



## Questioning the Legality of Arrests Based on the Status of the Wanted Person List (DPO) to Ensure Legal Certainty

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### ABSTRACT

Unlawful or juridically defective arrests can also cause detention to become unlawful, so that such actions are considered illegal and can harm the principles of legal certainty and human rights. This study analyzes the legality of arrests according to the Criminal Code against suspects with the status of Persons Wanted List (DPO), by comparing two pretrial decisions: Decision Number 10/Pid.Pra/2024/PN Bdg and Decision Number 2/Pid.Pra/2024/PN Cbn. The research method used in writing this article is a normative approach. The data type used from the Law and Pre-Trial Decision Number 10/PID.Pra/2024/PN Bdg and Pre-Trial Decision Number 2/Pid.Pra/2024/PN Cbn as the main data. As well as interviews, as supporting data. The data collection technique used was document and literature studies, while the analysis used qualitative methods. The results of the study showed that in Decision Number 10/Pid.Pra/2024/PN Bdg, the judge stated that the arrest was invalid because it was carried out without the permission of the Chief Justice and proof of urgency, and the DPO status of the applicant was considered legally defective because an official summons did not precede it. On the other hand, in Decision Number 2/Pid.Pra/2024/PN Cbn, the arrest was made based on the court's determination, but the pretrial application was declared null and void because the main case had been delegated. Hence, the DPO status and arrest legality were not substantially tested.

## **INTRODUCTION**

Article 1, Paragraph 3 of the 1945 Constitution stipulates that Indonesia is a state of law. The rule of law consists of universal principles, such as the recognition and protection of human rights, the legality of state or government actions, which means that every government action must be held legally accountable, and the guarantee of an independent judiciary (Santosa et al., 2023).

According to Article 1, Numbers 5 and 14 of the Criminal Code, a suspect is a person who is determined to be a perpetrator of a criminal act based on preliminary evidence obtained from a police investigation. Investigators determined the suspect after confirming that the actions were criminal acts, supported by sufficient evidence. However, the limitations of time, quality, and amount of proof required make the determination of suspects ambiguous. After the Investigation Warrant is issued, the investigation process must be carried out responsibly to avoid arbitrariness. The suspect can file a case if the investigator does not show a warrant. This indicates that suspects must be determined clearly and legally to prevent human rights violations.

Arrest is an act of coercion by the authorities against a person that causes a reduction in freedom of movement or individual independence without interference from other parties. In the Indonesian criminal procedure law, the arrest is carried out as a form of deprivation of liberty for the suspect or defendant with the aim of the investigation process under the provisions of Law No. 8 of 1981 and Article 1 Number 20 and Article 17 of the Criminal Code (Sumadi, 2021).

The arrest procedure must meet the requirement that there is sufficient preliminary evidence to support the examination. This initial evidence must be in the form of at least two pieces: a letter, a statement of the defendant/witness/expert, or a clue. If the initial evidence is sufficient, investigators can arrest Articles 16 and 19 of the Criminal Code. In addition, the arrest must be carried out under an Arrest Warrant, and the suspect's family is also entitled to be notified of the arrest. The suspect can file a lawsuit if the investigator does not show an arrest warrant. Arrests carried out under the Arrest Warrant, considering the principles of propriety and correct legal process, are one of the indicators of the lawful action of the arrest.

If necessary, after arrest, the suspect's detention must also be based on a valid Arrest Warrant and consider the same reasons as the arrest, namely the suspect's fear of fleeing, damaging or eliminating evidence, or repeating a criminal act. This ensures that detention is not carried out indiscriminately and protects the rights of suspects during the legal process (Syafaruddin, 2023).

Unlawful or juridical defects may also make the detention unlawful, so such actions are considered illegal and may injure the principles of legal certainty and human rights (Hutabalian, 2023). In law enforcement practice, especially at the arrest stage, investigators enforce criminal law and guarantee that any action does not violate human rights (Riyani, 2023). This protection aims to ensure that suspects obtain fundamental rights such as the right to humane treatment, the right to information about their legal status, the right to be accompanied by legal

counsel, and the right to justice and fair treatment during the judicial process (Aprilia et al. 2023).

The provisions regarding the legality of arrest or detention, namely Article 79, state: "a request for an examination of the legality or not of an arrest or detention is submitted by the suspect, his family or his attorney to the district court chief stating the reason." (Firmansyah et al., 2022).

The case of Decision Number 10/Pid.Pra/2024/PN Bdg is an important precedent that shows the consequences of arrest without a court determination. In this case, investigators made an arrest. However, the judge of the Bandung District Court as stated in the verdict Number 10/Pid.Pra/2024/PN Bdg noted that the action was invalid. The judge considered that the DPO status pinned to the Applicant was not preceded by a valid summons attempt, so the procedure was flawed.

Based on the "*fruit of the poisonous tree*" theory adopted in pretrial rulings in Indonesia, evidence obtained unlawfully will affect the validity of the entire series of evidentiary processes (Putri, 2024).

Thus, based on the description of the phenomenon above, the researcher is further encouraged to examine the legal consequences of the act of arrest without proper procedures, especially in the context of the investigator's mistake of considering the status of the DPO as in the decision Number 4 Pid.B/2017/PN Cbn to remove procedural obligations in the context of arrest. This study aims to illustrate the limits of investigators' authority and affirm the importance of court control over coercive actions by making Decision Number 10/Pid.Pra/2024/PN Bdg and Number 2/Pid.Pra/2024/PN Cbn as case studies.

This study aims to analyze the legal requirements that must be met in determining a person as a Person Search List (DPO), especially from the perspective of criminal procedure law in Indonesia. Exploring the legality aspect of the DPO determination is essential, considering that this status has profound implications for a person's constitutional rights, including restrictions on freedom and loss of the right to file a pretrial as stipulated in SEMA No. 1 of 2018. In addition, this study is also intended to examine the practice of arrest in two pretrial decisions, namely Decision Number 10/PID.Pra/2024/PN Bdg and Decision Number 2/Pid.Pra/2024/PN Cbn, to evaluate whether the actions of investigators in the two cases were under applicable legal procedures. By comparing the two cases, this study is expected to contribute to the understanding of the limits of investigators' authority and the importance of judicial control over coercive actions in the criminal law enforcement process. This study also analyzes the legality of arrests without court determination of suspects with the status of a Person Search List (DPO), by comparing two pretrial decisions: Decision Number 10/PID.Pra/2024/PN Bdg and Decision Number 2/Pid.Pra/2024/PN Cbn.

## LITERATURE REVIEW

### Arrest of people

Law Number 8 of 1981, which governs the Criminal Procedure Code (KUHAP), underscores the significance of safeguarding Human Rights for those implicated in criminal offenses. The apprehension or confinement of offenders

must not occur indiscriminately, disregarding their rights. In managing criminal cases, law enforcement officers must meticulously evaluate the interests of the parties involved. Initially, individuals who experience emotional, bodily, and financial detriment. Conversely, it is as crucial to consider the rights of criminal offenders. Implementing human rights safeguards within the criminal justice system encompasses the idea of the presumption of innocence. This principle is articulated in the Criminal Procedure Code and Law Number 48 of 2009 regarding Judicial Power, which asserts that "Every individual who is accused, arrested, detained, tried, or presented before the court must be presumed innocent until a court decision declaring guilt with permanent legal effect is rendered." (Sofianti & Zulkarnain, 2024).

The Criminal Procedure Code (KUHAP) serves as a framework for managing criminal proceedings. The Criminal Code governs legal procedures and offers extensive protection for the human rights of those classified as Suspects or Defendants. It is crucial to enable them to advocate for their interests before law enforcement authorities. The Criminal Procedure Code is anticipated to serve as a pragmatic legal reference in the criminal domain, safeguarding the human rights of persons engaged in the legal process while preserving societal order. This criminal procedural law system aims to prohibit arbitrary actions by law enforcement authorities in managing criminal cases, particularly with the use of force during arrests by police investigators.

Article 1, point 20 of the Criminal Code defines arrest as an action by investigators to restrict the freedom of the Suspect or Defendant temporarily, contingent upon adequate evidence supporting the objectives of the investigation, prosecution, or justice. The arrest procedure must adhere to the stipulations of the relevant legislation.

### **People Search List Status**

The concept of arrest has been established in procedural law since the era of the Dutch East Indies, specifically as outlined in the *Herziene Indonesis Reglement (HIR)*, *Staatsblad 1941 No. 44*, and subsequently in Law Number 8 of 1981 concerning the Criminal Procedure Code, also referred to as the Criminal Procedure Code (KUHAP), which supersedes the HIR. Arrests are also addressed in Government Regulation in place of Law (Perppu) Number 1 of 2002 regarding the Eradication of Terrorism Crimes, which was enacted as Law Number 15 of 2003 and subsequently amended by Law Number 3 of 2018 about the Amendments of Law Number 15 of 2003 regarding the Enactment of Government Regulations instead of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes.

The notion of the rule of law that ensures human rights consequently led to the concept of pretrial. The pretrial process primarily seeks to implement horizontal oversight of all coercive actions executed by law enforcement officers. La Nyalla's pretrial motion as a suspect designated as a Person Search List (DPO). Following the pretrial request made by the DPO suspect, the Supreme Court released Circular Letter (SEMA) No. 1 of 2018 on March 23, 2018, addressing the ban of pretrial submissions for suspects who have fled or are on the wanted list

(DPO). SEMA Regulation No. 1 of 2018 appears to contradict the approval of a pretrial application from a suspect with DPO status, as evidenced by Decision No. 23/Pid.Pra/2018/PN Pbr and Decision No. 8/Pid.Pra/2018/PN. The designation of the DPO results from the suspect's failure to comply with the investigator's summons, as outlined in Article 112, paragraph (2) of the Criminal Code, following proper procedural notification. Article 79 of the Criminal Code, which governs pretrial submissions, limits the suspect's right to file a pretrial application independently. The issue addressed in this paper pertains to the pretrial arrangements within the Criminal Procedure Code and the RKUHAP. What is the status of SEMA No. 1 of 2018 within the framework of laws and regulations? What is the status of the defendant with DPO designation in submitting a pretrial application? This research employs a normative juridical framework and is characterized as descriptive analytical. This research employs secondary data sources. This secondary data utilizes three sources: primary legal resources, secondary legal materials, and tertiary legal materials. This data collection approach was derived from library research. The data collection instrument is implemented by document analysis. The analysis was conducted using a qualitative approach, highlighting the deductive strategy. This study's findings indicate that the Criminal Procedure and Criminal Code, via the commissioner judge, have granted suspects and associated parties the authority to conduct horizontal oversight of investigators' work. SEMA lacks the authority to infringe upon the rights of citizens. SEMA No.1 of 2018 constitutes a segment of laws and regulations that serve as policy directives and are obligatory for the Supreme Court in its capacity as a rulemaker. Decision No. 23/Pid.Pra/2018/PN Pbr and Decision No. 8/Pid.Pra/2018/PN Plw represents a significant advancement for pretrial single judges, emphasizing the importance of societal values in delivering justice to suspects with DPO status seeking to initiate pretrial proceedings. SEMA Number 1 of 2018, issued on March 23, 2018, regulates three primary contents regarding the prohibition of pretrial submission for suspects fleeing or listed as wanted persons (DPO). Initially, those who are fugitives or listed as Wanted Persons (DPO) are ineligible to file for pretrial proceedings. Secondly, if the legal representative or their family still submits the pretrial, the judge may declare the verdict inadmissible (Niet Ontvankelijke Verklaard). Third, no legal recourse may be pursued against the decision. This SEMA was issued in response to the growing trend of pretrial applications presented by suspects listed as Persons of Interest (DPO), for which there are currently no governing laws or regulations. Furthermore, SEMA Number 1 of 2018 seeks to establish legal certainty in the pretrial filing process for suspects designated as Persons Search List (DPO) (Siagian et al., 2021).

### **Arrest of persons**

There are two legal grounds for effectuating an arrest: an arrest predicated on the suspect's status and an arrest executed by a hand-held device. Article 18 of the Criminal Procedure Code stipulates the following: Detention. The arrest is executed by police officers who are required to provide written orders and arrest warrants to the suspect. In instances of direct arrest, apprehension may occur

without a warrant. It is imperative that the suspect promptly surrender themselves and any evidence to the nearest investigator or investigative assistant.

Arrests predicated on suspect status are permissible only after acquiring adequate preliminary evidence. Article 1 of the National Police Chief's Regulation Number 66 stipulates that investigators may ascertain suspicious circumstances after collecting at least two categories of evidence. This adequate preliminary evidence is the foundation for designating an individual as a suspect, effectuating an arrest, and seeking detention – Law No. 12 of 2009 on the Oversight and Management of Criminal Cases by the Police.

Arrests executed by investigators employing violence constitute unlawful actions. The illegality of the arrest process is further substantiated by Article 70 of Perkap No. 12 of 2009, which governs the supervision and control of criminal case management within the Indonesian Police. This article stipulates that "arresting an individual may only be conducted under established laws and regulations." The arrest executed solely by Saiful Jami contravenes the stipulations outlined in the KUHAP and Perkap.

The enhancement of legal safeguards during the arrest process to avert acts of violence has been reinforced by several regulations, notably Article 77 of Police Chief Regulation No. 12 of 2009, which governs the oversight and management of criminal case handling within the Indonesian National Police. This regulation mandates that all police personnel adhere to specific protocols during arrests to demonstrate their official status as members of the National Police. Execute an arrest warrant, unless the arrest occurs directly (hand arrest); Elucidate the rationale for the apprehension; Inform the Suspect of the criminal allegations filed against them, including the potential penalties they may encounter upon arrest; Honor the legal status of the children involved and promptly inform the child's parents or guardians following the arrest. Safeguard the confidentiality of apprehended individuals at all times. and notify the Suspect of their rights, including the right to remain silent, the right to legal representation, the right to be accompanied by counsel, and other rights stipulated in the Criminal Code.

## **METHODOLOGY**

The research method used in writing this article is a normative approach. Data were used from the Law and Pre-Trial Decision Number 10/Pid.Pra/2024/PN Bdg and Pre-Trial Decision Number 2/Pid, as well as the results of interviews, as supporting data. The data collection technique was carried out by document study, literature study, and qualitative analysis.

## **RESEARCH RESULT AND DISCUSSION**

The Person Search List (DPO) concept in the Indonesian criminal law system is an administrative mechanism used by law enforcement officials, especially investigators, to state that a person suspected of committing a criminal act is unknown and does not comply with an official summons for investigation (Sam, 2018). Although the Criminal Procedure Code does not explicitly define DPO, determining DPO is technically regulated through Article 31 paragraph (1)

of the National Police Chief's Regulation Number 14 of 2012 jo. Perkapolri Number 6 of 2019 concerning Valid Conditions for Determining DPO Status, in this provision, a person can be included in the DPO if he is not present after three lawful summonses and an arrest warrant has been issued (Interview with Muh Imanullah).

The determination of DPO status must go through a strict administrative stage, because it has profound implications for citizens' rights, including freedom and legal protection. DPO status should not be used as a basis for waiving the principles of legal protection and human rights of suspects, because the determination does not abolish the principle of presumption of innocence. In such a framework, the DPO is only a tracking instrument, not a marker of guilt. Therefore, coercive actions such as confiscation of evidence must still follow the applicable legal procedures.

In practice, law enforcement officials often misinterpret the status of a DPO as a justification for carrying out coercive actions without judicial control.

Applying DPO status as a tool for the legitimacy of legal action should be subject to the principle of *due process of law*. Therefore, it is crucial to place the DPO's status proportionately in the structure of criminal procedure law, not to exceed the limits of legal protection guaranteed by the constitution. In the context of Decision Number 10/Pid.Pra/2024/PN Bdg, the pretrial judge stated that the determination of the Applicant as a DPO was invalid because there was no evidence of a proper summons, and there was no strong legal basis to declare his whereabouts unknown. Meanwhile, in Decision Number 2/Pid.Pra/2024/PN Cbn, the determination of the DPO is also said to be valid, because investigators have made previous arrests and have been detained.

In the case of Decision Number 2/Pid.Pra/2024/PN Cbn, the status of the Person Search List (DPO) assigned to the Applicant is considered legally valid. This is because after the Applicant was designated as a suspect, the investigator had summoned the Applicant correctly twice. However, the Applicant did not fulfill both summonses without valid reasons. Based on the provisions of the criminal procedure law, if the suspect does not comply with the investigator's summons twice, the investigator is authorized to designate him as a DPO to ensure the continuity of the investigation process.

The determination of DPO status in this context is also in line with the provisions of the Supreme Court Circular Letter (SEMA) Number 1 of 2018, which emphasizes that suspects who are fleeing or are in DPO status cannot submit a pretrial application. This provision provides legitimacy for the investigators' actions to maintain the effectiveness of law enforcement and avoid abuse of pretrial rights by suspects who evade legal proceedings.

Therefore, in this case, the determination of DPO status to the Applicant is carried out legally and under the applicable legal procedures. The judge's rejection of the pretrial application is a juridical consequence consistent with the principles of due process of law and applicable normative provisions, especially in maintaining a balance between the protection of suspects' rights and the interests of investigation.

This shows the importance of the principle of *judicial control over investigators' actions, which ensures* the protection of the human rights of suspects and third parties who may be affected.

Therefore, formal arrest procedures cannot be ignored, as they concern the principles of justice and the guarantee of human rights in criminal justice proceedings.

Arrest without judicial control is a form of abuse of authority by investigators that can be sued through the pretrial mechanism. In many cases, including those discussed in Decision Number 10/Pid.Pra/2024/PN Bdg, investigators cannot prove the legality of the arrest, while in case Number 2/Pid.Pra/2024/PN Cbn, the arrest is valid, but the pre-trial application is declared null and void because the public prosecutor delegated the subject matter to the District Court.

The pretrial decision Number 10/PID.Pra/2024/PN Bdg states that the applicant's arrest is illegal. This indicates that the arrest must still be subject to the formal norms of criminal procedure law, regardless of the suspect's status as a DPO or any other form of escape.

## **CONCLUSION AND RECOMMENDATIONS**

Decision Number 10/PID.Pra/2024/PN Bdg confirms that the arrest of the Applicant based solely on the status of DPO without being preceded by an official summons is legally invalid. This ruling rejects the legitimacy of using DPO status as the sole basis for bypassing legal procedures in the confiscation process – meanwhile, Decision Number 2/Pid.Pra/2024/PN Cbn states that the determination of the DPO against the Applicant is invalid because it was carried out without paying attention to the existence of a sick certificate and a request for postponement of examination from the Applicant. The determination of a DPO that is carried out without complying with legal procedures is declared legally defective and cannot be justified.

## **ADVANCED RESEARCH**

Future research should focus on questioning the legality of arrests based on the status of the wanted person list (DPO) to ensure legal certainty that the Applicant procedure is more valid. The legal consequences of unlawful arrests can also impact the dismissal of criminal cases or the release of suspects. In the context of state law, the validity of the procedure is an integral part of the legitimacy of court decisions' results.

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