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TEMPORARY DETENTION IN INVESTIGATING CRIMINAL CASES AND THEIR LEGAL CONSEQUENCES

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ABSTRACT

Background: In the provisions of Article 28(A) of the 1945 Constitution it is stated that "everyone has the right to live and has the right to maintain his life and life. "This guarantee is not only limited to the order of discourse, the realization of the guarantee can be seen in the Criminal Code and in the provisions of Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP) also aims to find and obtain material truth or at least approach the complete material truth.
Aim: To uphold the rule of law, thus realizing a national legal system that serves the national interest based on justice and truth.
Method: This research is normative legal research, so it requires primary legal material sourced from primary sources, namely legislation, official records or treatises in the making of legislation, and judge's rulings related to the formulation of the problem
Findings: The temporary detention in the examination of criminal cases based on the provisions of Article 21 of the Kuhap is appropriately carried out by the relevant parties, but there are still many weaknesses faced. Although the purpose of temporary detention is to detain criminals temporarily, for learning and law enforcement in the community, to realize legal certainty in the midst of society, detention is also only the result of a choice over the purpose of law enforcement that is temporarily taken.

KEYWORDS
temporary detention; criminal cases; legal consequences

INTRODUCTION

In the provisions of Article 28 (A) of the 1945 Constitution, it is stated that "everyone has the right to live and has the right to maintain his life and life" (Indonesia, 1945). This guarantee is not just limited to the order of discourse. The realization of such guarantees can be seen in the Criminal Code and in the provisions of Law No. 8 of 1981 concerning the Criminal Procedure Law (KUHAP) which also aims to seek and obtain material truths or at least approach complete material truth. A criminal case by applying the provisions of the criminal event law honestly and appropriately with the aim of finding out who the perpetrator can be charged with violation of the law (Nugroho, 2017).

The provisions of Article 27 of the 1945 Constitution state that is a state of law, in a country based on law, then every person or member of society is obliged to comply with the norms applicable in society. Based on the development of the law as mentioned above, the national purpose of development is to uphold the rule of law, thus realizing a national legal system that serves the national interest based on justice and truth.

The detention of a criminal offender is stipulated in the provisions of Article 24 paragraph (4) of the KUHAP, which basically contains provisions on detention as well as the rights and obligations of those involved in criminal proceedings. In connection with the above, Romli

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Atmasasmita said that the enactment of this new KUHAP, means that it has caused fundamental changes both conceptually and implementable against or the way of solving criminal cases in Indonesia (Atmasasmita, 1993).

KUHAP as a criminal event law that has been fully enforced in Indonesia has entered a relatively long time, but in that period there are often procedural errors in the implementation of kuhap as a law formal derived from the above, so the enactment of KUHAP has many shortcomings, especially in relation to violations of human rights. Human milk is a lot of procedural errors, especially in terms of temporary detention.

Article 7 of the Principal Law of Justice No. 48 of 2009 concerning the Power of Justice, contains the principle that "no one may also be subject to arrest, detonation and/or confiscation, except by written order by a lawful power in matters and in the manners provided for in law".

Regarding the time limit of detention owned by law enforcement agencies such as investigators in the Police as mandated by Article 24 paragraph (1) and (2) of the KUHAP, namely:

1) The restraining order granted by the investigator as referred to in Article 20, shall only be valid for a maximum of twenty days; and
2) Consider the time as stated in paragraph (1) if necessary for the purposes of unfinished examination, which may be extended by the competent public prosecutor for a maximum of forty days.

The above provisions explain the deadline for the period of detention for the entire examination of suspects by investigators which is 60 days and the authority to extend the detention period is the public prosecutor. However, if the examination passes the maximum period specified, the investigator must remove the Suspect from custody "for the sake of the law" or by itself the detention of the Suspect is null and void according to the law.

METHOD

This research is normative legal research, so it requires primary legal material sourced from primary sources, namely legislation, official records or treatises in the making of legislation, and judge's rulings related to the formulation of the problem. In addition to primary legal materials, secondary legal materials are also needed to be sourced from secondary sources; all publications of the law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on the Marzuki court ruling (2005), namely books on legal literature and other legal writings related to the formulation of problems. Legal research is a comprehensive analytical review of primary legal materials and secondary legal materials, and then the results of the study are presented in a complete and systematic manner.

RESULTS AND DISCUSSION

Provisions of detention or continued detention are carried out against a suspect or defendant who is suspected of violently committing a criminal offense based on sufficient evidence, in the event of circumstances that raise concerns that the suspect or defendant will flee, damage, or eliminate evidence and or repeat the criminal act (Article 21 paragraph (1) of the KUHAP).

Detention can be done if sufficient preliminary evidence can be interpreted that law enforcement officials already have at least 2 pieces of evidence that support the detention of suspects or defendants.

Detention can only be imposed against suspects or defendants who commit criminal acts and or probation or assistance in such crimes in the case (Prinst, 2002):

1) Criminal offenses are threatened with imprisonment of five years or more, namely criminal offenses as referred to in Article 282 paragraph (3) on violations of decency or pornography as a search and Article 296 on procrastination or prostitution;
2) Article 335 paragraph (1), which is forcing others with character, other acts, unpleasant acts, threats of violence, threats of other acts, threats of non-excessive deeds;
3) Article 353 paragraph (1), i.e. pre-planned persecution;
4) Article 372 on embezzlement;
5) Article 378 on fraud;
6) Article 379a on fraud in terms of buying and selling;
7) Article 453 on stopping work;
8) Article 454 on desertion (Betrayal or deflection against the enemy);
9) Article 455 concerning the desertion (Ordinary) of the crew;
10) Article 459 concerning the passengers of the ship that attacked the Captain;
11) Article 480 on detention; and
12) Article 506 on pimping.

Table 1. Procedures for Continued Detention and Detention

No	Detention/Extension by	Duration	Legal Basis
1	Investigators	20 Days	Art. 24 (1) KUHAP
	Extended JPU	40 Days	Art. 24 (2) KUHAP
2	Public Prosecutor	20 Days	Art. 25 (1) KUHAP
	Extended by Chairman of District Court	30 Days	Art. 25 (2) KUHAP
3	District Court Judge	30 Days	Art. 26 (1) KUHAP
	Extended by Chairman District Court	60 Days	Art. 26 (2) KUHAP
4	High Court Judge	30 Days	Art. 27 (1) KUHAP
	Extended by Chairman of High Court	60 Days	Art. 27 (2) KUHAP
5	Supreme Court Justices	50 Days	Art. 28 (1) KUHAP
	Extended by Chairman of Supreme Court	60 Days	Art. 28 (2) KUHAP
	Sum	400 Days	

Based on the results of research conducted it can be known that temporary detention and continued detention are generally often done in cases of theft, embezzlement, and fraud.

The detention procedure that has been carried out by the prosecutor's office so far has been in accordance with the procedures as mandated by law (Rompas, 2013)." The problem that arises in its implementation is, for example, the prisoner of the prosecutor's deposit that is in the Penitentiary is sometimes not proven legally and convinced to commit a criminal act as charged against him so that by the court he is declared free, but the detention that has been undertaken is improper detention. Other evidence is insufficient, witnesses also do not exist so

that the emergence of errors against the person arrested means that there are detained while it has expired but the process for trial has also not begun or there are prisoners who are still being held at the investigation level have long been detained but at the time of the dismissal of the case along with the suspect the date has changed so that it is in accordance with the provisions of the applicable law. Such patterns of detention need to be changed because they are not in accordance with the provisions of the regulations (KUHAP), although with the reason to avoid criminals or other criminals who will eliminate evidence or escape then temporary detention before the existence of permanent legal force then the detention is carried out.

From the description mentioned above, it can be understood that the purpose of temporary detention is to avoid criminals or perpetrators of other criminal acts also escape but must be considered about the temporary detention period in accordance with the KUHAP, to avoid detention that is not in place means that there is not enough evidence of continued detention.

Basically, detention is a reduction or take away the freedom or independence of suspects or defendants, with placement in a certain place for the purposes of investigation, prosecution, or examination of judges (Panggey, 2018). Suspects can be detained if there is a strong suspicion based on sufficient evidence that someone has committed a criminal offense, this type of detention can be detention in the state detention house, house arrest, and city detention. House arrest is carried out in the residence or residence of the suspect or defendant by conducting supervision of him to avoid anything that can cause difficulties in the investigation, prosecution, or examination at a court hearing (Pinontoan, 2013).

City detention is carried out in the city of residence or residence of the suspect or defendant, with an obligation for the suspect or defendant to report themselves at the specified time (Sugeng, 2020). The period of arrest and/or detention is deducted entirely from the sentence imposed and for city detention, the reduction is one-fifth of the amount of detention time while for house detention one-third of the amount of detention time (Pinontoan, 2013). A follow-up restraining order is carried out against a suspect or defendant who is suspected of committing a criminal offense based on sufficient evidence, in the event of circumstances that raise concerns that the suspect or defendant will flee, tamper or destroy evidence and/or repeat the criminal act (Nusi, 2016).

Further detention or detention is carried out by investigators or public prosecutors against suspects or defendants by providing a warrant for detention or determination of a judge that lists the identity of the suspect or defendant and mentions the reason for the detention and a brief description of the alleged or charged crime and where he is being held (Simatupang, 2021). The grant of a warrant for further detention or detention or determination of the judge was given to his family (Tawaris, 2016). Investigators or public prosecutors or judges are authorized to transfer one type of detention to another type of detention and the transfer of the type of detention is expressed separately by a warrant from the investigator or public prosecutor or the determination of a judge whose gush is given to the suspect or defendant and his family and to the interested agency. The restraining order granted by, only valid for a maximum of twenty days (Simangunsong, Kalsum, & Akli, 2021). The period of detention, if necessary for the purposes of unfinished examination, can be extended by the competent public prosecutor for a maximum of forty days (Simangunsong et al., 2021). However, it is possible to remove the suspect from custody before the end of the detention period, if the interests of the

examination have been fulfilled. After that sixty days, investigators must have removed the suspect from custody for the sake of the law (Makaminan, 2017).

Excluded from the above period of detention, for the purposes of examination, the detention of suspects or defendants may be extended for appropriate and unavoidable reasons because:

1) The suspect or defendant suffers from severe physical or mental impairment, as evidenced by a doctor's certificate; or
2) Cases under investigation are punishable by imprisonment of nine years or more.

An extension is granted for a maximum of thirty days and in the event that such detention is still required, it may be extended again for a maximum of thirty days. The extension of the detention on the basis of requests and examination reports in the level of investigation is provided by the Chairman of the District Court and the use of the authority of the extension of the detention is carried out gradually and with full responsibility. However, there is no possibility of the release of suspects or defendants from custody before the end of the detention period, if the examination is met.

If such a period of detention is invalid, the suspect or defendant has the right to seek damages. At the request of the suspect or the accused, the investigator or public prosecutor or judge, in accordance with their respective authorities, may hold a suspension of detention with or without bail of the person's money or bail, under the specified conditions and because of his position the investigator or public prosecutor or judge may at any time revoke the suspension of detention in the event that the suspect or defendant violates the predefined conditions. The restraining order granted by the public prosecutor is only valid for a maximum of twenty days. The period of detention, if necessary for the purposes of unfinished examination, may be extended by the competent chief justice of the district court for a maximum of thirty days. However, there is no possibility of the release of suspects from custody before the end of the detention period, if the interests of the examination have been fulfilled. After that fifty days, the public prosecutor must have taken the suspect out of custody for the sake of the law.

If such a period of detention is invalid, the suspect or defendant has the right to seek damages at the request of the suspect or defendant, the investigator or public prosecutor or judge, in accordance with their respective authorities, may hold a suspension of detention with or without bail of money or bail of persons, under the specified conditions and because of the position of the investigator or public prosecutor or judge at any time can revoke the suspension of detention with or without bail of money or bail of persons, based on the specified conditions and because of the position of the investigator or public prosecutor or judge at any time can revoke the suspension detention in case the suspect or defendant violates the conditions specified.

The most basic temporary detention procedures according to the rule of law in temporary detention against perpetrators of criminal acts are as follows: The detention procedure is stipulated in the provisions of Articles 20, 24, 31, 122, and 124 of the KUHAP. While those who are entitled to detention are Investigators, District Court Judges, High Court Judges, and the Supreme Court.

While the authorities to issue a warrant of detention or follow-up are:

1) For the purposes of investigation, by investigators and auxiliary investigators on the orders of investigators;

2) For the benefit of prosecution, by the public prosecutor;
3) For the purposes of inspection:
    a) The court is heard, by the judge with its determination;
    b) The Level of Appeal, by a High Court Judge; and
    c) Cassation Rate, by Supreme Court Justices.

Conditions of detention can be made against suspects or defendants who:

a) Suspected of committing a criminal offense;
b) Based on sufficient evidence; and
c) In the event of an existence that raises concerns that the suspect or defendant will flee, damage evidence, and commit criminal acts (Stipulated in the provisions of Article 21 paragraph (1) of the KUHAP).

The types of detention can be distinguished as follows:

1) State detention is detention carried out in a state detention house;
2) Home detention is the detention carried out in the residence or residence of the suspect by conducting supervision; and
3) City detention is detention carried out in the city of residence or the residence of the accused with the obligation to report themselves at the specified time.

CONCLUSION

From the description above, it can be taken some conclusions such as the temporary detention procedure in the examination of criminal cases based on the provisions of Article 21 of the KUHAP is appropriately carried out by the relevant parties, but there are still many weaknesses faced. Although the purpose of temporary detention is to hold criminals temporarily, for learning and law enforcement in the community, to realize legal certainty in the midst of society, detention is also only the result of a choice over the purpose of law enforcement that is temporarily taken. However, it is not permissible to comply with the procedure as contained in the KUHAP.

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