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Problems Of Determining A Suspect Against A Deceased Person In The Investigation Process

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Abstract: Bringing judicial proceedings against the body or memory of a deceased defendant was once possible, but this is no longer possible in today's world, as criminal actions must be stopped even before a deceased complainant is named as a suspect. This research aims to examine the criminal justice system in Indonesia regulating the status of cases against the determination of a suspect in a person as a witness/reported person who has first died. The research method used in this study is normative juridical. According to the findings of the study, the current Criminal Procedure Code cannot provide an adequate answer regarding the validity of the determination of a suspect against a deceased person, because it only states that the investigation must be stopped if the suspect dies, which implies that the suspect should have been determined during the investigation process. Therefore, lawmakers should make rules regarding the mechanism for investigations when the reported or suspected guilty person dies. Because in fact, the death of a person as a reported person suspected of committing a criminal offense requires the termination of the criminal case because the legal subject who should be held accountable for the criminal offense has died.

Keyword: Died, Determination, Investigation, Suspect.

INTRODUCTION

Previously, it was possible to bring judicial proceedings against the body or memory of a deceased defendant in some political crimes such as treason, as well as some religious crimes and suicide.(Al-Fadel, 1976) This is no longer possible in today's world, where criminal actions are stopped after the death of the accused. (Salem, 2009). Issa and Al-Khseilat in their article explained that there are 2 (two) reasons for this (Issa & Al-Khseilat, 2019): Firstly, the principle of the personality of the case, which relates to the principle of criminal liability and the personality of the punishment. Since the case arises from liability and is intended to impose punishment, the liability and punishment must be personal.

Law, in theory, is a set of rules that govern human behavior (Abdulkadir Muhammad, 2004). As a result, law refers to a number of rules that are interrelated and form a system rather than just a single rule (Alin, 2017). Thus, understanding the law cannot be achieved by focusing on just one rule. Therefore, to understand the law as a whole, it is important to

understand several rules at once. In this case, the purpose of law is to organize society in order to protect the interests of society (Efendi, 2011).

Lawrence M. Friedman highlights that the successful implementation of law depends on three aspects of the legal system, namely legal structure, legal substance, and legal culture (Rawls, 1971). Legal structure includes the role of law enforcement actors such as police, prosecutors, and courts, while legal substance reflects the rules and norms that govern behavior and legal culture in society. Furthermore, Notonegoro defines justice as actions that are in accordance with the applicable law, and in the context of criminal law, fair actions are actions that are in accordance with the rules of material criminal law. After the application of material criminal law, formal criminal law or criminal procedural law is used (Sapardjaja, 2016).

Punishment in criminal law will not achieve its purpose unless it is applied to the person responsible for the crime. However, when that person dies, the punishment cannot be carried out and achieve its purpose (Hosni, 1995). This principle is also affirmed in French jurisprudence (Lefort, 1877), which states that when the defendant dies, the case loses its subject because the punishment no longer has a proper or rational basis (Issa & Al-Khseilat, 2019). In addition, the death of the accused meant that the case lost one of its parties, so taking legal action against him without giving him a chance to defend himself was not reasonable (Al-Kahwaji, 2002). Therefore, it is important to hear the defendant's defense before passing sentence.

Therefore, criminal responsibility can be interpreted as a concept used to indicate a person's obligation to be criminally punished, where the perpetrator of the action must fulfill the elements of the offense as stipulated by law (Sugianto, 2018). However, in cases where the suspect (accused) dies, his or her objective presence in the case is absent. Nonetheless, the parties involved in these criminal cases still have rights to their honor and dignity, even after death, so the State has an obligation to create appropriate procedural mechanisms in the exercise of these rights (Nur Cahya Dian Saputra & Syamsul Bahri, 2020). This means that in a real legal context, the suspect (defendant) is involved in the circumstances of a particular criminal case. Thus, the absence of the main perpetrator in criminal proceedings clearly indicates a procedural violation in the criminal proceedings. This is based on the principle that a person is considered legally responsible for a particular act if he or she can be sanctioned for that act.

In this regard, it is important to remember that suspect status must be determined based on sufficient preliminary evidence. In accordance with Article 14 of the Criminal Procedure Code, "a suspect is a person who, based on preliminary evidence, should be suspected of being the perpetrator of a criminal offense because of his actions or circumstances." The Joint Decree of the Supreme Court, the Minister of Justice, the Attorney General's Office, and the Chief of Police on Improving Coordination of Criminal Case Handling and Chief of Police Regulation No. Skep/1205/IX/2000 on Guidelines for the Conduct of Criminal Investigations, contain specific rules regarding the concept of sufficient preliminary evidence. According to the regulations, there must be at least one police report and one additional piece of evidence for there to be sufficient preliminary evidence. This is in accordance with the provisions of Article 184 of the Criminal Procedure Code, which states that there are five types of evidence that are admissible in court: 1) witness testimony, 2) expert testimony, 3) letters, 4) instructions, and 5) testimony of the defendant. As a result, in accordance with the provisions stipulated therein, the determination of suspect status must be made on the basis of sufficient preliminary evidence and can be accounted for.

Article 77 of the Indonesian Criminal Code states that the prosecution of a criminal case becomes void if the accused dies, but this rule does not apply in the investigation and prosecution process. In situations where the suspect dies while the investigation is ongoing, the investigator has the legal authority to stop the investigation. There are several reasons that

can lead to the termination of an investigation, as stipulated in Article 109 paragraph (2) of the Criminal Code, namely: 1) There is insufficient evidence; 2) The event being investigated by the investigator turns out not to be a criminal offense; and 3) Termination of investigation based on legal considerations. This provision can be applied if there are reasons that lead to the loss of the right to prosecute and execute a crime, such as the death of the suspect. However, these two provisions do not explicitly regulate the mechanism if the reported or suspected guilty person dies while still in the investigation stage.

Even if the suspect is responsible for the crime, the investigation or prosecution must be legally terminated if the person who should be responsible for the act is no longer available due to death. Death is one of the grounds for dismissing a criminal case (Alfitra, 2014). Such an approach to law enforcement is inconsistent in investigation and judicial practice, which casts doubt on the perfect application of the principle of legality and confirms the need to regulate procedural relationships in criminal proceedings regarding the death of potential suspects. Therefore, situations where a witness or reported person dies before being named as a suspect need to be carefully examined.

The case of the six deceased FPI laskar members can be used as an example in this research. The chronology before their appointment as suspects began with a shooting incident that killed six members of the FPI laskar at Km 50 Cikampek. The police conducted an investigation and reconstruction after the incident. Investigators named six members of the FPI laskar as suspects based on evidence (Prodjo, 2021). Based on the above awareness of the problem, the focus of the research is to examine the extent to which the criminal justice system in Indonesia regulates the status of the case against the determination of a suspect in a person as a witness/reported person who has first died, the legislator should make rules regarding the mechanism for investigation when the reported or suspected guilty dies to overcome these problems. While in previous research such as that conducted by Yuhrianasari BR Harahap with the title "Determination of Suspects Against Dead People in the Investigation Process (Case Analysis of 6 FPI Laskar)" has examined the validity of determining suspects against dead people, but the focus is more on the process of determining suspects in criminal cases. Then the research conducted by Neden Rika Puspitasari which reviewed "The Application of Article 77 of the Criminal Code Regarding the Loss of the Right to Prosecute in the Trial Process" but with an emphasis on discussing the implementation of Article 77 of the Criminal Code which has implications for the loss of the right to prosecute because the defendant died during the trial process.

Therefore, this research will examine the applicable legal instruments to evaluate the validity of determining a suspect in the investigation process of a person who has passed away as a reported or witness in a criminal offense. Furthermore, this research will analyze these issues ethically in the context of the criminal justice process.

METHOD

The research methodology used in this research is normative juridical, which combines conceptual approaches and statutory approaches. Secondary data sources used in this research. Through a literature review using primary and secondary legal sources, secondary data was collected. The data analysis used is qualitative and descriptive data analysis. Descriptive analytical is the method used in the specification of this research.

RESULTS AND DISCUSSION

Criminal Responsibility of a Deceased Person

Currently, the criminal justice system in Indonesia, which is based on Law Number 8 of 1981 concerning Criminal Procedure Code, is considered no longer adequate. Therefore, a new system is needed that can ensure fairer treatment for suspects, defendants, or convicts, as well as victims of crime and witnesses in criminal cases, so that the criminal justice system in

Indonesia is more comprehensive and accommodates the interests of all parties involved in the criminal law enforcement process (Lubis, 2020).

Basically, the science of criminal procedure law attaches great importance to the form of criminal procedure that specifically in the procedural form (the order of criminal proceedings) can be applied to ensure effective criminal procedural activities, the correct application of the criminal procedure law so that only truly guilty persons will be brought to criminal liability (Sofyan, 2020). The task of law enforcement is the task of building human civilization where various interests face each other and interact. A law enforcer should have ethical awareness, which enables him to overcome the instinct for personal and group interests (Arief, 1998).

In some cases, legal rules may not be sufficient to determine the appropriate ethical action in a given context. In this regard, Hart explains that there are at least three problems of justification in terms of punishment when viewed from a moral perspective. First, regarding what compelling reasons exist to create and maintain a system of punishment as a general justification goal of punishment. Second, what principles or objectives should determine the allocation of punishment to individuals. Third, the appropriate amount of punishment should be determined (Hart, 1968). Hart went on to note that punishment should not tend to exacerbate crime, or even hinder the process of correcting offenders (Hart, 1968).

According to experts, the main purpose of law is to maintain social order and balance (Cahyadi & Manulang, 2007). Human needs and interests are expected to be met and protected when society achieves order (Ubaedillah & Rozak, 2015). However, when viewed from the purpose of criminal procedure law, criminal procedure law aims to seek material truth, or at least close to material truth, from a criminal case in an honest and precise manner in accordance with the provisions of criminal procedure law.

The aim is to identify the perpetrator, who can then be charged with breaking the law, and then request a hearing and decision from the court to determine whether a criminal offense has been proven and whether the suspect is culpable (Munib, 2018). Criminal procedure law seeks to find the actual material truth about an alleged criminal offense. (A. Hamzah, 2010). However, how can the material truth of an act be found if the alleged subject has never been examined or identified as a suspect, and has even passed away? This is clearly contrary to the purpose of criminal procedure law.

Based on this, regulations have a basis called principle. One of the principles related to this issue is the principle of geen start zonder schuld, which states that a person who commits a criminal offense must be held responsible (Hiariej, 2009). Therefore, if a person suspected of committing a criminal offense dies, the criminal case must be terminated because the heirs cannot inherit the criminal case, considering that they lost the legal subject who should be responsible for the criminal offense (Alfitra, 2014).

Related to this, the definition of criminal responsibility is the concept of legal responsibility where a person can be sanctioned in the case of unlawful actions (Alin, 2017). This responsibility is also known as toekenbaardheid or criminal responsibility (Tomalili, 2019). To be convicted, the perpetrator must fulfill the elements of the offense specified in the law (A. Hamzah, 2010). In the context of the capacity to be responsible, only individuals who have the capacity to be responsible can be held accountable for their actions (Ali, 2011). In this case, culpability can be interpreted as a mental state that justifies the application of criminal remedies. Thus, an individual can be held responsible for his or her actions as long as he or she is alive, and the responsibility is lost if the individual has died.

In the Criminal Code, there is no clear definition of responsibility. Therefore, Van Hamel explains that the ability to be responsible is a normal psychological state and maturity that includes three abilities, namely (Candra, 2013): 1) The ability to understand the consequences of one's own actions; 2) The ability to realize that his/her actions are not accepted by society; and 3) The ability to control his/her will over those actions. According to

Pompe, a person's criminal responsibility has the following elements (Syamsu, 2016): 1) The thinking ability of the actor which enables him to control his mind and determine his actions; 2) Therefore, he can understand the meaning and consequences of his actions; and 3) Therefore, he can control his will in accordance with his opinion.

Criminal responsibility relates to the punishment of the perpetrator after the occurrence of a criminal offense and the fulfillment of legal requirements (Rusianto, 2015). A person can be held criminally responsible if their actions are unlawful (and there is no excuse or rechtsvaardigingsgrond) from the point of view of the occurrence of the action (which is required). Only those who are capable of responsibility" can be held liable in the event of wrongdoing (Awaeh, 2017).

According to the elements of criminal liability, if a person or perpetrator of a criminal offense does not commit an unlawful act, they will not be prosecuted or punished criminally (Fadlian, 2020). Even if they commit a criminal offense, this does not guarantee that they will be convicted (Lubis, 2020). A person will be convicted of a criminal offense only if his guilt is proven legally and convincingly. According to Ruslan Saleh, there is no point in prosecuting the defendant for his actions if the actions themselves do not violate the law. Therefore, there must first be certainty of the existence of a criminal offense, and all elements of guilt must be associated with the criminal offense committed (Barlyan, 2020).

Thus, in the context of criminal proceedings involving the death of a person suspected or accused of a crime, the question of criminal responsibility in such situations is resolved by terminating the criminal case on non-rehabilitative grounds (Alfitra, 2014). This dispositive legal regime aims to effectively achieve the objectives of criminal legislation by following its main principles. Therefore, the dispositive legal regime and dispositive criminal law regulations imply that the parties involved in a criminal conflict have the freedom to determine their own model of legal relations (rights and obligations) or choose the alternatives provided by criminal law in their behavior, such as exercising their rights or withholding the exercise of those rights according to their own will without negative consequences (Polishchuk, 2014). Therefore, there is a need to develop criminal proceedings relating to the death of a person before a suspect or accused is established, with the aim of optimizing criminal proceedings, but must ensure that such proceedings do not place an excessive burden on the overall criminal procedure.

Based on the above-mentioned criteria, in the case of a person before a suspect is established, the criminal proceedings should be terminated because the subject has passed away. This is because criminal law is inherently personal. This conclusion is based on several aspects of criminal law (Asmarawati, 2014): 1) Personal elements related to the offender, such as fault, are part of the elements that determine whether an offender can be punished or not; and 2) Because criminal law and punishment are personal, if a person who commits a criminal offense dies, there is no longer an individual who can be prosecuted.

Furthermore, in relating these characteristics in criminal law to criminal cases where no person can be held criminally liable, it is important to review the need to involve interested parties in protecting the honor and dignity of deceased individuals, their rights, and legitimate interests. The resolution of procedural issues arising from these situations is important. Such law enforcement does not support uniformity of investigation and judicial practices, which raises questions about the overall application of the principle of legality and underscores the need to regulate procedural relationships in criminal proceedings (Sapardjaja, 2016), especially in cases where the suspect or defendant dies.

Therefore, the concept of the need for systemic rules of criminal procedure in the case of the death of a person before a suspect is established is of crucial importance. All issues that arise in criminal proceedings are ultimately related to ensuring human rights in an appropriate manner, so the primacy of human rights, freedom in legislative activity and law enforcement should be considered as additional factors that have a positive impact on ensuring and

protecting the dignity of a person in criminal proceedings (Simović & Karović, 2020). Finally, criminal responsibility attaches to the perpetrator, so the investigation or prosecution should be legally terminated if the perpetrator no longer exists due to death.

Determination of Suspects Against Deceased Persons in the Investigation Process

The investigation function includes two interconnected aspects: inquiry and investigation. The investigation function determines whether an event suspected of being a criminal offense can be investigated further by the investigator. The investigation process is necessary to gather evidence that will reveal the truth about a criminal offense. According to Article 10 paragraph (1) letter (a) of the Regulation of the Chief of the Indonesian National Police No. 6 of 2019 on the Management of Criminal Investigation, investigation is an integral part of investigation activities, and if no criminal offense is proven, the investigation is terminated. In accordance with the Criminal Procedure Code, investigations can only be carried out by authorized investigators. Therefore, the objectives of investigations conducted by the Indonesian National Police are as follows (Lubis, 2020): 1) gather information that can determine whether or not the event reported or complained about is a criminal offense; 2) gather more complete information to explain the case; and 3) plan the next steps of the investigation.

Furthermore, investigations and inquiries involve tracing individuals, objects, or locations suspected of having evidence related to a criminal offense (Marpaung, 2008). Therefore, investigation activities are a series of efforts made to prove the existence of a criminal offense. In this process, the investigator takes various steps to reveal the truth behind the alleged criminal act (Munib, 2018). Based on the efforts and authority previously described, investigators can take action to reveal the substance of the alleged criminal act.

In the event that the suspect dies during the investigation process, the investigator has the legal authority to stop the investigation. This is in accordance with the provisions of KUHAP Article 109 paragraph 2 which allows investigators to stop a series of investigation activities. Termination of investigation in a criminal case is carried out by the investigator if a case does not need to be continued to the next stage of law enforcement. The article emphasizes that the termination of investigation or prosecution of a suspect who has died is a reasonable action because in the process of investigation or prosecution no one can be found who can take responsibility for his actions. However, the provision does not explain how an investigation is terminated if a person who is examined as a reported party or witness in a criminal offense dies before being named as a suspect. The phrase null and void mentioned in Article 109 paragraph 2 of KUHAP does not provide a clear explanation regarding the termination of investigation when the suspect dies.

Previously, to fulfill the legal requirements stipulated in Article 109 Paragraph 2 of the Criminal Procedure Code, the investigation process in a case must be stopped by issuing a termination of investigation warrant in the following three situations (Atmasasmita, 2010): First, if there is nebis in idem or a double prohibition of prosecuting someone for the same act that has been tried and decided by an authorized court in Indonesia and has obtained permanent legal force. Secondly, if the suspect dies, the investigation must be stopped because the universally accepted legal principle in modern times states that the perpetrator is fully responsible for the criminal offense committed. Thirdly, if the criminal offense has exceeded a certain time limit so that no further prosecution can be conducted.

Knowing how a suspect is legally identified is crucial to assessing the legitimacy of charging a deceased person. There are two pieces of evidence used in the Indonesian Criminal Law system to identify a suspect (Barlyan, 2020). Evidence is defined as components that relate to the crime and serve as the basis for proof (Werluka, 2019). The Criminal Procedure Code regulates the types of evidence, including witness testimony, expert

testimony, clues, and testimony of the defendant, which can be used to prove the truth in a criminal prosecution.

In relation to this, the Criminal Procedure Code Article 1 point 14 states that a suspect is a person who, based on preliminary evidence, should be suspected of being a perpetrator of a criminal offense because of his actions or circumstances. Therefore, preliminary evidence is the basis for determining a suspect, although it is not clear what is meant by valid preliminary evidence (C. M. Hamzah, 2014). In addition, from the point of view of its purpose, preliminary evidence is a prerequisite for initiating an investigation and naming a person as a suspect in accordance with the rules outlined in the Criminal Procedure Code (KUHAP), which regulates the right to investigate (Lapasi, 2016).

Thus, after fulfilling the minimum requirement of 2 pieces of evidence in accordance with Article 184 of KUHAP, the determination of a suspect becomes valid based on the reasons mentioned above. The determination of a suspect becomes void if the minimum requirement of two pieces of evidence is not met. The determination of a suspect can be considered invalid if it is not supported by two valid preliminary evidence. However, because KUHAP does not explicitly state that a deceased person cannot be named as a suspect, a problem arises when using two valid pieces of evidence to name a suspect that still applies to those who have passed away.

In the context of this research, there are two cases that can explain the determination of suspects against people who have passed away, namely:

1. The case of naming six members of the FPI laskar as suspects.
   A case involving the naming of suspects in the deaths of six FPI laskar members occurred in 2020. On December 7, 2020, in the early morning, the incident occurred on the Jakarta-Cikampek Kilometer 50 toll road, involving police officers and the six FPI laskar members (Prodjo, 2021). According to rumors, the six were shot by police after they allegedly attacked the officer who was watching them. However, Bareskrim named the six as suspects in this case, and in fact, Bareskrim has made a number of mistakes. As mentioned earlier, an investigation process and a case title are required before naming someone as a suspect.
2. Accident case with a dead UI student.
   There was an accident involving a student from the University of Indonesia that caused the victim to die. After an investigation by the police, sufficient evidence was found to name a suspect in the case. However, there was no official information about the preliminary evidence so that the victim who died in the accident, Mohammad Hasya Attallah Syahputra, was named as a suspect (Sutrisna, 2023). However, shortly after the naming of the suspect, the Indonesian National Police conducted another case title which concluded to revoke the suspect status of Mohammad Hasya Attallah Syahputra with the process of the Order on Revocation of Suspect Status. In addition, the investigator in this case was reported to have violated existing procedures, resulting in an ethics hearing regarding the violation (Noviansah, 2023).

The naming of a suspect against a deceased person is a violation of the rules of criminal procedure, the concept of the Indonesian rule of law, and the purpose of the rule of law, as can be inferred from these two cases. After going through the investigation process, a suspect is usually identified and sent to the investigator for analysis or examination before being classified as a suspect (Lengkong, 2021). However, since the identification of suspects in these cases was done using the records of deceased people, there are irregularities in the process. Supposedly, investigators should conduct an investigation and find sufficient circumstantial evidence to name a suspect. This claim is supported by Constitutional Court Decision Number 21/PUU-XII/2014, dated April 28, 2015, which states that potential suspects (witnesses and whistleblowers) must first be investigated before becoming suspects.

The rules regarding the termination of an investigation in a criminal case are not clearly and explicitly regulated in the Criminal Procedure Code. However, there are other provisions described in Circular Letter Number: SE/7/VII/2018 on Termination of Investigation. In the circular, it is explained that if the facts and evidence collected by the investigator are insufficient in searching and finding events suspected of being a criminal offense, then this reason is sufficient to not continue the investigation into an investigation. The mechanism for terminating an investigation in the policy can be done by issuing an administration, such as a Letter of Order for Termination of Investigation, on the grounds that a criminal event is not found (Raseuki & Rizanizarli, 2018). However, the Circular Letter does not explain in detail the mechanism to be followed when a reported or suspected offender dies during the investigation stage.

In Article 77 of the Criminal Code, it is explained that if a defendant dies, the charges against him/her will disappear, as well as if a criminal suspect dies. However, this provision does not specifically regulate the investigation stage. Ideally, if a person suspected of committing a criminal offense dies, the charges will be dropped (Puspitasari, 2017), the investigation process must be stopped in accordance with the applicable law. However, the Criminal Procedure Code has not provided an adequate explanation regarding the validity of naming a suspect against a deceased person. Article 109 Paragraph 2 of the Criminal Procedure Code only reveals that the investigation should be stopped if the suspect dies, which means that the suspect should have been determined earlier in the investigation process. Therefore, to provide legal certainty for the reported or suspected person who has passed away, it is recommended that the lawmakers make rules governing the investigation mechanism when the reported or suspected guilty person has passed away. These rules can be contained in Police Regulations, Circular Letters, or even better if they are regulated in the Criminal Procedure Code.

CONCLUSION

In principle, the science of criminal procedure places a high value on criminal procedure to ensure that only the truly guilty are held criminally accountable. This involves the ethical awareness of law enforcers to overcome personal or group interests. In some cases, legal rules may not be sufficient to determine the appropriate ethical action in a given situation. Therefore, the law provides flexibility to law enforcers in the criminal justice system to take the most appropriate and accountable action. However, KUHAP has not provided an adequate explanation regarding the validity of determining a suspect against a deceased person. Article 109 Paragraph 2 of KUHAP only states that the investigation must be stopped if the suspect dies, which means that the suspect must have been named in the previous investigation process. Therefore, lawmakers should make rules governing the investigation mechanism when the reported or suspected guilty person dies.

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