

THE CONCEPT OF HAND CATCHING OPERATIONS ON CORRUPTION ERADICATION BASED ON THE VALUE OF JUSTICE (DECISION STUDY NUMBER 97 / PID / PRAD / PN JKT.SEL)

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Abstrak: Maraknya penangkapan yang dilakukan oleh KPK, yang dikenal dengan Operation Catch Hand atau OTT, telah menimbulkan polemik legal. Wacana ini mengemuka diawal intensitas anggota DPR seperti Fahri Hamzah. Tujuan dari penelitian ini adalah untuk menganalisis operasi tangkap tangan (OTT) dalam pemberantasan korupsi, apakah mencerminkan nilai keadilan dan untuk menemukan konsep pemberantasan korupsi terkait pengumpulan barang bukti permulaan dengan Hand Catching Operation (OTT) yaitu sesuai dengan nilai keadilan. Metode penelitian yang digunakan adalah penelitian normatif. Hasil penelitian menunjukkan bahwa pelaksanaan Operasi Tangkap Tangan yang dilakukan oleh Komisi Pemberantasan Korupsi dipidana dalam arti nilai keadilan yang pada hakikatnya merupakan upaya paksa, memperoleh hak warga negara, tetapi karena untuk kepentingan bukti bahwa sudah diatur dalam undang-undang, tindakan ini bisa dibenarkan.

Kata Kunci: Kejahatan Korupsi; Penangkapan Tangan; Nilai Keadilan; Operasi

Abstract: The rise of arrests made by the KPK, known as Operation Catch Hand or OTT, has led to a polemic of whether it is legal or not. This discourse arose at the beginning of the intensity of DPR member Fahri Hamzah. The purpose of the research is to analyze hand-catching operations (OTT) in the eradication of corruption, whether it reflects the value of justice and to find the concept of eradicating corruption related to preliminary evidence collection with Hand Catching Operation (OTT) that is under the value of justice. The research method used is normative research. The result of the research is that the implementation of the Catching Hand Operation conducted by the Corruption Eradication Commission is punished in terms of the value of justice which is essentially a forced attempt, accruing the right of citizens, but because it is for the sake of proof that it is regulated in law, this action can be justified.

Keywords: Corruption Crime; Hand-Catching; Justice Value; Operation

INTRODUCTION

Indonesia is a rule of law that enforces supermasi which means upholding truth and justice¹. One of the efforts to get justice for suspects from formal procedures is through pretrial institutions². First district court hearing for findings and conclusions: Detention and / or detention is legal either at the request of the suspect or his family or other party or agent; whether or not the termination of investigation or prosecution is legal as regulated in Article 1 point 10 and Article 77 KUHAP³

The judge who sits in the pretrial hearing is a single judge, as affirmed by Pasal 78 Ayat (2) KUHAP of the Criminal Procedure Code, namely: "The pretrial is led by a single judge who is appointed by the Chairman of the" Assistance from District Courts and Registrars ". Pre-judicial institutions based on the criminal justice system in Indonesia only have the authority to examine (examining judges) on the implementation of several coercive attempts so that judges

are not given a broader authority that includes investigating judges.

The main purpose of pretrial as stated in the Criminal Procedure Code, (hereinafter referred to as KUHAP) and In accordance with the decision of the Constitutional Court Number 21 / PUU-XII / 2014 is to carry out horizontal monitoring, examination of all acts of coercion (violating human rights)⁴. The investigator process or charges against the suspect during the investigation by the investigator or prosecution, so that the said action does not contradict the applicable provisions⁵

The Corruption Eradication Commission (KPK) is a member of the police force in the Corruption Eradication Commission in accordance with the provisions of Article 30 paragraph⁶. 3 of the 2002 Law. Government offices. very much. The KPK is the investigator in confiscating assets from suspects who have committed criminal acts of corruption. Not only that, the KPK also has a role to provide a

¹ Nawawi Arief Barda, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Prenada Media, 2018).

² Sahri Sebayang, 'Praperadilan Sebagai Salah Satu Upaya Perlindungan Hak-Hak Tersangka Dalam Pemeriksaan Di Tingkat Penyidikan (Studi Pengadilan Negeri Medan)', *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 2019.

³ S.H. R. SOENARTO SOERODIBROTO, 'KUHP DAN KUHAP', in *KUHP DAN KUHAP Dilengkapi Yurisprudensi Mahkamah Agung Dan Hoge Raad*, 2014.

⁴ Wahyu Ramadhani, Said Iskandar, and Radhali Radhali, 'Legalitas Operasi Tangkap Tangan (OTT) Komisi Pemberantasan Korupsi Terhadap Gubernur Aceh', *Syah Kuala Law Journal*, 2018
<<https://doi.org/10.24815/sklj.v2i3.11604>>.

⁵ Maesa Plangiten, 'FUNGSI DAN WEWENANG LEMBAGA PRAPERADILAN DALAM SISTEM PERADILAN DI INDONESIA', *Lex Crimen*, 2013.

⁶ Ramadhani, Iskandar, and Radhali.

deterrent effect in order Protection and oppression existing corruption cases⁷. On the relation in crime of money laundering, gratuities and others, the KPK has the authority in dealing with cases of Corruption offenses as a weapon. The operation of catching hands is not stated explicitly, meanwhile "Caught by hand" is regulated in 18 paragraph (2) of the Criminal Procedure Code.

Hand-Catching Operation (OTT) is linked to the definition of being caught hand in hand in the Criminal Procedure Code for parties who think that OTT is illegal based on the argument that the absence of the term Capture Operation in the existing Criminal Procedure Code is only Caught Hand⁸. There is legal confusion because the Criminal Procedure Code does not recognize the term Hand-Catching Operation, in fact there is not even one statutory regulation in Indonesia that contains this term. However, that does not mean that automatic OTT is illegal.

The definition of being caught red-handed by the principle of due process of law still needs to be questioned. The definition of being caught red-handed (IT) according to Article 1 point 19 of the

Criminal Procedure Code is "the arrest of a person while committing a criminal act or immediately after a while the criminal act has been committed, or a moment later the public is calling out to him as the person who committed it, or if a moment later at him. an object is found which is strongly suspected of being used to commit the criminal act which shows that he was the perpetrator or participated in or assisted in committing the criminal act"

The OTT of the KPK officers made an arrest of a person, then the actions of the arrest could be tested whether they were in accordance with the conditions of the arrest⁹. For example, it turns out that the KPK officer who made the arrest was carried out without the warrant required in Article 18 paragraph (1) even though the incident was not caught red-handed, but 1 day after the criminal incident occurred, the arrest was still illegal even though it was within the framework of Hand Catch Operation. Eradicating criminal acts of corruption that should be tested for legal certainty, including the Setya Novanto case. The KPK in its defense must have said that the OTT's actions were based on the KPK SOP¹⁰. However, the KPK leadership regulations in

⁷Aan Saputra R.A, I Made Sepud, and Simon Nahak, 'Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Korupsi Dalam Bidang Pengadaan Tanah', *Jurnal Prasada*, 4.1 (2017), 32–41.

⁸ Ramadhani, Iskandar, and Radhali.

⁹ Budi Arsih and C N Anisah, 'Solutions Governance Diminish Corruption in Public Health

Care Systems in Indonesia', *Health*, 6.1 (2015), 55–71.

¹⁰ Fernando, 'Tinjauan Yuridis Putusan Praperadilan Yang Memerintahkan Penghentian Penyidikan Perkara Tindak Pidana Korupsi Setya Novanto' (Universitas Bhayangkara Jakarta, 2018).

the form of SOPs should not contradict laws. The reason that the KPK has *lex specialis* authority has been stipulated in Article 46 paragraph (1) of the KPK Law because the special procedures in other laws do not apply under the KPK Law, only limitatively determined *vide* Article 12 of the KPK Law, excluding OTT which is trapping. This research aims to uncover the value of justice (Case Study of Preliminary Decision No. 97 / Pid / Prad / 2017 / PN. Jkt. Sel) in the operation of catching hands (OTT) of corruption and the concept of eradicating corruption related to the collection of preliminary evidence with the Hand Catch Operation in accordance with the value of justice¹¹

METHOD

This type of research used in this research is legalization research. Basic legal research: Organized to investigate the application of rules or regulations to strong laws. The method used in this research is the specific method (experimental method), method method (condition method) and method method (baseline method).

Researchers used primary, secondary and tertiary data, temporary information

contained in the Criminal Procedure Code Law dated 20 June 1999 of 1981 and the Anti-Corruption Law dated 20 June 2001. 30, interim results no. 97 / Pid / Prad / PN Jkt. On the wall. The second legal status includes books, magazines and articles, higher education and much more, especially guidelines and information on primary and secondary law.

RESULTS AND DISCUSSION

In the criminal procedural law, certain officials are given the authority to limit a person's freedom and independence in various forms of activity¹². This restriction of freedom and independence is an act or forceful effort that must be done in following the orders of the law. The Criminal Procedure Code has determined that there are several acts or attempts to force that can be carried out in connection with the occurrence of a criminal act committed by a person. The Criminal Procedure Code authorizes investigators, including the power to reduce a person's freedom and human rights¹³. The use of this power must be based on laws and principles that uphold human dignity and ensure a balance between protecting the interests of

¹¹ Imraan Coovadia, 'Corruption', *Social Dynamics*, 2019 <<https://doi.org/10.1080/02533952.2019.1621027>>.

¹² Muhaimin Muhaimin, 'Penetapan Tersangka Tidak Ada Batas Waktu', *Jurnal Penelitian Hukum De Jure*, 2020

<<https://doi.org/10.30641/dejure.2020.v20.275-288>>.

¹³ Suswanto Suswanto, Slamet Suhartono, and Fajar Sugianto, 'Perlindungan Hukum Bagi Tersangka Dalam Batas Waktu Penyidikan Tindak Pidana Umum Menurut Hak Asasi Manusia', *Jurnal Hukum Magnum Opus*, 2018 <<https://doi.org/10.30996/jhmo.v0i0.1768>>.

the suspect on the one hand, and the interests of the wider community, the public interest on the other¹⁴

The powers that the law gives to investigators that limit a person's freedom and human rights can be carried out in the form of acts of arrest, detention, confiscation and search¹⁵. An arrest by an investigator is useful to impose limits on the freedom of the accused as regulated by law¹⁶.

Officials authorized to make arrests are:

a. Investigators have the right to detain in connection with investigative purposes.

b. Investigators and assistant investigators are authorized to make arrests for the purpose of investigation.

Article 17 of the Criminal Procedure Code stipulates that an investigator and investigator / assistant investigator shall arrest a person a serious person accused of a crime must be based on sufficient prior evidence. This provision indicates that an arrest warrant cannot be made arbitrarily but is directed at those who have actually committed a criminal act.

The definition of "sufficient preliminary evidence" is still unclear, so in practice this

problem It depends on the goals the researcher has set. and investigators¹⁷. The meaning of "sufficient preliminary evidence" as explained in the Elucidation of Article 17 of the Criminal Procedure Code is preliminary evidence to suspect a criminal act, In accordance with the provisions of Chapter 1 par. 14 of the Criminal Procedure Act. However, as a guideline in practice it is usually based on the testimony of witnesses who show the suspect as the perpetrator is supported by other evidence, such as evidence of evidence, and so on.

Referring to Article 17 of the Criminal Procedure Code and its explanation, there is no explicit provision that states what initial evidence is sufficient. However, later, in the Decision of the Constitutional Court (MK) Number 21 / PUU-XII / 2014 it was stated that the phrases "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" as specified in Article 1 number 14, Article 17, and Article 21 paragraph (1) KUHAP must be interpreted by at least two pieces of evidence contained in Article 184 KUHAP.¹⁸ As for the valid evidence according to Article 184 paragraph (1) of the Criminal Procedure Code is witness testimony; expert statement; letter;

¹⁴ Luis Roberto Barroso, 'Here, There, & Everywhere: Human Dignity in Contemporary Law & in the Transnational Discourse', *Boston College International & Comparative Law Review*, 2012.

¹⁵ "Pasal 7 Ayat 1,"

¹⁶ "Pasal 1 20 KUHAP,"

¹⁷ Iman Hidayat, 'Fungsi Dan Wewenang Polri Dalam Kaitannya Dengan Perlindungan Hak Asasi Manusia', *LEX Spesialis*, 14, 26–34.

¹⁸ Bahrani Baseri and Bahrani Buseri, 'Penetapan Tersangka Menurut Hukum Acara Pidana Dalam Perspektif Hak Asasi Manusia', *Syariah Jurnal Hukum Dan Pemikiran*, 2018 <<https://doi.org/10.18592/sy.v17i2.1972>>.

instructions; and the statement of the defendant¹⁹.

The Constitutional Court argued that the Criminal Procedure Code did not provide an explanation regarding the limit on the number (evidence) of the phrases "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence"²⁰. The Constitutional Council has considered the minimum requirements for identifying and investigating potential suspects in the identification and protection of individual rights before being declared a suspect can provide a balanced statement²¹. This will prevent investigators from committing the crime, especially if the initial information is sufficient²².

The role of the investigator is to explain the reasons and reasons for detention, the suspect's case and where he is present by providing a certificate to the agent and directing it. suppression of suspicion. During the survey²³. In the event of being caught in the act, the arrest is carried out without a warrant, provided that the catcher

must immediately hand over the caught and existing evidence to the nearest investigator or assistant investigator²⁴.

In the event that the perpetrator is caught in the act, alternative conditions must be met, meaning that if one of them is met, it can be categorized as being caught red-handed²⁵: However, in this provision there are weaknesses, namely it does not explain how long it means "immediately after the criminal act is committed" and "if a moment later objects are found ..."

Considering that being caught in the act is part of the realm of arrest, according to Article 19 paragraph (1) of the Criminal Procedure Code, an arrest can be made for a maximum of one day. Thus, the problem of carrying out arrests carried out by investigators in handling criminal acts, including corruption, is said to be valid if it meets one of the requirements²⁶.

Meanwhile, OTT is not mentioned in the Criminal Procedure Code and the Corruption Act, as well as the KPK Law²⁷.

¹⁹ Luthvi Febryka Nola, 'Operasi Tangkap Tangan Oleh KPK', *P3Di*, 2013.

²⁰ Risma Yuristia, 'Pengaruh Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Terhadap Pengajuan Praperadilan Mengenai Penetapan Status Tersangka', *Verstek*, 4.3 (2016).

²¹ Baseri and Buseri.

²² Mohammad Isa Gautama, 'Analisis Framing Pemberitaan Operasi Tangkap Tangan Patrialis Akbar Di Media Daring Lokal Dan Nasional', *Jurnal Socinus: Journal of Sociology Research and Education*, 2018 <<https://doi.org/10.24036/scs.v4i1.72>>.

²³ Iqbal Parikesit, Eko Soponyono, and Sukinta, 'Tinjauan Tentang Objek Praperadilan

Dalam Sistem Peradilan Pidana Di Indonesia', *Diponegoro Law Journal*, 2017.

²⁴ 'Tertangkap Tangan Sebagai Pengecualian Terhadap Penangkapan Menurut KuhaP', *LEX PRIVATUM*, 2016.

²⁵ hartati S Nusi, 'Penangkapan Dan Penahanan Sebagai Upaya Paksa Dalam Pemeriksaan Perkara Pidana', *Lex Crimen*, 2016.

²⁶ Andre Putra Utiahman, 'Upaya Paksa Dalam Penyidikan Tindak Pidana Korupsi Di Indonesia', *Lex Crimen*, 8.10 (2020).

²⁷ Puteri Hikmawati, 'Operasi Tangkap Tangan Dalam Penanganan Kasus Korupsi (Arrest Hand Operation In Handling Corruption Case)', *Negara Hukum: Membangun Hukum Untuk Keadilan Dan*

OTT is the KPK term for "catching red-handed" someone suspected of being a corruption actor. An operation that is secretive, measurable and the victims are rarely able to survive accusations because it is based on a long process when the KPK "sniffs" the existence of corruption^{28,29}.

The term OTT has just appeared in the Presidential Regulation of the Republic of Indonesia (Perpres) Number 87 of 2016 concerning the Task Force to Clean Up Illegal Levies. Presidential Decree Number 87 of 2016 establishes a Task Force to Clean Up Illegal Levies, hereinafter referred to as the Saber Pungli Task Force, which is located under and responsible to the President³⁰.

Minister The Coordinator for Political, Legal and Security Affairs is in charge of the Saber Pungli Task Force, with the Chief Executive of the Police General Supervision Inspector³¹. The task of the Saber Extortion Task Force is to carry out the eradication of illegal levies effectively and efficiently by optimizing the use of personnel, work units

and infrastructure, both in ministries / institutions and local governments³².

In at the regional level the Saber Pungli Team was formed by a Governor Decree. The working period of the Saber Team is one year, with a budget from the governor and district / city with a budget from the regent / mayor. In East Java, for example, the Saber Pungli Team was formed by Governor Decree No. 188/624 / KPTS / 013/2016 concerning the Task Force for Cleansing Pungli of East Java Province, dated 4 November 2016. The budget from the governor is 3 billion a year³³.

The members of the Saber Extortion Task Force include: Police, Regional Government Legal Bureau, Inspectorate, Prosecutor, Intelligence, Ombudsman, Experts/Academics. The structure of the Saber Pungli consists of the Intelligence Sub-Task Force, the Prevention Sub-Task Force, and the Enforcement Sub-Task Force. So Saber doesn't just take action. The results of Saber Pungli's work are reported to their respective superiors³⁴.

Kesejahteraan, 2018
<<https://doi.org/10.22212/jnh.v9i1.998>>.

²⁸ Fatimah Asyari, 'Operasi Tangkap Tangan (Ott) Di Pusat Dan Daerah Untuk Meraih Wtp Terkait Masalah Pelanggaran Hukum', *Legalitas*, 2017.

²⁹ Budiarsih and Anisah Che Ngah, 'Challenges In The Health Care System in Malaysia and Indonesia', *Scientific Journal of PPI-UKM*, 2.6 (2015), 278–81.

³⁰ I Made Arya; Sanjaya Utama Ray Dio, 'Implementasi Peraturan Presiden Nomor 87 Tahun 2016 Dalam Pemberantasan Pungutan Liar Oleh Polresta Denpasar', *Kertha Negara: Journal Ilmu Hukum*, 2019.

³¹ Nyoman Trisna Sari Indra Pratiwi and Adiyaryani Ni Nengah, 'PEMBERANTASAN PUNGUTAN LIAR (PUNGLI) SEBAGAI BENTUK KEBIJAKAN KRIMINAL DI INDONESIA', *Kertha Wicara: Jurnal Ilmu Hukum*, 2019.

³² Arleta Gustitia, 'Upaya Peningkatan Pemberantasan Pungli Oleh Satgas Saber Pungli', *Jurnal Litigasi*, 20.1 (2020).

³³ A Djoko Sumaryanto, 'The Implementation of Justice Collaborator at The Investigation Stage in East Java Regional Police', 2019
<<https://doi.org/10.2991/iscogi-17.2019.6>>.

³⁴ Hernawati and Windu Gata, 'Sentimen Analisis Operasi Tangkap Tangan KPK Menurut

CONCLUSION

To prevent human rights violations of suspects / defendants, the Corruption Eradication Commission collaborates with other investigating agencies to formulate standard provisions on the procedures for conducting Hand Catching Operations that accommodate the human rights of suspects in the form of a Joint Decree which is the reference for all investigators in carrying out Hand Catching Operations. While there is no regulation on wiretapping, the Head of the Corruption Eradication Commission needs to immediately stipulate a regulation on the wiretapping mechanism as an implementing rule for Law Number 30 of 2002 concerning the Corruption Eradication Commission, then there is socialization and there needs to be public participation which must be expanded through coordination, supervision and prevention of corruption (korsupgah). Furthermore, the Government and the DPR need to immediately enact the Tapping Law as the legality of wiretapping for the KPK, the Attorney General's Office, the Police and the National Intelligence Agency by taking into account the aspirations of the agency.

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