

## **Rules on Not Fulfilling an Investigator Request to Provide a Statement Due To Illness Reason in Corruption Case**

Desky Ferdyan<sup>1</sup>, Dahlan Ali<sup>2</sup>, Ali Abubakar<sup>3</sup>

<sup>1</sup>*Master of Law in Syiah Kuala University*

<sup>2</sup>*Lecturer in Law at Syiah Kuala University, Banda Aceh*

<sup>3</sup>*Lecturer in sharia and Law at Ar-Raniry State Islamic University, Banda Aceh*

---

**Abstract:** The fulfillment of coming to provide a statement in a crime proceeding is a legal obligation. A suspect, an accused, a witness or an expert must come to fulfill a call in criminal processes. There is no law allows the call by representing it to other people unless in the traffic violation which is the accused can refer someone by a representing letter to represent him in the trial. The call towards the suspect aims at making the investigation runs smoothly. However, the investigators are having difficulties in doing investigation towards a suspect as an illness reason. It is particularly happening when a call to provide a statement in the process of witness interview or as a suspect in the corruption case. This research aims to know and explain rules on calling the suspects having an illness reason in criminal procedure law, and to know and explain the efforts done to overcome the obstacles in the process of making a suspect fulfilling the call. This is normative legal research by reviewing the secondary data or library research. Its specification is prescriptive analytical, that is trying to analyze, understand and find the answer about what and how it should be from each problem and analyze it by the law purpose, justice values, statutory validity, concepts and norms of law, in this regard is relating to the aspect of law of not fulfilling the obligation to come an investigator request due to an illness reason in corruption case. This research is using the statutory approach, analytical approach, and comparative approach case approach. The research shows that rules on requesting the suspect who is ill as a reason in criminal process law as follows; 1) Article 26 (4) of the Act Number 8, 1981 on Criminal Process Law; 2) Article 18 of the Act Number 2, 2002 on the Indonesian Police; 3) Article 9 of the Indonesian Judiciary Ministry Number: M.04-UM.01.06 Year 1983 on Procedures of Placement, Detention Treatment and Custody Code of Conducts; 4) Article 92 of the Chief of the Indonesian Police Number 12, 2009 on the Monitoring and Controlling of the Crime Handling within the Police of the Republic of Indonesia. The efforts to handle the obstacles in presenting the suspects with the illness reason are 1) To create a fix standard in medical consideration to determine the kind of illness that can be used to delay the detention and or the corruption suspects; 2) to establish an explicit rules regarding the usage of illness reason in handling the corruption case. It is recommended that the lawmakers should enact more explicit laws regarding the usage of illness reason to avoid the delay on investigators and courts, especially, in corruption case. Apart from that the medical staffs, investigators and law makers are also expected to coordinate in determining a fix standards of health to know the kind of illness that can or cannot be used to delay the detention and or investigating the corruption.

**Keywords:** Rules, investigation, corruption, illness reason.

---

Date of Submission: 01-05-2020

Date of Acceptance: 14-05-2020

---

### **I. INTRODUCTION**

The State of Indonesia is known as the State of Law. This is also confirmed in the 1945 Constitution Article 1 paragraph (3), "The State of Indonesia is a state of law". The rule of law is the basis of the State and the way of life of every Indonesian citizen, and Pancasila is the source of all the legal order in force in the Indonesian State. As a state of law, Indonesia must fulfill the concept of the rule of law in the world, namely as a state based on the constitution, adhering to the principles of democracy, recognizing and protecting human rights, and a free and impartial judiciary.

One of the important principles of the rule of law is the principle of legality. The principle of legality is closely related to the idea of democracy and the idea of the rule of law. The idea of democracy demands that every form of law and various decisions get the approval of the people's representatives and pay as much attention to the interests of the people as possible. The idea of the rule of law requires that state administrators and the government must be based on the law and provide guarantees for the basic rights of the people enshrined in the Act. According to Sjachran Basah, the principle of legality means realizing a harmonious integral duet between the understanding of the rule of law and the sovereignty of the people based on the principle of

monoduality as constitutive pillars. The application of the principle of legality according to Indroharto, will support the enactment of legal certainty and the application of equality of treatment.<sup>1</sup>

In administering a state that is clean and free of Corruption, Collusion, and Nepotism as mandated in article 43 of Law Number 31 of 1999 concerning Eradication of Corruption (Corruption Law), several policies were born, including the immediate order to establish the Corruption Eradication Commission (KPK). In the next step a draft law on the formation of the Corruption Eradication Commission was made.<sup>2</sup>

Corruption eradication institutions are formed based on Law Number 30, 2002 concerning the Corruption Eradication Commission (KPK Law). The Corruption Eradication Commission (KPK) was given the mandate to eradicate corruption professionally, intensively, and continuously. The KPK is an independent state institution, which is carrying out its duties and authorities is free from any power.

The task of the KPK is to coordinate with agencies authorized to eradicate corruption; supervision of agencies authorized to eradicate corruption; carry out investigations, inquiry and prosecutions of corrupt acts; take actions to prevent corruption; monitor the implementation of state government.

Article 6 of the KPK Law gives the KPK authority to conduct investigations, inquiry, and prosecutions of corruption. Furthermore, article 11 of the KPK Law limits the authority of the KPK in conducting investigations, inquiry, and prosecutions. This authority is limited to corruption which:

- 1) Involving law enforcers, state administrators, and other people who are related to corrupt acts committed by law enforcement officials or state administrators;
- 2) Getting attention that unsettles the community; and / or
- 3) Concerning state losses of at least Rp 1,000,000,000.00 (one billion rupiah)

In carrying out the authority to investigate and inquire the Corruption Eradication Commission based on Article 44 paragraph (2) of the KPK Law, the determination of a person as a suspect can be carried out if he already has preliminary evidence. Preliminary evidence which is sufficiently assumed to have existed if at least 2 (two) pieces of evidence have been found, including and not limited to information or data that is spoken, sent, received, or stored either on an ordinary or electronic or optical basis.

Article 1 Number 14 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) defines a suspect, a person who, because of his actions or circumstances, based on "preliminary evidence" should be suspected as a criminal.<sup>3</sup>

After determining the suspect, the investigator has the authority to summon the suspect, who because of his actions or circumstances based on preliminary evidence should be suspected as a criminal. For summons carried out by law enforcement officers at all levels of examination to be considered valid and perfect, it must be fulfilled the conditions that have been determined by law. Provisions on the legal requirement for a summon at the level of investigation are set out in Article 112, Article 119, and Article 227 of the Criminal Procedure Code.

Fulfill the summons is a legal obligation (Legal Obligation). Suspects, defendants, witnesses, and experts are required to fulfill the summons. There is no legal provision that allows the fulfillment of a call by representing someone else. Except for examining traffic violations, where the defendant can appoint someone with a power of attorney to represent him at trial (Article 213 of the Criminal Procedure Code).<sup>4</sup>

If the person summoned does not fulfill the summons, the person has violated the obligations imposed by the law under Article 112 paragraph (2) of the Criminal Procedure Code. However, the provisions of Article 112 paragraph (2) of the Criminal Procedure Code already regulate the next steps towards the denial of these obligations, namely:

- 1) If the first summon is not fulfilled by the person even though the summon has been made in the manner specified then the summon is made a second time;
- 2) If the second summons is not fulfilled by the person, the investigating officer issues an "order" to the officer to "bring the person" toward the official who summons him or to compel the appearance in a judicial proceeding by the principle or doctrine of "sulpoera".<sup>5</sup>

---

<sup>1</sup> <http://indoprogress.blogspot.com/MasalahKekuasaanNegara>, accessed on September 19, 2018.

<sup>2</sup> [www.pikiran-rakyat.com](http://www.pikiran-rakyat.com) accessed on May 9, 2019.

<sup>3</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia*, (Jakarta, SinarGrafika, 2008), p. 65

<sup>4</sup> Harahap M. Yahya, *PembahasanPermasalahandanPenerapanKuhap*, (Jakarta, SinarGrafika, 2000), p.

If the person summoned does not want to come without an acceptable reason, then he can be convicted according to Article 216 of the Criminal Code. If the summons is to appear before a trial court the suspect and the witness does not want to come without an acceptable reason, then he can be convicted according to Article 522 of the Criminal Code.<sup>6</sup>

The summons of the suspect aims to facilitate the investigation process. However, investigators encountered difficulties when calling for suspects who were ill. Especially this happens when called to fulfill the examination process as a witness or as a suspect.

Coordinator of the Indonesian Corruption Watch (ICW), Adnan TopanHusodo, said that several things caused the reasons for illness that were often used by corruption suspects. First, the suspect wants to buy time in the investigation process, especially for those who are undergoing a pretrial process. The effort to buy time is also part of the strategy to face the legal process that is carried out by the suspects.<sup>7</sup>

Forensic psychologist, Reza Indragiri Amriel said that the tactics of corruptors who are often absent due to illness, medical treatment, and other are indeed not new. According to him, people who are involved in legal cases can indeed play tactics to pretend to be sick or commonly called malingering so that they can circumvent the law or even get relief from punishment.<sup>8</sup>

The Criminal Procedure Code does not explicitly regulate whether convicts who are ill should not be examined. The Director of the Center for Constitutional Studies at the Andalas University Faculty of Law, FeriAmsari, acknowledged this. According to him, the prohibition against examining the ill was more due to humanitarian reasons. Law enforcement officials must also give the rights of the suspect including when ill. Forcing an examination of aill person also risks hindering the trial process, because the defendant can dispute the contents of the Minutes of Investigation (BAP) because he is ill.<sup>9</sup>

On the other hand, based on Article 120 of the Criminal Procedure Code, the investigator has the authority to request the opinion of an expert. The opinion of the expert appointed by the investigator is used to break the reason for the illness reason proposed by the suspect or defendant.

In the Criminal Procedure Code, there is no reason for illness as a condition where a person can avoid the legal process, and it does not concretely stipulate any reasons that can hinder the arrest and detention of someone who has been designated as a suspect. Regarding a suspect who is ill can still be arrested and detained by investigators. Whether or not it is detained becomes an investigator's discretion.

Based on the description above, the writer tries to explore the rules of criminal procedure law related to the illness of a suspect, as an excuse to delay or hinder the commencement of the investigation and inquiry process, especially in cases of corruption. Research by the writer aims to uncover and explore more deeply the extent to which the rules of criminal procedure provide space for suspects who do not meet the investigator's summons due to illness. Based on the description above, this thesis will discuss "Rules on Not Fulfilling an Investigator Request to Provide a Statement Due to Illness Reason in Corruption Case."

Based on the background description above, then some interesting problems can be formulated for further investigation, namely: How is the summons for sick suspect in criminal procedural law, and what efforts are made to overcome the obstacles to summons a ill suspect?

This research is a normative juridical research. Normative juridical research is research conducted by examining library materials (secondary data) or library law research.<sup>10</sup> The specifications of this paper are analytical prescriptive, which seeks to study, explore and find answers about what and how should each problem arise and analyze it with legal objectives, values of justice, the validity of the rule of law, legal concepts and legal norms, in this case relating to the juridical aspects in terms of rules on not fulfilling an investigator request to provide a statement due to illness reason in corruption case.

---

<sup>6</sup>Ibid, p. 127.

<sup>7</sup><https://nasional.kompas.com/read/2017/09/19/07581621/di-balik-alasan-sakit-para-terangka-kasus-korupsi?page=all>. Accessed on June 17, 2019

<sup>8</sup><https://www.idntimes.com/news/indonesia/linda/setya-novanto-dinta-stontinued-reason-sick-to-avoid-hukum/full> accessed on June 17, 2019

<sup>9</sup><https://tirto.id/modus-sakit-para-koruptor-yang-bambat-process-hukum-cV9h>. Accessed on June 18, 2019

<sup>10</sup>SoerjonoSoekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, cet. 9th, Rajawali Press, Jakarta, 2006, p. 23.

## II. DISCUSSION

### A. Rules for Summoning of Suspected Due to Illness Reason in Criminal Procedure Law

The phenomenon of using illness reason to avoid examination in criminal procedural law is rife in Indonesia. So far, most of the suspects have reason to be ill so that the examination of corruption cases can be deferred.

The suspension of the examination is in the hands of investigators and judges, based on recommendations from expert doctors. As mentioned in chapter II, one of the administrators of the Indonesian Doctors Association (IDI) and also a doctor of the National Narcotics Agency (BNN) explained that there is no medical standard; doctors can only provide recommendations that a person should be detained by undergoing treatment in a detention room based on medical considerations about the patient's illness and condition. Furthermore, the decision rests with the investigator or judge. Besides that, giving recommendations can be done individually, but if recommendations are doubtful it is permissible to ask for second opinions from other doctors.

During this time, Indonesia has several legal rules governing the submission of postponement of hearings in cases of criminal acts of corruption by suspects due to illness reason, among others as follows.

#### 1. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP)

Criminal Procedure Code provides leeway in examining criminal cases if the suspect is ill. This is as Article 26 paragraph (4) of the Criminal Procedure Code which states that "If a defendant is ill can hold a detention postponement or the defendant has a permanent illness that requires intensive care from the doctor so that he cannot be present continuously and in the judicial process. Judges or prosecutors may not examine the ill accused will be dispatched or suspended temporarily to avoid the end of the detention period of 90 days if more than that then the defendant must be excluded by law. "

The Criminal Procedure Code has provided a provision that in the examination process requires the presence of a suspect or defendant, except for certain reasons. The exception to the trial in a corruption case that allowed the trial to proceed without the presence of the defendant. This is following the provisions of Article 38 paragraph (1) of Law Number 31 of 1990 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption, then the examination of the defendant can proceed, provided the defendant has been legally summoned by the summons. In Absentia justice or without the presence of the accused himself can be carried out and must meet the elements namely<sup>11</sup> :

- 1) Because the defendant lives or travels abroad;
- 2) There was an attempt by the defendant to commit an act of defiance such as running away;
- 3) In case the defendant has been legally summoned, and is not present in court without a valid reason, the case can be examined and decided without his presence.

#### 2. Law Number 2 of 2002 concerning the Indonesian National Police

Article 18 of the POLRI Law states the following.

"(1) For the public interest of the Republic of Indonesia Police officials in carrying out their duties and authorities, they can act according to their own judgment; (2) The provisions referred to in paragraph (1) can only be carried out under conditions that are necessary by observing the laws and regulations, as well as the Professional Ethics Code of the Indonesian National Police."

That the act of delivery is a police policy called discretion. The dispute of detention carried out by the investigator by the authority given by the law can carry out a policy based on his own judgment. This discretion can be carried out by investigators to take action to overcome, by permitting treatment, so that investigators are required to carry out detention of suspects.

#### 3. Regulation of the Minister of Justice of the Republic of Indonesia Number: M.04-UM.01.06 of 1983 concerning Procedures for Placement, Maintenance of Tides and Rules for Detention

Based on Article 9 which formulates: (1) Health care for detainees who are seriously ill, can be done in a hospital outside the State Detention House, after obtaining permission from the holding institution according to the level of examination and on the advice of the state prison doctor ; (2) Detainees suffering from mental illness are treated in the nearest local mental hospital; and (3) Under conditions of being forced to detainees treatment can be done in hospitals outside the State Detention Center (RUTAN) and the Head of the State Detention Center reports to the concerned institution for the completion of their permit.

---

<sup>11</sup>. Tiara PB, et. al., 2013. Analisis Yuridis Penyidikan In Absentia Dalam Tindak Pidana Korupsi (putusan Pengadilan Negeri Sidoarjo Nomor: 630/Pid.B/2010/PN.Sda). Bagian Hukum Pidana, Fakultas Hukum, Universitas Jember (UNEJ). p 5.

4. Regulation of the Head of the Indonesian National Police Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases in the Indonesian National Police Environment

Article 92 of the law reads as follows:

- (1) In the case of detainees who, due to their health condition, require intensive care and / or inpatient treatment in hospitals can be delivered.
- (2) Detention must be accompanied by an Order issued by the authorized official.
- (3) Warrant Detention Warrants are issued based on:
  - a) the doctors' consideration that states that the suspect needs treatment in a hospital;
  - b) Request from suspect / family / legal counsel.

The official in charge of signing the Warrant Release Detention letter as low as:

- a) Director of Detective / Kadensus at Criminal Investigation Police and report to the Police Kabareskrim;
- b) Director of Detective / Consensus at the Regional Police level and report to the Regional Police Head;
- c) Head of the Detective Unit / Section at the Regional Police level and report to the Regional Police Chief;
- d) Head of the Detective Unit at the Polres level and report to the Police Chief; or
- e) Head of Regional Police level and report to the police chief.

Article 24 letters d, f and j of the Republic of Indonesia National Police Chief Regulation No.6 of 2010 concerning Management of Investigations by Civil Servant Investigators reads as follows.

(d) the summons letter has been received by the person later than 3 (three) days before the date of attendance specified; (f) if the first summons is not fulfilled without a valid reason, a second summons shall be carried out accompanied by a carrying warrant, the administration of which is made by PPNS; (j) for the summons of suspects and/or witnesses of Indonesian citizens who are abroad, assistance is requested through the National Police Investigator to the States' representative where the suspect and/or witness is located ".

In the case of a suspect or witness who does not fulfill the first summons, the second summons will be accompanied by an order to bring the suspect or witness. As a general criminal provision that applies to anyone if it does not fulfill or obey the command of an authorized official, Article 216 paragraph (1) of the Criminal Code is determined as follows.

"Whoever intentionally does not obey orders or requests carried out according to the law by officials whose job is to supervise something or by officials based on their duties, as well as those who are authorized to investigate or inquiry criminal acts; likewise whoever deliberately prevents, obstructs or thwarts actions to carry out the provisions of the law carried out by one of these officials is threatened with imprisonment of up to four months two weeks or a maximum fine of nine thousand rupiah. "<sup>12</sup>

Article 59 paragraph (3) Police Chief Regulation No. 12 of 2009 concerning Supervision and Control of Criminal Cases in the Environment of the Republic of Indonesia National Police reads:

"In the case of suspects who are expected to flee, lose evidence, or make investigations difficult, arrests can be made without prior summons".

Article 21 of Law Number 31 of 1999 concerning Eradication of Corruption Crimes has:

"Every person who intentionally prevents, impedes, or thwarts directly or indirectly the investigation, prosecution, and examination at a court of suspects and defendants or witnesses in a corruption case, is convicted with imprisonment for a minimum of 3 (three) years and at most 12 (twelve) years and or a minimum fine of Rp. 150,000,000.00 (one hundred fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah). "

5. Supreme Court Circular Letter No. 1 of 1989 concerning Stuiting of the Deadline of Detention for Defendants Who are Cared for Staying in Hospitals Outside State Detention Houses with Permission from Authorities with Authorities to Detain

In item 3 SEMA No. 1 of 1989 stated that essentially if the defendant because of the illness he suffered requires inpatient treatment at the hospital he will not be in detention will undergo the same treatment. Officials who are authorized to provide detention include investigators.

The stipulation regulates the suspects who are in custody, the state detention house gets permission to be hospitalized outside the state detention center, which sometimes takes a long time to treat so often, the suspect is expelled from custody by law, because of his grace period to hold up has been used up. Therefore, it

---

<sup>12</sup> Tim Penerjemah BPHN. 1983. KitabUndang-UndangHukumPidana.SinarHarapan. Jakarta. Page 94.

is necessary to provide detention for the detention of suspects carried out by investigators, in the form of treatment that stays in a hospital outside the state prison with the permission of the agency authorized to detain.

According to Arsil, suspects who claim to be ill can still be arrested and detained by investigators. This is following the rules contained in the Criminal Procedure Code relating to matters that can hinder arrest and detention. Detained or not an ill suspect is the discretion of the investigator. The state of illness can be a consideration of investigators in making decisions, even though there is no standard illness as to what makes a suspect can remain detained or not. However, there are humanitarian standards that can be used as glasses to assess the types of diseases that can hinder trials.<sup>13</sup>

Generally, the investigator also has a team of doctors to assist the suspect. As long as the suspect's illness can still be handled by the team of doctors, the suspect can still be arrested and detained. However, if the disease is severe enough and cannot be treated by the investigating doctor, the investigator can decide not to arrest and detain the suspect.<sup>14</sup>

The doctor's statement is not a legal proof that must be followed by the investigator. Information given by the doctor regarding the suspects' condition is only a matter of consideration for the investigator to decide whether the suspect will be arrested and detained or not. Besides, doctors must also not be in psychology to defend a suspect. Those who obstruct the investigation can also be charged with criminal sanctions that are specifically regulated in the Criminal Code.

Article 221 paragraph (1) of the Criminal Code provides a criminal threat to "anyone who deliberately conceals a person who commits a crime or is prosecuted for a crime, or who gives help to him to avoid investigations or detention by criminal or police criminals, or by others who according to the provisions of the law are continuously or temporarily delegated to carry out policy positions".

Besides, doctors who examine a suspect are also prohibited from giving false information. This is because if the investigator has confidence that the doctor's statement is false, then the investigator can examine the doctor. This is as regulated in Article 267 paragraph (1) of the Criminal Code which states that, "a doctor who intentionally gives a false statement about the presence or absence of disease, weakness or disability, is threatened with a maximum prison sentence of four years".

Since its inception in 2002, the Corruption Eradication Commission (KPK) has continued its efforts to address the problem of corruption in all components and lines of the Indonesian nation. In the process of eradicating corruption, law enforcement for corruption eradication often faces obstacles with a growing model of various factors. Among them are the limitations of KPK personnel, corrupt counterattacks, restrictions on wiretapping rights, revisions to the KPK law, and demands for the KPK's dissolution.<sup>15</sup>

In addition, there are other challenges in handling corruption cases, namely the effort to stall for time from corruption suspects. This effort was carried out by using the excuse of being ill in order to be absent from the summons of KPK investigators or proposing a postponement of detention for corruption suspects.

The use of reason for illness in the legal process has been frequently carried out by suspects in corruption. Some of the cases summarized from the mass media include the following.<sup>16</sup>

a. The case that ensnared SetyaNovanto, who was the Chairperson of the Golkar Party DPP as well as the Chairperson of the Peoples' Representative Council (DPR) who failed to meet the KPK investigator's summons due to illness reason and needed treatment in the hospital.

b. Former President of the Republic of Indonesia, Soeharto, who was admitted to Pertamina Hospital and the results of the doctors' examination, said that Suharto had neurological, mental problems and had difficulty communicating.

c. Lawyers for the former Aceh Governor, Abdullah Puteh, OC Kaligis and Juan Felix, once asked their clients to be hospitalized.

d. Former Managing Director of PerumBulog, WidjanarkoPuspoyo, through OC Kaligis, also used the illness reason to stall the trial.

e. Former Mayor of Depok, NurMahmudi Ismail, who reportedly suffered from memory loss after being named a suspect in a corruption case for a land acquisition project for widening JalanNangka, Tapos, Depok.

Apart from those mentioned above, there are still several other cases that use the illness reason in order to avoid investigating of the investigators and or suspending the detention in the process of corruption investigation. The case that had shocked the Indonesian news and still lingers in our memories is the drama of the convicted car accident on the Electronic Identity Card (KTP) case, SetyaNovanto. A day after being lost when they were about

---

<sup>13</sup>Arsil, *Peneliti Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP)*, accessed on December 10, 2019.

<sup>14</sup>Idem.

<sup>15</sup>Endarto, "Kendala KPK dalam Pemberantasan Korupsi di Indonesia", *Jurnal Lingkar Widyaiswara*, 3 (6), 2014.

<sup>16</sup>Sudrajat, *Sakit Tersangka Korupsi, Serius atau Cuma Modus*, <https://news.detik.com>, 2017

to be picked up by the KPK, SetyaNovanto's lawyer FredrichYunadi announced that the car SetyaNovanto was in had an accident, and the former Chair of the Golkar Party was claimed to have suffered a commotion.

After being explored, the KPK stated that the former Chairman of the Indonesian Representatives Council deliberately avoided the examination. The KPK stressed that one of the doctors at PermataHijau Hospital, where SetyaNovanto was being treated, BimaneshSutarjo, also worked together to strengthen SetyaNovantos' ill mode. For his actions which prevented the examination of the corruption case, dr. BimaneshSutarjo was sentenced to 3 (three) years in prison and fined Rp 150,000,000 (one hundred fifty million rupiah).

In addition, SetyaNovanto's lawyer, FredrichYunadi, who was proven to have participated in preventing, hindering, and thwarting KPK investigations, was sentenced to 7 (seven) years in prison and paid a fine of Rp 500,000,000 (five hundred million rupiah). SetyaNovanto himself for a corruption case that ensnared him was sentenced to prison for 15 (fifteen) years and a fine of Rp 500,000,000 (five hundred million rupiah).

In addition, other cases use the excuse of illness to avoid the examination. Former Mayor of Depok, NurMahmudi Ismail reportedly suffering from memory loss. The information came from his former personal staff, namely Tafi.

According to Tafi, on August 18, 2018, the first President of PartaiKeadilan Sejahtera (PKS) competed in volleyball at GriyaTuguAsri, KelapaDua, Depok. While playing, NurMahmudi fell and hit his rear head. At least 11 (eleven) days after the incident NurMahmudi allegedly still undergoing recovery after being treated at Hermina Hospital.

The news came after the Head of Public Relations of the Jakarta Police, Commissioner Argo Yuwono, on Tuesday, August 29, 2018, confirmed that NurMahmudi had been named a suspect. NurMahmudi is suspected of being involved in a corruption of a land acquisition project for widening JalanNangka, Tapos, Depok. He allegedly caused state losses of around Rp 10.7 billion (ten-point seven billion rupiah).

The second president of the Republic of Indonesia, Soeharto, once also used the excuse of being ill to avoid the examination. When he was about to be examined by the Attorney General's Office regarding allegations of corruption, Suharto used the reason due to illness until the examination continued to be delayed.

On September 23, 2000, the President in power for 32 (twenty-three) years was admitted and treated at Pertamina Hospital. Based on the results of the doctors' examination, Suharto was declared to have neurological and mental problems and had difficulty communicating.

Finally, on September 29, 2000, the Panel of Judges of the South Jakarta District Court determined that the trial against Suharto did not proceed and must be stopped. Then on May 11, 2006, Attorney General Abdul Rahman Saleh through the South Jakarta District Prosecutors' Office issued a Termination Letter for Case Investigation (SP3) for Suharto.

The Indonesian Corruption Watch (ICW) coordinator, Adnan TopanHusodo, said that several things caused the reasons for illness that were often used by corruption suspects, as follows.<sup>17</sup>

a. The suspect wants to buy time in the examination process, especially for those who are undergoing pretrial proceedings. This effort to buy time is also part of the strategy to face the legal process that is carried out by the suspects or avoid forced efforts in certain cases. Forced efforts such as suspects must be detained to facilitate the examination.

b. The suspect is experiencing stress (psychological pressure) because he never imagined that he would be caught in a case and undergoes a legal process. Moreover, they usually have a luxurious lifestyle, in terms of social status, reputation; have power, all of a sudden lost because of the status of the suspect. This can trigger a heart attack or a person's condition decline.

Detention is a limitation of a persons' freedom, especially someones' freedom of movement. Therefore, such detention should be carried out when it is very necessary for the sake of law enforcement. In addition, detention also raises 2 (two) principle contradictions. On the one hand detention results in the loss of someones freedom of movement, and the other hand detention is carried out to maintain order which must be maintained in the public interest for the evil deeds alleged to the suspect or defendant.<sup>18</sup>

International Covenant in Civil and Political Rights(International Covenant on Civil and Political Rights) in 2005 was ratified with the establishment of Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights, then some consequences must be faced

---

<sup>17</sup>Rakhmat Nur Hakim, DiBalikAlasanSakitParaTer- sangka KasusKorupsi, <https://nasional.kompas.com>, 2017.

<sup>18</sup>Sugiyono, S.A, KebijakanPenyidikPolriTidakMelakukanPenahananTerhadapTersangkaPelakuTindakPidana(StudiKasus Di Polresta Pontianak Kota)", Jurnal NESTOR Magister Hukum, 3(5), 2014

by the KPK in enforcing the law. Among them, detention by investigators must be as short as possible and immediately brought to the judge.

**B. Efforts to Overcome Barriers to Summons the Suspect Due to Illness Reason**

The use of illness reason will certainly slow down the investigation process and potentially eliminate evidence for the suspect. Based on a juridical perspective and an empirical perspective, an overview can be obtained of the steps that can be taken in responding to the illness reason given by a criminal suspect in corruption. Legally, based on the provisions of the laws and regulations, it can be possible for investigators to provide a suspension of detention for suspects in criminal acts of corruption who use the illness reasons. Although there are no laws and regulations that explicitly regulate this matter.

Meanwhile, based on an empirical perspective, there are no medical standards to determine the type of disease that can be used to delay the detention of a suspect. Therefore, the KPK investigator together with the Indonesian Doctors Association (IDI) is expected to agree together or make disease standards and severity so that the suspension of detention of a suspect can be carried out.

Broadly speaking, the types of diseases can be grouped into 2 (two) parts in the preparation of medical standards, including the following.

a. Communicable Disease

Some infectious diseases that need to be watched out include hepatitis, HIV / AIDS, and Tuberculosis (TB) because the disease is very vulnerable in the prison environment. A prisoner who suffers from one of these infectious diseases has the potential to transmit the disease to other prisoners. Research conducted in Nigeria concluded that prison is a source of threat of infectious diseases in a nation.<sup>19</sup>

In 2013, The International Union of Tuberculosis and Lung Disease published an official statement urging health authorities, national and international technical bodies, civil society organizations and donor agencies to prioritize TB prevention and control in places of detention.<sup>20</sup>

Therefore, in the preparation of medical standards it is necessary to consider that a suspect suffering from one of these diseases should not be detained with other detainees.

b. Non-communicable Disease

Non-communicable diseases globally are categorized as a very serious public health problem. Cardiovascular disease, cancer, diabetes, and chronic respiratory diseases are non-communicable diseases that are often found, causing around 36 (thirty-six) million deaths annually and contributing 63% (sixty-three percent) of total deaths globally.<sup>21</sup>

Early screening allows officers to diagnose undetectable diseases such as diabetes with urine analysis or blood tests, and hypertension with blood pressure monitoring.<sup>22</sup> Considering the high mortality rate due to this type of disease, in the preparation of medical standards it should be explained in more detail about the type of disease and severity criteria for a suspect that should not be detained which can cause sudden death for the suspects.

One of the cases faced by the Corruption Eradication Commission when it was about to arrest the Bandung Regent who had to undergo chemotherapy so he could not be arrested. As is well known that cancer requires routine chemotherapy so it will be very difficult if it has to be detained and life-threatening suspect. Therefore, in medical standards it is necessary to include items of disease type and severity for types of disease that may be delivered so that KPK investigators have clear references, especially for diseases that have a high risk of death such as cancer.

The Criminal Procedure Code itself does not explicitly regulate the prohibition of examining corruption convicts. Director of Constitutional Studies at the Andalas University Faculty of Law, FeriAmsari acknowledged this. According to him, the prohibition of examining sick people was more due to humanitarian reasons. The sick must not be forced to give information. And law enforcement officials must also give the rights of the suspect, including when sick to be healed first.

---

<sup>19</sup>Ahmed, A. B, et al., "Passive surveillance of communicable diseases among friends of Jos central prison", Nigeria, International Journal of Research in Medical Sciences, 4 (5), 1366-1374, 2016.

<sup>20</sup>Dara, Masoud, et al., HIV and other bloodborne viruses in Prison. Prison and Health. World Health Organization, p. 56, 2014.

<sup>21</sup> Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases, 2013

<sup>22</sup> Herbert, Katharine, et al., "Prevalence of risk factors for non-communicable diseases in prison populations worldwide: a systematic review." The Lancet 379.9830: 1975-1982, 2012.



Examination of the sick also risks hindering the trial process. This is because the defendant could refute the contents of the Investigation Report (BAP). After all, he was ill.

KPK Deputy Chairman, Saut Situmorang explained in the law, there is a doctrine that says that sick people should not be tried if they are not healthy. Even when it will be examined, someone must declare that he is in good health first.

According to Saut, many ways can be used to verify the claims of suspects who claim to be ill. One way is to ask for a second opinion or ask the opinion of other parties about the health status of the suspect. This method has been used by the KPK in the Setya Novanto case. At that time the KPK asked for help from the Indonesian Doctors Association (IDI).

Saut also advocated suspecting corruption suspects who claimed to be ill. But if it is proven to be ill, then he can tolerate the loss of action from the examination.

### **III. CONCLUSION**

Rules for summoning suspects who are ill in criminal procedure is as follows: 1) Article 26 paragraph (4) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP); 2) Article 18 of Law Number 2 of 2002 concerning the Indonesian National Police; 3) Article 9 Regulation of the Minister of Justice of the Republic of Indonesia Number: M.04-UM.01.06 of 1983 concerning Procedures for Placement, Maintenance of Rules and Rules of Detention; 4) Article 92 of the Republic of Indonesia Police Chief Regulation Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases in the Indonesian National Police Environment.

Efforts to overcome the obstacles to summoning an ill suspect are as follows; 1) establish standards for the medical treatment to determine the types of diseases that can be used to delay the detention and or examination of a suspect of corruption; 2) establish explicit rules regarding the use of ill reasons in the examination of corruption.

### **REFERENCES**

#### **Books**

- [1]. Hamzah, Andi. 2008. *Hukum Acara Pidana Indonesia*; Jakarta: Sinar Grafika.
- [2]. Harahap, M. Yahya. 2000. *Pembahasan Permasalahan Dan Penerapan KUHAP*; Jakarta: Sinar Grafika.
- [3]. Soerjono Soekantodan Sri Mamudji. 2006. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Cet-9, Jakarta: Rajawali Press.
- [4]. Tim penerjemah BPHN. 1983. *Kitab Undang-undang Hukum Pidana*. Jakarta: Sinar Harapan.

#### **Laws and Regulations**

- [5]. The 1945 Constitution of the Republic of Indonesia
- [6]. Criminal Law Book
- [7]. Law Number 8 of 1981 concerning the Criminal Procedure Code
- [8]. Law Number 31 of 1999 concerning Eradication of Corruption Acts as amended by Act Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption
- [9]. Law Number 2 of 2002 concerning the Indonesian National Police
- [10]. Regulation of the Minister of Justice of the Republic of Indonesia Number: M.04-UM.01.06 of 1983 concerning Procedures for Detention, Detention of Prisoners and Rules of Detention
- [11]. Regulation of the Head of the Indonesian National Police Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases in the Indonesian National Police Environment
- [12]. Supreme Court Circular Letter No. 1 of 1989 concerning Stuiting of the Deadline of Detention for Defendants Who are Cared for Staying in Hospitals Outside State Detention Houses with Permission from Authorities with Detention Authorities.

#### **Scientific Works**

- [13]. Ahmed, A.B, et al., "Passive surveillance of communicable diseases among inmates of Jos central prison", *Nigeria, International Journal of Research in Medical Sciences*, 4(5), 1366-1374, 2016.
- [14]. Tiara P.B, et al., 2013. *Analisis Yuridis Penyidikan In Absentia Dalam Tindak Pidana Korupsi (putusan Pengadilan Negeri Sidoarjo Nomor: 630/Pid.B/2010/PN.Sda)*. Bagian Hukum Pidana, Fakultas Hukum, Universitas Jember (UNEJ).
- [15]. Arsil, Peneliti Lembaga Kajian dan Advokasi untuk Independensi Peradilan (LeIP).
- [16]. Dara, Masoud, et al., *HIV and other bloodborne viruses in Prison*. Prison and Health. World Health Organization, p. 56, 2014.
- [17]. Endarto, "Kendala KPK dalam Pemberantasan Korupsi di Indonesia", *Jurnal Lingkar Widayaiswara*, 3(6), 2014.

- [18]. Herbert, Katharine, et al., "Prevalence of risk factors for non- communicable diseases in prison populations worldwide: a systematic review." *The Lancet* 379.9830: 1975-1982, 2012.
- [19]. *Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases*, 2013.
- [20]. Sugiyono, S. A., "Kebijakan Penyidik Polri Tidak Melakukan Penahanan Terhadap Tersangka Pelaku Tindak Pidana (Studi Kasus Di Polresta Pontianak Kota)", *Jurnal NESTOR Magister Hukum*, 3(5), 2014.

**The websites**

- [21]. Dibalik Alasan Sakit Para Tersangka Kasus Korupsi, <https://nasional.kompas.com/>, (accessed June 17, 2019).
- [22]. Masalah Kekuasaan Negara, <http://indoprogress.blogspot.com/> (accessed September, 19 2018).
- [23]. Modus Sakit Para Koruptor yang Menghambat Proses Hukum, <https://tirto.id/>, (accessed June 18, 2019).
- [24]. RakhmatNur Hakim, *Di Balik Alasan Sakit Para Tersangka Kasus Korupsi*, <https://nasional.kompas.com>, 2017.
- [25]. Setya Novanto Diminta Berhenti Beralasan Sakit untuk Hindari Hukum, <https://www.idntimes.com/>, (accessed June 17, 2019).
- [26]. Sudrajat, *Sakit Tersangka Korupsi, Serius atau Cuma Modus*, <https://news.detik.com>, 2017.
- [27]. [www.pikiran-rakyat.com](http://www.pikiran-rakyat.com) accessed May 9, 2019.

DeskyFerdyan, et. al. "Rules on Not Fulfilling an Investigator Request to Provide a Statement Due To Illness Reason in Corruption Case." *IOSR Journal of Humanities and Social Science (IOSR- JHSS)*, 25(5), 2020, pp. 01-10.