



Problematics of hand arrest operation by KPK in the due process of perspective law

Parnitongan Malau

Fakultas Hukum, Universitas Riau Kepulauan, Indonesia

ARTICLE INFO

Article history:

Received Jan 23, 2023

Revised Feb 01, 2023

Accepted Mar 30, 2023

Keywords:

Corruption
Criminal Law
Due Process of Law
Hand Arrest Operation
KPK

ABSTRACT

There has been a legal emergency in Indonesia's law enforcement, notably in terms of corruption, ever since the reformation. The purposes of this research are twofold: (1) to ascertain whether or not the hand arrest operation conducted by Komisi Pemberantasan Korupsi Indonesia (KPK) investigators is in accordance with Indonesian criminal procedure legislation, and (2) to ascertain whether or not the operation represents the rule of law in Indonesia. Specifically, this is an example of normative legal research. This thesis was written using a legal approach. The research found that KPK investigators' arrest operations are treated the same as any other arrest governed by Indonesia's Criminal Process Code, which requires many stages prior to being carried out (including eavesdropping and undercover operations). The purpose of this study is to analyze the existence of Hand Arrest Operation by Komisi Pemberantasan Korupsi Indonesia (KPK) investigators in Indonesian criminal procedural law, as well as to examine whether hand arrest operation by KPK investigators reflects Indonesian criminal procedure law which adheres to due process of law. The type of research in this research is normative legal research. While the approach taken in writing this thesis is statutory. The results of the study show that the existence of the arrest operation by KPK investigators in the Indonesian criminal procedure law can be concluded to be the same as the ordinary arrest regulated in the Criminal Procedure Code, which must be preceded by a series of actions such as as wiretapping and undercover operations before the arrest operation is carried out.

This is an open access article under the [CC BY-NC](https://creativecommons.org/licenses/by-nc/4.0/) license.



Corresponding Author:

Parnitongan Malau,
Fakultas Hukum,
Universitas Riau Kepulauan,
Jl. Pahlawan No.99, Bukit Tempayan, Kec. Batu Aji, Kota Batam, Kepulauan Riau 29425.
Email: pmalau0707@gmail.com

1. INTRODUCTION

After the reformation, corruption in particular has created a dire situation for Indonesia's law enforcement. Crimes against humanity are becoming commonplace because of corruption, which was formerly considered exceptional. It's as though corruption has developed into a "acute sickness" in Indonesia. In reality, authorities make several corruption-related arrests every year. Unfortunately, additional dishonest individuals are not deterred by reports of corruption arrests. Corruption is becoming a major problem in Indonesia. Because of its systemic nature, widespread application, and wide-ranging harmful effects, corruption ought to be recognized as a crime of exceptional gravity, if not a crime against humanity. Since the reformation, the condition of law

enforcement in Indonesia, especially regarding corruption, has been in a state of legal emergency. Corruption is no longer an extraordinary crime, but has led to crimes against humanity. The practice of corruption seems to have become an "acute disease" in Indonesia. In fact, every year many corruptors are arrested by law enforcement officers. However, news about corruptors being arrested does not dampen other corruptors at all. In fact, corruption practices are increasingly massive in Indonesia, making corruption considered an extraordinary crime or a crime against humanity because corruption is carried out systematically, widely and there are many negative impacts caused by corruption.

Corruption is a danger to democratic ideals like openness, accountability, and integrity, as well as to the security and stability of the Indonesian country. Democracy itself, which we thought was complete after the 1998 Reformation, became worthless as corruption persisted in practically every facet of national and state life in Indonesia (Muhart, 2019a)

In and of itself, corruption threatens a country's very survival. UNCAC's introductory statement agrees, stating that "corruption is a hazardous scourge that has many destructive impacts on society," including "weakening democracy and the rule of law," "leading to human rights abuses," "distorting markets," "eroding quality of life," and "enabling organized crime, terrorism, and other dangers to human security to thrive." According to (Putriyana, 2021) Fontian Munzil claims that the time it takes for the dishonest inmate to pay back the public's money into consideration when calculating the loss of state funds. As a consequence, combating corruption requires not just conventional methods, but also creative approaches (Munzil, 2015). According to KPK law, the KPK is responsible for significantly reducing and eliminating corruption-related crime. Operation Capture Hands, also known as the Hand Arrest Operation, is a series of recent arrests made by the Corruption Eradication Commission (hereinafter referred to as the KPK). An individual who is highly suspected of being the perpetrator of a corruption offense may be arrested using the KPK's Hand Arrest Operation after a series of activities, including as wiretapping mobile phones, by KPK investigators utilizing the instruments of power inside the KPK.

According to the information gathered, the KPK has relied mostly on the Hand Arrest Operation to apprehend corruption suspects in recent years. While "Hand Arrest Operation" is not widely recognized as a legal notion, some people classify it as synonymous with the phrase "caught red-handed." Yet, if "caught red-handed" is understood to be something that happens unexpectedly and instantly in a crowded hall, then it becomes problematic to correlate Hand Arrest Operation with "caught red-handed."

When the power behind Hand Arrest Operations is not codified in many statutes, the practice itself becomes controversial. As a result, speculation arose that the KPK had acted improperly and unlawfully throughout its implementation (Tyara & Fanhar, 2020). As several suspects or suspects' lawyers made pretrial petitions seeking arrest, the matter became even more pressing since it was not obvious whether or not the arrests were the result of a forced effort on the part of KPK investigators.

The fact that the Indonesian criminal justice system follows the idea of due process of law has implications for law enforcement that prioritizes proper procedures and protects the rights of all people and things inside the system. As the Hand Arrest Operation is akin to the covert buying approach, also known as undercover buying, for uncovering illegal drugs trafficking, any association with the notion of due process of law would create significant difficulties for KPK investigators. The "trapping" of the target of operations is a prominent feature of the undercover purchase approach. As a consequence of the provisions of Law Number 35 of 2009 pertaining to Drugs, BNN or Polri investigators (Ditres narcotics or Satres narcotics) may confidently carry out undercover buy-based arrest operations. It's worth noting that human rights advocates continue to be very critical of the undercover purchase approach because of the persistent risk of human rights violations, particularly those involving the suspect or target of the operation.

Pretrial legal trials of arrests are increasingly being carried out, and we can see from the judicial issues that the KPK often submits this way of hand-catching operations via requests by suspects or their lawyers since it is thought that the arrangements are still unclear.

Nonetheless, it's fair to say that the KPK's Hand Arrest Operation technique is currently operating in a "gray area," with no firm grounding under either Law Number 30 of 2002 establishing

the Corruption Eradication Commission or the Criminal Process Code. To prevent ambiguity and numerous interpretations when put into practice, it was also said that formal law (procedural law) had a stiff or inflexible nature.

In keeping with the views of many criminal law experts concerning the breadth of the responsibilities and powers of the KPK, one criminal law expert, Chairul Huda, examines the function of the Corruption Eradication Commission (KPK) as if it had determined everything itself. So that the KPK does not make its own laws and regulated themes may be simplified, it is crucial that the KPK take the lead in rewriting Law Number 30 of 2002 governing the KPK. The KPK's authority is investigated in Law No. 30 of 2002, and there have been many attempts to challenge this law before the Constitutional Court in light of a broad variety of problems and the differing views of numerous experts. (Susastyo & Waluyo, 2021). In particular, the KPK's authority to use handcuffs to capture allegedly corrupt officials or gather evidence against them has been contested. The writers felt forced to look into the KPK's handcuffing practices to see whether they represent the rule of law in Indonesia and if they have any basis in Indonesian criminal procedural law. The criminal act of corruption is a threat to the principles of democracy, which uphold transparency, accountability and integrity, as well as the security and stability of the Indonesian nation. Democracy itself, which we considered complete after the 1998 Reformation, became meaningless when corruption still reigned in Indonesia in almost every aspect of national and state life. (Muhtar, 2019).

Corruption itself cannot be denied has powerful implications for the sustainability of a country. This is supported in the Opening statement of the United Nations Convention on Corruption (UNCAC), that "Corruption is a dangerous plague that has various corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish." (Putriyana, 2021). According to Fontian Munzil, the calculation of the loss of state money must be calculated in detail by considering the timeframe until the state money can be returned by the corruption convict. So, the handling of corruption cases is not only through conventional methods, but also requires extra and special approaches (Munzil, 2015).

The KPK has an important task in preventing and eradicating criminal acts of corruption in accordance with the KPK law itself. Lately there have been many arrests made by the Corruption Eradication Commission (hereinafter referred to as the KPK) using the term Operation Catch Hands which is more popularly known as Hand Arrest Operation. Hand Arrest Operation carried out by the KPK is a method of arrest that is preceded by a series of actions such as wiretapping of mobile phones to the target of operations by KPK investigators using the instruments of authority within the KPK to arrest someone who is strongly suspected of being the perpetrator of a corruption crime.

The data obtained states that the arrest of corruption suspects by the KPK in recent years has been dominated by the Hand Arrest Operation method. Hand Arrest Operation itself is generally not known as a legal concept, but there are some people who categorize Hand Arrest Operation as or similar to the concept of "caught red-handed". It becomes a complicated problem if Hand Arrest Operation is equated with being caught red-handed, bearing in mind that "caught red-handed" is an event that occurs spontaneously and immediately in a crowded hall, so it is difficult to equate Hand Arrest Operation with being caught red-handed.

The phenomenon of Hand Arrest Operation becomes a polemic in itself when the basis for this authority is not regulated in several laws. This gave rise to the opinion that the KPK had committed violations and unprocedural actions in its implementation (Tyara & Fanhar, 2020). The problem became even more acute when many suspects or those represented by their attorneys submitted pretrial requests with the object of arrest, that arrests were deemed to still need clear examination through pretrial institutions regarding whether or not a forced effort in the form of arrest by KPK investigators.

That it is true that the Indonesian criminal justice system adheres to the principle of due process of law which will have an impact on the law enforcement process which emphasizes correct processes and upholds human rights for subjects and objects included in the circle of the criminal justice system. If the principle of due process of law is connected with Hand Arrest

Operation conducted by KPK investigators, it will cause quite serious problems, because Hand Arrest Operation is an action similar to the method of disclosing illicit narcotics trafficking using the covert buying method or commonly referred to as undercover buying. A strong characteristic of the undercover buy method is a "trapping" of the target of operations. Where undercover buy expressly has a legal basis in Law Number 35 of 2009 concerning Narcotics, resulting in BNN investigators or Polri investigators (Ditres narcotics or Satres narcotics) to calmly carry out arrest operations using the undercover buy method. It is a special note that the undercover buy method itself is still receiving a lot of criticism from human rights activists, because there is still a strong tendency to violate human rights, especially human rights related to the suspect or the target of the undercover buy operation itself.

We can see from the juridical problems that the KPK often submits this method of hand-catching operations through pretrial requests by suspects or their attorneys because it is considered that the arrangements are still unclear, so that legal trials of arrests through pretrial are increasingly being carried out.

Meanwhile, it can be said that the Hand Arrest Operation method by the KPK still does not have a clear legal basis either in Law Number 30 of 2002 concerning the Corruption Eradication Commission or in the Criminal Procedure Code, resulting in a situation called a "gray area". It was also added that the character of formal law (procedural law) is rigid or rigid, to avoid multiple interpretations and confusion later when applied in the field.

Likewise the views of several criminal law experts regarding the extent of the duties and powers of the Corruption Eradication Commission (KPK), one criminal law expert Chairul Huda assesses the role of the Corruption Eradication Commission (KPK) as if it had determined everything itself. Therefore, the leadership of the revision of Law Number 30 of 2002 concerning the KPK is needed so that the KPK does not make its own rules and matters that are regulated can be simplified. From several issues and the views of several experts regarding the authority of the KPK, several attempts have been made to examine Law Number 30 of 2002 concerning the KPK regarding the authority of the KPK at the Constitutional Court. (Susastyo & Waluyo, 2021). Especially regarding the pros and cons of the legality of the Corruption Eradication Commission's (KPK) authority in carrying out its duties to arrest or seek evidence of convicted corruption by carrying out a Hand Arrest Operation. This is of concern to the authors to examine the existence of Hand Arrest Operation by KPK investigators in Indonesian criminal procedural law, as well as to examine whether Hand Arrest Operation by KPK investigators reflects Indonesian criminal procedural law which adheres to due process of law.

2. RESEARCH METHOD

Normative juridical research (also known as doctrinal legal research, library research, or document study) is used because the proposal relies only on codified norms and other sources of law (Soekanto, 2007). This thesis was written using a legal approach, however The statutory technique (statute approach) looks at laws within the context of their standardization by assessing all statutes that have any influence on the problems (legal issues) at hand. study that seeks to collect and evaluate all applicable legal materials pertaining to the issue at hand. Research in the subject of law is knowledge-based since it is conducted with the intention of solving real-world legal issues. The final result is a suggested issue to bring up (M. Marzuki, 2017). The type of research in writing this proposal isnormative juridical research method whose other name is doctrinal legal research which is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials (Soekanto, 2007).While the approach taken in writing this thesis is a statute approach. The statutory approach (statute approach) is used to examine statutory regulations in their normalization and this approach is carried out by examining all statutory regulations that are related to the problems (legal issues) that are being faced.research that obtains legal materials by collecting and analyzing legal materials related to the issues to be discussed. Legal research is carried out to find solutions to legal issues that arise, therefore, legal research is a research within a know-how framework within law. The result achieved is to provide a prescription regarding what should be the issue raised (Marzuki, 2016).

3. RESULTS AND DISCUSSIONS

The Existence of HAND ARREST OPERATION by KPK Investigators in Indonesian Criminal Procedure Code

Corruption is never simple, regardless of the character of the victim, from the viewpoint of the criminals and their techniques. Many labels may be used to corruption, including "commercial crime," "economic crime," "white collar crime," "official crime," and "misuse of power." (Danil, 2021) Corruption in government often takes the form of bribery, fraud, extortion, abuse of authority, and favoritism. (Rohim, 2008)

It is notoriously difficult to prove corruption in a court of law. Bribery is one example of an underhanded practice that often occurs in private. Do the greatest effort you can to deny the occurrence of the crime. The KPK's Hand Arrest Operation is one strategy it employs to combat corruption. Many corruption cases, such as the beef import payments that led to the downfall of former Prosperous Justice Party leader Luthfi Hasan Ishaq and the SKK Migas bribes that led to the downfall of Rudi Rubiandini, are intrinsically related to the Hand Arrest Operation.

The KPK's Hand Arrest Operation makes use of eavesdropping and entrapment (Wahyuni, 2022) The Corruption Eradication Commission Law just declares the power to wiretap without regulating protocols, and none of Indonesia's anti-corruption legislation recognize entrapment. So, when the KPK uses any of these tactics, it is often accused of breaking the law and violating people's basic rights (HAM). Due to a lack of transparency on the procedure and limitations of the KPK's wiretapping ability, the public has incorrectly inferred that the KPK has infringed the law and even abused human rights, including a person's right to privacy.

The Constitutional Court's Decision No. 006/PUU-I/2003 on the Petition for Review of Law No. 30 of 2002 Regarding the Corruption Eradication Commission in Violation of the Constitution of 1945, the Constitutional Court's Decision No. 012-016-019/PUU-IV/2006 on the Petition for Review of Law No. 30 of 2002 Regarding the Corruption Eradication Commission in Violation of the Constitution of 1945, and the Constitutional Court's Decision No But, the Constitutional Court has made it clear that the right to privacy is not among those that can never be compromised (nonderogable rights). The Constitutional Court has mandated the establishment of a regulation to regulate wiretapping procedures, which must meet the following requirements: They include, but are not limited to: (1) the presence of a legal authority designated in law to give wiretapping licenses; (2) the assurance of a specified duration of time for wiretapping; (3) limits on handling wiretapped data; and (4) constraints on who may access wiretapping.

Wiretapping is currently unregulated by any comprehensive body of law. Meanwhile, the KPK is still implementing Operation Hand Arrest. KPK chairman Agus Rahardjo made good on his promise to arrest the hands of PDI Perjuangan member and DPR Commission V member Damayanti Wisnu Putranti three weeks after the inauguration. Yogyakarta Tipikor Court Judge Sumedi ruled that the KPK was not always wrong and not always right during "hand arrest operations" since the term is not regulated in the Criminal Procedure Law. Operation is a phrase used by Klan members to describe their clandestine activities. If a suspect is detained "while committing a crime," "immediately after the act is done," "called out by the general public as the person who committed it," or "if evidence is found on it," they are said to have been "caught red-handed," under Article 119 of the Criminal Procedure Code. But, if the KPK's hand arrest operation takes too long, the "caught in the act" defense will not apply. However there are gaps in the Criminal Procedure Law, such the fact that it does not limit "some time" in any way. Just how long would you say it has been? KPK's hand arrest operation was preceded by eavesdropping, according to East Java High Prosecutor's Office Head of Investigation Trimmo.

Neither the idea of "hand arrest operations" nor their actual execution violates the CPC. To put it plainly, we confused terms. Evidence, such as bribes or gifts, is acquired before the KPK begins its handcuffing operation. Being "caught red-handed" is equivalent to being subject to the hand arrest operation under the Criminal Procedure Code, since the KPK continues to operate in accordance with the CPC while making hand arrests. When the KPK catches you in the act, it's a big deal, says Oce Madril (UGM Legal Expert and Director of Pukat), since the KPK has the legal right to conduct wiretapping. Arrests and claims of corruption require treating charges of recording or wiretapping separately. In the course of an investigation, the KPK may resort to wiretapping in

order to collect evidence. The Corruption Eradication Commission's hand arrest operation is still deemed red-handed as defined by the Criminal Process Law, whether it is conducted at the time of or after the commission of an act of corruption. Arresting corrupt individuals and conducting wiretaps are two independent issues. KPK may track suspects all the way to the point of execution. While the KPK did not locate any evidence on the suspect during the handcuff operation, the suspect may still be arrested if he or she possesses legal facts, as explained by Didik Endro Purwoleksono, a legal expert from Airlangga University.

Immediately after the crime was committed, someone in the crowd identified him as the perpetrator. If, after some time has passed, items are discovered that are highly suspicious of having been used in the commission of the crime, indicating that he was the perpetrator, or if he participated or assisted in the commission of the crime,

Additionally, Didik Endro Purwoleksono argued that the KPK's handcuffing operation did not violate criminal procedural rules since evidence strongly suggested that the suspect was either the offender or a participant or assistant in the crime due to the things discovered in his possession. While the KPK follows the processes outlined in the Criminal Procedure Code and the Corruption Eradication Commission Law, the handcuffing operation that it conducts does not violate the concept of the presumption of innocence or human rights. According to Article 50 of the Criminal Code, the KPK's operations are not only permissible but also have reasonable causes, since they are carried out in accordance with legal mandates.

The type or quality of the target of corruption is not a simple crime from the point of view of the perpetrators and their modus operandi. There are various terms used to refer to criminal acts of corruption, one of which is as a form of crime as business, economic crimes, white collar crime, official crime, or abuse of power.(Danil, 2021).The modus operandi in corruption in general is bribery, fraud, extortion, abuse or discretion, and nepotism.(Rohim, 2008).

In the context of criminal law, corruption is a crime that is difficult to prove. In the case of bribery, for example, usually the bribe giver and bribe recipient carry out a silent operation to realize the crime. Even as far as possible negate the evidence that the crime has been committed. KPK has a system to deal with corruption cases, namely Hand Arrest Operation. It is undeniable that the revelations of many corruption cases, such as beef import bribes which implicated former Prosperous Justice Party chairman Luthfi Hasan Ishaq and SKK Migas bribes involving Rudi Rubiandini, are inseparable from Hand Arrest Operation.

In carrying out Hand Arrest Operation there are two techniques used by the KPK, namely wiretapping and entrapment (Wahyuni, 2022).The Corruption Eradication Commission Law only mentions the authority to wiretapping, does not regulate procedures, while trapping is not recognized in various regulations regarding corruption in Indonesia. As a result, in their use, these two techniques often lead to opinions that the KPK has violated the law and human rights (HAM). The lack of clarity regarding the mechanism and limits on the wiretapping authority carried out by the KPK has led to public assumptions that the wiretapping authority by the KPK has violated the law and even violated human rights, namely violating a person's right to privacy.

Some of the Constitutional Court's Decisions related to wiretapping, including the Constitutional Court's Decision No. 006/PUU-I/2003 regarding Request for Review of Law No. 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution, MK Decision No. 012-016-019/PUU- IV/2006 regarding Request for Review of Law No. 30 of 2002 concerning the Corruption Eradication Commission against the 1945 Constitution, and the Constitutional Court Decision No. 05/PUU-VIII/2010 regarding the Review of Article 31 paragraph (4) of Law no. 11 of 2008 concerning Information and Electronic Transactions against the 1945 Constitution, among other things, states that Article 12 paragraph (1) letter a of the KPK Law regarding the KPK's authority in wiretapping is contrary to Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), which states that "Everyone has the right to protection of himself/herself, family, honor, dignity and property under his control, and are entitled to a sense of security and protection from fear of doing or not doing something which is a human right." However, the Constitutional Court explained that the right to privacy is not part of rights that cannot be reduced under any circumstances (nonderogable rights), so that the state can place restrictions on the exercise of these rights by using a law, as stipulated in Article 28J paragraph (2)

of the 2011 Constitution of the Republic of Indonesia. 1945. The Constitutional Court mandated the establishment of a regulation on wiretapping mechanisms and procedures which contained the following requirements (1) The existence of a formal authority designated in law to grant wiretapping permits, (2) There is a guarantee of a certain period of time in wiretapping,, (3) Restrictions on handling wiretapped material, and (4) Restrictions regarding people who can access wiretapping.

Currently the law that specifically regulates wiretapping has not been formed. Meanwhile, the KPK continues to conduct Hand Arrest Operation. Three weeks after the inauguration, KPK chairman Agus Rahardjo fulfilled his promise by arresting the hands of a DPR Commission V member from the PDI Perjuangan faction: Damayanti Wisnu Putranti.

Regarding the Hand Arrest Operation conducted by the KPK, Sumedi (Yogyakarta Tipikor Court Judge) was of the opinion that the KPK was not always wrong and not always right, because the term Hand Arrest Operation was not regulated in the Criminal Procedure Code. The word "operation" was coined by the KPK. The Criminal Procedure Code states that being caught red-handed is carried out while committing a crime, or immediately after a while the crime is committed, or a moment later it is called out by the general public as the person who did it, or if a moment later evidence is found on it (Article 1 number 19 of the Criminal Procedure Code) . But if the time is too long, then the Hand Arrest Operation conducted by the KPK does not meet the terminology of being caught in the act in the Criminal Procedure Code. However, there are weaknesses in the Criminal Procedure Code which do not explicitly regulate "some time", how to interpret how long.

Meanwhile, Trimo (Head of Investigation at the East Java High Prosecutor's Office) said that the Hand Arrest Operation conducted by the KPK was preceded by wiretapping. Hand Arrest Operation is only a term, in practice it does not violate the Criminal Procedure Code. It's just a mistake in the use of terms. The Hand Arrest Operation carried out by the KPK waits until there is evidence, such as gratuities or bribes. The Hand Arrest Operation process carried out by the KPK is still in accordance with the Criminal Procedure Code, there is no difference between Hand Arrest Operation and being caught red-handed as regulated by the Criminal Procedure Code.

According to Oce Madril (UGM Legal Expert/Director of Pukat), being caught red-handed by the KPK is special because the KPK has the authority to carry out wiretapping. Recording or wiretapping must be seen separately from arrests, there are allegations of corruption. The KPK may conduct wiretapping at the investigation stage, in the context of gathering material to find evidence. Hand Arrest Operation carried out by the Corruption Eradication Commission is still considered red-handed as regulated in the Criminal Procedure Code, namely at the time or after the act of corruption was committed. Wiretapping and arresting the hands of corruption must be seen separately. KPK can follow people suspected of corruption until corruption is carried out.

However, according to Didik Endro Purwoleksono, a legal expert at Airlangga University, Hand Arrest Operation can still be carried out against suspects, even though the KPK did not find any evidence on the suspect during the Hand Arrest Operation, provided that the suspect has legal facts: Immediately after a while the crime was committed; A moment later it was called out by the crowd as the person who did it; If, after a while, objects are found which are strongly suspected of having been used to commit the crime, indicating that he was the perpetrator, or Participated in or assisted in the commission of the crime.

Furthermore, according to Didik Endro Purwoleksono, the Hand Arrest Operation carried out by the KPK did not violate criminal procedural law because objects were found in the suspect that were strongly suspected of having been used to commit the crime indicating that he was the perpetrator or the suspect participated in or assisted in committing the crime. The Hand Arrest Operation carried out by the KPK also does not violate the principle of the presumption of innocence and human rights because the KPK carries out Hand Arrest Operation in accordance with the procedures stipulated in the Criminal Procedure Code and the Corruption Eradication Commission Law. The KPK's actions are in the framework of carrying out the orders of the law, so that they are actions that can be justified (justifiable reasons), as stipulated in Article 50 of the Criminal Code.

Hand Arrest Operation by KPK Investigators in the Perspective of Due Process of Law

In criminal corruption proceedings, the legal procedure is the same as in any other criminal case, consisting mostly of actions linked to evidence or efforts to show guilt. While criminal procedure legislation is geared toward showing guilt in court, the proving process really begins during the inquiry. In order to get the evidence in question, you must first find evidence, since there is no other way to get the evidence you need. Being caught in the act is proof of having done so. According to Article 184, paragraph 1, of the Criminal Process Code, the following types of evidence may be presented in court: (1) testimony from witnesses; (2) testimony from experts; (3) correspondence; (4) directives; and (5) the accused's own statement. Law No. 31 of 1999, as modified by Law No. 20 of 2001, establishes a body of criminal law with special formalities. The Criminal Process Law is the primary source of specialized criminal law, and it governs various unique aspects of criminal investigations, prosecutions, and examinations that must be handled in special or extraordinary court sessions. Under the formal criminal legislation on corruption, there are provisions in the area of evidence for trial examination (the law of proof).

There are advantages and disadvantages to the hand-catching operation, which is a method of uncovering corruption cases that relies on wiretapping techniques that are supported by the KPK's internal Standard Operating Procedures (SOP), as well as the difference between the terms of the KPK Hand Arrest Operation and being caught red-handed in accordance with the KUHAP and KUHP. The following statements were made by those who agree with the KPK's handcuffing operation being carried out: According to Mahfud MD, he said: According to him wiretapping and HAND ARREST OPERATION carried out by the KPK were legal because they were carried out in accordance with the authority granted by the Law (UU). "There is no point in debating about the term Hand Arrest Operation. I said the operation was allowed, the act of catching hands was allowed, being caught red-handed was allowed. The important thing is the substance of article 1 point 19 of the Criminal Procedure Code. Alluding to the Hand Arrest Operation which was carried out through wiretapping, Mahfud said that the wiretapping carried out by the KPK was legal because it was in accordance with the authority given by law. "And the KPK already has the authority from the KPK Law to wiretapping, namely Article 12." (Hariariej, 2017). According to Edward Omar Sharif Hariariej argued: First, the Constitutional Court's decision did not revoke the wiretapping authority, the basis for the right to wiretapping authority by the KPK was based on the law. Second, reconnaissance is a natural thing to do in an investigation/investigation. There is no article in the KPK Law that prohibits surveillance. According to Andi Irmanputra Sidin, "The operations that the KPK continues to carry out are very important in order to rid our law enforcement world of bribery,". "Bribery is the beginning of the collapse of justice for justice seekers," said Irmanputra Sidin. Therefore, he continued, KPK HAND ARREST OPERATION must be appreciated so that the world of law enforcement will be more careful about committing bribes (Malau, 2017).

Those who believe the Corruption Eradication Commission's hand-catching operation goes against the Criminal Procedure Code Act of 1981, the Corruption Eradication Act of 1999, as amended by the Corruption Eradication Act of 2001, and the Corruption Eradication Commission Act of 2002, state as follows: (a) According to Romli Atmasasmita, he argues: In the context of the Hand Arrest Operation Kpk, there are two important things that need to be studied by criminal law experts and the KPK. First, regarding the Hand Arrest Operation procedure, which was preceded by wiretapping. Second, regarding the Hand Arrest Operation KPK results themselves. Hand Arrest Operation procedures (procedures), (not authority), continuation of wiretapping and there is no regulation in the KPK Law and Corruption Law with surveillance and arrest which are entrapments that violate the principles of due process of law and the presumption of innocence. (b) The Hand Arrest Operation results came from legal procedures that violated the law, which constituted illegal evidence and did not have the strength of evidence before the court. the arrest and detention of a suspect from the Hand Arrest Operation KPK constitutes deprivation of the freedom of movement of a person who is prohibited and subject to criminal penalties under the provisions of Article 333 of the Criminal Code. (c) Strictly speaking, the KPK's Hand Arrest Operation is invalid and null and void with the consequence that Hand Arrest Operation's actions can be pre-trialized (Atmasasmita, 2019). (d) According to Yusril Izhah Mahendra, he argued: "The facts that we see, the KPK is no

longer focused on activities to prevent losses to state finances, but prefers enormous news coverage with print and electronic media coverage and with the use of sarcastic language, spoken while stuttering. bricks to attract attention, because they have made arrests, which have been publicized as Hand Arrest Operation," he continued. (e) Yusril believes that the KPK has not even given time to report the Rp100 million gift to the KPK. "Based on Article 12 letter c, giving under certain circumstances does not necessarily fall into the category of bribery or corruption and what must be done is to give time to state administrators who receive gratuities without the intention to report the gift to the KPK within 30 days after receiving the gift in question (Herman, 2016). (f) According to Mohamad Laica Marzuki, he argued: "Hand-Catching Operation" is not recognized in the Criminal Procedure Code, the word does not include red-handed arrest if it is preceded by a series of research efforts, it is not a Hand-Catching Operation, according to him if there has been previous research it is called an arrest. assignment letter, there is an arrest warrant because it was not caught red-handed. "If this is not fulfilled, there is deprivation of liberty, that is a fundamental violation," said Marzuki (Michico 2016).

The hand-catching operation was an act of coercion conducted by the Corruption Eradication Commission and other law enforcement agencies. Although the hand-catching operation's use of force is permitted by law if it serves the interests of justice, the operation's personnel must still be mindful of the human rights of suspects and defendants, as enshrined in the Criminal Procedure Code, which "places a suspect in a dignified position as a creature of God so that the rights of a suspect or defendant shall be guaranteed and protected." Law Number 8 of 1981, also known as the Criminal Procedure Code; Law Number 39 of 1999, also known as the Human Rights Law; Law Number 31 of 1999, also known as the Anti-Corruption Law; and Law Number 20 of 2001, also known as the Law Concerning the Eradication of Corruption Crimes, all grant certain rights to the suspect or defendant at each stage of the legal process, from investigation to trial.

The law has a dual purpose: on the one hand, it limits the power of law enforcement to do their jobs, and on the other, it safeguards the rights of those who commit crimes. Law enforcement's attempts—in this instance, the Corruption Eradication Commission's—to restrict the freedom and human rights of suspects must be conducted ethically and in accordance with the letter and spirit of the law (due process of law). If the apparatus commits a breach of rights, the suspect may seek restitution, which is carried out via a pretrial procedure.

Pretrial exists for the purpose of protecting human rights and serving as a method of horizontal monitoring; alternatively, one could state that pretrial proceedings are held with the intention of serving as a method of horizontal supervision for the purpose of safeguarding human rights, in particular the rights of suspects and defendants. Article 110 of the Criminal Process Law provides the legal concept of "pretrial." At the request of the suspect, his family, or another party with authority over the suspect, the district court can determine whether or not the arrest and/or detention were lawful; whether or not the investigation and/or prosecution should be terminated; whether or not the termination is valid for the sake of upholding law and justice; and whether or not the suspect should be compensated and/or rehabilitated (Article 1 Point 10 of the Criminal Procedure Code). Pretrial matters are within the purview of the district court, which is tasked with making a determination in accordance with the provisions of this Law regarding: (a) The legality of the arrest, detention, termination of the investigation, or termination of the prosecution (with the exception of cases excluded by the Attorney General in the public interest). The Criminal Process Law specifies this in Article 77, subparagraph a. (b) Restitution and/or treatment for those whose cases are dropped while still in the investigation or prosecution stages. The Criminal Process Law specifies this in Article 77, paragraph (b). (c) Third, the thing seized may be used as evidence, whether or not it is legitimate. The Criminal Process Law specifies this in Article 82, paragraphs (1) and (3). (d) Compensation claims by suspects or their heirs for unlawful arrests, unlawful detentions, or unlawful measures taken if the matter was not brought to the district court. The Criminal Process Law specifies this in Article 95, paragraph 2. (e) A suspect's motion for rehabilitation because he or she was unlawfully arrested or imprisoned or because of an error in the application of the law in a case that was not brought before a district court. The Criminal Process Code specifies this in Article 97, subsection 2 (Sutarto, 2004).

Whereas, pursuant to the aforementioned provisions of Article 77, letter an, of the Criminal Procedure Code, the Constitutional Court of the Republic of Indonesia, in its Decision No. 21/PUU-XII/2014, the meaning of which was decided by pretrial institutions as defined in Article 1 Number 10, letter an, of the Criminal Procedure Code, has broadened the meaning of the term to include the investigation process, which includes the determination of suspects, searches, and confiscations.

Basically all activities in the legal process of criminal corruption cases are the same as general criminal cases, namely in the form of activities related to evidence or activities to prove. Although the law of proving criminal cases focuses on the purpose of proving in court, the process of proving has already begun at the time of investigation. Looking for evidence in question is actually looking for evidence, because this evidence can only be obtained from evidence including evidence. In being caught red-handed, there is evidence in it. valid evidence which may be used to prove has been regulated in Article 184 paragraph (1) of the Criminal Procedure Code, namely: 1. witness testimony; 2. expert testimony; 3. letter; 4. instructions; 5. statement of the accused; Special formal criminal law in Law no. 31 of 1999 which was amended by Law no. 20 of 2001, The main source of special criminal law regulates several special matters in the field of investigation, prosecution and examination in different or exceptional court sessions as regulated in the Criminal Procedure Code. In the formal criminal law on corruption in the field of trial examination in court, there are special provisions in the field of evidence (law of proof).

Regarding the Hand Arrest Operation in uncovering corruption cases, one form of action is supported by wiretapping techniques that rely on the KPK's internal Standard Operating Procedures (SOP) as well as the difference in the terms of KPK HAND ARREST OPERATION and being caught red-handed according to the KUHAP/KUHP, giving rise to pros and cons to the Hand-Catching Operation .

Parties supporting the implementation of the KPK's Hand-Catching Operation provided the following responses: (a) According to Mahfud MD, he said: According to him wiretapping and HAND ARREST OPERATION carried out by the KPK were legal because they were carried out in accordance with the authority granted by the Law (UU). "There is no point in debating about the term HAND ARREST OPERATION. I said the operation was allowed, the act of catching hands was allowed, being caught red-handed was allowed. The important thing is the substance of article 1 point 19 of the Criminal Procedure Code. Alluding to the HAND ARREST OPERATION which was carried out through wiretapping, Mahfud said that the wiretapping carried out by the KPK was legal because it was in accordance with the authority given by law. "And the KPK already has the authority from the KPK Law to wiretapping, namely Article 12."(Hariariej, 2017). (b) According to Edward Omar Sharif Hiariej argued: First, the Constitutional Court's decision did not revoke the wiretapping authority, the basis for the right to wiretapping authority by the KPK was based on the law. Second, reconnaissance is a natural thing to do in an investigation/investigation. There is no article in the KPK Law that prohibits surveillance. (c) According to Andi Irmanputra Sidin, "The operations that the KPK continues to carry out are very important in order to rid our law enforcement world of bribery,". "Bribery is the beginning of the collapse of justice for justice seekers," said Irmanputra Sidin. Therefore, he continued, KPK HAND ARREST OPERATION must be appreciated so that the world of law enforcement will be more careful about committing bribes (Malau, 2017).

Parties who consider that the implementation of the Corruption Eradication Commission's Hand-Catching Operation is contrary to Law Number 8 of 1981 concerning Criminal Procedure Code, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Criminal Acts of Corruption, and Law Number 30 of 2002 concerning the Corruption Eradication Commission states: (a) According to Romli Atmasasmita, he argues: In the context of the HAND ARREST OPERATION KPK, there are two important things that need to be studied by criminal law experts and the KPK. First, regarding the HAND ARREST OPERATION procedure, which was preceded by wiretapping. Second, regarding the Hand Arrest Operation KPK results themselves. Hand Arrest Operation procedures (procedures), (not authority), continuation of wiretapping and there is no regulation in the KPK Law and Corruption Law with surveillance and arrest which are entrapments that violate the principles of due process of law and the presumption of innocence. (b)

The Hand Arrest Operation results came from legal procedures that violated the law, which constituted illegal evidence and did not have the strength of evidence before the court. the arrest and detention of a suspect from the Hand Arrest Operation KPK constitutes deprivation of the freedom of movement of a person who is prohibited and subject to criminal penalties under the provisions of Article 333 of the Criminal Code. (c) Strictly speaking, the KPK's Hand Arrest Operation is invalid and null and void with the consequence that Hand Arrest Operation's actions can be pre-trialized (Atmasasmita, 2019). (d) According to Yusril Izha Mahendra, he argued: "The facts that we see, the KPK is no longer focused on activities to prevent losses to state finances, but prefers enormous news coverage with print and electronic media coverage and with the use of sarcastic language, spoken while stuttering. bricks to attract attention, because they have made arrests, which have been publicized as Hand Arrest Operation," he continued. (e) Yusril believes that the KPK has not even given time to report the Rp100 million gift to the KPK. "Based on Article 12 letter c, giving under certain circumstances does not necessarily fall into the category of bribery or corruption and what must be done is to give time to state administrators who receive gratuities without the intention to report the gift to the KPK within 30 days after receiving the gift in question.(Herman, 2016). (f) According to Mohamad Laica Marzuki, he argued: "Hand-Catching Operation" is not recognized in the Criminal Procedure Code, the word does not include red-handed arrest if it is preceded by a series of research efforts, it is not a Hand-Catching Operation, according to him if there has been previous research it is called an arrest. assignment letter, there is an arrest warrant because it was not caught red-handed. "If this is not fulfilled, there is deprivation of liberty, that is a fundamental violation," said Marzuki (Michico 2016).

The Hand-Catching Operation is an act of coercion carried out by law enforcement officials, especially in this case the Corruption Eradication Commission. Such coercive measures may violate individual rights, however, because the action of the Hand-Catching Operation for the benefit of justice has been regulated in the law, such action can be justified, but must still pay attention to matters related to the human rights of suspects or defendants who which must be guaranteed and protected in the Criminal Procedure Code which places a suspect in a dignified position as a creature of God so that the rights of a suspect or defendant may not be ignored or violated. The suspect/defendant is given a set of rights by Law Number 8 of 1981 concerning Criminal Procedure Code or what is often referred to as the Criminal Procedure Code, Law Number 39 of 1999 concerning Human Rights and Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning Eradication of Corruption Crimes both at the investigative level to the judicial level.

The law has two aspects, on the one hand it regulates the authority of law enforcement officials in carrying out their duties and functions, and on the other hand it protects human rights for perpetrators of criminal acts. Forced efforts by law enforcers, in this case the Corruption Eradication Commission, constitute a reduction and limitation of the independence and human rights of suspects, these actions must be carried out responsibly according to the provisions of law and applicable laws (due process of law). If in the process there is a violation of the rights committed by the apparatus, then the suspect can ask for compensation which in its implementation is through a pretrial process.

The existence of pretrial aims to provide protection for human rights as well as to function as a means of horizontal monitoring or in a more explicit sentence it can be said that the holding of pretrial has the intention of being a means of horizontal supervision with the aim of providing protection for human rights, especially the human rights of suspects and defendants. The definition of pretrial is stated in Article 1 point 10 of the Criminal Procedure Code. Pretrial is the authority of the district court to examine and decide on: (a) Whether or not the arrest and/or detention is legal at the request of the suspect or his family or another party under the authority of the suspect; (b) Whether or not the termination of the investigation or the termination of the prosecution is valid at the request for the sake of upholding law and justice; (c) Requests for compensation and or rehabilitation by the suspect or his family or other parties on his behalf whose case is submitted to the Court (article 1 point 10 of the Criminal Procedure Code).

Whereas the pretrial is the authority of the district court to examine and decide, in accordance with the provisions stipulated in this Law regarding: (a) Whether or not the arrest, detention, termination of the investigation or termination of the prosecution are legal (except for the

exclusion of cases in the public interest by the Attorney General. This is regulated in Article 77 letter a of the Criminal Procedure Code. (b) Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution. This is regulated in Article 77 letter b of the Criminal Procedure Code. (c) Legitimate or not the confiscated object as a means of proof. This is regulated in Article 82 paragraph (1) and (3) of the Criminal Procedure Code. (d) Claims for compensation by suspects or their heirs for arrests or detentions and other actions without reasons based on law or due to a mistake regarding a person or the law applied where the case was not submitted to the district court. This is regulated in Article 95 paragraph (2) of the Criminal Procedure Code. (e) A request for rehabilitation by a suspect for being arrested or detained without reason based on the law or due to a mistake regarding the law being applied where the case was not submitted to the district court. This is regulated in Article 97 paragraph (2) of the Criminal Procedure Code (Sutarto, 2004).

Whereas then because of the provisions of Article 77 letter a of the Criminal Procedure Code above, the Constitutional Court of the Republic of Indonesia through its Decision No. 21/PUU-XII/2014, the meaning of which was decided by pretrial institutions as defined in Article 1 number 10 letter a of the Criminal Procedure Code, has expanded its meaning, so that the investigation process which includes the determination of suspects, searches and confiscations is part of the pretrial order.

4. CONCLUSION

It can be concluded that the operation of hand arrest by KPK investigators in the Indonesian Criminal Procedure Code is the same as the usual arrest stipulated in the Criminal Procedure Code, which must be preceded by a series of actions such as wiretapping and disguising before carrying out a hand arrest operation. So it can be asserted that the hand-capture process carried out by the KPK is not the same as the concept of hand-capture stipulated in the Criminal Procedure Code. The arrest operation by the KPK investigator has not reflected the Indonesian Criminal Procedure Law, which adheres to due process of law; this is due to the level of transparency towards the commencement of the arrest operation by the KPK still seems covered up so that many parties equate the arrest operation carried out by the KPK investigator with being caught as stipulated in the Criminal Procedure Code. This study is a normative juridical research that only looks at the rules regarding the operation of hand capture. Future research is expected to examine the interests of a legal umbrella to establish standard regulations regarding the capture operation so that the eradication of corruption in the future can be better. It can be concluded that the existence of the Hand Arrest Operation by KPK investigators in Indonesian criminal procedural law is the same as the ordinary arrests regulated in the Criminal Procedure Code, which must be preceded by a series of actions such as wiretapping and disguise before carrying out the Hand-Catching Operation. So that it can be emphasized that the Hand-Catching Operation by the KPK is not the same as the concept of hand-catching as stipulated in the Criminal Procedure Code. The hand-catching operation by KPK investigators does not yet reflect Indonesia's criminal procedural law which adheres to due process of law, this is due to the level of transparency towards the start of an act of hand-catching operation by the KPK which still seems to be covered up so that many parties equate the Hand Arrest Operation carried out by KPK investigators as caught red-handed as stipulated in the Criminal Procedure Code.

REFERENCES

- Atmasasmita, R. (2019). OTT KPK Ilegal: Ini Tanggapan Balik Prof. Romli untuk Prof. Eddy Hiariej - NegaraHukum.com. Retrieved from <https://www.negarahukum.com/romli-atmasasmita-dan-eddy-hiariej.html>
- Danil, E. (2021). Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya-Rajawali Pers. Retrieved from <https://books.google.com/books?hl=en&lr=&id=7PUbEAAQBAJ&oi=fnd&pg=PA1&dq=Korupsi+Konsep,+Tindak+Pidana,+dan+Pemberantasannya.&ots=MyIrwR96N6&sig=CVO4WPz3q9b2TCUtafsRgRImRAs>
- Hermawan, B. (2016). Yusril: KPK Seperti Toko Kelontong | Republika Online. Retrieved from <https://republika.co.id/berita/ogo956354/yusril-kpk-seperti-toko-kelontong>

- Hiariej, E. O. (2017). Memahami Analogi dan Ihwal OTT KPK. Retrieved from <https://nasional.sindonews.com/berita/1247918/18/memahami-analogi-dan-ihwal-ott-kpk>
- Malau, S. (2017). OTT KPK Dinilai Penting Untuk Bersihkan Dunia Penegak Hukum Dari Praktik Suap Menyuap - Tribunnews.com. Retrieved from <https://www.tribunnews.com/nasional/2017/09/10/ott-kpk-dinilai-penting-untuk-bersihkan-dunia-penegak-hukum-dari-praktik-suap-menyuap>
- Marzuki, M. (2017). Penelitian Hukum: Edisi Revisi. Jakarta: Prenada Media. Retrieved from <https://books.google.com/books?hl=en&lr=&id=CKZADwAAQBAJ&oi=fnd&pg=PA1&dq=Penelitian+Hukum:+Edisi+Revisi+marzuki&ots=mmMwdU6bSG&sig=VP9Xk8UsO1zatEeOwXc-jprVe0s>
- Marzuki, P. M. (2016). Penelitian Hukum, Edisi Revisi, Cetakan Ke-12. Jakarta: Kencana.
- Michico, N. R. (2016). Saksi Ahli Irman Gusman Sebut Istilah OTT Kacau Hukum Acara. Retrieved from <https://news.detik.com/berita/d-3331225/saksi-ahli-irman-gusman-sebut-istilah-ott-kacau-hukum-acara>
- Muhtar, M. (2019a). Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum. *Ejurnal.Ung.Ac.Id.* Retrieved from <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/1988>
- Muhtar, M. (2019b). Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum. *Ejurnal.Ung.Ac.Id.* Retrieved from <https://ejurnal.ung.ac.id/index.php/jalrev/article/view/1988>
- Munzil, F. (2015). Kesebandingan Pidana Uang Pengganti dan Pengganti Pidana Uang Pengganti dalam Rangka Melindungi Hak Ekonomis Negara dan Kepastian Hukum. *Journal.Uii.Ac.Id.* Retrieved from <https://journal.uii.ac.id/IUSTUM/article/view/4606>
- Putriyana, A. (2021). The Impact of Enforcement of Corruption Law by the Corruption Eradication Commission after the Ratification of the Latest KPK Law. *Academia.Edu.* Retrieved from <https://www.academia.edu/download/77400586/pdf.pdf>
- Rohim. (2008). Modus Operandi Tindak Pidana Korupsi. Depok : Pena Multi Media.
- Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat. Retrieved from <http://library.stikptik.ac.id/detail?id=5460&lokasi=lokal>
- Susastyo, D. A., & Waluyo, B. (2021). Strengthening The Corruption Eradication Commission as an Institution at The Forefront of Law Enforcement on Corruption in Indonesia. *Ijsshr.In.* <https://doi.org/10.47191/ijsshr/v4-i9-18>
- Sutarto, S. (2004). Hukum Acara pidana jilid II. Semarang: Badan Penerbit Universitas Diponegoro.
- Tyara, F., & Fanhar, M. (2020). Operasi Tangkap Tangan (OTT) Tinjauan Berdasarkan KUHAP Dan Undang Undang Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Korupsi (KPK). *Jurnal.Fh.Unila.Ac.Id.*, 01, 91–104. <https://doi.org/10.25041/corruptio.v1i2.2096>
- Wahyuni, W. (2022). Mengenal Operasi Tangkap Tangan KPK. Retrieved from <https://www.hukumonline.com/berita/a/mengenal-operasi-tangkap-tangan-kpk-lt626ac7a171949>