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RESEARCH ARTICLE

LEGAL PROTECTION OF THE SUSPECTS TO NOT EXPERIENCE VIOLENCE IN INVESTIGATION PROCESS

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Abstract

A suspect is someone who because of his actions or circumstances, based on initial evidence, should be suspected of being the perpetrator of a crime. Based on this explanation, the suspect is still suspected of being the perpetrator of a crime, which is not certain unless he has obtained permanent legal force. This is in line with a fundamental principle known as the presumption of innocence which is stated in the general elucidation of the Criminal Procedure Code and Law Number 48 of 2009 concerning Judicial Power. Constitutional guarantees for human rights, especially suspects, are very important to protect every citizen's basic rights, which means that every ruler in the state should not act arbitrarily towards its citizens. The form of protection for the suspect's rights has been outlined in the Criminal Procedure Code (KUHAP). In general, the rights of suspects are regulated in Article 50 to Article 68 of the Criminal Procedure Code. This research is intended to determine the legal protection of suspects' rights not to be subjected to violence in the investigation process and forms of violation of suspects' rights in the investigation process. The methods used in this research are the socio-legal and statutory approaches. The socio-legal approach is used to examine and explore research issues by studying norms, related legal doctrines, and the application of both, as well as social phenomena related to the issue of legal protection for children as perpetrators of crimes. In addition, a statute approach is also used per the scientific character of law as a practical science with an authoritative normology. The result of this research is that the legal protection of the suspect's right not to be subjected to violence in the investigation process has the most basic foundation which has been regulated in Article 28 G Paragraph (2) of the 1945 Constitution and Article 33 Paragraph (1) of Law Number 39 of 1999 Regarding Human Rights, forms of violation of the suspect's rights in the investigation process can be identified if the application of the suspect's rights is not per the provisions in the Criminal Procedure Code.

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Introduction:-

Cases of torture in the realm of investigation can be said to be quite high, while the things behind this incident are that no institution strictly monitors police performance and that most police officers are only given sanctions in the form of expulsion or ethical sanctions. In other words, criminal investigation is a multifaceted endeavor involving a study of the facts presented by the crime or the pattern of the crime.(1) These facts are then used to identify, find and provide evidence of a person's guilt or innocence for what he has done.

Article 1 Paragraph (3) of the 1945 Constitution emphasizes that Indonesia is a state based on law. All actions contrary to the applicable legal regulations must also be resolved legally. Likewise with a suspect in a criminal case, whatever form of wrongdoing he is accused of must be tried and receive equal treatment before the law until protection of human rights (HAM) is realized. As stated in Article 28D Paragraph (1) of the 1945 Constitution, it explains that:

"Every person has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law".

The starting point for the examination before the investigator is the suspect, from whom information is obtained about the criminal incident being examined.(2) However, even if the suspect is the starting point for the examination, the accuser principle must be applied to him. The suspect must be judged as a subject, not as an object. The person being examined is not the human suspect, but the criminal act he committed which is the object of examination.(3) This principle is clear that a person who is suspected of being arrested, or charged with committing a crime must be properly placed following human rights and his or her dignity as a human being. However, in practice there are still violations of the suspect's rights, especially in the investigation process carried out by law enforcement officials.(4) At the time of the interrogation stage investigators often carried out arbitrary actions, and suspects suspected of committing criminal acts were subjected to pressure in the form of intimidation, coercion and other acts of violence. So that the pressure obtained causes the suspect to be unable to freely give his statement, which is contrary to Article 52 of the Criminal Procedure Code (KUHAP) that "in examinations at the investigative and court levels, a suspect or defendant has the right to give information freely to investigator or judge".(5)

In the context of criminal investigation and judicial process, it is known that rights are universal and non-derogable in the form of the right to be free from torture and cruel and inhuman treatment or punishment. (6) These rights must always be respected without exception, including under certain conditions. . This right must also be understood that everyone who is arrested, detained or who is subject to other actions by investigators to examine the interests of the judicial process, whether as a suspect or witness must always be treated humanely, and not be used as an object of violence, either physical or psychological. or intimidation. (7) To prevent violence or torture in any form, Indonesia has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1998. This ratification is Indonesia's commitment to uphold the values of human values. (8) This ratification is Indonesia's commitment to uphold human values. The problem now is how to monitor guarantees not to be tortured by police officers during the investigation process in practice.

Materials and Method:-

This research is empirical juridical research. Where the authors conduct library research and data collection directly for further analysis. Primary data analysis is carried out on data that has been collected or obtained and then analyzed further. The secondary data analysis was carried out by analyzing several laws and regulations related to the research topic, library materials, legal document files and other data obtained indirectly under the research.

Result:-**A. Legal Protection of the Right of a Suspect Not to Get Violence in the Investigation Process**

According to the law, the state must protect human rights. The rule of law was born from the struggle of each individual to free themselves from the tyrannical and arbitrary actions of the authorities, so that the actions of the authorities against individuals and their power must be limited by law. Suspects are no exception, whatever crimes they commit, they must always be tried and treated equally before the law until human rights are protected.

The investigation stage is the most important part of the judicial process, especially in Indonesia. (9) At this stage, all criminal justice processes are initiated and the potential for human rights violations, especially for suspects, is

very large in each process group. The most frequent violations were coercion by investigators, the most serious of which were violence or torture during investigations.

Torture is a human rights violation and a form of abuse of power. Torture in investigations should not be used when this action is unjustified by law. Because investigators as law enforcers should act as the most assertive figure in upholding the law itself. Often times during investigations there is an element of pressure or threats which results in physical violence against suspects by investigators. This means that in their obligations, investigators have neglected or not carried out their obligations according to the laws that have been regulated.

The issue of violence or torture in the criminal justice process is a universal problem. The high rate of torture is a structural problem in the Indonesian criminal justice system. Torture occurs not only because of the culture of law enforcement officials who still tend to use a violent approach in uncovering a crime, but also because there are still deficiencies in existing regulations to prevent torture. It is also difficult to reach the perpetrators of torture, so that they are unable to provide a deterrent effect and lessons for enforcement officers, so that they are careful in carrying out their duties and stay away from violent methods in uncovering a crime. (11) There are allegations of violence committed by investigators violating the provisions stipulated in the Criminal Procedure Code and Law No. 39 of 1999 concerning Human Rights. If viewed from the human rights provisions, the investigative process should be able to guarantee the rights of suspects not to receive discriminatory treatment, to obtain the right to life, the right not to be tortured, and to obtain equal standing before the law. (12)

The most basic basis of the right not to violence has been regulated in Article 28 G Paragraph (2) of the 1945 Constitution which contains "everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from other countries". guarantee of the basic rights of every citizen implies that every ruler in the state cannot and may not act arbitrarily against its citizens, even the existence of these basic rights also means there is a balance in the state, namely the balance between power in the state and basic rights of citizens. (13)

Conception of the rule of law according to Prof. Jimly Asshiddiqie has at least thirteen basic principles of a rule of law, one of which is Equality before the Law. (14) Equality before the law in a rule of law is that the state or government may not privilege or discriminate against certain people or groups of people, in this case there is equality of position for everyone in law and government which is recognized normatively and implemented empirically. Within this principle, contained; there is a guarantee of equality for all people before the law and the government, and the availability of mechanisms to demand equal treatment for all citizens. (15)

1. Guarantees for the suspect's rights are listed in Law Number 48 of 2009 concerning Judicial Power, as follows:
 - a. Presumption of innocence / existence of the principle of presumption of innocence, stated in Article 8 paragraph (1)
 - b. The principle of equality before the law is stated in Article 4
 - c. The principle of an open trial is stated in Article 13
 - d. There are rights of appeal, rights of cassation, and review of decisions that have obtained a permanent decision, listed in Article 23, Article 24, Article 26 The right of denial, listed in Article 17
 - e. Obtain legal assistance, listed in Article 56, Article 57
2. The Criminal Procedure Code has clearly and firmly regulated matters relating to the rights of suspects (Articles 50 to 68 of the Criminal Procedure Code), and each party is obliged to respect the rights of suspects. The rights of suspects according to the Criminal Procedure Code are as follows:
 - a) Right to the preparation of a defense;
 - b) The right to give information freely;
 - c) The right to have an interpreter;
 - d) The right to choose their own legal adviser;
 - e) The right to obtain legal aid;
 - f) The right to free assistance
 - g) The right to visit by a private doctor;
 - h) The right to contact legal counsel;
 - i) The right to be notified, contact, or receive visits from family and relatives;
 - j) The right to receive visits from clergy;
 - k) The right to propose witnesses a de charge and expert witnesses;

- l) The right not to be burdened with the obligation of proof; And
- m) The right to grant compensation and rehabilitation.

In the Criminal Procedure Code, the suspect is no longer the object of examination and the dominant power is no longer in the legislature. Still, the dominant power is in the judiciary and refers to the constitution, where his rights are guaranteed by law. This is confirmed by the existence of protection for the rights of suspects regulated in the Criminal Procedure Code. In Indonesia matters relating to human rights, including suspects' human rights, are recognized and their human rights are protected. In criminal procedural law, the state provides protection of human rights in the form of rights owned by suspects during the process of settling criminal cases as required in the provisions of the Criminal Procedure Code.

Legal protection for suspects when subjected to intimidation or violence during investigations is included in the legislation as contained in Article 11 Paragraph (1) of the Regulation of the Head of the National Police Number 08 of 2009 concerning Implementation of Human Rights Principles and Standards in the Implementation of Duties of the Indonesian National Police, which states that members of the Indonesian National Police are prohibited from carrying out punishments as well as physical actions that violate the law, that the National Police are also prohibited from taking inhumane acts against someone, and that the National Police are prohibited from using violence or firearms that are considered excessive or not under the law.

This form of legal protection is also contained in Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) that again emphasized the prohibition of the use of both physical and psychological torture which is considered cruel and degrading to human dignity.

In addition, it is stated in Article 422 of the Criminal Code "A state official who in a criminal case uses coercion, either to extort confessions, or to obtain information, is threatened with imprisonment for a maximum of four years". This means that a state official, whether a police officer, civil servant investigator or prosecutor, can be criminalized when using force or using tools to torture suspects to obtain certain information or confessions. However, seeing the reality regarding the widespread use of force against suspects in the investigation proves that the instruments mentioned along with Article 422 of the Criminal Code are ineffective. Whereas even though several police investigators have been reported in connection with cases of torture to obtain confessions from suspects, it is rare for them to be successfully processed in general courts.(16)

Forms of Violation of the Rights of the Suspect in the Investigation Process

Guaranteed protection of human rights is one of the important elements in a rule of law, and is also one of the characteristics of a democratic country. Where the guarantee of protection of these rights in every aspect of life is a state obligation.

Indonesia guarantees basic and procedural protection of human rights based on the criminal justice process. This can be seen in the Criminal Procedure Code (UU No. 8 of 1981), so that in the implementation of criminal procedure by law enforcement officials must be guided by the provisions of the Criminal Procedure Code. KUHAP as a shield to defend and defend the human rights and human dignity of suspects or defendants. In this case the Criminal Procedure Code lays down the foundation as stipulated in a separate section, namely CHAPTER VI regarding the rights of suspects or defendants as follows:

- a. The right of the suspect to be examined immediately;
- b. The suspect's right to defend himself;
- c. The rights of suspects who are in detention;
- d. Right before court hearings; And
- e. The suspect's right to demand compensation and rehabilitation;

The Criminal Procedure Code (KUHAP) regulates suspects' rights. If the implementation of the suspect's rights is not under the provisions in the Criminal Procedure Code, then this can violate the suspect's rights. The purpose of the Criminal Procedure Code is to place the suspect/defendant as a subject where in every examination the suspect/defendant must be treated as a human being with dignity, dignity and self-esteem. However, in practice,

suspects/defendants are often seen as objects whose human rights and dignity have been arbitrarily deprived by law enforcement officials.

The following are administrative and procedural violations at the investigation level that often occur:

- a. The investigator did not disclose the suspect's right to be accompanied by a legal adviser;
- b. The summons of the suspect did not pay attention to the deadline;
- c. The maximum period of detention at the investigative level is applied even though the suspect is only examined a few times;
- d. The suspect's right to submit witnesses a de charge;
- e. It is prohibited to examine witnesses accompanied by legal counsel;
- f. The military carried out the investigation; And
- g. Investigators did not reveal the name of reporter

In addition, in practice law enforcement officers also often violate the rights of suspects. Violations of these rights usually take the form of discriminatory acts of process or implementation of the law as follows:

- a. Selective logging case handling;
- b. The subjectivity of detention; And
- c. Rough treatment of police officers.

Based on the provisions of Article 52 of the Criminal Procedure Code, the suspect or defendant is guaranteed reasonable treatment by the investigator. Therefore, in carrying out interrogations, it should not be allowed to use coercion, pressure, and even suspects also have the right not to provide answers to questions that are suggestive, trap, or corner the suspect. If the confession or statement the suspect gave originates from an act of coercion, then the statement is considered invalid according to law and has no evidentiary power in court.

The Criminal Procedure Code is the result of reforming criminal law in which there are improvements to statutory regulations, which are then continued by increasing efforts to codify and unify law in certain fields, also trying to improve and determine the attitudes and behavior of law enforcement officers, increasing development in in order to improve the image and authority of the apparatus for the sake of law enforcement, justice and protection of human dignity. Thus, the Criminal Procedure Code places the suspect as a subject, not as an object, whose rights are guaranteed by law. In addition to the Criminal Procedure Code, in international agreements, Indonesia is subject to various international human rights instruments, including the Universal Declaration of Human Rights. The Universal Declaration of Human Rights recognizes that the presumption of innocence is one of human rights. However, in the procedural law itself it is known. The National Commission on Human Rights (Komnas HAM) observes that there are still frequent cases of violent behavior by law enforcement officials during the interrogation of a suspect, or beatings and shootings outside of procedures against public members.

Conclusion:-

The law has protected the rights of suspects contained in Law Number 48 of 2009 concerning Judicial Powers, Law Number 39 of 1999 concerning Human Rights, and Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) regulated also regarding the prohibition of the use of both physical and psychological violence as contained in article 422 of the Criminal Code. However, in practice there are still many factors that justify the existence of violence in investigations so that external supervision is needed in carrying out the duties of investigators.

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