The Antinomy of Value in Determining a Suspect by a Judge: An Anachronism in the History of Human Rights

Panca Sarjana Putra
{panca.sh2601@gmail.com}

Faculty of Law, Islamic University of North Sumatra, Medan, North Sumatra

Abstract. Protection of Human Rights is a form of reform contained in Law Number 8 of 1981 concerning Criminal Procedure Law in Indonesia. In line with this spirit, the Constitutional Court Decision Number 21 / PUU-XII / 2014, in particular, has stipulated the importance of examining a potential suspect, before the issuance of a Determination of a suspect against a person. However, it is an anachronism, the emergence of Article 36 letter d of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, which gives Judges the authority - in a criminal trial process through a court decision, to designate a person as a suspect without being examined as a potential suspect. in the process of investigation. This raises a value anomaly in the criminal trial process which is expected to respect a person's human rights with the interest of law enforcement in relation to the protection of natural resources.

Keywords: Determination of the suspect; Value Anomaly; Human rights; Criminal Procedure Law.

1 Introduction

Law Number 8 of 1981 concerning Criminal Procedure Law or known as the Criminal Procedure Code (KUHAP), since its promulgation in 1981, has been named as a masterpiece or sublime work [1]. This view is a logical consequence when we always compare with the previous regulations regarding criminal procedural law in the Het Herziene Inlandsche / Indonesich Reglement (HIR / RIB).

Binary contamination of the grand narrative only emerged when the dynamics of legal discourse were contained in the Constitutional Court Decision Number 21 / PUU-XII / 2014 dated 28 April 2015 (hereinafter referred to as the Constitutional Court Decision No. 21/2014) regarding the protection of human rights in the investigation process. in relation to a model of a legal decision from an investigator to determine a person as a suspect. Where, the determination of a person as a suspect has not yet become a problematic legal issue [2]. Therefore, common sense logic at that time was still relevant based on normal science in the realm of awareness of legal science academics and criminal law practitioners by communal convention.

Progressivity of the Constitutional Court Decision No. 21/2014 has been distilled in the Supreme Court Regulation No.4 of 2016 concerning the Prohibition of Reviewing Pre-Trial Decisions (hereinafter referred to as the Supreme Court Regulation No. 4/2016) which includes the Determination of Suspects as the object of decisions that can be tested through the

ICEHHA 2021, June 03-05, Flores, Indonesia

DOI 10.4108/eai.3-6-2021.2310822

authority of the district court, namely pretrial. However, it is also reductionist in Article 2 paragraph (2) of the Supreme Court Regulation No. 4/2016 by providing restrictions only on formal terms.

This value anomaly is increasingly developing into the emergence of other value anomalies when it is related to laws outside the Criminal Procedure Code that give authority to a Judge to give a decision in his decision to be a suspect based on Article 36 letter d of Law Number 18 of 2013 regarding the Prevention and Eradication of Forest Destruction (hereinafter referred to as Law No. 18/2013) which affirms “For the purposes of investigation, prosecution, or examination in court, investigators, public prosecutors or judges: determine a person as a suspect and be included in the wanted list.”

This authoritative text has been used as a legal argument in the District Court Decision Number 145 / Pid.B / 2014 / PN Dpu dated February 12, 2015, where the Panel of Judges is of the view that - based on evidence and guidance revealed in the process of evidence at trial, there is cooperation between the defendant Brother X, where Brother X had a significant role in the occurrence of a criminal act. Other things that were taken into consideration for the Panel of Judges were (1) there was an acknowledgment that Brother X was included in the Wanted List (WL), but administratively not in the Case File; and (2) the public prosecutor was unable to present Brother X before the trial based on the order of the Panel of Judges [3].

The existence of the provisions of Article 36 letter d of Law no. 18/2013 should be questioned again when it is related to the constitutional mandate contained in the Constitutional Court Decision No. 21/2014, so as not to raise anomalous values at the level of criminal law praxis.

2 Dynamics of Determination of Suspects in the Investigation Process

Investigation, obtaining a legal concept, is based on Article 1 point 2 of the Criminal Procedure Code which affirms "Investigation is a series of actions by an investigator in matters and according to the manner regulated in this law to seek and collect evidence which with that evidence sheds light on the criminal act that occurred. and to find the suspect. " The term investigation was used as a legal term in 1961 since the inclusion of the term in the Basic Police Law (Law No. 13/1961). Before being used, the term “investigation” which is a translation from the Dutch language, namely opsporing[4].

Meanwhile, according to R. Soesilo[5], Investigation comes from the word "fingerprint" which means "light", so investigating means to make clear or clear. "Fingerprints" also means "marks" (fingerprints), so the investigator means looking for traces, in this case traces of crime, which means that after the marks are present and collected, the crime becomes clear. Starting from the two words "light" and "former" meaning the word fingerprint, investigation means to make light of the crime. Sometimes the terms "investigation" or "investigation" are also used. The Dutch call it "opsporing", or in English it is called "investigation", which means strictly to investigate, so that it can be known what criminal events have occurred and who the person who committed the crime is.

Meanwhile, according to Whitney D. Gunter and Christopher A. Hertig[6], explain that “Investigation can be defined quite simply as a systematic fact-finding and reporting process. It is derived from the Latin word vestigere, to “track or trace,” and encompasses a patient, step-by-step inquiry. An investigation is finding facts; it is akin to research conducted in the academic arena.”

As for the meaning of investigation as a legal concept, according to M. Yahya Harahap[7], is a follow-up action of an investigation when a criminal event occurs. Strict requirements and restrictions on the use of coercion following the collection of sufficient preliminary evidence to make clear an event that can reasonably be suspected of being a criminal offense.

Based on the description above, Rocky Marbun [8] concludes that an investigation is a process of investigating the work of an investigator to follow up on the results of an investigation in searching for, finding and collecting evidence, so that the investigator is convinced that it is clear and clear about the nature of a criminal act and the belief in that matter gives the investigator rights and authority to do two things, namely to determine a person as a suspect and at the same time determine coercion.

Thus, when an investigator has interpreted the evidence collected and a belief emerges in the investigator's self-awareness, then juridically, the next step is to determine a person as a suspect for the criminal act he is suspected of committing. The process of determining the suspect, prior to the Constitutional Court Decision No. 21/2014, is not a systematic problematic study. Thus, it is common sense when a person becomes a suspect, juridically as well, an investigator, through juridical authority and discretionary authority based on Article 21 of the Criminal Procedure Code, can enforce forced efforts on him.

The Criminal Procedure Code never explains how many pieces of evidence must be collected to be interpreted, but the Criminal Procedure Code only provides a limit through the phrase "sufficient initial evidence". The adequacy of such evidence becomes problematic, when a person who is to be named a suspect has never gone through an examination process to be asked for his information in the Investigation Report.

In fact, if we refer to Erdianto Effendi's view, in criminal procedural law, the process of determining a suspect is the final part of the investigation process, which is an action to seek and collect evidence of a case and find someone who due to their circumstances and actions should be suspected of being the perpetrator of a criminal act Erdianto [9] continued explains where to arrive at the belief that a person can be declared a suspect, the investigator must examine evidence, starting from witness testimony, expert testimony, letters, and other evidence. To be called appropriate as evidence, the witness testimony is at least two witnesses, and the quality of the testimony must also be checked, not just any witnesses. How is the behavior and morality of the witness, the relationship between the witness and the potential suspect, so that it affects his testimony? Likewise, the testimony of an expert, it must also be seen the quality of the information, not just expert testimony.

This view seems to be citing legal considerations in the Constitutional Court Decision No. 21/2014 which confirms the Court's consideration that includes the examination of a potential suspect in addition to the minimum two pieces of evidence mentioned above, is for the purpose of transparency and protection of a person's human rights so that before a person is declared a suspect, he / she can provide a balanced statement with a minimum of two pieces of evidence that have been discovered by investigators. Thus, according to the Constitutional Court, an investigator in determining "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" as referred to in Article 1 point 14, Article 17, and Article 21 paragraph of the Criminal Procedure Code. Arbitrary actions can be avoided, moreover when determining sufficient preliminary evidence, it is always used as an entry point for an investigator in determining a person to be a suspect [2].

3 Value Anomalies and Anachronisms in Criminal Law Enforcement

The concept of anomaly in general language is often given the meaning as an oddity, oddity or deviation from something that is ordinary or from normal conditions that are different from the general situation or the majority [10]. Meanwhile, in the Big Indonesian Dictionary [11], anomaly is an abnormality; deviation from normal; abnormality; deviations or disorders seen from the point of view of grammatical or semantic conventions of a language. In Webster's New Dictionary of Synonyms [12], it provides an explanation that an anomaly is something that is contrary to what it should be.

Anomaly is also synonymous with paradox and antinomy. Paradox is something opposite. Meanwhile, antinomy is something that contradiction between two laws, principles or conclusions. Another term that is equivalent to anomaly is deviance / deviant, which means a person who deviates from standards or conditions. Thus, an anomaly will give rise to an antinomic and paradoxical state. The anachronism is occasionally used interchangeably to mean something that does not properly belong to the setting or background in which it is placed and that is incongruous with it.

More specially, anachronism implies a mistake in associating things which do not belong to the same time or age [12]. According to Tri Widodo WU [13] anachronism itself is a style of contradiction, or describes a paradox and anomaly. Anachronism also refers to a term that is often used to describe logical errors in understanding a phenomenon or event, or thinking that is not in accordance with the times when a phenomenon or event occurs. In other words, anachronism is the reading of a thought with interpretations that come from outside the context of its historicity. Thus, anachronism itself is an anomaly or paradox or antinomy.

This anachronism, in the context of criminal law enforcement, appears not only in the policy formulation process, but also in its contextualization. However, the convention that applies as the major premise should first be formulated, before drawing an anachronism in the minor premise to provide justification in the form of a conclusion. So, it is generally known that the existing conventions are based on the Consideration Considering letter a of the Criminal Procedure Code which emphasizes that as a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia it is obliged to uphold human rights and the principle of equality before the law. It is this philosophical basis that makes the Criminal Procedure Code an instrument of procedural law that differentiates it from past regulations.

The contextualization of the Criminal Procedure Code in the realm of praxis, according to Soerjono Soekanto [14] is a process that focuses on activities to harmonize the relationship of values that are outlined in solid and manifest principles and attitudes as a series of defining the final stage of values, to create, maintain and maintain a peaceful social life. So, it is not wrong when Soerjono Soekanto[14] argues that the use of power and authority in the law enforcement process, in essence, cannot be released by using discretion by law enforcement officials in interpreting and implementing the established legal rules.

In the development of legal science in general and legal practice, according to Soerjono Soekanto[15] problems often arise concerning the correctness of legal principles and the effectiveness of these legal principles. This is because, the problem of formulating the correct rule of law is a problem of legal dogmatic (normative law), while the effectiveness of law is a problem of sociology of law and other social sciences Furthermore, explained by Soerjono Soekanto[14] that interference with law enforcement may occur, if there is a mismatch between the trinity in the form of values, rules (norms) and behavior patterns.

The disturbance occurs when the mismatch between paired values, which are incompatible with conflicting principles, and undirected behavior patterns that disturb the peace of life. Although, Soerjono Soekanto[14] also emphasized that the pattern of behavior in law enforcement does not merely mean the implementation of laws. One form of anachronism and anomaly that raises the antinomy of value, in relation to this contextualization, is seen in the District Court Decision Number 2 / Pid.Pra / 2018 / PN Lbj dated 29 October 2018 related to the disobedience of the Judge - as the holder of judicial power, to the Constitutional Court Decision No. 21/2014 which rejects the examination of potential suspects as a formal requirement which represents respect for human rights values[16], through an arbitrary interpretation model that ignores the semantic (grammatical) aspects of the language of legal considerations in the Constitutional Court Decision No. 21/2014.

The second anachronism is in the District Court Decision Number 119 / Pid.Prap / 2015 / PN. Jkt-Sel[17], which emphasized that in the process of determining a person as a suspect, he has the main requirement, namely based on two pieces of evidence, while the examination of a potential suspect is an additional condition that cannot negate the main requirement. The third anachronism, as previously stated, is Article 36 letter d of Law no. 18/2013 which gives the Judge two powers, namely to determine a person as a suspect and order the investigator to include the suspect in the wanted list.

4 Analysis

The philosophical reflection contained in the preamble has received constitutive reinforcement through the Constitutional Court Decision No. 21/2014 which emphasizes the importance of examining a person before being declared a suspect in order to get a balanced opportunity and information. However, with regard to the contextualization of philosophical reflection, on the other hand, it creates anomalies in the form of anachronisms both in the form of legal norms and in the application of law through elections based on false awareness of legal principles.

The existence of Article 36 letter d Law no. 18/2013 is an anachronism that is very likely to be applied absolutely in the realm of criminal law praxis. The nature of absolutism of Article 36 letter d of Law no. 18/2013 obtained both justification and legitimacy based on the legal reasoning model in criminal law which is hegemonized and dominated by an interpretive cognitive activity model based on the logic of deduction of syllogisms and false awareness of the submission of law enforcement officials - especially judges, to legal principles through a sorting process that intersubjective.

The District Court Decision Number 2 / Pid.Pra / 2018 / PN Lbj dated 29 October 2018, shows the existence of a trinity game (trinity game) in its contextualization. The judge — as the holder of judicial power, has negated a series of semantic studies on legal considerations in the Constitutional Court Decision No. 21/2014 as an effort to produce knowledge to maintain the status quo — that is, the formality aspect of pretrial, based on the knowledge of the authority of the Supreme Court Regulation No. 4/2016.

The anachronisms that we mentioned above appear in the intersubjective-negative form. This differs from the study of the District Court Decision Number 145 / Pid.B / 2014 / PN Dpu dated February 12, 2015, which is an anachronism with a subjective-positive nature. In this case, the judge eliminates the basic rights of a person in obtaining a balanced examination process based on legal politics or the purpose of promulgation (wessenchau) of Law no.

18/2013 and conditions that are seen as absolute conditions are evidence of evidence, negating the possibility of concrete facts that have not been unearthed in the investigation process in the realm of investigation.

However, if we look at the time (tempus) between the District Court Decision Number 145 / Pid.B / 2014 / PN Dpu dated February 12, 2015 which preceded the Constitutional Court Decision No. 21/2014, there will be an antinomic value or at least a paradoxical situation between philosophical reflections on the decision to determine the suspect and the examination of potential suspects in criminal acts regulated in Law no. 18/2013 after the Constitutional Court Decision No. 21/2014.

Regarding the activities of identifying legal sources, there are often conditions of legal rule, namely legal emptiness (leemten in het recht), conflicts between legal norms (legal antinomies), and vage norms or unclear norms [18]. In the settlement of conflicts between legal norms (legal antinomies), the principles of conflict resolution (preference principles) apply, namely [19]:24

a. Lex superiori derogat legi inferiori, that is, higher legislation will paralyze lower legislation;
b. Lex specialis derogat legi generali, which is a special regulation that will disable general regulations or specific regulations that must take precedence;
c. Lex posteriori derogat legi priori, namely the new rules that defeat or deactivate the old rules.

However, the settlement of conflicts between legal norms (legal antinomies) can also be carried out through more practical steps, namely disavowal, reinterpretation, invalidation, and remedy [20]. This conflict resolution model is often used in criminal justice processes.

5 Conclusion

Article 36 letter d Law no. 18/2013 which gives the judge the authority to determine a person as a suspect based on absence from the criminal justice process - when it is interpreted absolutely and it is possible that based on the semiotic data above, there will be neglect of a person's right to convey a balanced statement against the evidence that has been collected by the investigator. In fact, the anomalies that give rise to anomalies and antinomies of these values are precisely because investigators have examined someone as a suspect without any protection of their human rights to present favorable information. In the end, Judges - based on Article 36 letter d Law no. 18/2013, took over the function of investigation and investigation in the pre-adjudication domain.

Acknowledgements

In doing this study, researchers received supports, such as information and fund, from several institutions. So, in this part of paper, researchers would like to thank The Dean of Faculty of Law, Islamic University of North Sumatra.

References

[1] R. Marbun, “Pasivitas Fungsi Advokat Dalam Proses Pra-Adjudikasi: Membongkar Tindakan Komunikatif Instrumental Penyidik,” J. Huk. Samudra Keadilan, vol. 15, no. 1, pp. 17–35, 2020, doi: https://doi.org/10.33059/jhsk.v15i1.2190.

[2] Putusan Mahkamah Konstitusi. Jakarta: Mahkamah Konstitusi, 2015.
[3] Putusan Pengadilan Negeri Dompu No. 145/Pid.B/2014. 2015.
[4] S. Sutarto, Hukum Acara Pidana. Semarang: Badan Penerbit Universitas Diponegoro, 2003.
[5] R. Soesilo, Taktik Dan Teknik Penyidikan Perkara Kriminal. Bogor: Politea, 1980.
[6] W. D. Gunter and C. a Hertig, "An Introduction To Theory , Practice and Career Development for Public and Private Investigators," 2005. [Online]. Available: https://www.ifpo.org/wp-content/uploads/2013/08/intro.pdf.
[7] M. Y. Harahap, Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan dan Penuntutan). Jakarta: Sinar Grafika, 2003.
[8] R. Marbun, Telaah Kritis-Filosofis Praktik Peradilan Pidana: Membongkar Oposisi Biner antara Kekuasaan dan Kewenangan. Yogyakarta: CV. Arti Bumi Intaran, 2019.
[9] E. Effendi, "Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka,"
[10] Undang J. Huk., vol. 3, no. 2, pp. 267–288, 2020, doi: 10.22437/ujh.3.2.267-288.
[11] J. M. Echols and H. Sadili, John M Echols dan Hasan Sadili, An English-Indonesian Dictionary (Kamus Inggris-Indonesia). Jakarta: PT Gramedia, 1995.
[12] K. B. B. Indonesia, "Anomali." https://kbbi.web.id/anomali (accessed Jan. 04, 2021).
[13] A Merriam-Webster, Merriam Webster's Dictionary of Synonyms. A Dictionary of Discriminated Synonyms With Antonyms and Analogous and Contrasted Words. Massachusset: Merriam Webster. Inc, 1984.
[14] T. W. WU, "Anakronisme Dalam Kebijakan Publik," J. Borneo Adm., vol. 6, no. 3, pp. 139–141, 2010, doi: https://doi.org/10.24258/jba.v6i3.139.
[15] S. Soekanto, Faktor-faktor Yang Mempengaruhi Penegakkan Hukum. Jakarta: RajaGrafindo Persada, 2014.
[16] S. Soekanto, Efektivitas Hukum Dan Peranan Sanksi. Bandung: Remadja Karya, 1988.
[17] Pengadilan, Putusan Pengadilan Negeri Labuan Bajo. Indonesia, 2018.
[18] Pengadilan Jakarta Selatan, Putusan Pengadilan Negeri Nomor 119/Pid.Prap/2015/PN. Jkt-Sel. 2015.
[19] A. Rifai, Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif. Jakarta: Sinar Grafika, 2011.
[20] S. Mertokusumo, Mengenal Hukum (Suatu Pengantar). Yogyakarta: Liberty, 2002.
[21] P. M. Hadjon and T. S. Djatmiati, Argumentasi Hukum. Yogyakarta: Gadjah Mada University Press, 2009.