

Legal Implications of The Application of The Principle of The Prejudiction Of Incurityin Criminal Action Investigation

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Abstract. The diversity of criminal acts in the form of violations and crimes in Indonesia, this has implications for the implementation of the main tasks and functions of the police, especially with regard to the authority of POLRI Investigators which are regulated by Law Number 2 of 2002 concerning the Indonesian National Police and Law Number 8 of 1981 concerning KUHAP. The research aims to investigate the legal implications of violating the application of the presumption of innocence in an investigation conducted by an investigator against the perpetrator of a crime. The research method carried out in a socio legal approach. The implementation of the criminal justice system can be interpreted as all stages of examining criminal cases to uncover criminal acts that occurred and take legal action against the perpetrators. In the concept of the criminal justice system, there are several law enforcement institutions that take part in carrying out the criminal justice process including the Police, Prosecutors, Courts and Corrections. Each institution is responsible and works according to its duties and obligations. Law enforcement is the process of making efforts to enforce or actually function legal norms as a guide for actors in traffic or legal relations in social and state life. Meanwhile, substantially the laws and regulations have regulated the authority in law enforcement, against parties who are made suspects or defendants related to the existence of a criminal act.

Keywords: Application of the Presumption of Guilt in Investigation

1 Introduction

The variety of criminal events commonly referred to as a crime, the longer the modus operandi continues to grow and fluctuate. These crimes occurred in big cities as well as in small towns. Given the increasing quality of its modus operandi, this implies a decrease in the time or number of completions of legal actions at the investigation stage and requires a more professional quality of performance so that in carrying out the duties of the Police investigators, they do not violate the principles of criminal and procedural law. The punishment must be obeyed.

Law Number 2 of 2002 concerning the Indonesian National Police gives authority to the National Police to carry out investigation and investigation tasks and explicitly regulates investigations and investigations. Law Number 2 of 2002 concerning the Republic of Indonesia Police still refers to the Criminal Procedure Code and other laws and regulations. Laws relating to investigations and investigations. It means that the authority of POLRI Investigators in

carrying out their duties as regulated by Law Number 2 of 2002 concerning the State Police and the Criminal Procedure Code.

An investigation is one of the main tasks of the National Police to carry out law enforcement based on the provisions of the letter (b) of Law Number 2 of 2002 concerning the State Police and concerning the National Police as investigators based on the provisions of Article 14 paragraph (1) letter (g) of the Law. Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia, that: The State Police of the Republic of Indonesia is tasked with conducting investigations and investigations of all criminal acts under the Criminal Procedure Code and other statutory regulations.

The implication of this provision is that; The police are obliged to carry out the authority given by Law and be careful in every action following the provisions of the Criminal Procedure Code. If POLRI investigators deviate from the Criminal Procedure Code, it will automatically result in legal consequences for the legal actions taken.

Based on the formulation of Article 1 point (2) of the Criminal Procedure Code, which is abbreviated as KUHAP in conjunction with Article 1 point (13) of Law Number 2 of 2002 concerning the Indonesian National Police, Investigation is a juridical activity carried out by investigators to seek and find the actual truth (making clear, clear about the crime that occurred). Thus, every investigative process is normatively guided by existing laws and regulations and must obey the principles to realize the principles of criminal law proceedings, including obeying the presumption of innocence. The problem is the legal implications of violating the application of the presumption of innocence in an investigation conducted by an investigator against the perpetrator of a crime.

2 Discussion

Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in its position as the ceremonial law, is a guideline for all law enforcers in law enforcement against parties suspected of committing a criminal act, which is then processed at every stage based on the criminal justice system. in Indonesia. The principles in criminal procedural law which serve as legal benchmarks are at the same time a guideline for law enforcement agencies based on the provisions of the Criminal Procedure Code in resolving the existence of a criminal act that must be resolved based on the principle of legal objectives, namely for the sake of justice.

The principles contained in the Criminal Procedure Code, which must be a guide in the implementation of the criminal justice system, consist of 9 principles, including:

- a. The principle of fast justice, simple, low cost
- b. The Presumption of Innocence
- c. The Principle of Opportunity
- d. Principles of Court Examination Open to the Public
- e. The principle of all people being treated equally before the law
- f. Judges carry out the principle of justice because their positions are permanent
- g. The principle of the suspect/accused is entitled to legal aid
- h. Principle of Accusator and Inquisitor (Accusator and Inquisitor)
- i. Principles of Direct and Oral Examination of Judges.

The implementation of the criminal justice system can be interpreted as the entire stage of the examination of a criminal case to reveal the criminal act that occurred. The implementation of the criminal justice system goes through several stages, each stage being accommodated by an institution with its structure and authority. In the criminal justice system, several law enforcement institutions carry out the criminal justice process, including the Police, Prosecutors,

Courts, and Corrections. Each institution is responsible and works according to its duties and obligations.

Law enforcement is the process of making efforts to enforce or function legal norms as a guide for actors in traffic or legal relations in social and state life. This includes the precautionary principle in carrying out legal proceedings against parties who are suspects and defendants of a crime and the right to legal protection and respect for their human rights as regulated by the Criminal Procedure Code, related to the implementation of the criminal justice system.

The protection of the rights of suspects in the criminal justice process is implemented in the Criminal Procedure Code regarding suspects and defendants contained in Article 1 Point 14, regarding suspects, namely: A suspect is a person who, because of his actions or circumstances, based on preliminary evidence, should be suspected as a criminal act. While point 15 regarding the defendant is stated: The defendant is a suspect who is prosecuted, examined, and tried in court. Furthermore, Article 52 of the Criminal Procedure Code states: "In examination at the investigation and court level, a suspect or defendant has the right to give information freely to the investigator or judge." In the article's explanation, the suspect cannot be forced or pressured. Therefore, it is mandatory to prevent coercion or pressure on a suspect or defendant.

A suspect/defendant is not necessarily guilty as reported, reported, or charged. Everyone is presumed innocent until a final judge's decision that he is guilty. It follows the principle of the presumption of innocence. Thus, the rights of the suspect or defendant deserve legal protection as regulated by laws and regulations until a defendant is decided by the court to be guilty or not.

From the whole series of criminal justice processes and based on the applicable laws and regulations, the Indonesian criminal justice process can be divided into 4 (four) stages, namely:

- a. Investigation and Investigation, this stage is the responsibility of the police;
- b. Prosecution, this stage is the responsibility of the Prosecutor's Office;
- c. Examination in trial and decision, this stage is the responsibility of the Court;
- d. Implementation of the Decision/Execution, this stage is the responsibility of the Correctional Center.

Based on these stages, the responsibility of the state police is to carry out the task of the first stage, namely the authority to carry out investigations and investigations, which are formulated in the Criminal Procedure Code and Law no. 2 of 2002 concerning the State Police. The main tasks and authorities that are the responsibility of the police for these principles are related to;

- a. The Principles of Fast, Simple, Low-Cost Justice.
- b. Principle of the Presumption of Innocence
- c. The principle of all people being treated equally before the law
- d. The principle of the suspect/accused is entitled to legal assistance

Based on these four principles, the principle of presumption of innocence, related to the authority of POLRI investigators in revealing the existence of a criminal act based on the Criminal Procedure Code, is the main thing to be a guide in carrying out the duties and authorities of POLRI investigators in disclosing the existence of a criminal act. The responsibility of POLRI investigators in applying the principle of presumption of innocence is also intended as a control so that unprofessional or unprofessional behavior occurs in carrying out their duties of authority during the investigation, investigation, and determination of someone who will be made a suspect.

The principal application of the presumption of innocence in criminal investigations related to the case of a murder crime in Sumarecon, Bekasi City, on 23 May 2018, at

approximately 22.00 GMT+7 that a robber was stabbed to death by his victim. A robber named Aric Saipulloh died at the hands of his victim in self-defense with the initials MIB (19). After the robbery victim won his defense, MIB reported the criminal incident on the same day. However, later, MIB was named a suspect by investigators and charged with Article 351 of the Criminal Code with a maximum penalty of seven years in prison."

Many people protested against the determination of the suspect because it was clearly in the context of defending themselves from the active threat of robbers who later failed to defeat MIB. According to Mahfud MD, forced defense is justified by the Criminal Code Article 49 Paragraph 1 and cannot be punished. Article 49 Paragraph 1 of the Criminal Code reads: Not being punished, whoever commits an act of forced defense for himself or others, honor, decency or property own property or other people because there is an attack or threat of attack that is very close at that time which is against the law.

Based on the chronology of the legal events, the author conducted a study regarding the duties of the POLRI Investigator's authority in applying the Presumption of Innocence principle and its legal implications. The investigator was reckless and inattentive and did not consider the principles of criminal law and the principles of criminal procedural law that must be obeyed that in order to comply with the principle, investigators are intended to be able to act carefully and professionally.

In that case, the investigator, obeying the principle of legality as regulated under Article 2 of the Criminal Code, stated that no action could be punished unless the law stated it. Then the principle of eliminating criminal sanctions regulated by the Criminal Code is based on the abolition of putative crimes, such as because of statutory orders, coercive power, and self-defense/force (Article 49 of the Criminal Code). Meanwhile, the principles regulated in the Criminal Procedure Code include the presumption of innocence.

In the case of MIB determination (Irfan), at that time, he was charged with Article 351 of the Criminal Code with a maximum penalty of seven years in prison. Moreover, when asking for information from a suspect without being accompanied by a legal assistant, as stated by the suspect. Before carrying out an investigative action, an investigation should be carried out by an investigating officer to collect preliminary evidence or sufficient evidence so that a follow-up investigation can be carried out. A result of hasty measures of action can lead to the attitude and behavior of police investigators, who tend to underestimate the fate of the person being investigated.

3 Conclusion

Starting from the principle of presumption of innocence, the POLRI, in carrying out its investigative functions and powers, should adhere to the special rules stipulated in the criminal procedure law, in this case, the Criminal Procedure Code. The legal implications of applying the principle of presumption of innocence, an investigator in making decisions regarding the alleged existence of a criminal act, then carrying out an investigation process to make clear the existence of a crime related to the existence of a criminal event as above, investigators understand, about not using the principle of presumption of innocence, instead may have legal implications for being held accountable to investigators.

Investigators in dealing with criminal acts: no one exists and places themselves above the law, and the law must be applied to anyone based on the principle of treatment and in a fair manner. Every enforcement and application of criminal law must comply with constitutional requirements and must comply with the law. The actions of the POLRI investigators, the Bekasi Police, who determined that MIB (Irfan) was charged with Article 351 of the Criminal Code

with a maximum penalty of seven years in prison, and without the assistance of legal counsel, this was a rash act, did not comply with the precautionary principle and ignored the principle of presumption. Not guilty of all the confessions of MIB (Irfan), who was named a suspect.

It can be concluded that the implications of the application of the Presumption of Innocence in criminal investigations, in the Case Study of the Murder Crime in Sumarecon - Bekasi City, will have legal implications for obeying the law, both those regulated under the Criminal Code and those regulated by the Criminal Procedure Code.

References

- [1] Achmad Harumi, Penyelenggaraan Sistem Peradilan Pidana Menurut KUHAP, Yogyakarta; Jakalpress, 2016
- [2] Buchari Said, Hukum Acara Pidana, Bandung; Griya Ganesha, 2015
- [3] Ilham Suwito, Penerapan KUHAP Dalam Penyidikan, Jakarta; Intermasa, 2017
- [4] Muchlis Humaidi (2017), Sistem Peradilan Pidana di Indonesia, Jakarta; Pamator Press, 2017
- [5] Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia
- [6] KUHAP
- [7] KUHP