Reconstruction of Subjective Conditions for Detention in the Criminal Procedure Code Based on Due Process of Law

Hendro Gunawan, Mhd Azhali Siregar, Henry Aspan

Abstract

Detention, as a form of coercive action in criminal procedure law, has direct consequences for the restriction of human rights, particularly the right to personal liberty. Therefore, its implementation must be strictly implemented based on the principles of legal certainty and due process of law. However, the regulation of subjective conditions for detention in the Criminal Procedure Code, particularly regarding the "concern" that the suspect will flee, destroy evidence, or repeat the crime, remains abstract and lacks measurable indicators. This condition opens up wide discretion for investigators and has the potential to create legal uncertainty and abuse of authority. This study aims to analyze the problematic regulation of subjective conditions for detention from the perspective of legal certainty and due process of law, and to formulate an ideal normative reconstruction to guarantee the protection of suspects' rights. The research method used is normative legal research with a statutory and conceptual approach, supported by an analysis of pretrial decisions and law enforcement practices in the North Sumatra Regional Police. The results show that the subjective conditions for detention in the Criminal Procedure Code do not have clear parameters, are multi-interpretable, and tend to place investigators' authority dominantly without an effective control mechanism. This has resulted in weak protection of suspects' rights and suboptimal implementation of the principle of due process of law. Therefore, norm reconstruction is needed through the formulation of objective indicators, limitations on investigators' discretion, and strengthening of judicial oversight mechanisms through pretrial proceedings. This research is expected to contribute to the development of criminal procedure law in Indonesia, particularly in realizing a more measurable, accountable, and human rightsoriented detention system.

Keywords : Detention; Criminal Procedure Code; Subjective Requirements; Due Process of Law; Human Rights.

Hendro Gunawan[1]
[1]Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: hendrogunawan1992@gmail.com[1]

Mhd Azhali Siregar[2], Henry Aspan[3]
[2,3]Law, Universitas Pembangunan Panca Budi, Indonesia e-mail:
azhalisiregar@dosen.pancabudi.ac.id[2], henryaspan@yahoo.com[3]
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https://proceeding.pancabudi.ac.id/index.php/ICIE/index

Introduction

Detention in the criminal justice system is a form of coercive action that has direct consequences for the restriction of human rights, particularly the right to personal liberty. Therefore, every act of detention must be carried out carefully, proportionally, and based on clear legal provisions to avoid violating individual rights. In a state governed by the rule of law, restrictions on a person's liberty must not only be based on law but also on the principles of justice and legitimate procedures, thereby preventing arbitrary action by law enforcement officials.[1]

The Criminal Procedure Code, the primary foundation of Indonesia's criminal justice system, stipulates that detention is a matter of authority for law enforcement officers, which can be used during investigations, prosecutions, and court hearings. The Criminal Procedure Code was created in the spirit of legal reform to replace the repressive colonial system, with the aim of providing stronger protection for the rights of suspects and defendants. However, developments in legal practice indicate that the provisions of the Criminal Procedure Code still have various weaknesses, particularly regarding the subjective conditions for detention.

In its provisions, the Criminal Procedure Code distinguishes between objective and subjective detention requirements. Objective requirements relate to the type of crime and the potential penalty, while subjective requirements relate to the fear that the suspect will flee, destroy evidence, or reoffend. Although both requirements must be met cumulatively, in practice, subjective requirements often dominate the determination of detention, leaving investigators with ample discretion.[2]

The fundamental problem with subjective detention requirements lies in the use of the phrase "concern," which lacks clear and measurable parameters. This ambiguity renders the subjective requirements abstract and open to interpretation, making their application highly dependent on the investigator's subjective judgment. Consequently, standards for applying detention are inconsistent and have the potential to create legal uncertainty and injustice for suspects.

From the perspective of legal certainty theory, a legal norm must be clear, consistent, and predictable in its application. When legal norms are not clearly formulated, they open up room for differing interpretations, which can ultimately lead to disparities in law enforcement. In the context of detention, unclear subjective requirements have the potential to lead to unequal treatment of suspects in similar cases, thus contradicting the principle of equality before the law.

Furthermore, the issue of subjective conditions for detention is closely related to the principle of due process of law, a fundamental principle in a modern state governed by the rule of law. This principle emphasizes that all law enforcement actions must be conducted based on fair, transparent procedures that respect human rights. In the context of detention, due process of law requires a clear legal basis and sufficient evidence before restricting a person's freedom.[3]

However, in practice, the implementation of the principle of due process of law in the Indonesian criminal justice system still faces various challenges. This is evident in the persistence of detentions based on subjective considerations without sufficient preliminary evidence. This situation indicates that although the principle of due process of law has been normatively adopted in the Criminal Procedure Code, its implementation in practice has not been optimal.

This phenomenon is clearly reflected in Pretrial Decision Number 22/Pid.Pra/2025/PN Mdn, heard at the Medan District Court. In this case, the applicant filed a pretrial motion to challenge the validity of his suspect status in the alleged crime of falsifying authentic documents and deeds. The motion was based on the argument that the suspect status was made without sufficient preliminary evidence and without proper examination procedures.[4]

In its deliberations, the pretrial judge stated that the investigator's determination of the suspect did not meet the minimum standard of preliminary evidence as required by Constitutional Court Decision No. 21/PUU-XII/2014. The ruling stipulates that the

determination of a suspect must be based on at least two valid pieces of evidence and preceded by an examination of the potential suspect. Therefore, the investigator's actions in the case were deemed inconsistent with the principle of due process of law.[5]

This case demonstrates that law enforcement practices still tend to overuse their authority, particularly when it comes to suspect determination and detention. Failure to adhere to established legal procedures not only violates the suspect's rights but also fosters public distrust in the criminal justice system.

On the other hand, the pretrial mechanism, which should serve as an instrument of judicial oversight over investigators' actions, has also not been fully effective in ensuring the protection of suspects' rights. In many cases, pretrial judges only assess formal aspects without being able to examine the substantive grounds for detention, thus limiting their oversight function.

Modern legal developments demand a criminal justice system that not only guarantees legal certainty but also substantive justice and the protection of human rights. In this context, detention regulations must reflect a balance between the interests of law enforcement and the protection of individual rights. Therefore, reforms to criminal procedural law are needed to be more responsive to these developments.[6]

Based on this description, it can be concluded that the regulation of subjective conditions for detention in the Criminal Procedure Code still leaves various problems that result in legal uncertainty and potential human rights violations. Therefore, an in-depth study is needed to analyze these issues and formulate a more measurable and accountable normative reconstruction, thereby ensuring the optimal application of the principle of due process of law in the Indonesian criminal justice system.[7]

Research Methodology

This research employs normative legal research (normative juridical), a research method that focuses on the study of legal norms contained in legislation, doctrine, and court decisions relevant to the legal issue under study. Normative legal research aims to identify legal principles, concepts, and principles that can be used to systematically and prescriptively address legal issues. In this context, the research focuses on analyzing the provisions of subjective detention requirements in the Criminal Procedure Code and their application in criminal justice practice.

The approaches used in this research are the statutory approach and the conceptual approach. The statutory approach is carried out by examining various relevant legal provisions, particularly the Criminal Procedure Code as the legal basis for detention, as well as other regulations related to human rights protection. Meanwhile, the conceptual approach is used to examine legal concepts such as due process of law, legal certainty, and the principle of protecting the rights of suspects in the criminal justice system.[8]

Furthermore, this study employs a case-by-case approach by analyzing Pretrial Decision Number 22/Pid.Pra/2025/PN Mdn as a case study reflecting the problematic application of subjective detention requirements in practice. This approach is crucial for assessing the alignment between applicable legal norms and their implementation in the field, thus obtaining a more comprehensive picture of the issues under study.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, particularly the Criminal Procedure Code, Law Number 39 of 1999 concerning Human Rights, and relevant court decisions. Secondary legal materials consist of textbooks, scientific journals, research results, and the opinions of legal experts related to detention, due process of law, and the protection of suspects' rights. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that support understanding of the legal terms and concepts used.[9]

The legal material collection technique was conducted through library research, which involves tracing, identifying, and reviewing various legal sources relevant to the research

problem. In this case, the researcher collected data from various legal literature, scientific journals, and official documents related to detention regulations and criminal justice practices in Indonesia.

The analysis of legal materials in this study was conducted qualitatively using descriptive-analytical and prescriptive methods. Descriptive analysis was used to systematically describe the provisions of the subjective conditions for detention in the Criminal Procedure Code and their practical application, including through a study of pretrial decisions. Furthermore, prescriptive analysis was used to formulate recommendations in the form of a reconstruction of ideal legal norms, thereby providing legal certainty and guaranteeing the protection of suspects' rights in accordance with the principle of due process of law.

Thus, the research method used in this study aims not only to explain the legal phenomena that occur but also to provide normative solutions to the problems studied. This approach is expected to produce a comprehensive analysis and contribute to the development of criminal procedure law in Indonesia, particularly in terms of regulating subjective conditions for detention that are more measurable, accountable, and equitable.

Results 1. Problems in the Regulation of Subjective Conditions for Detention in the Criminal Procedure Code which Gives Rise to Legal Uncertainty and the Potential for Abuse of Authority

The regulation of subjective conditions for detention in the Criminal Procedure Code remains a legal issue in Indonesian criminal justice practice. Normatively, Article 21 of the Criminal Procedure Code stipulates that detention may be carried out if there is a concern that the suspect will flee, destroy or destroy evidence, or repeat the crime. However, this normative formulation does not provide clear parameters regarding the boundaries of this "concern," leaving law enforcement officials open to wide interpretation.

This lack of clarity in the norms directly impacts the lack of legal certainty in the application of detention. In legal theory, legal certainty requires clear, firm, and noninterpretable norms to provide definitive guidance for law enforcement officers and the public. However, in the context of subjective conditions for detention, the lack of measurable indicators means that their application relies heavily on the subjective judgment of investigators, which ultimately has the potential to lead to disparities in law enforcement.[10]

Furthermore, the abstract nature of the subjective conditions of detention also opens up the possibility of abuse of power. In practice, detention is often used as a means of pressure on suspects, particularly during the investigation stage. This occurs because investigators have significant authority to determine whether someone should be detained, without an effective mechanism for testing these subjective reasons.

This issue becomes even more complex when linked to the principle of due process of law, which requires that all law enforcement actions be carried out fairly and based on legitimate procedures. In the context of detention, this principle requires a clear legal basis and sufficient evidence before restricting a person's freedom. However, when detention is based on immeasurable concerns, it potentially violates the principle of due process of law.[11]

In law enforcement practice, this problem is reflected in various pretrial cases that challenge the legality of investigators' actions. One relevant example is Pretrial Decision Number 22/Pid.Pra/2025/PN Mdn, which demonstrated weaknesses in the application of legal standards in suspect determination and detention. In this case, the judge determined that the suspect determination was not based on sufficient preliminary evidence and therefore declared it invalid.

This ruling indicates that in practice, investigators' authority to name suspects and detain them is often not supported by an adequate legal basis. This demonstrates a tendency toward excessive discretion, which can ultimately harm the rights of suspects and undermine the principle of justice in the criminal justice system.[12]

Furthermore, the problematic subjective conditions for detention are also related to the weakness of judicial oversight mechanisms through pretrial proceedings. Theoretically, pretrial proceedings serve as a monitoring instrument for coercive measures taken by investigators. However, in practice, pretrial judges often only assess the formal aspects of detention, failing to examine the substance of the subjective reasons used.

This situation results in the pretrial process's function as a mechanism for protecting the suspect's rights being suboptimal. Consequently, detention based on subjective considerations is difficult to effectively test, thus opening up the possibility of human rights violations. This demonstrates that the problem lies not only in unclear legal norms, but also in the weak oversight system for their implementation.[13]

Furthermore, recent developments in the updated Criminal Procedure Code, indicate an attempt to address these weaknesses by formulating more detailed detention requirements. However, this detail does not necessarily eliminate subjectivity, as in practice it remains dependent on the interpretation of law enforcement officials. In fact, there is a risk that the formulated indicators will simply serve as a formal legitimation tool for predetermined detention decisions.

Thus, it can be concluded that the main problems in regulating subjective conditions for detention lie in three main aspects: unclear norms, the dominance of investigator discretion, and weak judicial oversight mechanisms. These three aspects are interrelated and cumulatively create legal uncertainty and potential violations of suspects' rights in the Indonesian criminal justice system.[14]

2. Reconstruction of the Regulation of Subjective Conditions for Detention in the Criminal Procedure Code to Guarantee Legal Certainty and Protection of the Rights of Suspects

The fundamental weaknesses in the regulation of subjective conditions for detention in the Criminal Procedure Code (KUHAP) indicate an urgent need for a more comprehensive normative reconstruction. This reconstruction is not intended merely as a editorial improvement to legal norms, but rather as a systematic effort to rebuild the concept of detention in line with the principles of legal certainty, justice, and due process of law. In this context, legal reform must address the practice, which has so far demonstrated the dominance of uncontrolled discretion by law enforcement officials.[15]

The first step in this reconstruction is the formulation of objective indicators for the subjective requirements for detention. Until now, the use of the phrase "concern" in Article 21 of the Criminal Procedure Code has been abstract and lacks clear measurement, leading to multiple interpretations in its application. Therefore, concrete indicators are needed that can be legally tested, such as a history of absconding, lack of a permanent residence, attempts to destroy evidence, and strong indications of a repeat offense. With these indicators, detention will no longer be based on subjective assumptions but on accountable empirical facts.

Furthermore, the reconstruction of detention regulations must be directed at limiting investigators' discretion through stricter accountability mechanisms. Every detention must be based on rational legal arguments and sufficient evidence, and clearly outlined in a detention warrant. This is crucial to ensure that investigators' authority is not used arbitrarily. In this regard, the concept of discretion in criminal law must be placed within the framework of human rights protection, so as not to conflict with the principle of justice.[16]

Lebih lanjut, dalam perspektif perlindungan hak asasi manusia, rekonstruksi ini harus menempatkan hak tersangka sebagai bagian integral dari sistem peradilan pidana. Penahanan sebagai bentuk pembatasan kebebasan individu harus dilakukan secara proporsional dan tidak melanggar prinsip-prinsip dasar HAM. Oleh karena itu, penting untuk memastikan bahwa setiap tindakan penahanan benar-benar didasarkan pada kebutuhan hukum yang mendesak, bukan sekadar asumsi atau kepentingan praktis dalam proses penyidikan.[17]

Strengthening judicial oversight mechanisms through pretrial proceedings is also a crucial component of reconstructing detention arrangements. To date, pretrial proceedings have tended to function only as formalities, failing to substantively examine the subjective reasons used by investigators. Therefore, it is necessary to expand the authority of pretrial judges to substantively assess the grounds for detention, thereby preventing abuse of authority by law enforcement officials.[18]

In the context of criminal law reform, the reconstruction of subjective conditions for detention must also consider the restorative justice approach as part of a modern criminal justice system. This approach emphasizes the fair resolution of cases by involving all stakeholders and reduces the use of detention as the primary instrument in the legal process. Thus, detention is no longer the primary option but rather a measure of last resort (ultimum remedium) when no other more proportionate alternatives are available.

Furthermore, reconstruction must also lead to a substantive strengthening of the principle of due process of law at every stage of the criminal justice process. This principle requires that all law enforcement actions be carried out based on legitimate, transparent procedures and respect for human rights. In the context of detention, this means that any restriction of liberty must be based on sufficient evidence and legally verifiable, so as not to constitute arbitrariness.[19]

On the other hand, modern legal developments also demand innovation in the detention system, including the use of more humane and proportionate alternatives to detention. These alternatives can include suspended detention, bail, or the use of surveillance technology as a less restrictive form of freedom. This approach aligns with the principle of least restrictive measure, which requires that restrictions on individual rights be kept to a minimum.

Therefore, a comprehensive reconstruction of the subjective conditions for detention under the Criminal Procedure Code (KUHAP) must be undertaken, encompassing the formulation of clear norms, limitations on investigator discretion, strengthening judicial oversight mechanisms, and developing more proportionate alternatives to detention. This reconstruction is expected to create a more just, accountable, and human rights-oriented criminal justice system, thereby increasing public trust in law enforcement institutions in Indonesia.[20]

Conclusion

1. The regulation of subjective conditions for detention in the Criminal Procedure Code (KUHAP) continues to pose serious legal problems, particularly in terms of legal certainty and the potential for abuse of authority by law enforcement officials. This is due to the use of the phrase "concern," which lacks clear and measurable indicators, thus opening up wide room for interpretation for investigators in determining detention. This condition results in inconsistent application of the law, weak control over investigator discretion, and potentially violates the principle of due process of law. This fact is also reflected in judicial practice, such as in Pretrial Decision Number 22/Pid.Pra/2025/PN Mdn, which shows that the act of determining suspects and detention is often not based on adequate standards of proof.
2. A comprehensive reconstruction of the subjective conditions for detention in the Criminal Procedure Code (KUHAP) is necessary to ensure legal certainty and protect the rights of suspects in the criminal justice system. This reconstruction should be directed at formulating objective indicators that can be legally tested, limiting investigators' discretion through strict accountability mechanisms, and strengthening the role of pretrial hearings in testing the substance of the reasons for detention. Furthermore, detention should be considered a last resort (ultimum remedium) by prioritizing more proportional alternatives oriented toward protecting human rights. In this way, the detention system in Indonesian criminal procedure law can evolve toward

a model that is fairer, more accountable, and in line with the principles of due process of law.

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