

Obstacles for Law Enforcement Officers Against the Suspect In the Criminal Justice Examination Process

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Abstract: The purpose of this study is to analyze the obstacles for law enforcement officers to suspects in the criminal justice examination process. This research is a prescriptive study, using primary data and secondary data collected through interviews and documentation. The data obtained were then analyzed qualitatively. The results showed that the obstacles of law enforcers in anticipating the reasons for the illness of suspects or defendants to avoid the judicial review process are the number of regulations related to the protection of the rights of suspects/defendants and the obligation for law enforcers to fulfill these rights, so that it becomes an opportunity to postpone the examination, coordination problems between law enforcement concerning the health condition of the suspect/defendant, the habit of avoiding the examination process with the intention of delaying, the community's perception that the reasons for illness can eliminate criminal liability, and the negative assumption about law enforcement and the lack of medical resources that can examine objectively the health conditions of the suspect or defendant in the criminal justice process.

Keywords: criminal justice, examinations, law enforcement officers, obstacles.

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I. INTRODUCTION

The law is a norm/rule that contains rules and provisions that guarantee the rights and obligations of individuals and communities. With the existence of the law intended to create harmony in living in a society, nation, and state. Maintaining harmony in life in society requires a variety of rules to guide the relationship between personal interests and interests in society. However, not a few relationships that lead to conflict, in this case, related to or within the scope of criminal law. Therefore we need a criminal procedure law which is a channel to resolve interests in the event of an act against the law regulated in criminal law.¹The implementation of criminal procedure law is a mechanism for the operation of criminal law enforcement agencies starting from the process of investigation and investigation, arrest, detention, prosecution until the examination in a court session, or in other words, the work of the police, prosecutors, judges, and prison officials, which also means the process or work criminal procedure law.

Every state lossca used by perpetrators of corruption, both those that are still in the country and those already outside the country must be returned, through the mechanism of international cooperation which is an absolute thing to do.² Law enforcement officers in the criminal justice system (Police, Prosecutors, and Judges), encounter difficulties when dealing with suspects or defendants who have reason to be ill (especially in cases of criminal acts of corruption). Especially this happens when called to fulfill the criminal justice process. Suspect or Defendant through his attorney only submit a letter in the form of a doctor's certificate explaining the suspect or defendant because of illness, then need to rest or need to be hospitalized in the hospital.

The state of illness can be considered by investigators to make decisions. Indeed, there are no fixed standards as to what makes the suspect remain detained or not. But humanitarian standards that can be used as glasses to assess the types of diseases that prevent the detention of doctor's information are not legal evidence that must be followed by investigators. He explained, the information that was delivered by the doctor regarding the suspect's condition only became another consideration for investigators to decide whether the suspect would be arrested and detained or not.

The Due Process Model is one model that supports the criminal justice system because it separates the authority of various bodies in the criminal justice system.³Pursuant to Article 113 of Law of the Republic of Indonesia Number 8 Year 1981 concerning the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*) it is regulated regarding a suspect who cannot attend to fulfil the criminal justice process for reasons of illness which he showed with a doctor's certificate. On the other hand, the investigator based on Article 120 of the Criminal Procedure Code has the authority to request opinions from an expert. The opinion of the expert appointed by the investigator is used to break the reason for the pain proposed by the suspect or

defendant. Whereas based on Article 180 of the Criminal Procedure Code the judge is authorized to ask for expert opinion to clarify the issue. In this case, the doctor's certificate in the criminal justice process has a very important and decisive role.

Medical certificate can raise legal problems if the patient who wants to make the letter is a criminal offender or witness a criminal event. The public considers that asking a doctor to make a sick certificate for reasons of absence is often considered normal or reasonable to do, a private doctor can easily issue the certificate because of its proximity to the patient.

From the issuance of the defendant's illness and illness condition, the defendant who was declared ill will be deemed unfit to be tried or unfit to stand trial and then law enforcement will conduct a dispute in the court of law regarding the delivery system contained in Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung/SEMA*) No. 1 Year 1989 concerning Delivery. In the Indonesian Criminal Procedure Code, there is no clear regulation regarding health or illness that can be heard when dealing with the judicial process.

Only at a certain level, these sanctions are no longer balanced, so it needs more stringent and heavier sanctions that are accompanied by criminal sanctions.⁴ In medical science, justice is only an explanation of forensic evidence, a crime against life and body. Whereas in the stages and procedures of a criminal case trial contained in the Criminal Procedure Code the law enforcers always begin by examining the defendant's identity and then inquire about the condition of the defendant in good health. Based on the explanation, the problem that will be discussed in this paper is what obstacles are experienced by law enforcers in anticipating the reasons for the illness of the suspect or defendant to avoid the criminal justice examination process?

II. RESEARCH METHODS

This type of research used in this research is prescriptive research,⁵ using primary data and secondary data collected through interviews and documentation. The data obtained were then analyzed qualitatively.

III. RESULTS AND DISCUSSION

Obstacles are Experienced by Law Enforcers in Anticipating the Reasons for the Illness of the Suspect or Defendant to Avoid the Criminal Justice Examination Process

The criminal justice system is also referred to as the "criminal justice system" which starts from the process of arrest, detention, prosecution, and examination before the court, and ends with the implementation of crime in a prison.⁶ According to Soebekti,⁷ what is meant by the system is an order or order, a whole consisting of parts related to one another, arranged through a plan or pattern, the result of a thought to achieve the goal. The system moves based on the goals that already exist first so that all actions are based on the goals that have been made. Barda Nawawi Arief⁸ defines the criminal justice system as a process of criminal law enforcement, therefore it is closely related to criminal law itself, both substantive criminal law and criminal procedure. Basically, criminal law is the enforcement of criminal law in *abstracto* which will be translated into law enforcement in *concreto*.

In addition to the law, justice is the king of all movements both directly and indirectly, namely the relationship between the people and the Indonesian government.⁹ Law enforcement is the process of making efforts to be able to erect or function of legal norms that are in force and have been regulated as guidelines for behavior in traffic or legal relations in human, community and state life. For this reason, the provisions that regulate them will not stop in the sense that the rules do not move or die, but they will stand upright and walk forward as determined by official and recognized state institutions governing them. Broadly, the process of law enforcement involves all legal subjects in every legal relationship. Whoever runs the normative rules or does or does not do something by basing themselves on the norms of the rule of law, then that means that they have run or enforced the rule of law.

Meanwhile, narrowly from the aspect of the subject, law enforcement can be interpreted as an effort of certain law enforcement apparatuses to be able to guarantee and ensure that the rule of law runs as stipulated by its rules. This is to ensure the rule of law; law enforcement officials are allowed to use forceful measures. From the perspective of the object, namely from the legal aspect of law enforcement that is the understanding also includes broad and narrow meanings. In a broad sense, then law enforcement also includes the values of justice contained in the sound of formal rules or values of justice that live in society.

Different things in a narrow sense, law enforcement is limited to the formal and written enforcement of regulations and issued by the authorized institution to issue the regulation. But in the field of law enforcement is not as beautiful as described by the legal theories and regulations that have governed it. There is more than one problem of law enforcement and to be able to discuss law enforcement more deeply and the problem can be clearer, then by considering what factors can influence law enforcement.

These factors in law enforcement can be obstacles but can also support law enforcement officials in enforcing the law. In law enforcement, there are at least five factors, namely the substance of the law, legal structure, legal culture, factors, and the community.

1. Legal Substance

Legislation as a legal product becomes a very important tool in the implementation of state life.¹⁰ Judges are not just mouthpieces for legislators, but are autonomous, creating, delving into social processes.¹¹ The legal substance constraint in the discussion of this writing refers to the applicable regulations related to the medical certificate as a reason for the illness of a suspect or defendant to avoid examination in the criminal justice process, especially the provisions stipulated in the Criminal Procedure Code and other regulations. Andi Hamzah¹² said that "With the creation of the Criminal Procedure Code, for the first time in Indonesia a complete codification and unification was held in the sense of covering the entire criminal process from the beginning (seeking the truth) to appeal in the Supreme Court even to the point of reviewing (*herzeining*)".

Based on an interview delivered by Ridwan,¹³ as the Functional Prosecutor at the Takalar District Attorney explained that "in the Criminal Procedure Code it is clearly stated that the suspect/defendant has the right not to be present by the doctor's statement but in the case of reasoning this pain becomes an obstacle to the law enforcement officers (*Aparat Penegak Hukum*/APH) in terms of settlement case, considering the volume of cases facing the APH which increases every year, it will disrupt one another's cases".

During the detention, the suspect has rights that can be used, among others, written in Article 58 of the Criminal Procedure Code which states that the defendant who is being held has the right to contact a doctor, Article 57 of the Criminal Procedure Code states that the suspect is free to contact his legal counsel. Article 71 of the Criminal Procedure Code explains that the public prosecutor is permitted to monitor the defendant and his legal advisers from a distance without knowing or hearing the contents of the conversation. Limiting the space between the defendant and legal counsel is prohibited by the public prosecutor until the case is transferred to the court.¹³

The many regulations regarding the protection of the rights of the accused and the obligations of judges and prosecutors fulfill these rights, making the regulation an opportunity to draw up plans to manipulate the situation so that it can delay the examination process or get the lightest sentence even free. The plan will not be considered in violation of regulations because it is based on the rights of the accused and according to the mechanism permitted by law. Here the understanding of prosecutors and judges in providing the rights of the defendant during the hearing process stipulated in the Criminal Procedure Code must be given but seen the basis or the reason the defendant uses his rights. Fulfillment of the rights of the accused which is wrong or not in accordance with reality will result in legal certainty for the defendant and law enforcement cannot be achieved.

In the investigation process by the prosecutor and the trial in the court by the judge the defendant does not always have to be detained or can also request the suspension of detention from the public prosecutor or judge, which can be made by himself or by his attorney. So that the defendant's detention status is still valid and applies only the implementation of detention is stopped with the defendant out of custody.

If the defendant is ill and cannot undergo detention, he can request the suspension of detention from the judge or prosecutor who checks by showing the doctor's letter as the reason for the request for the suspension of detention. Conversely, if a defendant who has been detained for detention then becomes ill in the period of detention seeing Article 22 of the Criminal Procedure Code, then during the illness will be counted as detention resulting in a reduction in a sentence which will later be handed down by the judge. Although the verdict must contain punishment according to Article 197 paragraph (1) letter (k) "order that the defendant is detained or remain in detention or released". But in the Supreme Court Circular Letter (SEMA) Number 8 Year 1985 Concerning Orders for Defendants to be Detained According to Article 197 Paragraph (1) Letter K of the Criminal Procedure Code explains "if the detention authority possessed by a District Court/high court has been used up, then the State/High Court Judge cannot order the defendant to be detained, in his decision".

The contents of the verdict in the SEMA benefit the defendant and legal counsel to seek the mildest sentence even free. If the evidence has been secured by the investigator and the request for the detention postponement is approved by the prosecutor, then the defendant is ill during the suspension period until the detention period expires when the judge's verdict is in accordance with the time the defendant is held then the defendant will be released or reduced by the defendant's illness during the detention suspension. This action is also not a violation because every process is in accordance with the laws and regulations, this event occurs overlapping regulations which increasingly provide space for the defendant to avoid even free from the judicial process rather than aggravating the sentence.

2. Legal Structure

There is a relationship correlation between the substance arrangement of the legal substance of the criminal law material and formal criminal law with the effort to the protection of the victim of crime.¹⁵ To determine whether or not effective written legal performance is a law enforcement apparatus. In this connection, the desired apparatus is reliable so that the apparatus can do their job properly. Reliability in relation here includes professional skills and a good mentality.

Based on an interview delivered by Ridwan,¹⁶ as the Functional Prosecutor at the Takalar District Attorney's Office explained that "at the investigation level investigators who postpone the examination of suspects will ask for more time from the Public Prosecutor and in the case of the trial of the defendant who is in the examination process with a doctor's certificate as a the reason for the illness that has delayed the trial will make the judge issue a decision for the next trial".

3. Legal Culture

Legal culture basically includes the values that underlie the applicable law, so which values are abstract conceptions of what is considered good and what is considered bad. These values are usually pairing of values that reflect two extreme conditions that must be harmonized. Law enforcement must also be able to understand the problems of cultural elements that can affect the rule of law.

Based on an interview delivered by Ridwan,¹⁷ as the Functional Prosecutor at the Takalar District Attorney explained that "the legal culture or legal culture that develops in the examination process with the presence of a doctor's certificate as the reason for the illness of the suspect/defendant is the loss of criminal responsibility towards the suspect or defendant due to lack of understanding against suspects/defendants and not accompanied by legal counsel in the judicial process".

In connection with the problem of legal culture, there is the custom of the community to look for various ways to avoid the examination process in order to avoid the judicial process or even to make the judicial process delayed with a specific purpose or objective. In addition, there is an assumption that if experiencing an illness that is explained by a doctor's certificate can eliminate or eliminate criminal liability for a criminal offense, the assumption is certainly very wrong because a sick certificate is not a cause for the elimination of criminal liability, this is due to a lack of public understanding especially the suspect or defendant, one of them is because in undergoing the judicial process is not accompanied by an advocate as a legal advisor.

4. Facility

Based on an interview delivered by Ridwan,¹⁸ as the Functional Prosecutor at the Takalar District Attorney explained that "the facility factor which is an obstacle namely detention status whether the detention or city detention is not carried out by the APH at all levels of the judicial process that makes there loopholes hindering the trial process, but it cannot be denied that the status of detention was carried out at the consideration of the APH itself".

In relation to the detention status, the detention of both detainees and city prisoners by law enforcement officials at all levels of investigation, prosecution and trial in court results in delays in the judicial process which should be conducted according to the principle of fast, simple and low cost. In this case, the ability of law enforcement officials is needed to be able to be truly objective and thorough to assess whether someone needs to detain a suspect or defendant based on various considerations such as medical records or the existence of a second opinion from a comparison doctor.

5. Community

Based on an interview delivered by Ridwan,¹⁹ as the Functional Prosecutor at the Takalar District Attorney explained that "the community responds to the intervention of the APH to the suspect/defendant who considers the suspect/defendant to be unfit for the criminal justice process, this is due to the lack of understanding law from the public regarding the judicial process, this also resulted in the emergence of a negative stigma APH among certain communities".

There is a mistaken assumption in the community that law enforcement officials intervene or intervene in the interests of suspects or defendants by striving that the suspect or defendant be declared ill so that it is not feasible to conduct a criminal justice process against him, this is due to the lack of community legal understanding regarding the criminal justice process. This needs to be done with good socialization or communication of the law to the community so that people's misperceptions or assumptions can be corrected, because if not immediately rectified it will continue to cause a negative stigma of law enforcement officials in certain communities.

The existence of a medical certificate as a reason for sick suspect or defendant to avoid the examination will be a problem as described previously because it will hamper the criminal justice process with delays that actually result in the failure to fulfill the principle of quick, simple and low cost and the principle of legal certainty.

IV. CONCLUSION

Barriers to law enforcement in anticipating the reasons for the illness of suspects or defendants to avoid the judicial inspection process, namely the number of regulations related to the protection of the rights of suspects/defendants and the obligation for law enforcers to fulfill these rights so that it becomes an opportunity

to postpone the examination, coordination problems between law enforcers regarding the health conditions of the suspect/defendant, the habit of avoiding the examination process with the intention of delaying, the community's perception that the reasons for illness can eliminate criminal liability and negative assumptions about law enforcement and the lack of medical resources that can examine objectively the health conditions of suspects or defendants in the criminal justice process.

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