

THE SUSPENSION OF DETENTION TO DEFENDANT IN PADANGSIDIMPUAN DISTRICT COURT

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Abstract

In the series of criminal justice proceedings, the issue of detention is one of the most essential matters concerning the freedom of human rights, because every detention of a person suspected of being involved in a criminal incident is a temporary restraint on his freedom and independence. So that in this study the problems are, first, whether the implementation of the provision of guarantees, whether in the form of people or money, has been carried out in accordance with the provisions of the legislation? Second, what are the judges' considerations in granting detention postponements for defendants within the jurisdiction of the Padangsidempuan District Court? The methods used are library research and field research. After the data was analyzed using hypothesis testing techniques based on induction and deduction methods. Then it can be concluded that if we look at the developments in the practice of granting bail in the jurisdiction of the Padangsidempuan District Court as stipulated in Article 31 paragraph (1) of the Criminal Procedure Code, then in determining whether or not the request for bail with a guarantee submitted by the suspect or defendant to the detaining agency can be granted.

Keywords: Suspension of Detention, Defendant.

I. INTRODUCTION

The fulfillment of the implementation of detention suspension during the criminal case examination process does not mean releasing the suspect or defendant from detention status, but rather the implementation of this detention suspension is intended to release them from the detention room, while the person remains legally as a suspect or defendant with detention status until the detention period determined by law. The detention action as explained above can be seen from the determination of legal regulations that formulate the definition of detention as follows, "Detention is the placement of a suspect or defendant in a specific location by an investigator, public prosecutor, or judge, in circumstances and in a manner regulated by law."¹

Therefore, in order to protect individuals, especially those faced with detention actions, and to always respect the existence of human rights, the law has formulated several provisions as legal efforts to minimize arbitrary deprivation and restriction of human rights, or in other words, to uphold the fundamental values of human rights and to ensure the rule of law and justice. Based on Law Number 8 of 1981

¹ Departemen Kehakiman RI, *UU Nomor 8 Tahun 1981 tentang KUHP*, Depkeh RI, Jakarta, 1986, p. 6.

(Criminal Procedure Code), it has established in a limited and detailed manner the implementation of detention actions, one of which is what is called the submission of a request for suspension of detention with the provision of a guarantee.

In relation to the explanation above, to fulfill this detention suspension, it must be determined through several legal requirements or other humanitarian factors that make it impossible to detain a criminal offender. However, considering the development of practices, it turns out that the issue of fulfilling requests for detention suspension is not simply granted by the authorities even if the specified conditions have been met. Rather, the factor of a third party's guarantee regarding the certainty of the detention suspension's implementation remains a determining element.

In the criminal justice process, the issue of detention is one of the most essential issues in the freedom of human rights, because any detention of a person suspected of being involved in a criminal incident is a temporary restraint on his freedom and independence. The explanation above that detention cannot be separated from the essential factors of human life, this is as emphasized by M. Yahya Harahap, that every name of detention automatically involves the value and meaning of:

1. Deprivation of freedom and independence of the person detained.
2. Concerning the value of humanity and human dignity.
3. It also involves the defamation of one's reputation and personal honor, or in other words, every detention automatically involves the restriction and temporary revocation of some human rights.²

Further on this matter, as emphasized in her book, Ratna Nurul Arifin stated, "In the suspension of detention, it is still valid and official and remains within the detention period permitted by law." However, the execution of detention is halted by releasing the detainee after the detaining agency establishes the conditions for suspension that must be fulfilled by the detainee or another person acting as a guarantor for the suspension.³ Considering the entire explanation above, the occurrence of a detention suspension is inseparable from a request to the institution that detains a suspect or defendant to be released from legal restraint. Therefore, if detailed, the implementation of this detention suspension can occur based on the following three considerations:

1. Because of the request of the suspect or defendant.
2. And this request is approved by the agency that detains or is legally responsible for the detention under the stipulated terms and guarantees.

² M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta: PT. Sarana Bakti Semesta, Jakarta, 1985, p. 41.

³ Ratna Nurul Arifin, *Barang Bukti dalam Proses Pidana*, Sinar Grafika, Jakarta, 1989, p.91.

3. The existence of approval from the suspect or defendant to fulfill the stipulated conditions and meet the specified guarantees.⁴

The development of practice often constitutes this guarantee element, where the guarantee right in the form of a person is much more decisive than other requirements in the law. Therefore, in this context, it is related to the topic that the author raises in the thesis writing to determine the requirements in the law. Therefore, in relation to that, if linked to the topic raised by the author in the thesis writing, to determine with certainty how the previous provisions of detention suspension were.

II. RESEARCH METHOD

This research uses a qualitative research method, with the reason that qualitative methods are more easily adaptable when faced with real-world situations. The location of this research is at the Padangsidempuan District Court Office. The type of research conducted is an Observational Research through surveys, which is research carried out in the field to obtain the necessary data and ultimately address the issues faced. This achievement was accomplished through various means to study and analyze various reading materials or utilize books to obtain scientific materials that serve as the foundation or theoretical framework in the research and data analysis of the issues faced. After that, field research activities are conducted to obtain data through developments in practice.

The population in this study consists of the Panel of Judges at the Padangsidempuan District Court. Then the sample of this research is one of the judges who handles murder cases at the Padangsidempuan District Court.

The sources used in this research are:

1. Primary Data is: data obtained directly from respondents, namely data obtained from the Chief of the District Court and others who have a direct interest.
2. Secondary Data is: data available in written form obtained from literature, regulations, and relevant expert opinions.

The data collection tool used by the author in this research:

1. Interview (wawancara), namely: a direct interview with an institution that, in the author's opinion, can provide the necessary data.
2. A questionnaire is a data collection tool that involves presenting a list of questions in writing to the relevant parties.

⁴ S. Tanusubroto, *Dasar-Dasar Hukum Acara Pidana*, Armico, Bandung, 1989, p.43.

After the data is collected, both primary and secondary data obtained by the author from the field through interviews will be processed by categorizing the data according to its type. Data sourced from questionnaires will be presented in the form of tables. Then a discussion is conducted in the form of interpretation linked with legal theories, documents, and other data, and compared with the opinions of experts. The method of drawing conclusions uses deduction, which means drawing conclusions from specific or concrete matters based on positive legal instruments, as a general basis to attempt to draw conclusions regarding the case at hand concerning the suspension of detention.

III. DISCUSSION

a. Guarantee in the Application for Suspension of Detention

Based on research data, it turns out that the importance of guarantees in requests for detention suspension has been misinterpreted from the principles of criminal law, where the existence of guarantees is made as if it is only for the benefit of the parties involved in the agreement, similar to what is done in civil law. The interest that should be considered in the guarantee of suspension of detention is actually aimed at the interest of law enforcement so that it can truly be applied according to the facts that will be proven. Therefore, in the guarantee, the most important content is the certainty that the suspect or defendant will not flee or repeat the criminal act during the suspension of detention, not as it has developed in practice, which seems to suggest that the guarantee of suspension of detention is for the benefit of the suspect or defendant, but rather it is for the interest of the examination process of the evidence that will be conducted against the suspect or defendant.

The importance of providing a guarantee when submitting a request for a suspension of detention in the criminal justice process is a sign that a bond has been formed between the two parties, namely the suspect and the law enforcement officers who are carrying out the detention. Therefore, if viewed from the perspective of the importance of guarantees in the request for a suspension of detention, it serves merely as a basis for fostering mutual trust. This means that on one hand, law enforcement officials believe that the suspect or defendant who is guaranteed will comply with all legal requirements during the suspension of detention, while on the other hand, the suspect or defendant or the person providing the guarantee will adhere to and respect the trust given by law enforcement officials. The reason for the development of the importance of guarantees during detention suspension is more sociological than juridical, which is inseparable from the lack of understanding among law enforcement officers and the community regarding guarantees themselves. This can be seen from the favoritism shown to parties who submit detention suspension requests based on guarantees. This means that if the guarantors belong to a social group that is well-known in the community, the

authorities are usually more inclined to grant detention suspension. Conversely, if the guarantors are less known in social circles, they will face difficulties in obtaining detention suspension. Therefore, it is clear that in the matter of detention suspension guarantees, the social aspect is more prominent than the juridical aspect.

In connection with the above explanation, it is therefore important that the guarantee in the request for detention relief be restored to its proper proportion, namely as a guarantee for the protection of the suspect or defendant's reputation in case he is not proven guilty during the court proceedings. Similarly, from the perspective of law enforcement who will grant a suspension of detention to a suspect or defendant, it is necessary to consider the request for suspension of detention submitted to them, because by carefully screening each request for suspension of detention, even with a guarantee, legal certainty will be better established, based on the prevailing practice regarding the importance of guarantees in the suspension of detention for a criminal case judicial process.

According to the author's analysis, it has not been fully implemented in accordance with the public interest, as evidenced by the law enforcement's attitude in neglecting a detention suspension request that prioritizes social aspects over legal aspects, thereby deviating significantly from the essential purpose of guarantees in every detention suspension. Therefore, with all the explanations above, the author concludes that the analysis of the importance of guarantees in the request for detention suspension cannot yet be considered one of the interests for the smoothness of the proof process.

b. The Legal Force of Guarantees in the Application for the Implementation of Detention Suspension

Based on the explanation of the criminal procedural law, the guarantee in the suspension of detention must be viewed specifically on a case-by-case basis according to the severity of the crime committed. This means that law enforcement officers, whether investigators, prosecutors, or judges themselves, are the ones who consider whether the suspension should be granted with a guarantee. Formally and juridically, determining bail as a mandatory requirement with legal force, independent of the conditions for detention suspension, is not appropriate, because according to the criminal justice process, the right to detain and the authority to grant detention suspension lie with each judicial institution. Therefore, the guarantee determined by the parties during the preliminary examination does not mean it can be used during the prosecution process and the court trial process. This means that the guarantee given by a suspect during the investigation process can be canceled by the public prosecutor or the judge. For the reasons mentioned above, if

viewed from a legal perspective, the legal force of a guarantee, whether in the form of money or a person linked to the request for a suspension of detention, is not absolute but rather serves only as a complement to the conditions for the suspension of detention.

So it is clear that what has developed in the provision of bail for detention postponement has so far been inconsistent with the applicable legal rules, because in practice, this bail seems to be something that is mandatory and has its own legal force in the postponement of detention. Similarly, when viewed from the provisions for the implementation of guarantees for approved detention suspension requests, this does not mean that the law enforcement officer who issued it can revoke it. Rather, it still has the possibility of being revoked if the suspension conditions are violated by the suspect or defendant. Therefore, it is clear that the conditions are what determine this, not the guarantee promised between law enforcement officers and the suspect or defendant.

The above assertion can be seen from the stipulation in the last sentence of Article 31 paragraph (1) of the Criminal Procedure Code, which bases the granting of detention suspension on specified conditions. Therefore, a detention suspension granted by the detention authority without conditions is contrary to legal provisions. The establishment of conditions for the suspension of detention by the institution granting the suspension is the basis for granting the suspension; without the predetermined conditions, the suspension of detention should not be granted.⁵

Based on the provisions of that article, the development regarding the existence of bail as one of the requirements is not accurate. In other words, the legal force of a bail, whether in the form of money or a person in a bail release, is merely an addition to what is stipulated. Thus, from all the explanations above, it can be concluded that the determination of a guarantee for the suspension of detention is facultative, in accordance with the provisions of Article 31 paragraph (1) of the Criminal Procedure Code, which states that the suspension of detention is granted with a guarantee. So determining the guarantee depends on the detaining agency's assessment of the case at hand, therefore, without a guarantee, the act of granting a suspension of detention remains legally valid.

c. Practice of Guarantee Implementation in Detention Suspension

When viewed from the perspective of public legal knowledge, especially in determining bail for detention suspension, it is also colored by attitudes that are still developing in practice, where members of the public, especially those involved in

⁵ H. Hamrat Hamid, *Pembahasan Permasalahan KUHP Bidang Penyidikan dalam Tanya Jawab*, Sinar Grafika, Jakarta, 1992, p. 19

case investigations, still believe that this guarantee must be included if they wish to submit a request for detention suspension. Therefore, this has led to a perception among the public that if one wishes to apply for a suspension of bail, it must be prepared in advance before determining the rules. In the applicable criminal procedural law, it is actually the opposite; the conditions are determined first, and then the bail is set.

The cause of the aforementioned perception arises from the lack of consensus among law enforcement officers in each institution regarding the consideration of granting detention suspension. For example, at the investigation stage, detention suspension is intended for the collection of evidence, while at the prosecution stage, it is only for preparing the case file to be submitted to the district court, and during the trial, it is used to ensure the smooth conduct of the proceedings. So in this relationship, the suspect or defendant only has to adjust to the level at which he will apply for a suspension of detention, instead of what should be the guideline as stipulated in Article 31 paragraph (1) of the Criminal Procedure Code. Based on the descriptions above, it is clear how the developments that have occurred in practice, especially in the Padangsidimpuan District Court, where both in terms of importance and legal force, the guarantee of a suspension of detention has not been implemented properly. Therefore, the practice of implementing a suspension of detention based on a guarantee in the form of money or a person is still implemented according to the interpretation of each detaining agency, or in other words, what is implemented by the agency in connection with the implementation of the suspension guarantee has not all been regulated in the provisions of Article 31 paragraph (1) of the Criminal Procedure Code.

As for the reasons for the explanation above, this is known from the attitude or principle that occurs in every application for a detention suspension by the suspects or defendants, namely that if one wishes to apply for a detention suspension, the institution must set a guarantee without considering the severity or leniency of the case faced. Then, from another perspective that has developed in practice regarding the guarantee of detention suspension, there is the issue of the form of guarantee provided, because as stipulated in the Criminal Procedure Code, this form of guarantee can be in the form of money and in the form of a person.

The more developed form of guarantee in the jurisdiction of the Padangsidimpuan District Court is a personal guarantee, namely by entering into a bail agreement where someone provides themselves as a guarantor for the bail granted to the suspect or defendant. This development is due to the easier procedure compared to bail in the form of money, in addition to the economic level of the bail applicants being less likely to use money. Meanwhile, a guarantee in the form of a person only

receives consideration from the authorities conducting the detention, to examine the possibility of their responsibility, as well as the readiness of the guarantor to be trustworthy or not. Therefore, if we look at the development in practice, seekers of justice such as suspects or defendants tend to prefer guarantees in the form of a person rather than in the form of money.

However, if we look at the purpose of granting bail for the continuation of the judicial process, it would actually be more assured if the detention institution popularized bail in the form of money, because the bail money is directly deposited in the court clerk's office, where the deposit is made directly by the suspect or defendant or through their legal counsel. Moreover, the issue of bail is based on community funds, especially for the suspect or defendant through their legal counsel, who still lack confidence in the storage methods used in the court clerk's office. This is because there is a high possibility that once the bail is completed, it will be difficult to retrieve the bail money, or at the very least, there will be difficulties or complicated procedures when applying for the return of the bail money. Therefore, based on the explanations above, it can be concluded that the guarantee of detention suspension commonly practiced is by using personal guarantees, whether in minor criminal cases such as violations or in the form of crimes.

After studying the research data on the issue of bail in detention suspension, the author concludes that this issue of bail has not been implemented as stipulated in the law. Therefore, if we examine several factors causing the failure to implement bail determination as it should be, it is due to several weaknesses as follows:

1. Legislation

As is known, the judge's rules governing the issue of bail in detention suspension are outlined in Article 31 of the Criminal Procedure Code, Government Regulation Number 27 of 1981, and the Minister of Justice of the Republic of Indonesia Regulation No. M.04UM.01.06/1983 Article 35 paragraph (1), which has provided guidance that: In the event of an approved request for detention suspension, an agreement shall be made between the authorized official according to the level of investigation and the suspect or their legal advisor along with the conditions. If the guarantee is in the form of money, then the bail amount must be clearly stated in the agreement and its amount determined by the authorized official.⁶

For example, in the three legal regulations governing guarantees, there is no clear determination of the position of guarantees in each detention

⁶ A.F. Lamintang, *Pembahasan Secara Yuridis dan Ilmu Pengetahuan Hukum Pidana*, Bandung: Sinar Baru, 1984, p.160.

suspension, whether the element of guarantee is a factor included in the suspension request, or in other words, if viewed from the determination of the conditions for detention suspension, it is a "condition sine qua non" factor in detention suspension. Without the establishment of these conditions, the suspension is considered invalid and contrary to Article 31 paragraph (1) of the Criminal Procedure Code, whereas on the other hand, there is no definite regulation regarding guarantees.

On the other hand, if the bail is determined based on the money deposited with the district court clerk, while the suspect or defendant has already been released from detention. It turns out that the law does not further regulate who will supervise the suspect or defendant whose detention is suspended based on that bail money. Next, the weakness in the legislation regarding the issue of bail is the position of the guarantor, meaning the law does not regulate the extent of the actions that can be imposed on the guarantor, especially in the case of a personal guarantee, when the suspect or defendant violates the specified conditions.

2. Uncertainty of Procedure

As explained in the data presentation chapter, the determination of bail in a suspension request is decided by each agency conducting the detention, in accordance with the level of detention imposed on the suspect or defendant. Therefore, the determination of guarantees, especially in the form of personal guarantees when applying for a detention suspension, often experiences uncertainty for the applicants. This is because if a defendant or suspect submits a request for a detention suspension at the investigator level, it will not be the same as the procedure that will be followed at the prosecutor or trial level. As for the inconsistency in the procedure for requesting bail suspension, it is caused by the law itself, which does not provide an explanation, method, or procedure for requesting bail suspension, whether in writing or merely verbally. Likewise, there are no regulations regarding how many people must provide guarantees or how much money must be deposited if a request for bail is submitted, so the procedure for submitting a bail request truly lacks specific guidelines.

3. Public Knowledge

As an unavoidable weakness, it is also inseparable from the lack of legal knowledge in society regarding the provisions that regulate bail when applying for a detention suspension; therefore, what often happens as a custom is what the community does. For example, by making a suspension request letter addressed to the detaining agency, without knowing the requirements contained within it according to the expectations of Article 31 paragraph (1) of the Criminal Procedure Code. Therefore, in that context,

Article 35 of Government Regulation Number 27 of 1983 is emphasized as follows:

1. The bail for detention suspension is set by the authorized officer in accordance with the examination and is kept in the court registry.
2. If the suspect or defendant flees and is not found after 3 (three) months, the bail money will become state property and will be deposited into the State Treasury.⁷

With the aforementioned reasons, the implementation of detention suspension with guarantees, whether monetary or personal, still varies in practice, leading to conditions that often result in negative impacts in the determination of these guarantees. For example, there may be favoritism towards individuals who apply for bail by the detention authority, or in cases of serious crimes, bail may be granted because the guarantor is wealthy. On the contrary, a minor offense, but because the guarantor is not wealthy or not well-known in society, does not receive a suspension of detention. Based on the author's analysis of the research data, it can be concluded that the implementation of bail in the application for detention suspension still faces obstacles in practice.

IV. CONCLUSION

1. Viewed from the developments in the practice of granting bail in the jurisdiction of the Padangsidempuan District Court, it seems that it does not yet comply with the provisions of Article 31 paragraph (1) of the Criminal Procedure Code (KUHP), but its implementation still follows the customary practices that have developed so far.
2. In determining whether or not to grant a request for a bail suspension submitted by the suspect or defendant to the detaining agency, it turns out that law enforcement officers themselves still adhere to a subjective interpretation.

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⁷ Leden Marpaung, *Proses Penanganan Perkara Pidana*, Sinar Grafika, Jakarta, 1992, p.122.

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