



## Analysis of Suspension of Detention in the Process of Investigation of the Criminal Acts of Child License

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### **Abstract**

In this study, the author uses a type of normative legal research. Normative legal research is legal research conducted by examining library materials or secondary. The request for adjournment in this case of Brother Angelo was due to lack of legal certainty regarding handling and detention process carried out by investigators from PPA Unit of Depok Metro Police. The legal uncertainty that occurs is because investigators cannot complete instructions given by public prosecutor in file P-19. In process of examining investigation carried out by investigator in case of sexual abuse of minors by Brother Angelo, there are problem factors, in this case are law enforcement factors and facilities. For sake of creating legal objectives in series of criminal procedural law processes, it is recommended that legislators of Criminal Procedure Code, namely legislative body in formulating Draft Criminal Procedure Code, should have a firm orientation in this context, namely in form of reformulation. Article on suspension of detention regarding guarantees and their implementation, so as to assist law enforcement officials in practice. This is based on the fact that practice of granting a suspension of detention with money or people as collateral by law enforcers in the Criminal Procedure Code has not been clearly explained regarding the amount of money guaranteed in its implementing regulations. This is expected to be able to realize legal certainty in giving careful consideration to applicant the suspension of detention by suspect or his legal representative.

**Keywords:** *Criminal; Child; Sexual Abuse*

### **Introduction**

Based on provisions of Criminal Procedure Code, that are process of handling criminal cases in principle originates from investigation, investigation and prosecution, and ends with a judge's decision. Detention of a suspect is not absolute, unless investigator deems it necessary to take such coercive measures. Detention as a form of coercion is regulated in Article 1 point 21 of Criminal Procedure Code, namely: *"Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with their determination, in this case and according to method regulated in*

*this law*". From definition in above, it is clearly stated that detention is placement of a suspect or defendant in a certain place and may only be carried out by investigators, public prosecutors, judges with a determination in terms of matters and procedures regulated in other articles in the Criminal Procedure Code.(Gumilang et al., 2019)

Regarding the suspension of detention, it can be seen in the provisions of Article 31 paragraph (1) of the Criminal Procedure Code which reads "at the request of a suspect or defendant, investigators or public prosecutors or judges, in accordance with their respective authorities, may hold a detention suspension by or without a guarantee of money or a guarantee of people, based on the specified conditions". Furthermore, M. Yahya Harahap (*PEMBAHASAN PERMASALAHAN DAN PENERAPAN KUHAP : Penyidikan Dan Penuntutan | Perpustakaan Pengadilan Agama Boyolali*, n.d.) explained that as for what conditions must be set by the competent authority, it is not detailed in Article 31 of Criminal Procedure Code. The confirmation and details of conditions that must be stipulated in the suspension of detention are further stated in explanation of article 31. From this explanation, it is obtained confirmation of what conditions the detaining agency can set, among others: a). Compulsory reporting; b).Not leaving house, or; c). Not out of town.

Obscene acts against children in the above case are specifically formulated in Article 76E of Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law ,which was ratified by President Joko Widodo in Jakarta on November 9, 2016.(*PENERAPAN SANKSI PIDANA BAGI PELAKU KEKERASAN SEKSUAL TERHADAP ANAK SETELAH DIBERLAKUKANNYA PERATURAN PEMERINTAH NOMOR 70 TAHUN 2020 | Pea | LEX PRIVATUM*, n.d.) The sanctions for violating Article 76E are contained in Article 82 of Law Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

Problems in the process of resolving cases of immoral crimes against children often occur in the role of law enforcers who don't understand the approach that pays attention to the best interests of handling cases of children and the application of laws and regulations. For example, this can be seen from the practice of law enforcement in the case of child molestation at the Kencana Bejana Rohani Orphanage, Depok, who do not understand the role and duties in providing safety for victims, are unable to understand the best interests of children in handling them, are not sensitive to social conditions if cases against children as victims being handled are stopped or suspended, so that the process of resolving these cases the perpetrators cannot be brought to justice.(*PENANGGUHAN PENAHANAN DALAM PROSES PENYIDIKAN TINDAK PIDANA PENCABULAN TERHADAP ANAK DI WILAYAH HUKUM POLRES METRO DEPOK (Studi Kasus Pencabulan Anak Di Panti Asuhan Kencana Bejana Rohani, Depok) | Reine Roftiana | LEGALITAS : Jurnal Ilmiah Ilmu Hukum*, n.d.)

Viewed from the perspective of criminal procedural law, detention is an ordinary law enforcement process that is only carried out when absolutely necessary. However, detention often creates problems. There are many slanted voices regarding the detention of suspects or defendants. Likewise, only regarding the suspension of detention, so the centralized view or perception has been discriminatory in terms of suspension of detention. Applications for suspension of detention submitted by suspects or defendants with high socio-economic status which with more power swirls are granted when compared to applications submitted by suspects or defendants who are ordinary people, small people, poor, have no relationship with the circle of power, although Even state of Indonesia as a state of the rule of law recognizes and adheres to principle of equality before the law.(*PERAN ADVOKAT SELAKU PENASEHAT HUKUM TERSANGKA ATAU TERDAKWA ATAS DASAR PASAL 56 AYAT (1) KITAB UNDANG-UNDANG HUKUM ACARA PIDANA | Farahwati | LEGALITAS : Jurnal Ilmiah Ilmu Hukum*, n.d.)

Based on this, it is important to have an analysis of the process of suspension of detention for suspects or defendants in the process of criminal cases of child molestation. Therefore, the authors are interested in conducting research on how to review the criminal procedure law on suspension of detention for crime of child molestation and how the law enforcement process and legal issues that arise in investigation process of child abuse cases.

### **Research Method**

In this study, the author uses a type of normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data. (Maharani et al., 2021)

### **Research Results and Discussion**

The detention carried out by official authorized to carry out detention as referred to in Article 21 paragraph (1) of Criminal Procedure Code is due to concerns from agency that is holding suspect or defendant that later: 1). The suspect or defendant is feared to run away; 2). The suspect or defendant destroys or destroys evidence; 3). The suspect or defendant repeats the crime. ("ANALISIS HUKUM ACARA PIDANA TERHADAP PERTIMBANGAN SYARAT SUBJEKTIF OLEH PENYIDIK SEBAGAI DASAR PENAHANAN TERSANGKA DALAM PASAL 21 KUHP," 2018)

This suspension of detention is not same as release from detention. The difference is mainly in terms of law as well as reasons and requirements that follow action of implementing suspension with release from detention. On suspension of detention, a detainee is still legal and official and is still within detention time limit justified by legislation.

Provisions regarding the suspension of detention can be seen in Article 31 paragraph (1) of Law no.8 of 1981 concerning the Criminal Procedure Code. This article reads: "*at request of a suspect or defendant, investigators or public prosecutors or judges, in accordance with their respective authorities, may hold a suspension of detention with or without guarantees of money or guarantees of people, based on the specified conditions*". Based on Article 31 paragraph (1), a person receiving a suspension of detention must on meet following requirements: 1). Requests from suspects or defendants; 2). This request for suspension of detention is approved by investigator or public prosecutor or the judge who is holding him with or without guarantees as stipulated; 3). There is agreement from the suspect/defendant who is detained to comply with the conditions and guarantees set. (I Made Arya Kusuma Winata et al., 2021)

The suspension of detention can be carried out with or without a guarantee in form of money or a person's guarantee, but Criminal Procedure Code doesn't explain amount of the security deposit if suspension is carried out with a money guarantee. Likewise, if suspension is carried out with guarantee of a person, the Criminal Procedure Code also doesn't provide an explanation. In addition, Article 31 of Criminal Procedure Code also doesn't explain of legal consequences of guarantor if suspect is guarantees escapes. Therefore, official authorized to detain a suspect or defendant is not required to grant every application for a suspension of detention and may reject in application for a suspension of detention for a certain reason and still place suspect or defendant in custody.

As in this case of child molestation at Kencana Bejana Rohani Orphanage, Depok with perpetrator Brother Angelo on September 13, 2019. Police investigators from Depok Metro Police explained that investigation process into Brother Angelo's case was the result of research on case files submitted in first stage of investigation results is not complete, the public prosecutor returns this case file to investigator accompanied by instructions to be completed within 14 (fourteen) days after receipt return of case file. In order to return the case file in question, a notification is issued that results of investigation

are not complete (P-18) and return of case file with instructions is carried out by issuing (P-19) instructions, among others, are asking for further information from child victims, asking for results of a post-mortem physically and psychologically against child victims, and requesting a social report on child victims by social workers. The approval of request for suspension of detention for suspect Brother Angelo was given, because the victims didn't want to testify, because they felt that Angelo had taken good care of them while in orphanage. Thus, investigator cannot fulfill the instructions given by prosecutor through P-19 file in investigation process and request for a suspension is granted. (*ANALYSIS OF BROTHER ANGELO CHILD SEXUAL ABUSE CASE UNDER CRIMINAL LAW AND CONTROL THEORY / INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW*, n.d.)

Law enforcement in this case of sexual abuse of minors by Brother Angelo at Kencana Bejana Rohani Orphanage has following problem factors: 1). Constraints with knowledge of investigators in this case of child molestation carried out by Brother Angelo, there is a lack of understanding or knowledge of investigators regarding the settlement of children's cases. So, that case is suspended or cannot be continued until examination process in court; 2). Not carrying out of obligation to coordinate with other parties in process of law enforcement against children's cases. Investigators are required to request social reports from professional social workers or social welfare workers after a crime has been reported or reported. This indicates that investigator's ignorance in applying applicable regulations and investigator's incomprehension in handling cases of children as victims or witnesses; 3). Not doing *Visum Et Repertum* to witnesses who are victims of sexual abuse cases. Either a physical or psychological visa for the child; 4). The victim doesn't want to be investigated or doesn't want to carry out examination process at investigation level; 5). Constraints or obstacles faced by investigators of PPA Unit Depok Metro Police in dealing with criminal acts of child molestation on factors of facilities and facilities are limited resources investigators.

Cases of children as victims often stop in process of being handled, especially case of criminal acts of child sexual abuse by Brother Angelo cannot just be finished process of law enforcement at investigation level or suspended against the suspect which results in cessation continuation of law enforcement and perpetrator should get a punishment that is appropriate commensurate with actions taken, it is feared that criminal acts against children will become increasingly widespread, because they see the law enforcement process is not good and lacks attention to children. So, it is necessary for everyone to pay attention to every case that occurs in children, because children are also next generation of nation that will come.

## **Conclusion**

The request for adjournment in this case of Brother Angelo was due to lack of legal certainty regarding handling and detention process carried out by investigators from PPA Unit of Depok Metro Police. The legal uncertainty that occurs is because investigators cannot complete instructions given by public prosecutor in file P-19. In process of examining investigation carried out by investigator in case of sexual abuse of minors by Brother Angelo, there are problem factors, in this case are law enforcement factors and facilities. For sake of creating legal objectives in series of criminal procedural law processes, it is recommended that legislators of Criminal Procedure Code, namely legislative body in formulating Draft Criminal Procedure Code, should have a firm orientation in this context, namely in form of reformulation. Article on suspension of detention regarding guarantees and their implementation, so as to assist law enforcement officials in practice. This is based on the fact that practice of granting a suspension of detention with money or people as collateral by law enforcers in the Criminal Procedure Code has not been clearly explained regarding the amount of money guaranteed in its implementing regulations. This is expected to be able to realize legal certainty in giving careful consideration to applicant the suspension of detention by suspect or his legal representative.

## References

- ANALISIS HUKUM ACARA PIDANA TERHADAP PERTIMBANGAN SYARAT SUBJEKTIF OLEH PENYIDIK SEBAGAI DASAR PENAHANAN TERSANGKA DALAM PASAL 21 KUHAP. (2018). *LEX CRIMEN*, 7(2).
- ANALYSIS OF BROTHER ANGELO CHILD SEXUAL ABUSE CASE UNDER CRIMINAL LAW AND CONTROL THEORY | INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW.* (n.d.). Retrieved February 21, 2022, from <https://ijospl.org/index.php/ijospl/article/view/46>
- Gumilang, D., Yudianto, O., & Setyorini, E. H. (2019). LEGALITAS SURAT KUASA YANG DITERBITKAN SEORANG BURON. *Jurnal Hukum Magnum Opus.* <https://doi.org/10.30996/jhmo.v2i2.2497>
- I Made Arya Kusuma Winata, I Nyoman Gede Sugiarta, & I Made Minggu Widyantara. (2021). PROSES PENANGGUHAN PENAHANAN DENGAN JAMINAN PADA TINGKAT PENYIDIK BERDASARKAN PASAL 31 KUHAP. *Jurnal Interpretasi Hukum*, 2(2). <https://doi.org/10.22225/juinhum.2.2.3449.403-408>
- Maharani, A. S., Afifah, W., & Michael, T. (2021). Right To Health Guarantee For Household Workerst. *International Journal of Scientific and Research Publications (IJSRP)*, 11(5), 8–12. <https://doi.org/10.29322/ijsrp.11.05.2021.p11303>
- PEMBAHASAN PERMASALAHAN DAN PENERAPAN KUHAP: Penyidikan dan Penuntutan | Perpustakaan Pengadilan Agama Boyolali.* (n.d.). Retrieved February 21, 2022, from [https://perpustakaan.mahkamahagung.go.id/slims/pa-boyolali/index.php?p=show\\_detail&id=356](https://perpustakaan.mahkamahagung.go.id/slims/pa-boyolali/index.php?p=show_detail&id=356)
- PENANGGUHAN PENAHANAN DALAM PROSES PENYIDIKAN TINDAK PIDANA PENCABULAN TERHADAP ANAK DI WILAYAH HUKUM POLRES METRO DEPOK (Studi Kasus Pencabulan Anak di Panti Asuhan Kencana Bejana Rohani, Depok) | Reine Rofiana | LEGALITAS : Jurnal Ilmiah Ilmu Hukum.* (n.d.). Retrieved February 21, 2022, from <http://ejournal.untag-smd.ac.id/index.php/LG/article/view/5886>
- PENERAPAN SANKSI PIDANA BAGI PELAKU KEKERASAN SEKSUAL TERHADAP ANAK SETELAH DIBERLAKUKANNYA PERATURAN PEMERINTAH NOMOR 70 TAHUN 2020 | Pea | LEX PRIVATUM.* (n.d.). Retrieved February 21, 2022, from <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/38451>
- PERAN ADVOKAT SELAKU PENASEHAT HUKUM TERSANGKA ATAU TERDAKWA ATAS DASAR PASAL 56 AYAT (1) KITAB UNDANG-UNDANG HUKUM ACARA PIDANA | Farahwati | LEGALITAS : Jurnal Ilmiah Ilmu Hukum.* (n.d.). Retrieved February 21, 2022, from <http://ejournal.untag-smd.ac.id/index.php/LG/article/view/5862>

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