do not occur against the suspect's freedom, independence, and human rights. The problem in this research is the law, implementation, and what factors become obstacles and obstacles in the process of determining suspects for perpetrators of criminal acts. This research uses a descriptive analysis method using a normative approach (legal research) and is supported by empirical research. This was carried out to obtain primary data obtained through interviews through field research. The results of this study explain that the Criminal Procedure Code (KUHAP) has clearly and firmly regulated matters relating to the rights of suspects. The rights of suspects regulated in the Criminal Procedure Code are Priority Rights for Case Settlement, this has been emphasized in Article 50 of the Criminal Procedure Code (KUHAP) which reads: a) A suspect has the right to immediately be examined by investigators, then can be submitted to the Public Prosecutor. b) The suspect has the right to immediately bring his case to court by the public prosecutor. c) The accused has the right to be tried immediately by the Court., The right to prepare a defense, the right to get an interpreter, and the right to choose their own legal adviser. The purpose of this right is to get legal counsel in accordance with the provisions of Article 54 of the Criminal Procedure Code for suspects. For this reason, it is expected that in determining the suspect to have qualified investigators they pay attention to the following matters: Have general knowledge, Knowledge is quite broad, where Investigating Officers are required to have knowledge that is quite extensive, Confident in themselves. Investigating Officers must have high self-confidence, have character, be professional, understand psychology practically, be brave, honest, talented actor, wise, alert, and experienced. Courage, honesty, wisdom, and vigilance are needed in the examination process by an investigating officer. Experience Investigating officers must be experienced in order to master psychology/psychology and be able to act in acting is also very important to have.

**Keywords:** Determination of suspects, Police Investigators, Crime

### Introduction

Referring to Article 1 point 5 of the Criminal Procedure Code (KUHAP), an investigation is a series of investigatory actions to search for and determine an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this Law. . And those who have authority in the investigation process are officials of the Republic of Indonesia State Police who are authorized by law (Article 1 point 4 of the Criminal Procedure Code).<sup>1</sup> At the start of the investigation process, the investigator asks for clarification, invites and asks for information from witnesses in order to find and determine a legal event as a criminal act in order to determine whether or not an investigation can be carried out, as the witness knows, heard,

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<sup>1</sup> Eddy O.S Hiariej, 2014, *Prinsip-Prinsip Hukum*, Cahaya Atma Pusaka, Yogyakarta. Hlm.13

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saw and experienced the event. Law. Witnesses are one of the pieces of evidence in formulating Article 184 of the Criminal Procedure Code.

A person strongly suspected of committing a criminal act based on sufficient preliminary evidence can be arrested as intended in Article 17 of the Criminal Procedure Code. After an arrest, the legal action carried out by the investigator is to carry out further investigations by carrying out detention as intended in Article 20, Article 21, and Article 24 of the Criminal Procedure Code; the investigation procedures have been regulated in the Criminal Procedure Code as well as the authority of the investigator himself.

In the investigation process regarding the investigator's authority, to ensure that the suspect provides clear information during the examination, it cannot be denied that there are actions by investigators who are not aware of the suspect's rights during the investigation process, with such actions will result in an unbalanced condition between law enforcers and suspects, this is contrary to the principle of balance adopted by the Criminal Procedure Code, where every law enforcement must be based on the principle of a harmonious balance between the protection of human dignity and the protection of the interests and order of society.<sup>42</sup>

Criminal cases in society must be resolved in a way deemed to provide justice for the parties involved. A criminal case is a case that occurs between the Public Prosecutor (JPU) who acts on behalf of the victim and the perpetrator of the crime. The series of criminal justice resolutions has several stages. This process begins with a legal event; for example, a perpetrator commits a criminal offense. However, to determine whether the incident is a criminal act, an investigation must be carried out based on reports, complaints, being caught red-handed, and the investigator's knowledge of the person who committed the crime.<sup>5 3</sup> Article 1 number 5 of the Criminal Procedure Code (KUHAP) states that "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 according to the procedures regulated in the law".

In this investigation process, several things must be carried out by the investigator, namely summoning suspects and witnesses, arrest, detention, search, and confiscation, all of which must be based on a warrant, and an official report must be made regarding the action.

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<sup>2</sup>M. Hariwijaya dan Bisri M. Djaelani, 2004, *Panduan Menyusun Skripsi dan Tesis*, Siklus, Yogyakarta, hlm. 49

<sup>3</sup>Sugianto, *Hukum Acara Pidana Dalam Praktek Peradilan Di Indonesia*, (Yogyakarta:Deepublish, 2018), hlm. 1.

When the investigation begins, an investigator must notify the District Prosecutor's Office of the commencement of the investigation through a Notice of Commencement of Investigation (SPDP).

Handling a criminal case certainly takes a long time, starting from investigation, investigation, prosecution, and examination in court. Determining someone as a suspect is not an easy thing. Based on Article 1 point 14 of the Criminal Procedure Code, it is stated that a suspect is "a person who, because of his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act." Investigators in determining someone's suspect status usually have sufficient evidence by Article 183 of the Criminal Procedure Code; that is, at least two pieces of evidence can be continued to the court hearing to obtain further evidence, namely the judge's belief. Furthermore, the procedure for determining a suspect is outside of Article 25 of the Republic of Indonesia Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation.

### **Research Methods**

This research uses normative legal research and is supported by empirical legal research. Starting from secondary data and then continuing with research on primary data or data obtained directly at the Bareleng Police, Batam. The location of this research was carried out by researchers in the Batam area, considering the time and distance, namely at the Bareleng Batam Police Station. The population is investigating officers and the head of the Bareleng Batam Police criminal investigation unit. The sample used by researchers is a random technique that is used to find out for sure what is related to the research to be studied. As for collecting or collecting data, the author uses primary data and secondary data. In this research, data analysis was carried out qualitatively by describing the research, then comparing the data and legal theories, legal experts, and statutory regulations, where the analysis started with data collection, data processing, and finally, data presentation. After the data analysis is complete, the results will be presented descriptively, namely by describing the procedure for determining suspects by police investigators against perpetrators of criminal acts in the jurisdiction of the Bareleng Batam Police.

### **Results and Discussion**

#### **Definition of Suspect**

A suspect is a person who, because of his actions and circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act (item

14). According to Andi Hamzah, the words "because of his actions and circumstances" are inappropriate because, with those words, it seems as if the investigator already knows the actions and circumstances of the suspect, even though this is something that the investigator still needs to find out.<sup>4</sup> A suspect is a person whose actions or circumstances based on preliminary evidence are reasonably suspected of committing a crime. A defendant is a suspect who is prosecuted, examined, tried, and in court. Meanwhile, in Article 8 of Law of the Republic of Indonesia Number 14 of 1970, "A suspect is a person who, because of his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act".

### **Definition of Investigator**

Police officials are the principal investigators in criminal cases in addition to investigators from civil servant officials; this has been regulated in Law Number 8 of 1981 Article 6 paragraph (1) letters a and b. Meanwhile, to support the police's duties as investigators, the KUHAP also regulates the obligations and authority of police officials in investigative activities. This is further explained in law number 2 of 2002 concerning state police.

In carrying out these primary obligations or duties, Law Number 2 of 2002 article 14 paragraph (1) letter g explains that the National Police of the Republic of Indonesia is tasked with carrying out inquiries and investigations into all criminal acts by criminal procedural law and statutory regulations. Other. In carrying out investigative duties, when the investigator collects evidence, he is given the authority to carry out actions that enable the completion of the investigation process. When it is complete, it is immediately handed over to the public prosecutor. Authorities include arrest, detention, body/goods search, house entry, confiscation, letter inspection, and other authorities.<sup>5</sup> If necessary, investigators have the right to take action at the crime scene, which can be followed by summoning and questioning witnesses and suspects. If deemed necessary, investigators can ask for information and opinions or be examined by experts. If a suspect is detained, the examination of the suspect must begin one day after the detention order is executed (KUHAP Article 122).

To make a case clear and precise, investigators usually, or in general, use sources of information, namely:

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<sup>4</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia*, Sinar Grafika, Jakarta, 2014, hlm.110

<sup>5</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta : Rineka Cipta, 2015, hlm. 144.

- a. Evidence or physical evidence, such as bullets, bloodstains, traces, narcotics, and plants;
- b. Documents and records, such as fake checks, kidnapping letters, other identification marks, and notes regarding threats;
- c. People, such as victims, witnesses, suspected perpetrators of crimes, and things related to victims, suspects, and the conditions at the incident scene.
- d. To be able to utilize these sources of information requires understanding and assistance from the justice sciences, such as criminalistics, chemistry, physics, and others.<sup>6</sup>

### **Overview of Criminal Offenses**

The meaning of a criminal act depends on how a person understands the crime itself. So, regarding the meaning of this criminal act, there are many opinions. The term criminal act comes from the Dutch criminal term, namely strafbaar feit. This is an official term in Wet boek van strafrecht or the Criminal Code (KUHP), still valid in Indonesia. An act can be said to be a criminal act if it meets the following elements:

- 1) Subject
- 2) Error
- 3) 3) Illegal (from the action)
- 4) An action prohibited or required by law/legislation, and violators are subject to criminal penalties.
- 5) Time, place, and circumstances (other objective elements).

From the formulations of certain criminal acts in the Criminal Code (KUHP), eight elements of criminal acts are known, namely:

- 1) Behavioral elements
- 2) Elements against the law
- 3) Element of error
- 4) Elements of constitutive consequences
- 5) Elements of accompanying circumstances
- 6) Elements of additional requirements to be prosecuted for a criminal offense
- 7) Additional conditional elements make the sentence more serious

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<sup>6</sup> Pasal 110 ayat (1-4) Kitab Undang-undang Hukum Acara Pidana (KUHP).

8) Additional elements to be punished

According to Moeljatno, the elements or elements of a criminal act or elements of a criminal act are:

- 1) Behavior and consequences (actions)
- 2) The particulars or circumstances that accompany the action
- 3) Additional circumstances that aggravate the crime
- 4) Elements of objective unlawfulness
- 5) Subjective elements of unlawfulness

### **Determination of Suspect by Police Investigators**

Determining a suspect for someone suspected of committing a criminal act is regulated in Article 1 number 14 of the Criminal Procedure Code (KUHAP); based on the Criminal Procedure Code, several things must be considered when suspecting, including:<sup>7</sup>

- 1) There is preliminary evidence before determining someone as a suspect.

However, the Criminal Procedure Code does not explain further what is meant by initial evidence, especially the definition of initial evidence that can be used as a basis for determining a suspect. The explanation of what is meant by preliminary evidence is only touched on in a nutshell. It does not solve the problem of the Criminal Procedure Code in the explanation of article 17 of the Criminal Procedure Code, namely, "what is meant by sufficient preliminary evidence is preliminary evidence to suspect the existence of a criminal act by the words of article 1 point 14." Because the Criminal Procedure Code does not further define what is sufficient preliminary evidence, mainly what can be used as a basis for determining someone as a suspect, what is meant by preliminary evidence must be sought from other sources.

- 2) Preliminary evidence, as intended in Article 1 point 14 of the Criminal Procedure Code, is not explicitly regulated in the Criminal Procedure Code.

This definition is regulated in article 1 number 21 of Perkap Number. 6 of 2019, namely: "Initial evidence is evidence in the form of a police report and 1 (one) valid piece of evidence, which is used to suspect that someone has committed a criminal act as a basis for an arrest." So, based on a police report and valid evidence, a person can be named a suspect, and an arrest can be made.<sup>8</sup>

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<sup>7</sup> Chairul Huda, *Tiada Pidana Tanpa Kesalahan Menjadi Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Kencana, Jakarta, 2013 hlm. 27

<sup>8</sup> Pasal 184 Kitab Undang-undang Hukum Acara Pidana (KUHAP) meliputi: Keterangan saksi, Keterangan ahli,

## **Procedure for Determining Suspects for Criminal Perpetrators**

In criminal procedural law, the process of determining a suspect is the final part of the investigation process, namely an action to search for and collect evidence in a case and find someone who, due to their circumstances and actions, should be suspected of being the perpetrator of a criminal act. Article 183 of the Criminal Procedure Code stipulates that a judge may not sentence a person to a crime unless, with at least two valid pieces of evidence, they are convinced that a criminal act has occurred. The defendant is guilty of committing it. Normatively, it is true that determining a suspect is sufficient to be based on two pieces of evidence. The suspect's statement can be ignored because the suspect or defendant has the right to deny it. Once there are two pieces of evidence, there are enough reasons to designate someone as a suspect. There is no obligation to examine potential suspects, even as witnesses. It is not mandatory for investigators to examine witnesses or mitigating experts proposed by the suspect because bringing in witnesses and experts is only the suspect's right after being named a suspect.

## **Obstacle Factors in Determining Suspects**

Based on information obtained from the Barelang Batam Police narcotics investigator, Mr. Aipda Muzirwan. E, interviewed on October 21, 2023, said that several factors became obstacles and obstacles in determining suspects for perpetrators of criminal acts, including:<sup>9</sup>

### 1. Legal factors themselves

Laws in the material sense are written regulations that are generally applicable and made by legitimate Central or Regional Authorities. Regarding the enactment of this law, there are several principles whose aim is for the law to have a positive impact; these principles include:

- a) Laws that do not apply retroactively,
- b) Laws made by higher authorities,
- c) Have a higher position too,
- d) Laws of a specific nature override laws of a general nature if the makers are the same,
- e) Laws that are in effect later cancel laws that were in effect previously.
- f) The law cannot be contested,
- g) Laws are a means of achieving spiritual and material prosperity for society and individuals through preservation or renewal (innovation).

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Surat, Petunjuk, Keterangan terdakwa.

<sup>9</sup> Hasil wawancara Penyidik Satuan Narkoba Polres Barelang Batam, Bapak. Aipda Muzirwan. E. pada tanggal 21 Oktober 2023

Disturbances to law enforcement originating from laws may be caused by:

- a) Failure to follow the principles of law enforcement,
- b) There are no implementing regulations that are needed to implement the law.
- c) Unclear meaning of the words in the law, which confuses its interpretation and application.

2. The law enforcement factor itself

Law enforcers are societal role models who should have certain abilities for society's aspirations. They must be able to communicate and gain understanding from the target group, as well as being able to carry out or carry out roles that are acceptable to them.<sup>10</sup>

3. Facilities and facilities factors

Facilities or facilities have a vital role in law enforcement. These means or facilities are necessary for law enforcers to harmonize their proper role with their actual role. The following way of thinking should follow these means or facilities:<sup>11</sup>

- a) What does not exist creates a new one.
- b) What is damaged or wrong is repaired or corrected.
- c) What is lacking is added.
- d) What is stuck is smoothed out.
- e) What is backward or declining is brought forward or increased.

4. Community Factors

Law enforcement comes from society and aims to achieve peace in society. Therefore, viewed from a certain angle, society can influence law enforcement. Indonesian society has a great tendency to interpret the law and even identify it with officers (in this case, law enforcers as individuals).

5. Cultural factors

Cultural factors integrated with societal factors are deliberately differentiated because, in the discussion, the issue of the value system, which is the core of spiritual or non-material culture, is raised.

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<sup>10</sup> Hasil wawancara Penyidik Satuan Narkoba Polresta Barelang Batam, Muzirwan. E. pada tanggal 21 Oktober 2023

<sup>11</sup> Hasil wawancara Penyidik Satuan Narkoba Polresta Barelang Batam, Muzirwan. E. pada tanggal 21 Oktober 2023



### **Solutions and efforts to identify suspects**

Another solution that investigators must have in carrying out their profession as investigators is:<sup>12</sup>

1. Have general inspection knowledge. Here, investigating officers must master the knowledge and techniques of examination so that the examination process can run well and correctly.
2. Have fairly broad knowledge. Investigating officers are required to have extensive knowledge; it is hoped that later, the truth of the information given by the suspect or witness will be known.
3. Believe in yourself. Investigating officers must have high self-confidence and not be nervous when dealing with the person being interviewed so that there is no possibility for the suspect or witness to lie to them.
4. Have character, fortitude, and calm.

In carrying out their duties, a calm spirit and patient character are needed in the examination process; for this reason, investigating officers must have that kind of character and spirit.

5. Professional

Practically understands psychology, brave, honest, talented actor, wise, alert, and experienced. Characteristics of courage, honesty, wisdom, and alertness are needed in the examination process by an investigating officer.

6. Experience

Investigating officers must be experienced in order to master mental/psychological sciences and be able to play, which is also very important to have.

### **Conclusion**

Based on the description above, the author can provide several conclusions, including the following:

1. The investigator's determination of a suspect according to criminal provisions is also based on 2 (two) valid pieces of evidence, as intended in Article 67 paragraph (1) and paragraph (2) of National Police Chief Regulation No. 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the National Police of the Republic of Indonesia, namely witness statements obtained by investigators, expert

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<sup>12</sup> Hasil wawancara Penyidik Satuan Narkoba Polresta Barelang Batam, Muzirwan. E. pada tanggal 21 Oktober 2023

statements obtained by investigators, letters and instructions for each piece of evidence obtained by investigators through in-depth examination. The investigator's coercive actions must be carried out responsibly according to the law and legal provisions so that arbitrary actions do not occur against the suspect's freedom, independence, and human rights.

2. The Criminal Procedure Code (KUHP) has clearly and firmly regulated matters relating to the rights of suspects. The rights of suspects regulated in the Criminal Procedure Code are the Right to Priority Case Settlement. This has been confirmed in Article 50 of the Criminal Procedure Code (KUHP), which reads: a) The suspect has the right to immediately receive an examination by an investigator who can then be referred to the Public Prosecutor. b) The suspect has the right to have his case immediately brought to court by the Public Prosecutor. c) The defendant has the right to be immediately tried by the Court. The right to prepare a defense, the right to receive an interpreter, and the right to choose his legal advisor. The purpose of this right is to obtain legal advice by the provisions of Article 54 of the Criminal Procedure Code. The suspect can determine and choose his legal advisor according to his wishes. The right to receive free legal assistance, the right to contact legal counsel, the right to be visited by a private doctor, the right to be informed, and to contact or receive visits from family and relatives. The Right to Receive Clergy Visits The right to receive visits from clergy is regulated in Article 63 of the Criminal Procedure Code; the Right to Present Witnesses, the Right Not to be Burdened with the Obligation of Proof, the Right to claim compensation, the Right to be examined at the place of residence, as according to article 119 of the KUHP.

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