



## **PUBLIC PERSPECTIVE ON JUSTICE IN THE PROCESS OF DETAINING SUSPECTS BY INVESTIGATORS**

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Article	Abstract
<p><b>Keywords:</b> <i>Detention, Investigator, Justice</i></p> <p><b>Article History</b> Received: Jan 11, 2020; Reviewed: Jan.15, 2020; Accepted: Jan 18, 2020; Published: Feb.10, 2020</p>	<p>Humans as legal subjects have rights and obligations in the eyes of the law, having consequences in every action taken by them. The law of criminal procedure (KUHAP) in Indonesia is contained in Law No.8 of 1981, KUHAP, in Article 1 Number 21 where detention is process in the criminal justice system which aims to prevent the perpetrator of a criminal offense from escaping from the place where the perpetrator committed the criminal offense. The research analyses the application of process detention of person who has been named as suspect by investigators does not meet justice from community point of view, because the legal certainty of detention is not equally applied to the community. The case of alleged molestation committed by suspect DC in Bandung and the case of alleged premeditated murder by suspect PC. The suspects have fulfilled all the elements of detention in KUHAP, but the investigators still did not make legal efforts to detain them. The method used is a qualitative approach. Based on the results of the research, the existing detention rules in KUHAP have not evenly provided justice for the community and legal certainty, because the existing legal rules are still multi-interpretation in their application.</p>

### **1. INTRODUCTION**

The subject of law is everything that is capable of receiving rights and obligations or supporting rights and obligations. <sup>1</sup> The subject of law, namely humans or known as *natuurlijke person*, from birth to death, is considered as a legal subject. *subject of law*.<sup>2</sup> Humans as legal subjects certainly have consequences in every action taken by them, as long as these humans are still alive and live in a legal state regulated by the Law.

<sup>1</sup> Jamin Ginting, “Kejahatan Korporasi Dan Kejahatan Dunia Maya”.(bahan kuliah ), Jakarta: Program Studi Magister Hukum Universitas Pelita Harapan, 2022, hal.3

<sup>2</sup> *Ibid.*

The law of criminal procedure in Indonesia is contained in Law No.8 of 1981 which is the basis for the practice of criminal procedure law within the general court environment. Before this criminal procedure law was enacted Indonesia adhered to the Indonesian Regulations which were further updated with "Het Herziene Inlandsch Reglement or HIR" (Staatsblad Year 1941 Number 44) Based on Article 6 paragraph 1 of Law Number 1 Drt 1951. According to Moeljanto (1981: 1), criminal procedure law is a piece of legal rules in a country, in this case the criminal procedure law contains a basis for rules governing how the practice of criminal threats for every legal subject who commits a criminal offense.<sup>3</sup>

The purpose of criminal procedure law in seeking the truth is only an intermediate goal, that the ultimate goal to be pursued is to achieve order, peace, justice, and prosperity in society. As the theory of justice put forward by Hans Kelsen, Justice conveys that the law as a rule to regulate human behavior that applies to all people and found pleasure in it, therefore social justice has the meaning of social happiness. In accordance with Hans Kelsen's theory of justice, the law should be able to provide justice for everyone who is the subject of law.

Protection of human rights is in the law, the highest right for humans is the right to life, on the other hand criminal law has a counter to human rights, namely making the death penalty, which eliminates the fundamental rights of humans.<sup>4</sup>

The source of law, namely the law, provides protection for everyone to move around, on the other hand, the criminal law recognizes imprisonment and so does the criminal procedural law recognize detention.<sup>5</sup>

Based on Article 1 number 21 Jo Article 21 paragraph 1 KUHAP, Detention means the placement of a suspect or defendant who is strongly suspected of being a perpetrator of a criminal offense referring to sufficient preliminary evidence in a certain place by investigators, public prosecutors, or judges with their determination.<sup>6</sup>

In the practice of detention for suspects in Indonesia, it still cannot be applied to fulfill a sense of justice for all people, the detention process seems to fly selectively to every suspected perpetrator who has fulfilled the elements of detention by the investigator.

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<sup>3</sup> Ridwan Eko Prasetyo, *Hukum Acara Pidana*, (Bandung: Pustaka Setia, 2015), hal.1

<sup>4</sup> Darmadi Djufri, " *Proses Pemeriksaan Perkara Di Muka Persidangan Pada Dakwaan Tindak Pidana Dan Benda Sitaan Dalam Proses Peradilan*". Sekolah Tinggi Ilmu Hukum Sumpah Pemuda Vol 20, No.1,2022,hal.

<sup>5</sup> *Ibid.*

<sup>6</sup> Shafira Chandra Dewi, " *Penahanan Menurut Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana*". Jurnal Studi Hukum Pidana, Vol 1 No 1 2021, hal.2

The first case, on August 22, 2020, Sunan Kalijaga and Rohman Hidayat, the legal representatives of the victims, namely two girls suspected of being victims of sexual abuse and maltreatment, committed by the suspect "DC", visited the Bandung Police Station, to ask the police to make legal efforts to detain the suspect DC. Because since the victim's attorney reported the incident in July 2020 and DC has been named as a suspect, until August 2020 the investigators have not detained him.<sup>7</sup>

In the second case, Arist Merdeka Sirait, Chairman of the National Commission for Child Protection, highlighted an alleged case of sexual abuse committed by the defendant Julianto Eka Putra against his student. In this case, the defendant was not detained by the investigator and public prosecutor, while the defendant was detained by the public prosecutor is charged with Article 82 of Law Number 17 Year 2016 which carries a minimum sentence of five years imprisonment.<sup>8</sup>

The third case, Arman Hanis, as the attorney for the suspect Putri Chandrawati, said that he had submitted a request to the investigators so that the client would not be detained because she was unstable and had a small child. Putri Chandrawati is charged with Article 340 subsidiary 338 Jo 55 and 56 of the Criminal Code, along with four other suspects, for the alleged premeditated murder of the victim Brigadier Nofriansyah Yosua Hutabarat who served as an aide to suspects FS and PC.<sup>9</sup>

The fourth case, the police have named six suspects in the case of the loss of life of around 133 people and 500 people injured, namely football spectators at Kanjuruhan Malang, East Java on November 1, 2022. Inspector General of Police Dedi Prasetyo as the police's public relations cadre said that the suspects have not been detained because investigators are still carrying out the investigation process.<sup>10</sup>

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<sup>7</sup> Merdeka.Com, “ *Sambang Kantor Polisi, Kuasa Hukum Korban Minta Pelaku Pencabulan DI Bandung DiTahan*”, <https://www.merdeka.com/peristiwa/sambang-kantor-polisi-kuasa-hukum-korban-minta-pelaku-pencabulan-di-bandung-ditahan.html>. Diakses Pada tanggal 8 Januari 2023.

<sup>8</sup> Suara.Com, “ *Julianto Eka Putra Tak Ditahan, Arist Merdeka Sirait Curigai Ada Yang Janggal*”, <https://www.suara.com/entertainment/2022/07/06/191803/julianto-eka-putra-tak-ditahan-arist-merdeka-sirait-curigai-ada-yang-janggal>. Diakses Pada tanggal 8 Januari 2023.

<sup>9</sup> Cnn. Indonesia, “ *Putri Candrawati Tak Ditahan Karena Alasan Kemanusiaan*”, <https://www.cnnindonesia.com/nasional/20220901065634-12-841708/putri-candrawati-tak-ditahan-karena-alasan-kemanusiaan>. Diakses Pada tanggal 9 Januari 2023.

<sup>10</sup> Cnn. Indonesia, “ *Polri Soal 6 Tersangka Tragedi Kanjuruhan Tak: Ditahan: Masih Berproses*”, <https://www.cnnindonesia.com/nasional/20221020193049-12-863397/polri-soal-6-tersangka-tragedi-kanjuruhan-tak-ditahan-masih-berproses>. Diakses Pada Tanggal 10 Januari 2023.

The six suspects in the Kanjuruhan case are first AHL, President Director of PT.LIB, second AH Match Organizing Committee, third SS, Security Officer, fourth Wahyu SS, Head of Operations Malang Police, fifth H, Danki 3 Brimob Polda Jatim, and sixth TSA, Head of Samapta Malang Police. The six suspects are charged with different articles including Article 359 Jo 360 of the Criminal Code, Article 52 Jo 103 of Law No. 11 of 2022 concerning Sports.<sup>11</sup>

Expert Advisor Ariyanto, responded that the investigators who did not detain the suspects from the fourth case above, did not violate the applicable procedural law in Indonesia.<sup>12</sup>

On the other hand, many Indonesians after being named as suspects, detention is immediately carried out, namely a mother who was detained by investigators, starting from a child with the initials A, reporting his mother with the initials S of Demak, Central Java, this incident began when the child A who lived in Jakarta with her ex-husband S, returned to her hometown to pick up her clothes. However, there was an argument between A and S which led to a police report filed by A, Suspect S was charged with Article 44 Paragraph 1 of Law Number 23 of 2004 concerning Domestic Violence Subsidiary to Article 351 of the Criminal Code concerning persecution with a prison sentence of five years.<sup>13</sup>

Problem Formulation of the research: How is the application of the law related to the detention process of a person who has been designated as a suspect by police investigators? Objective of the research is to analyze the application of law related to detention process of a person who has been designated as a suspect by police investigators, in order to realize legal certainty and justice for all Indonesian people.

## 2. RESEARCH METHODS

The research used "Normative Juridical Legal Research" in accordance with Soerjono Soekanto's opinion that legal research is carried out by examining secondary materials or library

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<sup>11</sup> Detik News, "Daftar Pasal Jerat Tersangka Kanjuruhan Salah Satunya Soal Kealpaan", <https://news.detik.com/berita/d-6334077/daftar-pasal-jerat-tersangka-kanjuruhan-salah-satunya-soal-kealpaan>. Diakses pada tanggal 10 Januari 2023.

<sup>12</sup> Lintas. Ide, "PC Tidak Ditahan, Menyakiti Rasa Keadilan Ditengah Masyarakat", <https://www.lintaside.com/nasional/pr-4044398174/pc-tidak-ditahan-menyakiti-rasa-keadilan-ditengah-masyarakat>. Diakses pada tanggal 10 Januari 2023.

<sup>13</sup> Serambinews.Com, "Seorang Ibu Ditahan Usai Dilaporkan Anak Kandung Ke Polisi, Gara-Gara Pakaian Berujung Pertengkaran", <https://aceh.tribunnews.com/2021/01/08/seorang-ibu-ditahan-usai-dilaporkan-anak-kandung-ke-polisi-gara-gara-pakaian-berujung-pertengkaran>, Diakses Pada tanggal 11 Januari 2023.

materials or library legal research, through searching for books, laws, literature, and other legal materials.<sup>14</sup>

### **3. ANALYSIS AND DISCUSSION**

#### **3.1. The application of the law regarding the detention process of a person who has been named as a suspect by police investigators.**

The detention process for suspects is regulated in Law No.8 of 1981 concerning Criminal Procedure Law, that the law was created to provide legal certainty and justice for all legal subjects. Criminal Action in Dutch *Strafbaarfeit* is defined by Pompe as a violation of applicable norms with elements of intentional or unintentional by the perpetrator, and the provision of punitive sanctions against the perpetrator is considered important for the realization of legal order.<sup>15</sup>

Every person who commits a criminal offense will certainly receive the consequences of the actions committed by him, then we will discuss the process of a person being made a suspect and detaining him. A criminal offense report begins with the police conducting an investigation into an event that is suspected of being a criminal offense.

Investigation means a series of investigator actions to search for and find an event suspected of being a criminal offense to determine whether or not to proceed to the investigation stage regulated in the law. Furthermore, investigation means a series of investigator's actions within the scope and according to the method regulated in the law to seek and collect evidence which with the evidence can make light of a criminal act that occurred in order to find the suspect.

The explanation above previously stated that investigation is an action of investigators to collect evidence from events that are considered to have fulfilled the elements of a criminal offense and find out who the suspect is, then a suspect is someone because of make light of a criminal act that occurred in order to find the suspect.

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<sup>14</sup> Soerjono soekanto, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (RajaGrafindo Persada, Jakarta, 2011, hal.12)

<sup>15</sup> Fitri Wahyuni, *Dasar-Dasar Hukum Pidana Di Indonesia*, (Tangerang Selatan: PT. Nusantara Persada Utama, 2017), hal 37.

conditions based on preliminary evidence deserves to be suspected of being a perpetrator of a criminal offense.<sup>16</sup>

A person who has the status of a suspect, of course, can be detained by an investigator, detention is the placement of a suspect or defendant in a certain place by an investigator, or public prosecutor or judge with his determination in the case and in the manner regulated in the Criminal Procedure Code. However, the practice of detaining suspects in Indonesia still causes a lot of polemics, because it has not fulfilled equal justice in society, the police are considered selective in making efforts to detain suspects.

Muhammad Isnur, Chairperson of the Indonesian Legal Aid Foundation (YLBHI) said that the Police's decision not to detain the PC suspect was not a good one. justice where many cases experienced by mothers who are suspects are still detained by investigators.<sup>17</sup>

Discussing detention, there are conditions of detention or legal grounds for detention of suspects, as follows;

The legal basis for detention is found in several articles, namely Article 7 paragraph 1, letter d, Article 11, Article 20 paragraph 1, and Articles 21 to 31 of the Criminal Procedure Code, explained as follows:

The legal basis for detention is found in several articles, namely

1. Article 7 paragraph 1, letter d, Article 11, Article 20 paragraph 1, and Articles 21 to 31 of the Criminal Procedure Code, explained as follows:
2. Article 11 of the Criminal Procedure Code

The auxiliary investigator has the powers as mentioned in Article 7 paragraph (1), except for detention which must be granted by delegation of authority from the investigator.

3. Article 20 paragraph 1 KUHAP

For the purpose of the investigation, the investigator or assistant investigator on the order of the investigator as referred to in Article 11 is authorized to detain.

4. Article 21 KUHAP

- 1) An order of detention or further detention shall be made against a suspect or defendant who is strongly suspected of committing a criminal offense based on

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<sup>16</sup> *Ibid.*

<sup>17</sup> Merdeka. Com, “ Setuju Putri Candrawathi Tak Ditahan, YLBHI Ingatkan Polri Adil Dengan Wanita Lainnya”, <https://www.merdeka.com/peristiwa/setuju-putri-candrawathi-tak-ditahan-ylbhi-ingatkan-polri-adil-dengan-wanita-lainnya.html>. Diakses pada 12 Januari 2023. Hal 2.

sufficient evidence, in circumstances which give rise to concerns that the suspect or defendant will abscond, damage or eliminate evidence and/or repeat the criminal offense.

- 2) Detention or further detention shall be carried out by the investigator or public prosecutor against the suspect or accused by issuing a detention order or judge's decision stating the identity of the suspect or accused, stating the reason for the detention as well as a brief description of the crime alleged or charged and the place where he is detained.
- 3) A copy of the warrant of detention or continued detention or judge's decision as referred to in paragraph (2) shall be given to his/her family.
- 4) Such detention may only be imposed on a suspect or accused who has committed a criminal offense and or attempted or provided assistance in such a criminal offense in the event of:
  - a. the crime is punishable with imprisonment of five years or more;
  - b. the criminal offenses referred to in Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379 a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of the Penal Code, Article 25 and Article 26 of the Rechten Ordonnantie (violation of the Customs and Excise Ordinance, last amended by Staatsblad 1931 No. 471), Article 1, Article 2 and Article 4 of the Immigration Offences Act (Act No. 8 Drt. Year 1955, State Gazette Year 1955 Number 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47 and Article 48 of Law Number 9 Year 1976 concerning Narcotics (State Gazette Year 1976 Number 37, Supplement to State Gazette Number 3086).<sup>18</sup>

There are subjective and objective requirements for detention, subjective requirements are regulated in Article 21 Paragraph 1 of the Criminal Procedure Code, namely the existence of conditions that raise concerns that the suspect or defendant will:

- 1) Escape
- 2) Damaging or removing evidence and/or
- 3) Repeat criminal offense.

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<sup>18</sup> Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana. (Lembaran Negara Tahun 1951 Nomor 9, Tambahan Lembaran Negara Nomor 81).

The objective requirements for detention are stipulated in Article 21 paragraph 4 of the Criminal Procedure Code, namely criminal offenses punishable by imprisonment of five years or more and also other criminal offenses that are mentioned limitively in the provisions of the article.<sup>19</sup>

### **3.2. An example of the application of the law relates to the detention of a person who has been named as a suspect by police investigators.**

As stated in the background, there are 5 examples of cases where suspects who have been threatened with imprisonment of more than five years have not been detained by investigators, one of which is DC, who is the non-active Chairperson of the DPC Sahabat Polisi Bandung, has been named as a suspect by police investigators from the Bandung Police Criminal Investigation Unit. DC is threatened with Articles 81 & 82 of the Child Protection Law.<sup>20</sup>

#### First Case Example

Sunan Kalijaga and Rohman Hidayat as the legal team for the alleged rape victim, said that the suspect DC should be detained immediately so that there are no further victims.<sup>21</sup>

Some laws against alleged victims of sexual abuse or rape are as follows:

- 1) Article 76D of Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Child Protection reads: Every person is prohibited from committing violence or threat of violence to force a child to have sexual intercourse with him/her or with another person.
- 2) Article 76 E of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection reads: Every person is prohibited from committing Violence or threat of Violence, forcing, deceiving, committing a series of lies, or inducing a Child to commit or allow obscene acts to be committed.
- 3) Article 81 of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection reads:
  - (1) Any person who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).
  - (2) The criminal provisions as referred to in paragraph (1) shall also apply to any Person who intentionally commits deceit, a series of lies, or induces a Child to have sexual intercourse with him/her or with another person.
  - (3) In the event that the criminal offense as referred to in paragraph (1) is committed by Parents, Guardians, caregivers of Children, educators, or education personnel, the

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<sup>19</sup> LBH, "PENGAYOMAN" Universitas Katolik Parahyangan, "Kapan Penegak Hukum Dapat Melakukan Penahanan ? ", <https://lbhpengayoman.unpar.ac.id/kapan-penegak-hukum-dapat-melakukan-penahanan/>. Diakses pada 12 Januari 2023.

<sup>20</sup> AyoBandung.Com, "Kasus Pencabulan, Polisi Tetapkan David Cahyadi Jadi Tersangka", <https://www.ayobandung.com/bandung/pr-79696259/kasus-pencabulan-polisi-tetapkan-david-cahyadi-jadi-tersangka>. Diakses pada 12 Januari 2023.

<sup>21</sup> *Ibid.*



punishment shall be increased by 1/3 (one-third) of the punishment as referred to in paragraph (1).

(4) Article 82 Paragraph 1 of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection reads:

- a. Any person who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah).
- b. In the event that the criminal offense as referred to in paragraph (1) is committed by Parents, Guardians, Child caregivers, educators, or education personnel, then the punishment shall be increased by 1/3 (one third) of the criminal punishment as referred to in paragraph (1).<sup>22</sup>

### Second case example

The premeditated murder of the victim Brigadier J. On August 19, 2022, the National Police named PC as a suspect along with four other suspects. PC was charged with Article 340 Subsidiary to Article 338 in conjunction with Articles 55 and 56 of the Criminal Procedure Code. Despite being a suspect, PC has not been detained by investigators, due to illness.<sup>23</sup>

Some of the articles in the Criminal Procedure Code are described as follows: Article 340 Subsidiary to Article 338 in conjunction with Articles 55 and 56 of the Criminal Procedure Code :

1. Article 340 of KUHP

"Whoever with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder with premeditation, be punished by capital punishment or life imprisonment or a maximum imprisonment of twenty years."

2. Article 338 of KUHP

"Whoever with deliberate intent takes the life of another person, shall, being guilty of treason, be punished by a maximum imprisonment of fifteen years."

3. Article 55 of KUHP

1) Paragraph 1: Shall be punished as the perpetrator of a criminal offense:

- a. Those who commit, those who order to commit, and those who participate in the act;
- b. Those who, by giving or promising something, by abuse of power or dignity, by force, threat or deception, or by providing opportunity, means or information, intentionally induces another person to commit an act.

2) Paragraph 2: only the act that is intentionally encouraged is taken into account, along with its consequences.

4. Article of KUHP

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<sup>22</sup> Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 109, Tambahan Lembaran Negara Republik Indonesia Nomor 4235).

<sup>23</sup> Ibid.

Punishable as an accessory to a crime:

- 1) Those who intentionally provide assistance at the time of the crime;
- 2) Those who intentionally provide opportunities, means or information to commit a crime.<sup>24</sup>

In accordance with the two cases above, the subjective and objective requirements for detention have been met, the investigators should have detained the suspects, but in practice, they were not detained by the investigators.

As from the above cases the suspects can escape, eliminate evidence and repeat criminal acts, because detention is not carried out, so it can be concluded that even though the subjective requirements for detention and the objective requirements for detention have been fulfilled. Likewise, the threat of punishment given to the suspect is more than 5 years even up to the highest penalty of death, the application of detention against the suspect is not carried out.

With the above events, the public feels that there is no equal justice treatment for citizens, even though Indonesia adheres to "Equality Before the Law" in the Indonesian Justice System.

This is stated in "Article 27 paragraph (1) of the 1945 Constitution affirms that all citizens are equal before the law. The meaning of "equality before the law" is found in almost all state constitutions. This is the norm that protects the human rights of citizens. Equality before the law means that every citizen must be treated fairly by law enforcement officials and the government. Therefore, every law enforcement officer is constitutionally bound by the value of justice that must be realized in practice, but enforcing "equality before the law" is not without obstacles. It can be in the form of juridical and political obstacles, or sociological and psychological obstacles.<sup>25</sup>

The explanation above does not contain justice in law enforcement when viewed from Hans Kelsen's Theory of Justice, and Justice which has the meaning of legality in Hans Kelsen's view can be considered fair if a certain rule is used for the whole of the same problem, the meaning of fairness will be lost if the application of the rule is different when faced with the same problem.<sup>26</sup>

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<sup>24</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 1946 Tentang Peraturan Hukum Pidana.(Lembaran Negara Tahun 1951 Nomor 9, Tambahan Lembaran Negara Nomor 81).

<sup>25</sup> <https://lokataru.id/equality-before-the-law-dalam-sistem-peradilan-di-indonesia/>, diakses tgl2 Februari 2023

<sup>26</sup> Muhammad Aslansyah, " Studi Ajaran Hans Kelsen Tentang Pure Theory Of Law Ditinjau Dari Perspektif Keadilan", Mahasiswa PPkn FIS Universitas Negeri Makassar, 2022.

Article 31 Paragraph 1 of the Criminal Procedure Code, which reads: (1) At the request of the suspect or accused, the investigator or public prosecutor or judge, in accordance with their respective authorities, may grant a suspension of detention with or without monetary or personal guarantee, under the conditions specified.<sup>27</sup>

Based on Article 31 Paragraph 1 of the Criminal Procedure Code, related to the suspension of detention must be regulated more clearly, what kind of suspension can be made by the investigator to the suspect, because like the two examples of cases above, the suspect is threatened with Articles 81 & 82 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002, related to sexual violence against young children and has the highest penalty of 15 years. And the second case the suspect is charged with Article 340 of the Criminal Code, related to premeditated murder and has the highest threat of up to the death penalty.

Based on the analysis above, it can be concluded that the suspension of detention is not appropriate for the suspect, as the subjective and objective requirements have been met.

Law of the Republic of Indonesia No. 2 of 2002 on the Indonesian National Police or Law of the Republic of Indonesia No. 2 of 2002, does not regulate the detention process. This law only states that the police have the right to detain, which is regulated in Article 16 of Law No. 2/2002. Article 16 Letter A. Law of the Republic of Indonesia No.2. Year 2002.

In order to carry out the duties as referred to in articles 13 and 14 in the field of criminal proceedings, the Indonesian National Police are authorized to carry out arrest, detention, search and seizure.<sup>28</sup>

In accordance with Indonesian Law No. 2 of 2002 concerning the Indonesian National Police, it does not provide rules regarding the subjective and objective requirements for detention, in the Law only regulates the authority of investigators who have the right to detain a suspect.

Therefore, detention is only regulated in the KUHAP, which based on the analysis above, the application of the law is not in accordance with legal certainty and justice for all

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<sup>27</sup> Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana.(Lembaran Negara Tahun 1951 Nomor 9, Tambahan Lembaran Negara Nomor 81).

<sup>28</sup> Undang-Undang Republik Indonesia No. 2 Tahun 2002 Tentang Kepolisian Negara Republik (Lembaran Negara Tahun 1999 Nomor 169, Tambahan Lembaran Negara Nomor 3890).

Indonesian people, because there is no obligation to detain a suspect who has fulfilled the subjective and objective requirements for detention.

#### **4. CONCLUSIONS**

Based on the analysis that has been conducted previously, the regulation regarding the requirements for making legal efforts to detain is regulated in Articles 21-31 of the Criminal Procedure Code, which regulates the conditions for detaining a suspect or defendant. Then in the Law of the Republic of Indonesia No. 2 of 2002 concerning the Indonesian National Police, it regulates the authority of Police investigators in making legal efforts to detain suspects. In accordance with existing practice, there are two examples of cases where the suspect has fulfilled the conditions for detention, but no detention was carried out.

In relation to Article 31 Paragraph 1 of the Criminal Procedure Code, it does not stipulate what types of criminal offenses can be suspended, the article only regulates the mechanism for suspension of detention. On the other hand, a mother who was reported by her child was immediately detained by investigators. Therefore, it is concluded that the existing regulations have not been able to provide legal certainty and justice in law enforcement for all Indonesian people.

Based on the analysis above and the facts of the existing events, it is important that there is a clear and firm rule regarding legal efforts to detain suspects who have fulfilled the subjective and objective conditions of detention. This is a concern for the general public, the legal community, and lawmakers to further contribute to law enforcement in Indonesia. There needs to be a special rule regarding the detention process of suspects, to achieve legal certainty and justice in Indonesia.

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### **Research Results**

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