LIMITATION OF NOTIFICATION LETTER FOR THE COMMENCEMENT OF INVESTIGATION AS A REACTUALIZATION OF HUMAN RIGHTS IN PRE-PROSECUTION

ARIE PURNOMO[1], HIBNU NUGROHO[2], KUAT PUJI PRAYITNO[3]
Doctoral Student, Faculty of Law, Universitas Jenderal Soedirman, Indonesia [1]
University Jenderal Soedirman, Indonesia [23]
arie.p@mhs.unsoed.ac.id[1]
hibnu.nugrogo@unsoed.ac.id[2]
kuat.prayitno@unsoed.ac.id[3]

Abstract *- An investigation is conducted to obtain evidence and determine the suspect of a criminal offence, where the criminal justice system places investigation at the initial stage and then continues to prosecute, examine in court, and execute. Investigations before prosecution first pass through pre-prosecution, a stage of assessment by the prosecutor of the investigation file. Problems in pre-prosecution in Indonesia are not only that the file undergoes an almost unlimited review, but also that the investigation file is sent several times through the Notification Letter for the Commencement of Investigation (Surat Pemberitahuan Dimulainya Penyidikan - SPDP). This article is legal research that reviews two issues, namely the impact of multiple SPDP issuances on the progress of pre-prosecution and the relevance of SPDP restrictions as a protection of human rights. The data used included regulations, criminal case files, and references. This article reveals that SPDP in practice is sent several times to the prosecutor so that the operation of the criminal justice system reaches a point of legal uncertainty that is detrimental to all parties, such as the increasingly tense competition between prosecutors and the police and the unclear case for the reporter who is the victim and suspect. In the future, the SPDP needs to be revised as part of the Draft New Criminal Procedure Code currently being discussed between the Government and the House of Representatives. The SPDP should only be issued once for the same case and suspect, to respect and protect human rights and strengthen human values in the development of criminal procedure law in Indonesia.*

Keywords*: Human Rights; Investigation; Notification Letter for the Commencement of Investigation; Pre-Prosecution; Prosecution.*

INTRODUCTION

Notification Letter for the Commencement of Investigation (Surat Pemberitahuan Dimulainya Penyidikan- SPDP) is a letter issued by the investigator addressed to the public prosecutor, which aims to notify that an investigation is being carried out on a case. The SPDP will be responded to by the public prosecutor by appointing a research prosecutor to follow the investigation process; the absence of this process will result in the public prosecutor being unable to find out about the investigation conducted by the investigator so that the pre-prosecution process between the investigator and the public prosecutor automatically does not occur. The pre-prosecution process is an action of the prosecutor to monitor the progress of the investigation after receiving a notification of the commencement of the investigation by the investigator to study or examine the completeness of the case file received from the investigator and provide instructions to be completed by the investigator to determine whether the case file can be submitted to the prosecution stage.[1]The substance of providing instructions to improve the investigation is essentially part of further investigation, and the existence of pre-prosecution confirms that investigation and prosecution are two things that cannot be separated.[2]

The Constitutional Court of the Republic of Indonesia in 2015, through Decision Number 130/PUU-XII/2015, has provided a new, more humanist nuance in the implementation of the investigation process, especially in the sub-process of commencement of investigation. The decision instructs the Investigator in issuing a SPDP not only to deliver it limited to the Public Prosecutor but also to the

[1]Angga Nugraha, "Koordinasi Kepolisian Dan Kejaksaan Dalam Penyelesaian Perkara Pidana Pada Tahap Prapenuntutan (Studi Di Wilayah Hukum Pengadilan Sleman)" (2014).

[2]Andi Hamzah, *Hukum Pidana Indonesia*, 2d ed, Tarmizi, ed (Jakarta: Sinar Grafika, 2019).

Complainant/Victim and the Perpetrator/Suspect; even the letter must have been received by all these parties no later than seven days from the issuance of the Investigation Order.[3]The constitutional challenge filed by the civil society group that underpinned the decision is based on two arguments. First, there is no confirmation that the implementation of SPDP is an obligation in an integrated criminal justice system. Second, there is no clarity on when investigators are obliged to notify the public prosecutor when they have begun an investigation. This lack of clarity means that, often in the handling of a case, the public prosecutor is not involved at all because the Notification Of Commencement Of Investigation is not sent, or the SPDP is only sent together with the submission of the case file resulting from the investigation.[4]

The Notification Of Commencement Of Investigation is a reflection of the principle of functional differentiation that divides the two authorities, namely investigation and prosecution. The authority to investigate is managed by the police, while prosecution is handled by the Attorney General's Office, through which the division of the functions of investigation and prosecution becomes more clearly visible.[5]The Indonesian Criminal Justice System positions the SPDP as part of the pre-adjudication or pre-prosecution process, a process of coordinating case preparation between the Police and the Prosecutor's office before the case is submitted to the court. Problems in the SPDP clearly show that the operation of the criminal justice system in Indonesia often does not run systematically but is more about institutional sectoral egos, especially the police. The Prosecutor's Office as a case control function (dominus litis) loses the meaning of its function when police investigators in initiating investigations do not properly guide the provisions for issuing Notification Of Commencement Of Investigation; the needs of the community, both in terms of victims who report and perpetrators who are reported to the certainty of the course of the case, will also take place without clarity; the factor of this symptom arises as a combination of the disproportionate number of cases handled and the low work ethic of investigators.[6]

Later, a new pattern of complexity was found, where the SPDP was issued the SPDP several times so that the principle of nebis in idem, which contains the prohibition of trying someone for the same case more than once, was violated. This article will discuss two issues: (1) the impact of multiple SPDP issuances on the progress of pre-prosecution and (2) the relevance of SPDP restrictions as a protection of human rights.

Articles examining SPDP were published several times. First, Suarda (2021) stated that an SPDP that has not been submitted to the reported party can be used as a basis for the judge's consideration to assess the validity of the determination of the suspect.[7]Second, Shestak (2020) states that in the Russian criminal justice system, there are also symptoms of SPDP problems, because there is no legal certainty regarding who decides the start of pre-procedural activities to investigate economic crimes, as well as regularity regarding who is assigned as the main person in charge of the direction of progress.[8]Third, Chaitidou (2019) states that at the International Criminal Court, investigations into crimes of aggressive SPDP were issued on the basis of a request by the Public Prosecutor to the UN Security Council.[9] The novelty of this article is to reveal the practice of SPDP many times, explain how this practice can occur, and what impact it has on various parties. This article contributes to the international community on how SPDP are practiced in developing countries, such as Indonesia, explaining how the criminal justice system is used irresponsibly by its own investigators.

[3]Mahkamah Konstitusi Republik Indonesia, “Penyidik Wajib Sampaikan SPDP pada Terlapor dan Korban”, (2017), online: <https://www.mkri.id/index.php?page=web.Berita&id=13536%3E>.

[4]Mahkamah Konstitusi Republik Indonesia, “Decision No. 130/PUU-XIII/2015: Testing the Criminal Procedure Code against the Indonesian Constitution”, (2017), online: <https://www.mkri.id/index.php?page=web.Putusan&id=1&kat=3&cari=Choky+Risda+Ramadhan>.

[5]Hwian Christianto, “Arti Penting Surat Pemberitahuan Dimulainya Penyidikan: Kajian Putusan Mahkamah Konstitusi Nomor 130/PUU-XIII/2015” (2019) 16:1 Jurnal Konstitusi 170 at 179.

[6]KEzia Z E Sanger, “ASAS HUKUM PENERBITAN SURAT PEMBERITAHUAN DIMULAINYA PENYIDIKAN (NOTIFICATION OF COMMENCEMENT OF INVESTIGATION) DALAM PROSES PENYIDIKAN” (2019) 8:11 LEX Crim, online: <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/27393>.

[7]I Gede Widhiana Suarda, Moch Marsa Taufiqurrohman & Zaki Priambudi, “Limiting The Legality Of Determining Suspects In Indonesia Pre-Trial System” (2021) Indonesia Law Review.

[8]Victor A Shestak, Vladimir V Dubrovin & Zoya I Ilyicheva, “Models of the pre-procedural level of investigation of economic crimes: Spanish experience” (2020) Russian journal of criminology.

[9]Eleni Chaitidou, “The amendments to the regulations of the court: Laying the groundwork for investigating the crime of aggression” (2019) Journal of International Criminal Justice.

METHODS

This article is normative legal research; in Indonesian literature, this type of article is also known as library research. This study constructs the law from the perspective of regulations or norms as the object of research. The approach used in this study is a statutory and case approach. The data used were secondary data, which included regulations, case files, and references. The regulations analyzed in this research are related to criminal procedure law in Indonesia, namely the Indonesian Constitution (1945), Indonesian Criminal Procedure Law (1981), Judicial Power (2009), Chief of Police Regulation on Investigation (2019), Universal Declaration of Human Rights (1948), and International Covenant on Civil and Political Rights (1966). The case files studied were cases handled at the Purwokerto District Attorney's Office, Central Java Province, and other cases that could be found on the Internet; the cases selected were cases that had more than one Notification for the SPDP. The references studied were related to investigation and criminal procedure laws. The data are presented in descriptive text and analyzed qualitatively to draw conclusions from the issues discussed.

DISCUSSIONS

1. The Impact of Multiple Issuances of SPDP on Pre-Prosecution Proceedings

1.1. The Practice of Issuing SPDP Multiple Times

The juridical definition in the Criminal Procedure Code (KUHAP) of investigation is a series of investigative actions in the case and in the manner regulated by this law to seek and collect evidence with which the evidence makes light of the criminal offense that occurred and to find the suspect. Investigation is closely related to the restriction of a person's rights; the meaning of investigation must be clearly and definitively stated so that the restriction does not turn into a violation of human rights.[10]The investigation aims to seek and collect materials to find suspects in a criminal offense in the form of objects or people against objects. KUHAP provides a lot of authority to achieve this goal so that investigators have the authority with the permission of the local District Court to carry out confiscation, house searches, and examination of documents, while against a person, the investigator is authorized to arrest and detention.The Act of Notification of Investigation in the Criminal Procedure Code aims of being able to lay the foundations of cooperation and functional coordination and is a means of horizontal supervision between related law enforcement agencies in order to realize the process of handling criminal cases that are carried out quickly, simply, and at low cost.[11]The substance of the SPDP based on Article 25, paragraph (2) of National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigation contains: 1) the basis for investigation in the form of a police report and investigation warrant, 2) time of SPDP, 3) type of case, article alleged, and brief description of the criminal offense being investigated; 4) Identity of the suspect (if the identity of the suspect is known), and 5) Identity of the official who signed the SPDP.

The operationalization of criminal procedure law in Indonesia is generally based on several principles, both regulated in the Criminal Procedure Code and the doctrine that one of these principles includes the principle of equal treatment of everyone before the law, which means that criminal procedure law does not recognize special treatment for certain perpetrators of criminal acts.[12]Special treatment can also include excessive targeting of perpetrators so that they can be tried in court, even though it is difficult to fulfill the elements of the alleged crime. An interesting case was found in the Purwokerto District Attorney's Office, a work unit of the Prosecutor's Office in Central Java Province, in a case of placing false information on an authentic deed within the Putera Harapan Banyumas Foundation, it turns out that the investigation has been issued SPDP four times with details:

1. Letter Number: SPDP/173/XII/2020/Reskrim, December 07, 2020;
2. Letter Number: B/1033/VI/RES.1.24/Reskrim, June 13, 2022.
3. Letter Number: B/1411/X/RES.1.24/Reskrim, October 24, 2022; and
4. Letter Number: SPDP/1436/X/RES.1.24/2022/Reskrim, October 28, 2022.

The investigation of this case was carried out by the Banyumas Resort Police which was recorded in Police Report Number: LP / B / 403 / XII / 2020 / JATENG / RESTA BMS dated December 01, 2020 on behalf of the reporting party Yudi Sutanto, the investigator in this case has not even

[10]Hamzah, *supra* note 2.

[11]*Ibid*.

[12]P A F Lamintang, *Kitab Undang-Undang Hukum Acara Pidana dengan pembahasan secara yuridis menurut yurisprudensi dan ilmu pengetahuan hukum pidana* (Bandung: Sinar Baru, 1984) at 30.

clearly determined who the reported party is because various letters show the phrase "the reported party is still under investigation". The chronology of this case begins with a civil lawsuit at the Purwokerto District Court in May 2020 with the object of the case in the form of Deed Number 5 dated February 27, 2019 concerning the statement of meeting decisions of the Banyumas Entrepreneur Foundation, the main problem is that the Banyumas Entrepreneur Foundation carries out educational activities with licenses and assets that are actually owned by the Putera Harapan Banyumas Foundation.

In addition to carrying out the function of the Public Prosecutor as Dominus Litis, SPDP also aims to ensure the protection of the Human Rights of the parties, namely the reporter and the reported party. Philosophically, the birth of the Criminal Procedure Code is based on the principle of balancing human rights and human rights obligations so that in the Criminal Procedure Code, the state as the legislator maintains and considers the balance of power of the instruments of State power, in this case the Police, the Prosecutor's Office and the Court to run the Criminal Justice System.[13]The legal ideals of the establishment of KUHAP at least refer to the precepts of the Almighty God and the just and civilized humanity.[14]The investigation of the Banyumas Entrepreneur Foundation Case which was carried out with SPDP 4 times raises problems for various parties, for the Prosecutor's Office that the case is confusing to be monitored through the pre-prosecution process, for the Banyumas Putera Harapan Foundation as the Reporter of the case it is confusing to know the progress of the investigation process, while for the Reported Party who knows who it will be confusing if he suddenly gets a summons as a suspect. The protection of human rights for the Whistleblower and the Reported Party cannot be covered by the dominance of the use of investigative authority by the police, as if the police are so powerful in this casebecause they can change the case administration freely. The Reported Party in this case when suddenly receiving information on his status as a suspect has the potential to file a pretrial lawsuit against the Banyumas Resort Police, based on the Constitutional Court Decision Number 21/PUU-XII/2014, which has expanded the pretrial authority to be entitled to examine whether or not the determination of a suspect is valid.[15]

There are two models of the criminal justice system: the crime control model and the due-process model. In general, the former system (Crime Control Model) is characterized by characteristics such as efficiency, speed, and presumption of guilt so that criminal behavior must be dealt with immediately, and the suspect is left alone until he fights back. The characteristics possessed by the Due Process Model are, among others, rejecting efficiency, prioritizing quality, and the presumption of innocence so that the role of legal counsel is very important to avoid the imposition of punishment on innocent people.[16]The issuance of multiple SPDP in an investigation is contrary to the principle of the Due Process Model, which has been adopted in the development of criminal procedure law in Indonesia. Multiple SPDP show that the investigator has a certain interest in a particular case.

There are many similar cases in Indonesia, one of which is now being submitted for judicial review by the Constitutional Court. Rudi Hartono Iskandar through his attorney filed a lawsuit because he received 11 investigation warrants (sprindik) for the same case and object in Police Report Number LP/656/VI/2016/BARESKRIM dated June 27, 2016. Rudi Hartono Iskandar is a suspect in the alleged corruption of land acquisition for the construction of flats and was named as a suspect on January 17, 2022. The material test of KUHAP was filed because Rudi Hartono Iskandar remained a suspect despite the pre-trial verdict he had won. Instead of the suspect status being annulled, the police continued the case by issuing new investigation files such as the Investigation Order and SPDP.[17]These two cases reflect the uncertainty of the criminal justice system in Indonesia, whereas legal certainty provides legal security for individuals from government arbitrariness and allows them to know what the government can impose or do.[18]

[13]Marcus Priyo Gunarto, "Faktor Historis, Sosiologis, Politis, dan Yuridis Dalam Penyusunan Rancangan Undang-Undang Hukum Acara Pidana" (2013) Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada at 16.

[14]M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Jilid I* (Jakarta: Pustaka Kartini, 1985) at 16.

[15]Mahkamah Konstitusi, *Putusan*.

[16]Eddy OS Hiariej, *Teori dan Hukum Pembuktian* (Jakarta: Erlangga, 2012) at 30.

[17]"Mempertanyakan Penerbitan Sprindik Berulang Kali", online: *Mahkamah Konstitusi Republik Indonesia*.

[18]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2008) at 158.

The principle of Ne Bis In Idem is embraced by various countries and recognized in international provisions such as Article 14, paragraph (7) of the International Covenant on Civil and Political Rights, which is established and opened for signature, ratification, and accession through General Assembly resolution 2200 A (XXI). dated December 16, 1966, entered into force on March 23, 1976; that is, no one shall be tried or convicted again for a criminal offense for which he had already been convicted or acquitted in accordance with the laws and criminal procedure laws of each country. The loss of the right to prosecute and punish was considered the reason for the disappearance of the public prosecutor's authority to reprosecute the criminal acts of legal subjects. The paradigm then shifts, that what disappears is not only the prosecutorial authority but also the criminal event itself.[19] Thus, the philosophical meaning of the ne bis in idem principle in criminal law is not only to nullify the legal standing of prosecution, but also criminal acts that must be considered no longer exist because they have already been tried.[20]

1.2. Pre-Prosecution and Uncertainty in the Criminal Justice System

Pre-incrimination is a middle ground designed by KUHAP that provides space for the Prosecutor to review the investigation file prepared by the police by returning it with certain instructions. The mechanism provided by KUHAP is not very effective when implemented by the two institutions because the institutional coordination relationship is designed separately. On the one hand, investigators work without active guidance by the Prosecutor, so there is an imbalance of understanding of the case that makes the preparation of files often occur. On the other hand, the Prosecutor does not have active supervisory authority, so the need for evidence for the trial cannot be fulfilled by the investigator. The phenomenon of file returns often results in files not being sent back by Investigators to Prosecutors, and even suspects can be free from detention because the time period is exceeded. Santoso described this phenomenon as a criminal justice system that has lost its purpose because it does not solve criminal cases.[21]

Daniel S. Lev further describes the phenomenon, that the institutional relationship between the Prosecutor's Office and the Police occurs in the nuances of competition, both competing for power and prestige in Indonesia's status as a developing country. The police want to be able to carry out preventive and repressive functions in responding to criminal acts, which is then felt to reduce the authority of the prosecutor to just an intermediary officer of the court and, at the same time, to be a supervisor of government officials.[22]The KUHAP has not been very successful in resolving this problem, and the disharmonious relationship is more pronounced in corruption cases or other cases that have received public attention. The Prosecutor's Office has the authority to monopolize pre-prosecution because it also acts as an investigator in corruption cases, meaning that the Prosecutor's Office does not receive intervention or supervision apart from the trial process, which the police have never had. Andi Hamzah, a senior prosecutorial figure, even more clearly describes that it must be recognized that the fact of disharmony between the Police and the Prosecutor's Office has caused losses to justice seekers, thousands of cases have been stalled due to pre-prosecution which has failed to bring cases to court.[23]

Pre-prosecution is the authority of the Prosecutor's Office which allows the Prosecutor in his capacity as Public Prosecutor to submit case files to the court, entitled to assess whether the case file resulting from the investigator's examination is sufficient and perfect so that it is suitable for submission to the court. The concrete form of this authority is to provide alternatives for the operation of the criminal justice system, as follows: [24]

1. May accept the results of the investigation as sufficient and perfect for prosecution before the court, or in other words provide legality that the investigation has been completed; or
2. After receiving and studying the case file of the results of the investigation, they are of the opinion that the results of the investigation are insufficient and imperfect.

Pre-prosecution is carried out before the case is submitted to the court with the aim of preparing the prosecution action before the court and determining the success of the prosecution, its urgency

[19]Teguh Prasetyo, *Hukum Pidana* (Jakarta: Rajawali Press, 2010) at 197.

[20]Ilhamdi Putra & Khairul Fahmi, "Karakteristik Ne Bis In Idem dan Unsurnya dalam Hukum Acara Mahkamah Konstitusi" (2021) 18:2 Jurnal Konstitusi at 351.

[21]Topo Santoso & Choky Risda Ramadhan, *Prapenuntutan dan Perkembangannya di Indonesia* (Jakarta: Rajawali Press, 2022) at 7.

[22]Daniel S Lev, "Hukum Dan Politik Di Indonesi" in (Jakarta: LP3ES, 1990) at 52.

[23]Muhammad Alfath Giraldo, "Kedudukan Penyidik Dalam Prapenuntutan Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)" (2020) 9:4 Lex Crimen at 116.

[24]Moch Faisal Salam, *Hukum Acara Pidana dalam teori & praktek* (Bandung: Mandar Maju, 2001) at 186.

is very important to find the material truth which will be the basis for the prosecution process.[25]The entrance to the start of pre-prosecution is the notification of the investigation conducted by the Investigator to the Public Prosecutor or SPDP. The KUHAP states that the SPDP is administered immediately after the investigator begins the investigation. After the Investigator submits the SPDP, the Prosecutor's Office will follow up by appointing a Public Prosecutor to follow the progress of the investigation, known as the Research Prosecutor. The SPDP plays an important role in the criminal justice process. Without SPDP, the Public Prosecutor cannot find out about the investigation conducted by the Investigator, and of course this results in the Public Prosecutor not being able to follow the progress of the investigation and also makes coordination between the Investigator and the Public Prosecutor suboptimal.

The problem then arises; currently, the Criminal Procedure Code and other related laws and regulations only regulate the period of time for the Public Prosecutor to study, examine, and arrange for the investigator to complete the investigation file. Provisions that strictly regulate the limitations on the number of times examination files can be sent and returned between the two are not regulated, thus potentially hampering the submission of cases to the court. For example, in the case of Jessica Kumala Wongso, the case file was returned for the fourth time by the public prosecutor (Kejati DKI) to the investigator (Polda Metro Jaya).[26]The criminal justice process must be carried out based on the principles of fast, simple, and low-cost justice. The elucidation of Article 4, paragraph (2) of Law No. 48/2009 on Judicial Power elaborates on this principle. The principle of simple justice means that the examination and settlement of cases are conducted in an effective and efficient manner. The principle of low cost is the cost of affordable cases. Andi Hamzah explained the content of this principle, which in essence in the KUHAP is expected not to contain the use of speculative and ambiguous time descriptions, such as "immediately", "in the shortest possible time", but must use more definite terms, such as "one time twenty-four hours", "seven days", and so on. [27]

2. The Relevance of SPDP Restrictions in the Protection of Human Rights

2.1. Urgency of Human Rights Protection for Suspects

Indonesia is a colony country whose laws originated from the Netherlands as a colonizing country through the application of the principle of concordance, one of the regulations in force since Indonesia's independence on August 17, 1945 is the Criminal Procedure Law through Het Herziene Inlandsch Reglement (Staatsblad Year 1941 Number 44). It was only in 1981 through Law Number 8 of 1981 on Criminal Procedure that Indonesia had the KUHAP as the main legal umbrella in the process of enforcing criminal law, and even surpassed the Criminal Code, Civil Code, and Civil Procedure Code to be passed. In drafting the KUHAP, the main considerations chosen were

"that the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens equal status in law and government and must uphold the law and government with no exceptions."

The issue of human rights is the main issue underlying the reform of criminal procedure laws. Human rights are believed to have a universal value. A universal value means that it does not recognize the limits of time and space.[28]This universality has been translated into various legal products in various countries to protect and uphold human values. This universal value has been confirmed by international instruments. This includes international treaties in the field of human rights, such as the International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights; International Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel; Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; and Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. [29]

The rights of suspects are guaranteed and protected by law in the process of handling criminal cases, which shows that the KUHAP respects and upholds human dignity by providing protection and guarantees for human rights (suspects). Thus, the ultimate goal of the Criminal Procedure Code is

[25]Wiby Eka Santoso & Muhammad Rustamaji, "Asas Peradilan Cepat, Sederhana, dan Biaya Ringan Dalam Telaah Kekosongan Hukum Prapenuntutan" 9:1 Verstek at 30.

[26]"Kejati Kembalikan Lagi Berkas Perkara Jessica untuk Kali Keempat", online: *Kompas*.

[27]Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sapta Artha Jaya, 1996) at 13.

[28]A Masyhur Effendi, *Perkembangan dimensi hak asasi manusia (HAM) & proses dinamika penyusunan hukum hak asasi manusia (Hakham)* (Ghalia Indonesia, 2005) at 78.

[29]Editor: Muladi, *Hak Asasi Manusia Muladi, "Hakekat, Konsep Dan Implikasinya Dalam Perspektif Hukum dan Masyarakat"* (Bandung: Refika Aditama, 2005) at 70.

to concretely assert truth and justice in a criminal case.[30]Everyone is entitled to a fair and undifferentiated verdict based on facts proven before the court. Equal treatment before the law does not have to be interpreted against defendants who are different in position or wealth but must go beyond that, namely the avoidance of discrimination based on "race, sex, language, religion, national or social origin, property, wealth or other status."[31]

In principle, the criminal justice process is an act by criminal law enforcement officials that restricts human freedom. The procedure contained in KUHAP constructs law enforcers to act in accordance with the existing authority and formal limitations. Such a large authority is vulnerable to various kinds of administrative violations, from simple ones, such as not giving the Report Receipt Letter (STTPL) to the reporter, to the fatal level, namely miscarriage of justice. Instructors committed by the state apparatus against citizens are not only procedural in dimension but also lead to violations of human rights (HAM), not even a few of which are categorized as gross violations of human rights.[32]

Human rights guarantee that every person is in conflict with the law has been stated in several regulations. First, Article 6 and Article 7 of the Universal Declaration of Human Rights (UDHR) dated December 10, 1948, substantially focused on the right of everyone to be recognized and treated equally before the law without discriminatory treatment. The spirit of non-discrimination refers to treatment that does not discriminate against any person based on religion, race, ethnicity, national origin, skin color, social status, affiliation/ideology, and political choice.[33] Later, the United Nations (UN) also included sexual orientation and gender identity as new aspects in its resolution on recognizing the rights of LGBT people, including in the judicial context.[34]

This article correlates with Articles 27 paragraph (1) and 28 D of the 1945 Constitution, which means that equality before the law is fundamental to the state towards everyone in Indonesia and in the global context.[35]Furthermore, the value derivative of universal norms is embodied in juridical protection to the person who is determined to be a suspect in the context of an investigation, as contained in Article 50 to Article 68 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP).[36]Because it is related to human rights, the determination of a suspect must be carried out carefully, and attention must be paid to the details of the investigation administration (admindik). Admindiks play a central role in monitoring the handling of criminal offenses. Incomplete investigation documents, omission of locus and tempus delicti, or typing errors in the names of parties have consequences for the vagueness of the prosecutor's indictment material, making it prone to pre-trial motions.[37]The SPDP is one of the admindik materials often discussed and encountered. The SPDP marks the start of a functional relationship between the Investigator and the PU, which places the PU as a supervisor to monitor and follow the progress of the investigation. [38]

The results of an Ombudsman study in 2019 in ten provinces that focused on the administrative completeness of 40 case files in the general criminal justice process showed that the level of compliance of investigators in terms of SPDP fulfillment was 61.54%.[39] Research conducted by Sanger revealed that there is a normative obstacle, namely the absence of legal consequences for investigators who are suspected of negligently or deliberately not providing SPDP to PUs or

[30]Anthon F Susanto, *Wajah peradilan kita: konstruksi sosial tentang penyimpangan, mekanisme kontrol, dan akuntabilitas peradilan pidana,* (Bandung: Refika Aditama, 2004) at 82.

[31]Mardjono Reksodiputro, *Sistem Peradilan Pidana* (Rajawali Press, 2020) at 154.

[32]H Ediwarman, "Perlindungan HAM Dalam Proses Peradilan (the Human Rights Protection in the Process of Justice)" (2000) 1:1 Indonesian Journal of Criminology at 21.

[33]Nur Kholis, "Asas Non Diskriminasi Dalam Contempt Of Court" (2018) 26:2 Legality: Jurnal Ilmiah Hukum.

[34]Meilanny Budiarti Santoso, "LGBT dalam Perspektif Hak Asasi Manusia" (2016) 6:2 Share: Social Work Journal at 221.

[35]Hariz Azhar, "Equality Before the Law dalam Sistem Peradilan di Indonesia", (2018), online: *Lokataru Foundation*.

[36]M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan* (Jakarta: Sinar Grafika, 2016).

[37]Arfin Bin Ibrahim Fasini & Agung Tri Safari, "Analisis Peranan Tugas Petugas Administrasi Penyidikan Tindak Pidana Kepabeanan Dan Cukai" (2020) 13:1 Jurnal BPPK at 97.

[38]Edi Saputra Hasibuan, "Mengenal Proses Hukum Dalam Kepolisian" (2020) 5:2 Justicia Sains: Jurnal Ilmu Hukum at 208.

[39]Aziz Rahardyan, "Inilah Dokumen Penyidikan Polri yang Amburadul & Rawan Maladministrasi", (2022), online: *Ombudsman*.

Reporters and Reporters within a maximum period of 7 (seven) days after the issuance of an Investigation Order (Sprindik), and sociological obstacles in the form of proportionality in the number of investigators with cases handled.[40]The investigation by Thasia et al. reinforced the above facts and even encountered serious problems, namely the work ethics and integrity of investigators. This was recorded in 2 (two) pre-trial decisions: Number 04/Pid. Pra/2017/PN.Kla at Kalianda District Court (PN) and Case Number 07/Pid.Pra/2019/PN.Bpp in the Balikpapan District Court. Both decisions show the actions of investigators who deliberately delay the provision of the SPDP beyond the time limit based on the Constitutional Court Decision Number 130/PUUXII/2015.[41]
Of course, the non-fulfillment or incompleteness of the SPDP has a specific impact on the rights of the reportee/suspect. The MaPPI FH UI report from 2012 to 2014 found hundreds of thousands of cases whose handling was unclear owing to the uncertainty of SPDP issuance. Hundreds of thousands of reported and / or suspects are unclear about the status of the case, as well as hundreds of thousands of victims and / or reporters whose rights to obtain justice are suspended.[42]It cannot be imagined how the psychological condition of the parties, especially the suspects, is directly affected by the inconsistency of the investigators. The inconsistency in question is that the suspect is not notified when the investigation begins but is only notified when the investigation is stopped. The suspect only knows when the investigation against him has ended, but does not know when the investigation against him begins. James Gleick suggests that such conditions are identical to what is referred to as Legal Turbulence, namely a chaostic situation that describes the law as a game controlled by those called "troublemakers" so that the law is no longer autonomous.[43]

2.2. Pre-Prosecution Respecting Human Rights Through SPDP Restrictions

In principle, the provisions of criminal procedure law boil down to Pancasila, especially the second principle on humanity, which is closely related to the principle of the rule of law. Jimly Asshidqie,[44]views that in the principle of the rule of law there is a guarantee that the law is built and developed with democratic values or popular sovereignty. Laws should not be made, determined, interpreted, and enforced with an iron fist based on power alone (machtstaat) but must consider democratic values set out in the basic law. In line with this, P.M. Hadjon stated that, historically, the principle of Rechstaat originated from the spirit of resistance against absolutism, so it is not surprising that it is revolutionary.[45]The same spirit accompanied the issuance of KUHAP, which was born in the nuances of legal reform after a long time, guided by Het Herziene Indonesisch Reglement (HIR, Staatsblad 1941 No. 4) Renewed Indonesian Regulations (RIB). The formulation of the HIR/RIB, although constructed to meet the needs of case handling at the time, did not fully regulate administrative provisions. Therefore, although the KUHAP now regulates the SPDP, the idea of reforming the KUHAP that has begun to be campaigned for (although this will not be carried out in the near future) is part of the application of the principle of reschstaat in criminal procedure law.
The limitation of the SPDP is a limitation of authority for investigators as law enforcers, which is borne by the spirit to avoid abuse of power possessed by investigators. Its use will only be effective if this restriction uses a normative juridical approach or formulates rules.[46]The issuance of the SPDP more than once, as previously described, undermines the principle of legal certainty that has been accommodated in Article 28D paragraph (1) of the 1945 Constitution. The Investigator's concern in issuing SPDP more than once perhaps boils down to not being able to find the suspect, even though

[40]*Ibid*.

[41]Dinda Putri Anindya & Indah Fermatasari Nabilah Thasia Kamba, "Urgensi Surat Pemberitahuan Dimulainya Penyidikan: Kajian Putusan Mahkamah Konstitusi Nomor 130/PUU-VIII/2015" (2021) 3:2 LEX SUPREMA: Jurnal Ilmu hukum at 743.

[42]Zotero Ichsan Zikry et al, *Prapenuntutan Sekarang, Ratusan Ribu Perkara Disimpan, Puluhan Ribu Perkara Hilang: Penelitian Pelaksanaan Mekanisme Prapenuntutan Di Indonesia Sepanjang Tahun 2012-2014* (Jakarta: Lembaga Bantuan Hukum Jakarta - MaPPI FHUI, 2016) at 15.

[43]Achmad Faishal, "Akar Masalah Deforestasi di Indonesia (Dari Turbulensi Aturan Hukum Ke Perbaikan Hukum)" (2022) 4:1 Banua Law Review at 102.

[44]Jimly Asshiddiqie, "Konstitusi dan konstitusionalisme Indonesia" in (Jakarta: Sinar Grafika, 2019) at 57.

[45]Philipus M Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: PT Bina Ilmu, 1987) at 72.

[46]Majda El-Muhtaj, *Hak asasi manusia dalam konstitusi Indonesia* (Prenada Media, 2017) at 20.

SPDP is not an indicator for determining the status of a suspect for anyone called by the investigator, but a sign that the investigator has started investigating a case.[47]

Another reason why SPDP should be issued only once is that, at the same time, the investigator plays the role of a public servant who is obliged to provide services in an accountable manner; on the other hand, the suspect has the right to obtain service certainty and transparency of the handling process. Uncertain handling will lead to the potential to change the article, even though the investigation is ongoing. This habit tends to result in investigators not being accustomed to making decisions (determination of suspects) carefully, even tending to overestimate their level of expertise, unable to map their incompetence, and unable to recognize and admit their own shortcomings. This is ironic, considering that one of the components of the general principles of good governance that must be understood by every investigator is the principle of accuracy. The most important role of the police is law enforcement, because this role is the standard for the progress and decline of every country from the perspective of human rights. Indonesia can be considered a developed country if its law enforcement upholds human rights. [48]This kind of psychological effect that results in repeated mistakes is known as " the Dunning–Kruger effect by David Dunning and Justin Kruger.[49]

Referring to the above description, the precepts of Just and Civilized Humanity make it clearer that the law must be implemented by looking at the meaning of what is called "fair" and "civilized." The conception of justice is a condition where the law must treat everyone equally before the law (equality before the law), the law must be the highest tool in achieving justice (supremacy of law) and the concept of "civilized" which requires law enforcement to respect human rights,[50]as well as being the basis for legal politics that respect and protect non-discriminatory human rights. [51]Legal politics is the direction of legal development or the making and selection of laws based on state policies to make and stipulate laws and regulations in order to achieve the ideals and goals of the state as contained in paragraph IV of the Preamble of the 1945 Constitution of the Republic of Indonesia. The basis used to determine the direction of legal development is the values that live in society which are crystallized in the precepts of Pancasila.[52]

The value of fair and civilized Humanity means awareness and attitudes and behavior in accordance with moral values in living together based on the absolute demands of conscience by treating things as they should be. The embodiment of the value of just and civilized humanity is the recognition of human rights, in which humans must be recognized and treated as fully human, in accordance with their dignity as creatures of God Almighty.[53]

CONCLUSION

Notification Of SPDP that are issued multiple times in an investigation of the same case object and with the same suspect have the effect of eliminating the meaning of the criminal justice system as a means of resolving criminal acts. This phenomenon makes the criminal justice system work with no certainty at all and is very detrimental to all parties: the Prosecutor's Office and the Police will dwell on the endless pre-prosecution process and even make the institutional conflict even more destructive, while Reporters and Suspects will not trust the criminal justice system as a solution to legal problems. The protection of suspects' human rights is regulated by several national and universal norms. The provisions regarding the limitation of the SPDP need to be expanded in meaning, including limiting the issuance only once to ensure respect for human rights, so that the

[47]Norman Edwin Elnizar, "NOTIFICATION OF COMMENCEMENT OF INVESTIGATION Terbit Tak Berarti Sudah Ada Tersangka", online: *Huk Online*<https://www.hukumonline.com/berita/a/Notification of Commencement of Investigation-terbit-tak-berarti-sudah-ada-tersangka-lt5ce4ba267f339/>.

[48]Ryanto Ulil Anshar & Joko Setiyono, "Tugas dan Fungsi Polisi Sebagai Penegak Hukum dalam Perspektif Pancasila" (2020) 2:3 urnal Pembangunan Hukum Indonesia at 364.

[49]Nusation Anwar, "Fenomena 'Dunning-Kruger Effect' dalam Birokrasi Pemerintahan", online: *Kementerian Sosial Republik Indonesia*.

[50]Setiyono, *supra* note 48.

[51]Suteki, *Rekonstruksi Politik Hukum Hak Atas Air Pro-Rakyat* (Semarang: Surya Pena Gemilang Publishing, 2010) at 67.

[52]Any Ismayawati, "Pendekatan dan politik hukumdalam pembangunan hukum pidana di indonesia" (2021) 12 Yudisia: Jurnal pemikiran hukum dan hukum islam at 123.

[53]Ridwan Arifin & Lilis Eka Lestari, "Penegakan dan Perlindungan Hak Asasi manusia di Indonesia dalam konteks implementasi sila kemanusiaan yang adil dan beradab" (2019) 5:2 Jurnal Komunikasi Hukum at 21.

operation of the pre-prosecution process can be more humane for suspects and certain for reporters.

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