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Determination of Suspects Based on Regulation of the Chief of the Indonesian National Police Number 6 of 2019 Concerning Criminal Investigation (Case Study Number: 10/Pid.Pra/2024/PN Bdg)

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Abstract: This research aims to find out whether the arrangements for determining suspects in National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations are in accordance with the provisions in the Criminal Procedure Code (KUHAP). This research uses normative research methods with a prescriptive approach. The data used in this research is secondary data obtained from library materials, such as books, journals and statutory regulations. The results of the research show that "the beginning of evidence" in National Police Chief Regulation Number 6 of 2019 do have several differences with the provisions in the Criminal Procedure Code who have been perfected by the ruling of the constitutional court number 21 / puu-xii / 2014. that there must be 2 sufficient tools of evidence and the investigator's objective conviction to satisfy the establishment of a suspect. But, contrary to the regulations of the 6/2019 capture, there was an SPDP that contained the identity of the suspect. This would be a conflict of norms, but the stipulations of the 6/2019 capture should be consistent with the requirements of KUHAP.

Keyword: Determination of Suspects, National Police Chief Regulation Number 6 of 2019, KUHAP, Ruling of the Constitutional Court Number 21/puu-xii/2014.

INTRODUCTION

The main objective of an investigation is to identify the perpetrators of a crime and provide evidence relating to the acts they have committed. To achieve this goal, investigators will gather information relating to a particular fact or event. Assigning suspect status to a person before the criminal investigation process can have a major impact on their social status, as seen in the case of pretrial decision Number: 10/Pid.Pra/2024/PN Bdg, where it was stated that because there was no binding legal force, the suspect status was invalid. The Indonesian National Police (Polri) is a law enforcement agency in Indonesia that has the authority to conduct investigations and inquiries to uncover criminal acts and determine who the suspect

is. In carrying out their duties, Polri must comply with the procedures set out in the Criminal Procedure Code (KUHAP).

KUHAP is a procedural law that regulates how the criminal law process is carried out, starting from investigation, investigation, prosecution, to examination in court. In addition, the National Police must also comply with National Police Chief Regulation Number 6 of 2019 on Criminal Investigation. This regulation is a further elaboration of KUHAP and provides guidelines for Polri in conducting criminal investigations. As such, Polri has a legal obligation to carry out its duties in accordance with established procedures. This is important to ensure that the legal process runs fairly and in accordance with applicable legal principles (Mukhlis, 2012).

The definition of an investigator can be seen in Article 1 point 1 of Law Number 8 of 1981 concerning KUHAP, which states that an investigator is: "Indonesian State Police officers or certain civil servants who are specifically authorized by law to conduct investigations." KUHAP further regulates investigators in article 6, which provides limitations on investigating officials in criminal proceedings.

As explained in Article 7 paragraph (3) of the Criminal Procedure Code, "in carrying out their obligations as referred to in paragraph (1) and paragraph (2) of the Criminal Procedure Code, experts shall be guided by the relevant provisions." This clarification clearly expects agents to continue to safeguard the law and act in accordance with relevant regulations and guidelines, so as not to harm and ignore the rights of suspects or parties being examined (Hendrastanto et al., 1987).

The main stage before the examination process begins is the issuance of an SPDP or Order to Commence Investigation (hereinafter abbreviated as SPDP). The basis for investigators to conduct an investigation is a police report or an investigation warrant, as stipulated in Article 13 paragraph (1) of Perkap Number 6 of 2019 concerning Criminal Case Investigation (hereinafter referred to as Perkap No. 6 Th. 2019). After the investigation warrant (hereinafter abbreviated as sprindik) is submitted, then at that time, within seven days, the SPDP must also be finished (Article 13 paragraph (3) of Perkap No. 6 of 2019 concerning Criminal Investigation). If we look at the examination request process as stipulated in Article 10 paragraph (1) of Perkap No. 6 of 2019, then the assurance of the suspect is in the fifth place, specifically letter d, after several previous cycles. Thus, suspect assurance should not be at the SPDP stage.

This is confirmed in Article 14 paragraph (3) of Perkap Number 6 of 2019 concerning Criminal Case Examination which states that in the event that the suspect cannot be determined, there is no need to determine the suspect. Article 14 paragraph 4 of Perkap No. 6 of 2019 also states that in the event that the determination of a suspect is more than 7 days after the issuance of an Order to Commence Investigation (Sprindik), the determination of the suspect must be attached or attached to the previous SPDP.

Perkap No. 6 Th. 2019 on the Bail of Suspects is an important guideline in the overall legal chain in Indonesia. It provides clear rules and techniques on how a person is designated as a suspect in a law violation case. Nonetheless, there are some questions regarding the validity of suspect designation under this guideline. Some feel that the most common way of designating suspects is often done in disregard of the accused person's liberty and standards of fair play. As such, it is important to conduct a top-down exploration of the validity of the designation of suspects in Perkap No. 6. Th. 2019 The review is expected to provide a better understanding of how the guidelines are being applied in practice and whether there are opportunities for improvement or change.

Therefore, the focal point of this research is on the issue of a person who has been determined as a suspect before the interaction of the examination in Article 10 paragraph (1) of Perkap No. 6 of 2019 concerning Suspect Investigation is carried out, namely in the issuance of SPDP which is regulated in Article 14 of Perkap No. 6 Th. 2019.

METHOD

This research uses normative research methods with a prescriptive approach. The data used in this research is secondary data obtained from library materials, such as books, journals, and laws and regulations. In this research, the author uses an issue approach, a statutory and conceptual approach. The source of legal materials in this research uses primary, secondary and tertiary legal materials. The method of collecting legal materials used in this research is through literature study. Legal materials obtained through literature studies are first viewed and centered from top to bottom, then notes are made on the problems studied, either directly or indirectly (Arfa & Marpaung, 2018). then the conclusions generated in the research in this journal have a legal basis.

RESULTS AND DISCUSSION

Determination of Suspects Legal Basis for Suspect Designation

Determination of a suspect is an investigator's action to appoint a person as a suspect who is suspected of having committed a criminal offense based on sufficient preliminary evidence. The definition of suspect determination can be analyzed from two elements (Abdul Azis, 2022), namely:

1. Investigator's actions

The determination of a suspect is an investigator's action, not the action of a judge or public prosecutor. Investigator actions are actions taken by investigators in the context of carrying out their duties and authority as investigators.

2. Appointing someone as a suspect

The determination of a suspect is the action of an investigator to designate a person as a suspect. Designating someone as a suspect means that the investigator has suspected that the person has committed a criminal offense.

The definition of determining a suspect can also be analyzed from two aspects (Rizqy Nugraha Ramadhan, 2022), namely:

1. Substantive aspects

The substantive aspect of determining a suspect is that the determination of a suspect must be based on sufficient preliminary evidence. Sufficient preliminary evidence is evidence that exists at the time the investigator determines the suspect, which shows that there is a strong suspicion that someone has committed a criminal offense.

2. Formal aspects

The formal aspect of determining a suspect is that the determination of a suspect must be carried out in accordance with the procedures stipulated in the laws and regulations. In this case, the procedure for determining a suspect is regulated in the Criminal Procedure Code and National Police Chief Regulation No.6/2019.

Based on this explanation, it can be concluded that the determination of a suspect is the action of an investigator to appoint a person as a suspect who is alleged to have committed a criminal offense based on sufficient preliminary evidence. The determination of a suspect must be carried out in accordance with the procedures stipulated in the laws and regulations. The process of determining a suspect in Indonesian criminal law is a series of steps involving the investigation process, examination of potential suspects, interrogation, and finally the determination of the suspect. The initial stage begins with an investigation, where investigators are tasked with searching and identifying events suspected of being criminal offenses. Investigators must have strong knowledge in criminal law to assess whether an act constitutes a criminal offense.

Furthermore, the determination of a suspect must be based on valid preliminary evidence. This is in accordance with the Constitutional Court Decision Number 21/PUU-XII/2014 as a form

of improvement in the provisions of Article 184 of the Criminal Procedure Code, that what is meant by valid evidence as stipulated in Article 184 of the Criminal Procedure Code is a. witness testimony; b. expert testimony; c. letters; d. clues; e. testimony. The defendant regarding the requirements for determining a suspect must be based on sufficient preliminary evidence in quantity, and good quality, which is based on two pieces of evidence (based on the judge in deciding) and from this evidence the investigator believes that a criminal offense has occurred and a person is the suspected perpetrator of the criminal offense. In practice, the determination of preliminary evidence is limited to two pieces of evidence coupled with the investigator's objective belief. The investigator's belief can be carried out through interrogation which is one of the important processes in determining the suspect, where the investigator examines the suspect and witnesses involved in the incident.

After going through the process of investigation, examination, and interrogation, investigators can name a person as a suspect if there is sufficient preliminary evidence. Sufficient preliminary evidence must consist of at least two types of evidence. However, it is important to ensure that this process is conducted in a professional, proportionate and transparent manner. This is necessary to prevent abuse of power and also to ensure that the naming of a suspect is not done solely with the tendency to make someone a suspect immediately without sufficient evidence.

When the process of determining a suspect is carefully conducted in accordance with established procedures, it ensures that justice is served and avoids mistakes that could harm innocent parties. Professionalism, proportionality and transparency in every step of the criminal legal process are essential in maintaining the integrity of the criminal justice system in Indonesia.

If there is an act that is still suspected of being a criminal offense, the first step that can be taken by the community is to report or complain about the incident to law enforcement officials. This process involves several important steps that are generally taken: First, the community makes a report or complaint to a law enforcement officer, such as the police, which must contain complete information about the alleged criminal offense, including details of the time, place, modus operandi, and the identity of the perpetrator if known. Second, after receiving a report or complaint, law enforcement officials will record it in a register book and provide a receipt to the reporter or complainant as a sign that the report has been received and recorded correctly. The next stage is an investigation conducted by the investigator after receiving a report or complaint. The investigator will try to find evidence that confirms that a criminal offense has occurred and whether there is enough basis to proceed to the investigation stage.

If the results of the investigation show that there is sufficient preliminary evidence, the investigator will proceed to the investigation stage. Here, various investigative actions are taken, including the examination of the scene, witnesses, suspects, as well as the seizure of relevant evidence. Finally, if the investigator manages to gather sufficient evidence, the person suspected of committing a criminal offense can be named as a suspect. However, this designation must be based on a minimum of two valid pieces of evidence. It is important to ensure that this entire process is conducted with professionalism, proportionality and transparency. This aims to prevent abuse of power and keep suspects from being recklessly named without a strong basis. Thus, the legal process can run in accordance with the applicable rules and ensure that justice is realized for all parties involved. The Criminal Procedure Code as enhanced by the Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015 has stipulated 2 pieces of sufficient evidence along with the investigator's conviction objectively to be fulfilled in the determination of a suspect. However, to determine a person as a suspect, sufficient evidence is required to suspect that the person is the perpetrator of a criminal offense. Therefore, the determination of a suspect is considered valid if there are at

least 2 pieces of evidence in accordance with these provisions. Without meeting these minimum requirements, the determination of a suspect cannot be considered valid.

Criminal liability is the concept of legal responsibility in which a person can be subject to legal sanctions for actions that are contrary to the law. The term used for this responsibility is referred to as "toekenbaardheid" or criminal responsibility. To be convicted, a person must fulfill the elements of the offense set forth in the law. From the perspective of culpability, only individuals who have the capacity to be held responsible can be held accountable for their actions. However, the issue that arises in assessing the capacity for responsibility is whether a person meets the criteria as a norm subject who has the capacity for responsibility.

Several methods of submitting allegations of criminal acts that allow the investigation process (Purwoleksono, 2014). One of them is when law enforcement officers are directly aware of a criminal offense. For example, when police discover a robbery incident while on patrol and immediately make an arrest and bring the perpetrator to the police station (Azis, 2021).

In addition, the delivery of information through the mass media is also another way to find out or report suspected criminal acts. The mass media is often used for crime prevention efforts by influencing the public about the impact of crime and punishment through media coverage. For example, during the Bintaro train accident in 1980, the media was interested in covering the story of a woman who claimed to have lost her husband in the accident. However, it turned out that her husband did not die and her statement was revealed to be an attempt to obtain insurance. This triggered law enforcement officials to investigate the alleged crime of fraud. There are also other sources that explain several other methods to report or find out about suspected criminal acts, such as information, police reports, or submission of suspects or evidence from the public or certain institutions. From this description, there are various ways and steps to report suspected criminal acts to the authorities. These actions are not only carried out by law enforcement officials or victims, but can also be carried out by the community or through the mass media (provided that it is not a complaint crime). When information related to alleged criminal acts is submitted, the first step before determining a suspect is through an investigation process carried out by investigators of the Indonesian National Police. This is in accordance with Article 4 of the Criminal Procedure Code, which describes investigators as police officers who are tasked with finding the truth related to reports or complaints received to confirm the existence of a criminal offense (I Made Wisnu Wijaya Kusuma, I Made Sepud, and Ni Made Sukaryati Karma, 2020).

Determination of Suspects Under the Criminal Procedure Code

This investigation is an important preliminary stage before a suspect is named. It allows the authorities to examine and collect evidence that is support or confirm the alleged criminal offense before taking further steps. This process ensures that law enforcement steps are taken based on valid facts and evidence, before naming someone as a suspect (Hidayat, 2023). According to Article 5 of the Criminal Procedure Code, investigators have a number of powers which include:

1. Receiving Reports or Complaints about Alleged Crimes from Individuals Investigators are authorized to receive reports or complaints from individuals alleging that a criminal offense has occurred or is occurring.
2. Collecting Information and Evidence

Investigators have the authority to collect relevant information and evidence related to alleged criminal acts to ensure the truth of the report or complaint received.

3. Stopping and Checking the Identity of a Suspected Person

Investigators have the right to stop and check the identity of a person who is the object of suspicion in relation to a criminal offense under investigation. This aims to ensure the validity of the individual's identity and involvement.

4. Bringing and Surrendering a Person to the Investigator

In the context of further investigation, the investigator has the right to bring a person suspected of being involved in a criminal offense and present him to the investigator for further examination related to the event being investigated.

These powers provide investigators with the tools to perform a range of actions necessary to investigate suspected criminal offenses. In Article 5 Paragraph 1 Point b of the Criminal Procedure Code, investigators have certain powers that can be exercised if necessary for the purposes of the investigation. These actions include the following:

1. Arrest, Prohibition to Leave the Scene, Search, and Detention Investigators may make an arrest, prohibit a person from leaving the scene, conduct a search, or temporarily detain a person in the context of an investigation if it is necessary in uncovering the truth of the alleged criminal offense.
2. Examination and Seizure of Mail

Investigators are authorized to conduct an examination of certain letters or documents deemed relevant to the alleged criminal offense, as well as to confiscate such letters if needed in the investigation process.

3. Fingerprinting and Photographing a Person

In the context of an investigation, investigators have the right to take fingerprints or take photographs of a person involved in an alleged criminal offense for the purpose of identification or proof.

4. Bringing and Confronting a Person to the Investigator

The investigator has the authority to bring and present a person to the investigator in order to further examine the alleged criminal offense being investigated.

These actions are part of the permissible measures that investigators can take to seek the truth regarding suspected criminal offenses. It is important to remember that these actions must be carried out in accordance with applicable legal provisions and within the framework of a fair investigation process and in accordance with the human rights of the individuals involved.

Article 1 point 14 of the Criminal Procedure Code requires preliminary evidence before naming someone as a suspect. However, KUHAP does not provide a detailed explanation on what is meant by preliminary evidence, especially in the context of the definition of preliminary evidence that can be the basis for determining a suspect. KUHAP only provides a general explanation and does not solve the problem.

Based on Article 1 point 14 of KUHAP, the definition of preliminary evidence is not specifically explained. However, in Article 1 point 21 of Perkap No. 14/2012, preliminary evidence is defined as a police report and one valid piece of evidence used to suspect that a person has committed a criminal offense, which is the basis for arrest. As well as in the Constitutional Court through decision Number 21/PUU-XII/2014 dated April 28, 2015 has determined several matters related to the conditions for determining suspects, as well as preliminary evidence which explains in detail. However, there are differences between the definition of preliminary evidence in Perkap No. 14/2012 and the interpretation of the Constitutional Court (MK). This difference is important because it can have a significant impact on the law enforcement process. Therefore, it is important to rely on the Constitutional Court's interpretation in the practice of criminal procedure law.

Although KUHAP does not explain in detail the definition of 'preliminary evidence', the affirmation of the phrase 'preliminary evidence' has been stipulated in the Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015, namely that what is meant by "preliminary evidence" is that there are at least two pieces of evidence that according to the investigator based on these two pieces of evidence a criminal offense has occurred. In the investigation process, what is meant by valid evidence, such as witness testimony, expert testimony, and letters that can be obtained. Meanwhile, evidence in the form of clues and

testimony of the defendant is obtained during the trial, as stipulated in Article 188 paragraph (3) and Article 189 paragraph (1) of the Criminal Procedure Code. If in the investigation process there is a police report and one valid piece of evidence, a person can be named as a suspect, and the valid evidence can be in the form of witness testimony, expert testimony, and letters. However, it is also important to note that witness testimony must meet the requirements set out in Article 185 paragraph (2) and paragraph (3) of the Criminal Procedure Code, which states that witness testimony must be accompanied by other valid evidence in order to prove that the defendant is guilty of the act charged against him and the principle of "unus testis nullus testis principle".

The principle of unus testis nullus testis (one witness is not a witness) is a rule that rejects the testimony of a single witness. In the context of civil and criminal procedural law, the testimony of a witness without the support of other evidence should not be relied upon or used as a basis to prove a claim as a whole. This principle is emphasized by the KUHAP in evidence (Article 185 paragraph (2)). A single testimony cannot be considered as valid evidence, as it must be supported by other valid evidence. This is further regulated in Article 185 paragraph (6) of KUHAP, where investigators must collect valid evidence as "raw materials" for judges in the process of examination and trial of criminal offenses. because there are special conditions regulated in Police Regulation Number 14 of 2012. Article 36 paragraph (1) states that the arrest of a suspect can only be made based on two considerations that must be fulfilled simultaneously (cumulative), not as an interchangeable option. These considerations are:

1. The existence of sufficient preliminary evidence, namely a police report supported by one valid piece of evidence, taking into account the provisions of Article 185 paragraph (3), Article 188 paragraph (3), and Article 189 paragraph (1) of KUHAP.
2. The suspect is absent without reasonable cause after being summoned twice consecutively by the investigator. An arrest can only be made if the suspect is absent without reasonable cause after two consecutive summonses by the investigator. If the suspect is always present when summoned by the investigator, in accordance with the order of Perkap No. 14/2012, it is not allowed to arrest him. The same applies if the suspect only summoned once and has appeared before investigators for questioning, in this case an arrest cannot be made immediately.

In the context of criminal law in Indonesia, the Criminal Procedure Code (KUHAP) plays an important role. KUHAP was created as the basis for rules governing criminal pre-trial proceedings, marking a new era in our criminal law system. This was based on several reasons, including the aim to produce provisions that support a fair criminal justice process and respect individual rights.

This is reflected in the emphasis on the rights of suspects and defendants, the presence of legal aid at every stage of the examination, the limitation of coercive measures such as arrest or detention, a more comprehensive choice of remedies up to the last stage, and the monitoring mechanism for the implementation of decisions in the KUHAP.

In addition to the aim of fulfilling human rights in the criminal justice process, KUHAP also aims to correct the implementation of the law, especially in the criminal justice process. In an effort to renew the field of criminal procedure law, the idea arises that correction of law enforcers such as police, prosecutors, and others who commit abuse of authority or violations must be carried out optimally, so that law enforcement can run properly. For this reason, a form of supervision is needed both internally and externally. Human rights violations often occur due to abuse of power, including in the form of coercion that is not in accordance with applicable law. The Criminal Procedure Code authorizes law enforcement officers to carry out their duties, including coercive measures that can essentially reduce a person's human rights. Therefore, the implementation of coercive measures must comply with the provisions regulated by the law so that a person who is a suspect or defendant in a criminal case clearly understands

his rights and also the limits of the authority of law enforcement officers in carrying out coercive measures against him.

Law enforcement officers, in carrying out their duties, often have the potential to violate applicable rules, which in turn can result in harm to the suspect, his family, or other parties involved. Although done with the aim of ensuring justice and order, the actions taken by law enforcement officers can be the cause of harm. To ensure the protection of human rights and for law enforcement officers to carry out their duties according to regulations, KUHAP regulates an institution known as pretrial (Hidayat, 2023).

Pretrial is inspired by the principle of habeas corpus in the Anglo-Saxon justice system. Habeas corpus guarantees human rights, especially in relation to the right to liberty. Basically, habeas corpus guarantees and protects individual liberty through a simple, direct and open procedure that can be used by anyone. Under this principle, a person can ask the detaining official to prove that the detention is in accordance with applicable law, on the basis of a court order. It provides a mechanism whereby people can test the legality of their detention before a judicial authority to ensure that the detention is lawful and not unlawful. Pretrial in the Indonesian legal context serves a similar purpose of ensuring the protection of human rights and ensuring compliance with the law.

The birth of the pretrial institution was triggered by the lack of an institution that has the role to monitor and assess coercive measures that ensure the protection of human rights contained in the HIR. Its function is basically to horizontally monitor any coercive measures taken by law enforcement officials in the examination of criminal cases, ensuring that such measures are not contrary to applicable laws and regulations, apart from internal supervision within the apparatus itself. Pretrial is not a separate institution, but rather a new function given by KUHAP to the existing district courts. The main purpose of the pretrial institution is to uphold the law and protect the rights of suspects during the investigation and prosecution stages. As stated in the law, investigators or public prosecutors are authorized to take coercive measures such as arrest, detention, or confiscation for the sake of examination in criminal cases (Ramadhan, 2022). Every forced action taken by an investigator or public prosecutor against a suspect is essentially a treatment that has a dual nature:

1. Forced measures allowed by law in the interest of the examination of the criminal case charged to the suspect.
2. Coercive measures that are in accordance with existing laws and regulations. Any coercive measure is inherently a restriction on the suspect's human rights.

This is a crucial point in pretrial, which aims to ensure that the coercive measures taken are in accordance with the applicable legal limits and do not exceed the human rights of the suspect. Under KUHAP, pretrial has the authority to examine and determine:

1. Legality of arrest and/or detention at the request of the suspect, family, or other party authorized to represent the suspect.
2. The validity of terminating an investigation or prosecution upon request in order to maintain the continuity of law and justice.
3. Requests for compensation or rehabilitation by suspects, their families or representatives that are not filed in court.

From the above rules, it can be interpreted that pretrial is tasked with supervising or controlling the investigation and prosecution process. This means that pretrial judges are responsible for overseeing the actions of police investigators and prosecutors through the district court. Pretrial carries a horizontal supervisory function in criminal procedure law, particularly in looking at how coercive measures are implemented by investigators and prosecutors.

Determination of Suspects According to the Chief of Police Regulation

Article 10 Paragraph 1 Point a of the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 on Criminal Investigation states that investigation is part of the investigation activity. If there is insufficient evidence to indicate the existence of a criminal offense, the investigation process will not continue. However, if there is sufficient evidence, the investigation process will be continued by the investigator. According to the Criminal Procedure Code, no other institution has the authority to conduct investigations related to criminal offenses.

Investigations conducted by Indonesian National Police officers have several main objectives:

1. Seeking information needed to determine whether an event reported or complained about can be categorized as a criminal offense.
2. Collect and supplement existing information to achieve clarity before taking enforcement action.
3. Preparation for a more in-depth investigation.

This investigation process can be aimed at people, goods, or locations suspected of being involved in a criminal offense. Thus, investigation activities involve a series of efforts to gather evidence that can corroborate or prove the existence of a criminal offense.

An investigation is a very important early stage in the law enforcement process. It provides an opportunity to gather necessary information before following up with further investigations. This process must be conducted thoroughly and based on facts to ensure that every law enforcement step is based on adequate and valid evidence. According to Article 6 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 on Criminal Investigation, investigations into alleged criminal offenses are conducted through the following methods:

1. Crime Scene Processing

Processing the crime scene to gather evidence and information related to the alleged crime. This involves gathering evidence, documentation, and identifying possible traces.

2. Observation

Observe the environment, activities, or individuals related to the alleged criminal offense to obtain further information.

3. Interview

Hold meetings or interactions with witnesses, victims, or other related parties to obtain relevant information related to events suspected of being criminal offenses.

4. Stalking

Tracing or following people or objects suspected of being involved in a criminal offense in order to obtain further information or evidence.

5. Incognito

Conducting undercover actions or using false identities to gain access or information that is difficult to obtain in an investigation.

6. Tracking

Tracing digital or physical traces of individuals, goods, or information relevant to the alleged criminal offense.

7. Document research and analysis

Review relevant documents, such as records, letters, or other evidence to find information or evidence that supports the alleged criminal offense.

Each of these methods is part of an investigative strategy designed to gather information needed to confirm or deny the existence of a criminal offense. This process requires investigators to carry out detailed and careful steps to ensure that all evidence obtained is reliable and in accordance with applicable legal provisions (Pradana, 2020).

National Police Chief Regulation No. 6/2019 on Criminal Investigation is a regulation issued by the Indonesian National Police to regulate the criminal investigation process. This regulation has several differences with the determination of suspects as regulated in the Criminal Procedure Code (KUHAP). National Police Chief Regulation No. 6/2019 is a refinement and adjustment to legal developments, especially related to the rules regarding the Notice of Commencement of Investigation (SPDP) after the decision of the Constitutional Court Number: 130/PUU- XIII/2015. Apart from being a legal adjustment, this regulation also acts as a substitute for Perkap 14 of 2012 concerning Criminal Investigation Management which was previously revoked based on Police Regulation Number 06 of 2019.

It is important to note that National Police Chief Regulation No. 6/2019 officially revokes National Police Chief Regulation No. 14/2012 which previously regulated the Management of Criminal Investigations. This regulation came into effect on October 03, 2019. One of the main differences is related to the Notice of Commencement of Investigation (SPDP). Under KUHAP, the SPDP is issued by the investigator to the public prosecutor after the investigator receives a report or information that a criminal offense has occurred. This SPDP serves as a notification that the investigator has started the investigation process. However, in National Police Chief Regulation No. 6/2019, the SPDP is issued after the investigator has received a report or information that a criminal offense has occurred finds sufficient preliminary evidence of a criminal offense committed by a person. In other words, an SPDP is issued after a person has been named as a suspect. This distinction is important because it determines when a person can be named as a suspect in the legal process. In the National Police Chief Regulation, a person can be designated as a suspect after investigators receive a report or information about a criminal offense. Whereas in KUHAP, a person can only be named as a suspect after investigators find sufficient preliminary evidence.

National Police Chief Regulation No. 6/2019 has several differences that conflict with KUHAP, such as in the procedures for arresting and detaining suspects. Article 14 Paragraphs (2) and (3) of National Police Chief Regulation No. 6/2019 on Criminal Investigation are unclear due to the overlap between the two regulations. Article 14 Paragraph

(2) National Police Chief Regulation No. 6/2019 states that a suspect can be named in the SPDP, however Article 14 Paragraph (3) of the same regulation provides the possibility that in the SPDP, a suspect need not be named if the investigator has not been able to determine it. Article 14 Paragraph (4) of National Police Chief Regulation No. 6/2019 states that if a suspect is named after more than 7 (seven) days from the issuance of the Investigation Order, a notification letter of the determination of the suspect must be sent by attaching the previous SPDP.

The determination of the suspect in Article 10 paragraph (1) of National Police Chief Regulation No. 6/2019 on Criminal Investigation, which places this step as the fifth step, indicates that the investigation is considered complete when the suspect is determined. Conversely, naming a suspect from the very beginning, such as at the time of issuing the SPDP, is not in line with the essence of investigation as a process of identifying the perpetrator of a criminal offense. The link between Article 14 of Perkapolri Number 6 of 2019 on Criminal Investigation and Article 10 paragraph (1) of the same regulation, leads to the conclusion that in the Constitution of Criminal Procedure (KUHAP), the determination of suspects and the meaning of investigation as explained in Article (1) number 2 of the general provisions of KUHAP are related to efforts to identify suspects. Thus, KUHAP is more supportive of Article 10 paragraph (1) of National Police Chief Regulation No. 6/2019 on Criminal Investigation.

Article 14 paragraph (2) of National Police Chief Regulation No. 6/2019 on Criminal Investigation requires that the identity of the suspect must be stated in the SPPDP, but Article 14 paragraph (3) implies that if the investigator has not been able to determine the suspect, the suspect's identity is not required. In the words "naming a suspect," there is a tendency that the

naming may have been done when the SPDP was made. This suggests that the determination of a suspect may be made at an early stage when an investigation is initiated. Article 25 paragraph (1) of National Police Chief Regulation No. 6/2019 on Crime Investigation states that the determination of a suspect requires at least two pieces of evidence supported by evidence.

Based on the explanation above, National Police Chief Regulation No. 6/2019 changes the determination of suspects as stipulated in the Criminal Procedure Code. In general, the regulation of the determination of suspects in National Police Chief Regulation No. 6/2019 is contrary to the provisions in the Criminal Procedure Code. Article 1 point 10 of the Criminal Procedure Code states that the determination of a suspect is an action of the investigator to appoint a person as a suspect who is alleged to have committed a criminal offense based on sufficient preliminary evidence.

National Police Chief Regulation No. 6/2019 also provides the same definition of a suspect, namely:

The determination of a suspect is the action of an investigator to appoint a person as a suspect who is alleged to have committed a criminal offense based on sufficient preliminary evidence.

Based on this definition, it can be concluded that the determination of a suspect is an investigator's action based on sufficient preliminary evidence. Sufficient preliminary evidence is evidence that exists at the time the investigator determines the suspect, which shows that there is a strong suspicion that someone has committed a criminal offense.

Determination of a suspect is a further procedure based on the results of an investigation by an investigator. In the investigation itself, as contained in the definition of determining a suspect, both in National Police Chief Regulation No. 6/2019 and in the Criminal Procedure Code, it must be based on sufficient preliminary evidence. However, the provisions of "preliminary evidence" in National Police Chief Regulation No. 6/2019 and KUHAP have different interpretations. This is reflected in the interpretation of Article 14 paragraph (2) letter d which states that the Notice of Commencement of Investigation (SPDP) contains the identity of the suspect, further paragraph (3) emphasizes that the identity of the suspect can be left blank if the investigator has not yet named a suspect in the criminal offense in question.

Therefore, the phrases in Article 14 paragraph (2) letter d and paragraph (3) of National Police Chief Regulation No. 6/2019 prove that there are differences in interpretation as in the Criminal Procedure Code. KUHAP states that at the investigation stage, a person cannot be named as a suspect unless there is preliminary evidence, as has been refined in the Constitutional Court Decision Number 21/PUU-XII/2014, namely 2 legal evidence and the investigator believes that a criminal offense has occurred and a person is a suspect in the criminal offense.

The provisions contained in constitute a legal conflict between the provisions at the upper level, in this case the Criminal Procedure Code and its implementing regulations, namely the National Police Chief Regulation No. 6 of 2019, then to this provision applies the principle of lex superior derogat legi inferiori, namely the provisions in higher legislation may not conflict with the implementing regulations, so the provisions in the National Police Chief Regulation No. 6 of 2019 must be in line with the provisions in the Criminal Procedure Code.

In Criminal Decision Number 3/Pid.Pra/2021/PN/Mdl, the judge rejected the applicant's pretrial appeal against the determination of a suspect and detention. The judge was of the opinion that the determination of the suspect and detention of the applicant were valid and could not be overturned. The rejection of the pretrial motion was based on the judge's legal reasoning that the investigator had sufficient preliminary evidence to determine the applicant as a suspect. The sufficient preliminary evidence was the testimony of witnesses and evidence in the form of palms that had been harvested without a permit (Kusuma & Karma, 2020).

The determination of suspects in the criminal investigation process refers to the definition of investigation as described in Article 1 point (2) of the Criminal Procedure Code and Article 1

point (2) of National Police Chief Regulation Number 6 of 2019 concerning Investigation. Criminal offense which aims to identify the suspect. The legal basis that should be used in determining the suspect in the investigation process is Article 10 paragraph (1) of National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation, not Article 14 which requires the issuance of SPDP to include the identity of the suspect. The status of a person who has been designated as a suspect has a major impact on all legal actions related to that status. The determination of a suspect should not be made when the SPDP is issued because at that stage no investigation activities have been carried out. The SPDP issuance stage is still the first step in the investigation process that will begin. Article 14 of National Police Chief Regulation No. 6/2019 on Criminal Investigation indicates the possibility of a person being named as a suspect without an investigation process, whereas the essence of an investigation is to reveal the perpetrator of a criminal offense.

In his book, M. Yahya Harahap (2013) states that the assessment of sufficient preliminary evidence is entirely up to the statutory investigator. However, it is necessary considered that the application of this approach may create uncertainty in legal practice. It may also make it difficult for pretrial authorities to assess whether or not sufficient evidence exists, which should be based on rational and realistic considerations. If the word "preliminary" is omitted, the phrase could be phrased as: "strongly suspected of committing a criminal offense based on sufficient evidence." In determining the status of a suspect, a minimum of two pieces of evidence is required as a requirement in accordance with the principle of due process of law. If this principle is violated and the criminal process control principle is applied instead, it can lead to cases of wrongful arrest or make the evidence of the investigator doubtful. As a result, parties who feel that they have been named as suspects that are not in accordance with the correct legal process based on due process of law will file a lawsuit in pretrial, as stipulated in Article 1 point 14 of the Criminal Procedure Code.

According to J.C.T. Simorangkir, a suspect refers to a person who is suspected of committing a criminal offense and is still in the preliminary investigation stage to determine whether the suspect has sufficient grounds for trial.

Pretrial, introduced by KUHAP as a new institution in the law enforcement system, is located in CHAPTER X section one as part of the jurisdiction of the district court. The term used by KUHAP is "Pretrial", the literal meaning of which is different. "Pre" refers to before or preceding. Pretrial indicates the stage before the examination in court. Although there is a similar institution in erofa, its function is strictly focused on preliminary examination. (Andi Hamzah, 2008:187).

Broadly speaking, regulations related to pre-trial are set out in Articles 77 to 88 of the Criminal Procedure Code. Other articles related to pre-trial, namely claims for compensation and rehabilitation, are set out in Articles 95 and 97 of the Criminal Procedure Code. In particular, the specific authority of pretrial, in accordance with Articles 77 to 88 of the Criminal Procedure Code, includes assessing the validity of coercive measures such as arrest and detention, as well as reviewing the validity of the termination of investigation or prosecution. In conjunction with Articles 95 and 97 of the Criminal Procedure Code, pretrial authority also includes review and decision on claims for compensation and rehabilitation (Yahya Harahap, 2013:4).

Based on these legal considerations, it can be related to the discussion regarding the determination of suspects in National Police Chief Regulation No. 6/2019. National Police Chief Regulation No. 6/2019 stipulates that investigators are required to conduct an examination of suspects and witnesses before naming a suspect. This aims to ensure that the investigator has sufficient preliminary evidence to determine the suspect where this causes an overlap between article 14 paragraph (2) letter d and paragraph (3) regarding the identity of the suspect.

CONCLUSION

Based on the results and discussion, it can be concluded that the determination of suspects in National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation does have some differences with the determination of suspects as regulated in the Criminal Procedure Code. This regulation is not a perfection but there has been a conflict between the National Police Chief Regulation Number 6 of 2019 and the Criminal Procedure Code regarding the determination of suspects. in the National Police Chief Regulation Number 6 of 2019, it can be done to determine the determination of the suspect before conducting an investigation, precisely the determination of the suspect in the SPDP has contained the identity of the suspect. Meanwhile, Article 184 of the Criminal Procedure Code as refined through the Constitutional Court Decision Number 21/PUU-XII/2014 explains in detail that in terms of determining a suspect, there must be 2 valid evidence and have passed the investigation and investigation stages. It can be concluded that there is a conflict of norms against the provisions stipulated in the Criminal Procedure Code and National Police Chief Regulation Number 6 of 2019 which can affect the process of determining a suspect. This makes overlapping positive law in Indonesia, so that the purpose of law, especially legal certainty, is not realized.

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