

## **Act against the Law of the Detention Period More Than 460 Days Reviewed From Law No.8 the Year 1981 Concerning the Criminal Procedure Code (KUHAP) (CASE STUDY OF THE SUPREME COURT NUMBER 121 K / Pid.Sus / 2020)**

**SAMUEL SOEWITA, S.E., S.H., M.M., M.H.**  
*Faculty of Law, Pamulang University, Indonesia*

**Abstract:** ACT AGAINST THE LAW OF THE DETENTION PERIOD MORE THAN 460 DAYS REVIEWED FROM LAW NO. 8 YEAR 1981 CONCERNING THE CRIMINAL PROCEDURE CODE (KUHAP)". Detention is carried out by the investigator, prosecutor or court, on the grounds that the suspect or defendant will not run away, destroy or lose evidence and or repeat the criminal act. Detained suspects with the threat of sentences of 5 years or more. Criminal sanctions are the third main problem in criminal law which is actually a means or instrument used to achieve the objectives of criminal law. The word 'criminal' in 'Penal Law' has the meaning of reward or retribution, and therefore every perpetrator of violation of criminal law (KUHP) must be rewarded / retaliated. Such a view will be able to influence the understanding of law enforcers that a suspect / defendant / convict deserves to be rewarded or retaliated since being processed in an investigation through detention to serving a sentence in a Penitentiary (Lapas). Finally, as long as the suspect / defendant is in the State Detention Center (Rutan) to the prison, the treatment they receive is not protection (law), intelligence or a picture of the future welfare that should be received through 'correctional' institutions, but tends to the opposite. Basically, the limitation of the period of detention for a suspect / defendant in any law enforcement agency such as investigators in the Police, public prosecutors at the Attorney General's Office and Judges at the Court have their respective portions as determined by Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The research method used is empirical juridical meaning is to identify and conceptualize law as a real and functional social institution in a patterned life system. The data obtained from the literature research conducted a quantitative descriptive-analytic data analysis process, so that a conclusion was obtained. Detention beyond the time limit stipulated by Law No. 8 of 1981 constitutes an act of violating the law and violates human rights as regulated by Law No. 39 of 1999 on Human Rights. Penalties are needed for persons who violate the law and the Supervisory Agency for law enforcement for detention for the sake of establishing law enforcement.

**Keywords:** Detention period exceeding 460 days, Sanctions and law enforcement.

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### **1. PRELIMINARY**

#### **A. Background**

In a government in a country, the laws and sanctions for violations of the law must be regulated. "The law is the whole collection of rules or principles in a common life which can be enforced with a sanction".

(SudiknoMertokusumo, 2003, p 40). Criminal sanctions are the third main problem in criminal law which is actually a means or instrument used to achieve the objectives of criminal law. "Criminal sanctions are not a final goal but a means to achieve the real goal of criminal law." (SR Sianturi, 1989, p 57) In the Criminal Code (KUHP) there are two sanctions that can be imposed on a person if he is proven to have violated The law, which is contained in Article 10 of the Criminal Code, consists of the main and additional crimes. The main punishment consists of capital punishment, imprisonment, imprisonment, fines, while additional penalties consist of deprivation of certain rights, confiscation of certain items, and announcement of a judge's decision. One form of punishment commonly imposed on criminals is imprisonment. "The process of imprisonment with the correctional system as a renewal of the implementation of imprisonment is expected to be an activity that contains an idea about the form of imprisonment which will undergo evolution with regard to the implementation of new imprisonment, and contains an activity of thinking about new ways of treating prisoners in the context of correctional system ". (BambangPoernomo, 1985, p 13.)

The modern state as a welfare state (welfarestate) demands changes to criminal law, especially the Criminal Code and the Criminal Code. This is indeed difficult to do because from a long time ago students in the faculty of law, even criminal law experts were given the understanding that the word 'criminal' in 'Criminal Law' has the meaning of reward or retribution, and therefore every perpetrator of a violation of the law criminal (KUHP) must be rewarded / retaliated. This view will be able to influence the understanding of the law enforcers that suspects/defendants/convicts deserve to be rewarded or retaliated since being processed in the investigation through detention until serving a sentence in a Penitentiary (Lapas). Finally, as long as the suspect/defendant is in the State Detention Center (Rutan) to the prison, the treatment they receive is not protection (law), intelligence or a picture of the future welfare that should be received through 'correctional' institutions, but tends to the opposite.

Basically, the limitation of the period of detention for a suspect/defendant in any law enforcement agency such as investigators in the Police, public prosecutors at the Attorney General's Office and Judges at the Court have their respective portions as determined by Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

The provisions regarding the limitation of the period of detention can also be requested for an extension of the detention period once at each agency. Then as for the consequences of the detention period has passed the predetermined time limit, whether or not a suspect/defendant is subject to detention is being examined, according to the mandate of the Criminal Procedure Code a suspect/defendant must be released "by law" from the detainee. Detention as referred to in Article 1 point 21 of the Criminal Procedure Code, namely:

Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judges by ruling in matters and according to methods regulated in this law.

Regarding the time limit of detention held by law enforcement agencies such as investigators in the Police, as mandated by Article 24 paragraph (1) and (2) of the Criminal Procedure Code, namely:

(1) A detention order given by an investigator as referred to in Article 20, is only valid for a maximum of twenty days;

(2) The period as referred to in paragraph (1), if needed for an incomplete examination, can be extended by the competent public prosecutor for a maximum of forty days.

The provisions above specify the time limit for the retention period for the entire examination of a suspect by an investigator to be 60 (sixty) days and those who are authorized to extend the detention period, namely the public prosecutor. However, if the examination exceeds the predetermined maximum period, the investigator must remove the suspect from detention "for the sake of law" or automatically the detention of the suspect is null and void according to law.

Then for the time limit of the detention period that the public prosecutor has in the public prosecutor's office as mandated in Article 25 paragraph (1) and (2) KUHAP, namely:

- (1) The detention order issued by the public prosecutor as referred to in Article 20, is only valid for a maximum of twenty days;
- (2) The period as referred to in paragraph (1), if needed for an incomplete examination, may be extended by the competent Chairman of the District Court for a maximum of thirty days.

Seeing the above provisions, the maximum time limit for the public prosecutor to detain the Defendant is 50 days and the one who has the authority to extend the detention period is the Chairman of the District Court. However, after the time limit for the retention period stipulated by the Criminal Procedure Code has passed, whether the defendant is ready or not ready to be examined must be released from detention "for the sake of the law". This legal expenditure is without conditions and procedures.

For the time limit of detention held by the Judge in Court. All judges at all court levels, both at the District Court, High Court and Supreme Court, each have the authority to carry out detentions according to the time limit determined by the Criminal Procedure Code, including the following:

For District Court Judges, the time limit for detention as mandated in Article 26 paragraph (1) and (2) of the Criminal Procedure Code, namely:

- (1) The district court judge who hears the case as referred to in Article 84, for the examination is authorized to issue a detention warrant for a maximum of thirty days;
- (2) The time period as referred to in paragraph (1), if needed for the purpose of an incomplete examination, may be extended by the Chairman of the District Court concerned for a maximum of sixty days.

With the time limit for the retention period that can be carried out by District Court Judges of a maximum of 90 days, without precluding the possibility of removing the Defendant from detention even though the detention period has not ended if the detention is deemed unnecessary. and the one who has the authority to extend the period of detention, namely the Head of the District Court. Then when the time limit for the retention period has ended, according to law the Defendant must be released from detention.

For High Court Judges, the time limit for the period of detention as mandated in Article 27 of the Criminal Procedure Code, namely:

- (1) The judge of the high court who hears the case as referred to in Article 87, for the purpose of an appeal examination has the authority to issue a detention warrant for a maximum of thirty days;
- (2) The time period as referred to in paragraph (1), if needed for the purposes of an incomplete examination, may be extended by the Head of the High Court concerned for a maximum of sixty days.

In view of the provisions of Article 27 paragraph (1) and (2) of the Criminal Procedure Code, the maximum time limit for the detention of a High Court Judge is 90 days, in addition to that the High Court Judge also has the authority to remove the Defendant from detention even though the detention time limit has not ended. and the one who has the authority to extend the time limit of detention, namely the Chairman of the High Court. Then when the 90-day time limit has expired, there is no other way for the High Court Judge to get the Defendant out of detention "for the sake of law" without conditions and procedures.

For Supreme Court Judges, the time limit for the detention period of the Supreme Court Judges as mandated by Article 28 paragraph (1) and (2) of the Criminal Procedure Code, namely: (1) Supreme Court Judges who hear cases as referred to in Article 88, for the purpose of cassation examination has the authority to issue a detention warrant for a maximum of fifty days;

- (2) The period as referred to in paragraph (1), if needed for the purposes of an incomplete examination, may be extended by the Chief Justice of the Supreme Court for a maximum of sixty days.

The power of detention is held by the Supreme Court Judge with a maximum of 110 days. without precluding the possibility to remove the Defendant from detention even though the period of detention has not yet ended. and who has the authority to extend the period of detention, namely the Chief Justice of the Supreme Court. and if the 110 day period expires, the accused must automatically be expelled by law, regardless of whether the examination at the cassation level was completed or not.

Thus it can be seen clearly and firmly regarding the time limit for detention and the limits of authority that exist in each law enforcement agency which fulfils the interests of protecting human rights for each suspect/defendant. And if the total period of detention is added up from each level of examination, starting from the suspect at the stage of an investigation, to the status of the Defendant at the trial hearing at the Cassation level at the Supreme Court, it cannot be more than 400 days. After this time limit, even if the case hearing has not been completed, the person concerned must be released from detention "for the sake of the law" without being burdened with conditions and procedures.

Then for the period of detention, there are also exempt articles regarding the extension of detention that exceeds the time limit set out in the article above, this is as regulated in Article 29 of the Criminal Procedure Code, namely:

(1) Excluded from the period of detention as referred to in article 24, article 25, article 26, article 27, and article 28, for the purpose of examination, the detention of a suspect or defendant may be extended based on appropriate or unavoidable reasons because;

a. the suspect or defendant is suffering from a serious physical or mental disorder, as evidenced by a doctor's certificate, or

b. a case being investigated is punishable by imprisonment of nine years or more;

(2) The extension referred to in paragraph (1) shall be granted for a maximum of thirty days and in case the detention is still needed, it can be extended again for a maximum of thirty days.

With these provisions, the reasons for the exclusion of the extension of detention of a suspect or defendant are based on appropriate reasons, namely Article 29 paragraph (1) letters a and b, apart from these provisions, the provisions of Article 24, Article 25, Article 26, Article 27, Article 28. Regarding the deadline for extending the exemption as stipulated in Article 29 paragraph (2) of the Criminal Procedure Code, it is only for "two times" extension which is 60 days. And the extension should be gradual for 30 days each. if the 60-day extension period has ended, the Suspect / Defendant must be released from detention "for the sake of law" without conditions and procedures. Then the one authorized to extend detention is the authorized official according to the level of examination. at the level of investigation and prosecution, it is given by the Head of the District Court, the examination at the district court is given by the Head of the High Court, the Appellate examination is given by the Supreme Court and the Cassation Examination is given by the Chief of the Supreme Court as stipulated in Article 29 paragraph (3) of the Criminal Procedure Code.

In the decision of the Supreme Court No. 121 K / Pid.Sus / 2020, with the defendant Ir. GALAILA KAREN KARDINAH aka KAREN GALAILA AGUSTIAWAN aka KAREN AGUSTIAWAN, on page 1, the defendant has been under detention at the State Detention Center since September 24 2018, and on page 40 of 41, it is decided by the Supreme Court on March 9, 2020.

## **2. THE PROBLEM**

Based on the background above, the problems that will be raised by the author are:

1. What was the period of detention of the defendant Ir. GALAILA KAREN KARDINAH aka KAREN GALAILA AGUSTIAWAN aka KAREN AGUSTIAWAN in accordance with article 24, article 25, article 26, article 27, article 28 and article 29 paragraph (2) of Law No. 8 of 1981 on Criminal Procedure Code?

2. Are there any other regulations that are violated apart from the Criminal Procedure Code if they detain the defendant beyond the time stipulated in articles 24 (2), articles 25 (2), articles 26 (1 and 2), articles 27 (1 and 2), articles 28 (1 and 2) and Article 29 paragraph (2) of Law No. 8 of 1981 on KUHAP?

## **3. RESEARCH METHODS**

This type of research is an empirical juridical legal research, to identify and analyze legal factors that become obstacles to legal actions of administrative law, as well as to review the concepts that cause it.

In this research, the approach used is an empirical juridical approach. Juridical empirical means identifying and conceptualizing law as a real and functional social institution in a patterned living system. (Soekanto .S, 1984, p51)

The juridical approach in this study is an approach in terms of statutory regulations and legal norms in accordance with existing problems, while the empirical approach is to emphasize research aimed at gaining empirical knowledge by plunging directly from the object.

## 4. DISCUSSION

### A. The period of detention of Ir. Galaila Karen Kardinah

The provisions on the time limit for the retention period in accordance with Article 24 paragraph (1) and (2) of the Criminal Procedure Code for the entire examination of a suspect by an investigator is 60 (sixty) days and those who are authorized to extend the detention period are the public prosecutor.

The provision on the maximum time limit for the public prosecutor to carry out detention in accordance with Article 25 paragraph (1) and (2) of the Criminal Procedure Code against the Defendant is 50 days and the one who has the authority to extend the detention period is the Chairman of the District Court.

The provision on the time limit for detention that can be carried out by District Court Judges is a maximum of 90 days, in accordance with Article 26 paragraph (1) and (2) of the Criminal Procedure Code.

Based on the decision of the Supreme Court, other regulations were violated besides the Criminal Procedure Code if the defendant detained the defendant beyond the time stipulated in articles 24 (2), articles 25 (2), articles 26 (1 and 2), articles 27 (1 and 2), articles 28 (1 and 2) and Article 29 paragraph (2) Law No. 8 of 1981 concerning KUHAP on page 3 of 41 Corruption Court Decision at the Central Jakarta District Court Number 15 / Pid.Sus / TPK / 2019 / PN Jkt.Pst., Dated 10 June 2019.

Based on the data above, the detention period for Ir. Galaila Karen Kardinah, that from the time she was detained until the sentence was pronounced, it was as follows:

- September 2018 for 7 days
- October 2018 for 31 days
- November 2018 for 30 days
- December 2018 for 31 days
- January 2019 for 31 days
- February 2019 for 29 days
- March 2019 for 31 days
- April 2019 for 30 days
- May 2019 for 31 days
- June 2019 for 10 days.

The total period of detention until the sentence is pronounced at the level of the Central Jakarta District Court is 261 days, based on the provisions of the Criminal Procedure Code up to the sentence is 200 days. There has been an unlawful act of detention in the State Detention Center for more than 61 days.

Based on the provisions of Article 27 paragraph (1) and (2) KUHAP, the maximum time limit for the detention of a High Court Judge is 90 days.

Based on the decision of the Supreme Court No 121 K / Pid.Sus / 2020 on page 32 of 41, the Corruption Court Decision at the DKI Jakarta High Court Number 34 / Pid.Sus-TPK / 2019 / PT.DKI, dated 24 September 2019.

Based on the data above, the detention period for Ir. Galaila Karen Kardinah, that since the District Court verdict until the DKI Jakarta High Court verdict was read out as follows:

- June 2019 for 20 days
- July 2019 for 31 days
- August 2019 for 31 days

- September 2019 for 24 days

The total period of detention from the District Court decision until the sentence is read out at the DKI Jakarta High Court level is 106 days.

There has been an illegal act of detention in the State Detention Center for more than 16 days.

The power of detention is held by the Judge of the Supreme Court with a maximum of 110 days in accordance with Article 28 paragraph (1) and (2) of the Criminal Procedure Code.

Regarding the deadline for extending the exemption as regulated in Article 29 paragraph (2) of the Criminal Procedure Code, it is only for "two times" extension, namely 60 days.

Based on the decision of the Supreme Court No 121 K / Pid.Sus / 2020 on page 40 of 41, it was decided by the Panel of Judges on Monday 9 March 2020.

Based on the data above, the detention period for Ir. Galaila Karen Kardinah, that since the Jakarta High Court verdict until the Supreme Court verdict was read out, it is as follows:

- September 2019 for 6 days
- October 2019 for 31 days
- November 2019 for 30 days
- December 2019 for 31 days
- January 2020 for 31 days
- February 2020 for 29 days
- March 2020 for 9 days

The total period of detention from the Jakarta High Court decision until the sentence is read out at the Jakarta Supreme Court level is 167 days.

During the detention period of the Supreme Court hearing is 110 days + 60 days for threats exceeding 9 years or more, then the total detention allowed under the Criminal Procedure Code is 170 days, in the case of detention in a State Detention Center according to the applicable regulations because it does not last up to 170 days.

B. Other regulations that are violated besides the Criminal Procedure Code if the defendant detains beyond the time specified in article 24 (2), Article 25 (2), Article 26 (1 and 2), article 27 (1 and 2), article 28 (1 and 2) and Article 29 paragraph (2) of Law No. 8 of 1981 on KUHAP.

In the case study of the defendant Ir Karen Agustawan based on the Supreme Court decision No 121 K / Pid.Sus / 2020 on page 40 of 41, it was decided by the Panel of Judges on Monday 9 March 2020, that the defendant had been detained for 533 (five hundred and thirty-three) days from being detained on September 24, 2018, until the appeal decision was read out on March 9, 2020, as described in the above discussion.

1) Based on JOINT REGULATION

- CHAIRMAN OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA
- MINISTER OF LAW AND HUMAN RIGHTS OF THE REPUBLIC OF INDONESIA
- PROSECUTOR OF THE REPUBLIC OF INDONESIA
- HEAD OF THE STATE POLICE OF THE REPUBLIC OF INDONESIA
- NUMBER: 099 / KMA / SKB / V / 2010
- NUMBER: M.HH-35.UM.03.01 the YEAR 2010
- NUMBER: KEP-059 / A / JA / 05/2010
- NUMBER: B / 14 / V / 2010

CONCERNING THE SYNCHRONIZATION OF THE CRIMINAL JURISDICTION SYSTEM IN MAKING JUSTICE LAW ENFORCEMENT

In point 1 regarding correctional institutions/detention often do not get a copy of the Determination of detention/extension of detention from the Police, the prosecutor's office, or the court at all levels, or the late decision is received, it is explained that the Defendant and the correctional institutions/detention receive a copy of the detention determination and its extension in a timely manner from the Police, Prosecutors and Courts at all levels.

If the place is too far away, then the detention extension must first be conveyed by means of faster means (Fax / Email) which can be used as a temporary basis for a legal extension of detention, after re-checking the official fax number or email address through a circular letter from each of them. each agency.

The targets agreed upon in the joint regulation, namely correctional institutions/detention get copies so that:

1. There is legal certainty for the defendant (the defendant's human rights are protected).
2. To prevent correctional institutions/detention from carrying out detention illegally.

The agency responsible for implementing the joint Regulation is the National Police, the Attorney General's Office and the Courts at all levels

2) Based on Law 39 of 1999 concerning Human Rights in article 34 which reads:

"Everyone must not be arrested, detained, tortured, excommunicated, exiled, or dumped arbitrarily".

### Research result

1. From the results of the case study research of Ir. Karen Agustiawan has violated the law on detention at the level of:

- Central Jakarta District Court in the case of detention in a State Detention Center for more than 61 days.
- The DKI Jakarta High Court has violated the law in terms of detention in the State Detention Center for more than 16 days.

2. From the case study of the defendant Ir Karen Agustiawan who was detained beyond the time limit specified in the Criminal Procedure Code, it can be concluded that the detention by the State Detention Center had violated the law, both the Criminal Procedure Code, violation of the Joint Regulations between the Supreme Court, the Attorney General's Office. Agung, the National Police and the Minister of Human Rights Law, violation of human rights law.

### Suggestion

1. There need to be legal sanctions for those who violate the law at all levels of detention starting from investigations at the Police, the Attorney General's Office, and at the Court level.
2. There is a need for a Supervisor of the Joint Regulations that have been made so that the defendant will receive law enforcement and fair treatment according to the applicable law.

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**INFO:-**

***Corresponding Author: SAMUEL SOEWITA, B.Ec, LLB, MBA, LLM, Faculty of Law, Pamulang University, Indonesia.***

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