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Operasi Tangkap Tangan (OTT) in Corruption Crimes Based on Sociological Perspective of Law Enforcement

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Abstract. In order to realize a just, prosperous and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the eradication of corruption that happened until now can not be implemented optimally. Therefore, the eradication of acts of criminal corruption needs to be improved professionally, intensively, and sustainably because corruption has been detrimental to the state's finances and the economy and hampered national development. By 2017, it will be the most productive for the Corruption Eradication Commission (*Komisi Pemberasntas Korupsi*/KPK) in terms of *Operasi Tangkap Tangan* (OTT). Until October 2017, the total KPK conducted OTT in 17 cases with 63 suspects. That number is higher than the previous year, i.e. in 2016 ago. Throughout 2016, the KPK has conducted OTT as well, with a total of 17 cases, but with a total of fewer suspects, i.e. 58 suspects. Corruption in the Perspective of Normative and Sociological Law Enforcement is a study that can meet the demands of modern science to perform or make descriptions, explanations, disclosures, and predictions. It can meet modern science's demands to perform or make descriptions, explanations, disclosures, and predictions. Legal education, a sociological model consisting of social structure, behavior, variable, observer, scientific, and explanation, will make legal science responsive to the development and change in society.

Keywords: *Operasi Tangkap Tangan* (OTT), Corruption, Criminal Act, Sociological Law, Law Enforcement

Abstrak. *Dalam rangka mewujudkan masyarakat adil, makmur, dan sejahtera berdasarkan Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, pemberantasan korupsi yang terjadi hingga saat ini belum dapat dilaksanakan secara optimal. Oleh karena itu pemberantasan tindak pidana korupsi perlu ditingkatkan secara profesional, intensif, dan berkelanjutan karena korupsi telah merugikan keuangan negara, perekonomian negara, dan menghambat pembangunan nasional. Pada tahun 2017, ini akan menjadi yang paling produktif bagi Komisi Pemberantasan Korupsi (KPK), dalam hal Operasi Tangkap Tangan (OTT). Hingga Oktober 2017, KPK telah melakukan OTT sebanyak 17 kasus dengan total 63 tersangka. Angka itu lebih tinggi dari tahun sebelumnya, yakni pada 2016 silam. Sepanjang 2016, KPK juga telah melakukan OTT dengan total 17 kasus, namun dengan jumlah tersangka lebih sedikit, yakni 58 tersangka. Korupsi dalam Perspektif Penegakan Hukum Normatif dan Sosiologis, merupakan kajian yang dapat memenuhi tuntutan ilmu pengetahuan modern untuk melakukan atau membuat deskripsi, penjelasan, pengungkapan, dan prediksi. Ia dapat memenuhi tuntutan ilmu pengetahuan modern untuk melakukan atau membuat deskripsi, penjelasan, pengungkapan, dan prediksi. Pendidikan hukum yang merupakan model sosiologis yang terdiri dari struktur sosial, perilaku, variabel, pengamat, ilmiah, dan penjelasan akan menjadikan ilmu hukum responsif terhadap perkembangan dan perubahan masyarakat.*

Kata kunci: *Operasi Tangkap Tangan (OTT), Korupsi, Tindak Pidana, Hukum Sosiologis, Penegakan Hukum*

1. Introduction

The crisis of public confidence in law enforcement which is increasingly troubling for the future and the development of the law itself in society, is a form of power that cannot be weakened, especially in the Corruption Eradication Commission (*Komisi Pemberasntas Korupsi*/KPK). Legal analysis needs to be translated in more detail in practice, not just stopping at the filing table but being implemented in all aspects and spaces of national and state life, especially in the wheels of government.[1]

One of the issues that attracted public attention in 2017 was related to the Corruption Eradication Commission. On the one hand, this institution is considered an ad hoc institution capable of handling malpractice of power in matters of financial misappropriation. But on the other hand, this institution is considered to have committed a form of abuse of power, so the KPK Special Committee (*Pantia Khusus*/Pansus) has emerged in the DPR to deal with this problem. Despite facing this problem, the KPK continues to carry out its function in dealing with corruption. Even in the middle of the year, the KPK's OTT occurred at a fairly high frequency and uncovered corruption cases related to the involvement of the bureaucracy and members of the council.[2]

The Corruption Eradication Commission (KPK) is in the public spotlight when it is considered a target for weakening by the DPR. This phenomenon is, of course, controversial because the KPK is considered an independent institution that has succeeded in dealing with corruption issues in Indonesia today. The public's appreciation was reflected when the use of the Inquiry Right in the DPR's Questionnaire Committee against the Corruption Eradication Committee emerged, among others, by 357 professors from various universities in Indonesia. In general, this is sometimes associated with a major case being handled by the KPK, namely the electronic-ID card case, which is said to involve big names of

[1] Andi Hamzah. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional.* Raja Grafindo Persada. Jakarta, 2007; See also, Simon Butt. "'Unlawfulness' and corruption under Indonesian law." *Bulletin of Indonesian Economic Studies* 45, no. 2 (2009): 179-198.

[2]. Sanhari Prawiradiredja. Analisis Pemberitaan Operasi Tangkap Tangan KPK. *Laporan hasil akhir penelitian dosen program studi.* Universitas Dr. Soetomo (2017). http://repository.unitomo.ac.id/450/; Satjipto Rahardjo. *Sisi-Sisi Lain dari Hukum di Indonesia.* Cetakan Kedua Buku Kompas. Jakarta, 2006

members of Commission II of the DPR for the 2009-2014 period. The KPK has examined 23 members or former members of the DPR. Among the big names include the former Minister of Home Affairs, Governor of Central Java, Governor of North Sulawesi and others. Meanwhile, in implementing the KPK's duties in the first half of 2017, several OTTs involved the arrests of several regional officials at the city/district or provincial level. On the one hand, public opinion considers this incident part of the KPK's activation efforts to answer professional challenges in carrying out its main duties and functions.

It is mainly to answer minor accusations – especially from members of the DPR, that the KPK has deviated from the functional procedures for its existence and assignment. Contemporary issues – although they may still be personal and factional in nature – relate to efforts to postpone/temporarily suspend the KPK's budget. As a law enforcement agency, the KPK certainly tries to prove that its work is functional and measurable in dealing with dysfunctions and malpractices of power. On the other hand, the media certainly do serious coverage of the reality, which is the main priority of urgency. It is considered that good governance and clean government are still the main issues in handling the government sector.[3]

Corruption practices such as bribery to make things easier. Gratification is prone to occur in the bureaucracy. In fact, the ideals and spirit of clean government starting from bureaucratic reform have not yet come to light. Law No. 31 of 1999 concerning the Eradication of Corruption Crimes seems to have been neglected and the superbody institution called the KPK has been overwhelmed in handling this epidemic. Until one day this institution is also criminalized.

According to Adnan Buyung Nasution [4] whereas, Article 1 point 19 of the Criminal Procedure Code which regulates being caught in the hands of the person who is caught in the act requires the provision of a "shortly/not long" time after the criminal act caught red-handed is committed by the perpetrator. So that the characteristics of the "arrested" provision are very clear when viewed from the time the criminal act occurred and it is known that the crime was committed, where the specific conditions of the arrest in the case of being caught red-handed are carried out without a warrant with the stipulation that the catcher must be

[3] *Ibid.* See Also, Natasha Hamilton-Hart. "Anti-corruption strategies in Indonesia." *Bulletin of Indonesian Economic Studies* 37, no. 1 (2001): 65-82.

[4] Adnan Buyung Nasution. "Tertangkap Tangan". Adnan Buyung Nasution & Rekan. Retriewved from https://www.abnp.co.id/news/tertankap-tangan. Accessed 7 Nov 2019.

immediately (not later than immediately after the act). carried out) submitting the caught along with the existing evidence to the investigator and is an arrest (vide Article 18 paragraph (2) of the Criminal Procedure Code) which is not planned in advance in the sense that the perpetrator can be arrested anywhere without limitation of place and time. Article 18 paragraph (2) of the Criminal Procedure Code affirms that:[5]

> *"In the case of being caught red-handed, the arrest is carried out without a warrant, provided that the catcher must immediately hand over the caught along with the available evidence to the nearest investigator or assistant investigator."*

Referring to Article 18 paragraph (2) of the Criminal Procedure Code, legally apart from the conditions contained in Article 1 No. 19 of the Criminal Procedure Code that must be met, there are still absolute requirements that must be met in the event of being caught red-handed, namely the presence of evidence at the time the arrest occurred. And can be carried out without being accompanied by an arrest warrant. From the description above, it turns out that there are several differences in what has been formulated in the Criminal Procedure Code with the meaning of being caught in the hands in the understanding / minds of ordinary people.

2. Sociological Perspective in Law Enforcement

The approach used in the study of the sociology of law is different from the approach used by legal science, such as criminal law, civil law, and procedural law. The only similarity is that the object is the law in both the science of law and the sociology of law.[6] So even though the object is the same, namely the law, because of the different "glasses" used in viewing the object, the vision of the object is also different. Curzon's map of thought in looking at the sociology of law, termed legal

[5] *Ibid.*

[6] Anthony P. Maingot. "Confronting corruption in the hemisphere: a sociological perspective." *Journal of Interamerican Studies and World Affairs* 36, no. 3 (1994), p. 49; Eugen Dimant and Thorben Schulte. "The nature of corruption: An interdisciplinary perspective." *German Law Journal* 17, no. 1 (2016): 53-72.

sociology, also shows the specific study of the situation in which the rule of law operates and the behavior that results from the operation of the rule of law.[7]

Another view, Soetjipto Raharjo [8] confirms that; Sociology of law is a science that studies legal phenomena with the following characteristics:

1. The sociology of law aims to explain legal practices, both legal and deviant practices. Max Weber called such an approach an interpretative understanding, namely by explaining the causes, developments and effects of social behavior. Thus, studying law sociologically investigates people's behaviour in the legal world. By Max Weber,[9] this behavior has two aspects: "outside" and "inside". Therefore, the Sociology of Law accepts behavior that appears from the outside and obtains an internal explanation, including the motives of a person's behavior.
2. The sociology of law always tests the empirical validity of a rule or legal statement. Typical questions here are "how is the reality of the regulation", "is the reality really as stated in the sound of the regulation?". The big difference between the traditional normative approach and the sociological approach is that the former accepts only what is stated in the regulations while the latter always tests it with (empirical) data.[10]
3. The sociology of law does not evaluate the law. Behaviors that obey the law and those that deviate from the law are both objects of equal observation. He does not value one more than the other. His main concern is only to explain the object being studied. Such an approach often leads to misunderstandings, as if the sociology of law wants to justify practices that deviate or violate the law. Once again, it is stated here that the sociology of law does not provide an

[7] "*The learn 'legal sociology' has been used in some text to refer to a specific study of situations in which the rules of law operate, and of behaviour resulting from the operation of those rules"* Leslie Basil Curzon, *Jurisprudence*, (The M & E handbook series). Macdonald & Evans Ltd., 1979; See also, Leslie Basil Curzon and Paul Richards. *The Longman dictionary of law*. Pearson Education, 2007.

[8] Satjipto Rahardjo. *Ilmu Hukum.* Penerbit Citra Aditya Bakti, Bandung, 2012.; Atmasasmita, Romli. *Reformasi Hukum, Hak Asasi Manusia & Penegakan Hukum.* Mandar Maju. Bandung, 2001.; Satjipto Rahardjo. *Lapisan-Lapisan Dalam Studi Hukum.* Bayumedia. Malang, 2008.

[9] Max Weber. *[On law in economy and society]; Max Weber on law in economy and society*. Harvard University Press, New York, 1954.

[10] Serlika Aprita, S. H. *Sosiologi Hukum*. Prenada Media, Jakarta, 2021.; Amran Suadi. *Sosiologi Hukum: Penegakan, Realitas dan Nilai Moralitas Hukum*. Kencana, Jakarta, 2005.; Sudikno Mertokusumo. *Teori Hukum.* Cahaya Atma Pustaka. Yogyakarta, 2012.

assessment but approaches the law in terms of mere objectivity and aims to explain the existing legal phenomena.[11]

Paul Hadisuprapto provides an overview of the legal research methodology to facilitate our understanding of legal research using a sociological/empirical methodology commonly used to research legal issues related to (a) research on legal identification (unwritten) and (b) research on legal effectiveness. [12]

Juridically, the regulation on the acceptance of gratuities by public employees has been regulated since Law No. 3 of 1971 and is also regulated in Article 12 B jo. Article 12 C of Law No. 20 of 2001 jo. Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. This article specifically regulates granting gratuities related to their positions by public employees. Other casuistic studies are as follows:[13]

"Operasi Tangkap Tangan (OTT) carried out by the Corruption Eradication Commission (KPK) against Constitutional Court (MK) judge Patrialis Akbar (PAK), Basuki Hariman (BHR), Ng Fanny (NGF), and an intermediary named Kamaludin (KM) in three locations different on Wednesday (25/1) and still raises questions for a number of parties. First, why does the KPK refer to it as OTT if the arrests were made in three different locations and at the time of the arrest the money had not yet been handed over from the alleged bribe giver or intermediary to Patrialis? Second, why did the KPK ensnare Patrialis with a bribery offence, even though the bribe money has not yet been transferred to Patrialis?

KPK spokesman Febri Diansyah said there was a misunderstanding as if the OTT had to be carried out in one location. In fact, according to Article 1 No. 19 of the Criminal Procedure Code, there are four conditions that can be called as being caught red-handed. Among other things, being caught while committing a crime or some time after the crime was committed.

Article 1 No. 19 of the Criminal Procedure Code
To be caught in the hands is the arrest of a person while committing a crime, or immediately after the crime is committed, or a moment later it is called out by the general public as the person who

11. *Ibid, op.cit* hlm. 373-374.

12. Quoted from dr. Hibnu Nugroho, SH. MH. In the 31st Anniversary of the Faculty of Law Unsoed on January 14, 2012

13 NOV. "Meluruskan Pemahaman Soal OTT dan Delik Suap Patrialis Akbar". *Hukum Online*, 31 Jan 2017. Retrieved from https://www.hukumonline.com/berita/a/meluruskan-pemahaman-soal-ott-dan-delik-suap-patrialis-akbar-lt589034d572db8. Accessed 7 Nov 2019.

committed the crime, or if a moment later an object is found which is strongly suspected to have been used to commit the crime. the crime that shows that he is the perpetrator or has participated in or assisted in committing the crime.

After understanding the meaning of hand arrest, let's look at the chronology of the OTT events carried out by the KPK. On the morning of January 25, 2017, before the OTT, Patrialis met with Kamaludin who was suspected of being an intermediary at the Rawamangun golf course area, East Jakarta. "That's when the indications of the transaction occurred," said Febri at the KPK, Monday (30/1).

The transaction that Febri meant was not a handover of money, but a transactional "acceptance of promise" of Sing$200 thousand accompanied by the submission of a copy of the draft decision of the Constitutional Court No. 129/PUU-XIII/2015. And, in addition to the promise, some time before, Patrialis is alleged to have received another bribe from Basuki worth US$20 thousand.

After the meeting on the golf course, the KPK secured Kamaludin, while Patrialis returned to the Constitutional Court. From Kamaludin, the KPK found a draft of the Constitutional Court's decision No. 129/PUU-XIII/2015. The KPK has confirmed that the draft found from Kamaludin's hands is the same as the original draft decision that has not been read out by the Constitutional Court.

The draft decision is related to the judicial review of Law No. 41 of 2014 concerning Amendments to Law No. 18 of 2009 concerning Animal Husbandry and Health. Basuki as the controller of a number of companies engaged in the import of meat is suspected of having an interest in partially granting the decision. The KPK has also moved to the location of Basuki's company in Sunter, North Jakarta. The KPK secured Basuki, a number of people, as well as evidence. Only, in the evening, the KPK arrested Patrialis in Grand Indonesia, Central Jakarta. The arrests at the three locations were referred to by Febri as a series of OTT events.

"This is in accordance with the provisions of the procedural law. Because, in Article 1 No. 19 of the Criminal Procedure Code, it is emphasized that there are four conditions which can alternatively be interpreted as arrests. In this context, according to Article 1 No. 19 of the Criminal Procedure Code, the OTT was carried out by the KPK some time after the crime occurred," he said. actually happened, including confirming the findings of the draft decision of the Constitutional Court in the form of electronic information which is suspected to be one of the reasons for giving bribes.

"We also have evidence of meeting the suspects in a number of places in the past. We will make this clear at the trial.

We will show how the parties regulate, consensus occurs, until indications of bribes reach the transactional process and we do OTT," he explained. Then, regarding the understanding of the bribery article imposed on Patrialis, according to Febri, it also needs to be straightened out. The crime of bribery in Article 12 letter c or Article 11 of the Anti-Corruption Law is not only an act of accepting a gift, but also accepting a promise. Moreover, the promise has been realized in the form of a commitment.

"That's the formulation of the bribery article. In this case, the indication of acceptance by PAK is a gift of US$20 thousand. This gift is pre-received and a 'promise'. So, the promise here is not only promised, but there has been what is called a meeting of mind, there has been a transactional event with a value of around Sing$200 thousand," he said.

Article 12 letter c of the Anti-Corruption Law
Sentenced to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years and a fine of at least Rp. 200 million and a maximum of Rp. 1 billion: a judge who accepts a gift or promise, even though it is known or reasonably suspected that the gift or promise was given to influence the decision of the case submitted to him for trial.
Article 11 of the Anti-Corruption Law
Sentenced to imprisonment for a minimum of 1 year and a maximum of 5 years and/or a fine of at least Rp. 50 million and a maximum of Rp. 250 million. A civil servant or state administrator who accepts a gift or promise even though it is known or reasonably suspected that the gift or promise was given because of power. or authority related to his position, or in the mind of the person who gave the gift or promise to be related to his position.

Actually, the bribery case in the form of "receiving promises" is not the first time this has happened. Previously, the Supreme Court (MA) had decided on several cases, including the bribery case for handling the election dispute at the Constitutional Court with the defendant M Akil Mochtar and the bribery case for managing the meat import quota with the defendant Luthfi Hasan Ishaaq. In the cassation decision No. 336 K/Pid.Sus/2015, Akil was proven to have received gifts or promises related to the handling of a number of election disputes in the Constitutional Court. Two of them are the acceptance of promises related to the Gunung Mas Pilkada dispute amounting to Rp. 3 billion and the promise of giving Rp. 10 billion of money which was conveyed by Zainudin Amali related to the East Java Pilkada dispute. In addition, in the cassation decision No.1195 K/Pid.Sus/2014, it was stated that Luthfi was proven to have received a promise to give Rp40 billion of money from Maria Elizabeth Liman related to the processing of PT Indoguna Utama's meat import quota. Part of the promise has been received in the amount of Rp1.3 billion through Ahmad Fathanah. As quoted from the legal counsel's argument contained in Akil's cassation decision, regarding the element of "accepting a promise", a lecturer at the Faculty of Law, Universitas Brawijaya,

Drs Adami Chazawi has reviewed it in his book entitled "Material Criminal Law and Formal Corruption in Indonesia". In his book, on page 79, Adami explains, the element of "receiving a promise" can be considered to have been completed perfectly when there have been circumstances as a sign or indicator that the contents of what was promised have been received by the civil servant. Among other things, with a nod of the head or utterances or words that because of their nature can be assessed or considered acceptable (e.g. saying yes, good, thank you. Alhamdulillah, yes, ok, and so on). but it cannot happen by not signaling anything or being silent."

John Girling, in Corruption, Capitalism and Democracy, suggests provides analytical dimensions that can be used. Some argue that the sociological factor the choice of a case that OTT is a broad and complex tool in dealing with corruption.[14] Apart from that, the interesting thing is how the changes in the KPK are now becoming more evident along with the OTT.[15]

These dimensions are how the process and how widespread the spread of corruption, which has been able to weaken the legal conception, namely:

a) Incidental-individual. This individual incidental corruption is carried out by the perpetrator individually in a certain institutional environment where in fact the institution is relatively 'clean' in terms of corruption. This kind of corruption is only known in countries with very low levels of corruption such as New Zealand, Denmark, and Sweden.
b) Institutional-institutional. Corruption is called institutional if it affects an institution or a certain sector of activity where the whole sector or institution, in general, is not corrupt.
c) Systemic-social. In such cases, corruption has attacked all levels of society and the social system. Because in all the work processes of the community system, corruption becomes routine and is accepted as a tool to carry out daily transactions. This kind of thing is called systemic corruption because it affects institutional and affects individual behavior at all levels of the political, social and economic system.

[14] Girling, John. *Corruption, Capitalism and Democracy*. Psychology Press, 1997.

[15] Wijaya, Mendra. "Pendidikan Antikorupsi Sebagai Pencegah Patologi Korupsi". Detik, 10 Dec 2010. Retrieved from https://news.detik.com/kolom/d-1514990/pendidikan-antikorupsi-sebagai-pencegah-patologi-korupsi. Accessed 7 Nov 2019.

Various approaches and prevention are taken to minimize corrupt practices. From the aspects of bureaucratic reform, administrative reform, the rule of law, theological approach, and various aspects. However, all of these things just passed. It is as if humans (the 'corruptors' 'rulers') are no longer afraid of law enforcement and what is more concerning is the lack of fear of the religious aspect which has become an absolute value to avoid harming the general public.

3. Strengthening not Weakening

Two techniques used by the Corruption Eradication Commission (KPK) in carrying out hand arrest operations are wiretapping and trapping. However, both of these techniques have legal drawbacks. Wiretapping is only regulated in general in Law no. 30 of 2002, while entrapment is not known in various regulations regarding corruption in Indonesia. As a result, in their use, these two techniques often lead to the opinion that the KPK has violated the law and human rights. Therefore, for the sake of realizing legal certainty for the KPK in conducting wiretapping and trapping, the DPR-RI can make improvements to the rules in the revision of the KPK Law and in the revision of the Criminal Procedure Code Bill.[16]

The arrest operation carried out by the KPK received appreciation from various parties because it was able to ensnare various corruptions from the bottom to the top. In carrying out this arrest operation, there are two techniques used by the KPK to keep the corruptors from moving: wiretapping and trapping. However, both of these techniques have legal drawbacks. Wiretapping is only regulated in general in Law no. 30 of 2002, while entrapment is not known in various regulations regarding corruption. As a result, the use of these two techniques often gives rise to the opinion that the KPK has violated the law and human rights. Therefore, to achieve legal certainty for the KPK in conducting wiretapping and trapping, the DPR-RI can improve the wiretapping rules by revising the KPK Law and the Criminal Procedure Code. In addition, the DPR regarding the existence of a wiretapping SOP by the KPK also needs to be carefully discussed so as not to cause legal confusion. Meanwhile, the rules of entrapment need to be considered

[16] Luthvi Febryka Nola. "Operasi Tangkap Tangan Oleh KPK." *Pusat Pengkajian, Pengolahan Data Dan Informasi V* 24 (2013).; Sanhari Prawiradiredja. Analisis Pemberitaan Operasi Tangkap Tangan KPK. *Laporan hasil akhir penelitian dosen program studi*. Universitas Dr. Soetomo (2017). http://repository.unitomo.ac.id/450/.

to be legalized in corruption cases because corruption involves moral crimes that harm the interests of many people.[17]

According to the KUHAP law, the OTT procedural can be legally referred to clearly. The problem of arrest is a serious part and concern, because arrest, detention, search are basic rights or human rights which have a very broad impact on the lives of those concerned and their families.

There are two kinds of arrests, namely: 1. Caught; 2. Not in a state of being caught red-handed.

> *First, being caught red-handed: the arrest of a person while committing a criminal act, or immediately after the crime was committed, or a moment later being called out by the general public as the person who committed the crime, or, if a moment later an object is found which is strongly suspected of having committed a crime. used to commit the crime which indicates that he is the perpetrator, or, has participated in or assisted in committing the crime. [Article 19 paragraph (1)].*

This means that the arrest in the case of being caught red-handed: the arrest is carried out without a warrant, with the stipulation that the catcher must immediately submit the caught and the evidence available to the nearest investigator or assistant investigator. [Article 18 paragraph (2)], an arrest can be made no later than 1 days [Article 19 paragraph (1)], no arrests are made against the alleged perpetrator of the violation, except, in the case of being legally summoned 2 times in a row, he does not fulfill the summons without a valid reason [Article 19 paragraph (2)].

> *Second, arrests are not caught red-handed; an arrest is made by an investigator on a suspect who is not committing a crime.*

In contrast to arrests caught red-handed because arrests are "not caught red-handed" must meet the requirements stipulated by law as follows: Arrest by investigators; an arrest warrant is made against a person; who is strongly suspected of committing a criminal act based on sufficient preliminary evidence (Article 17).

The definition of sufficient initial evidence; is preliminary evidence to suspect a criminal act, (for example, there are witnesses and evidence), because of his actions or circumstances, based on preliminary evidence it is reasonable to suspect that he is the perpetrator of a crime).

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17. *Ibid,* p. 4

Preliminary evidence to make an arrest if it is related to article 183, it must meet the requirements as stated in the article which reads: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act is truly happened and that the accused is guilty of committing it".

Execution of arrest duties; carried out by officers of the State Police of the Republic of Indonesia; by showing a letter of assignment, and; give the suspect an arrest warrant which is listed; a brief description of the suspected crime case and the place where it is examined (Article 18). An arrest warrant is issued by; Police officers of the Republic of Indonesia; authorized to conduct investigations in their jurisdiction.

A copy of the arrest warrant; must be given to his family; immediately after the arrest is made [Article 18 paragraph (3)], the arrest by the investigator can be made no later than 1 day [Article 19 paragraph (1)]

Another view says that if the suspect is caught red-handed, according to Article 1 No. 19 of Law no. 8 of 1981 concerning the Criminal Procedure Code ("KUHAP") which reads:

> *"Arrested is the arrest of a person while committing a criminal act, or immediately after the crime is committed, or a moment later it is called out by the general public as the person who committed it, or if a moment later an object is found which is strongly suspected to have been used to commit the crime. criminal act which shows that he is the perpetrator or has participated in or assisted in committing the crime".*

Then based on Article 6 paragraph (2) of Law no. 48 of 2009 concerning Judicial Power:

> *"No one can be sentenced to a crime, unless the court, because of the legal evidence according to the law, is convinced that a person considered responsible has been guilty of the act he is accused of."*

A person caught in the act of committing a crime must go through a judicial process before being convicted if found guilty. Furthermore, the perpetrator of a criminal act becomes a convict, namely a person who is convicted based on a court decision that has obtained permanent legal force (see Article 1 No. 32 of the Criminal Procedure Code). So, for perpetrators caught red-handed, criminal sanctions cannot be immediately imposed before going through the judicial process. KUHAP does not clearly state what is meant by evidence. However,

Article 39, paragraph (1) of the Criminal Procedure Code mentions anything that can be confiscated, namely:

a) *objects or claims of a suspect or defendant which are wholly or partly suspected to have been obtained from a criminal act or as a result of a criminal act;*
b) *objects that have been used directly to commit a crime or to prepare it;*
c) *objects used to hinder criminal investigations;*
d) *objects specially made or intended to commit a crime;*
e) *other objects that have a direct relationship with the crime committed.*

In other words, the confiscated objects mentioned above can be said as evidence or corpus delicti is evidence of a crime. In this case the evidence is in the form of money and so on which can then be confiscated by investigators (see Article 40 of the Criminal Procedure Code).

Furthermore, Article 181 of the Criminal Procedure Code further explains that the panel of judges is obliged to show the defendant all evidence and ask him whether he recognizes the evidence. If deemed necessary, the trial judge will show the evidence.

This is where we need legal clarity in the OTT, which is an important matter in referring to the law in accordance with the applicable provisions. for example, the KPK OTT process often creates pro and contra legal opinions in the public. Meanwhile, in the Criminal Procedure Code, as found in the general explanation section, there are at least ten principles that serve as references for truth or teachings from the rules.[18]

One of these principles is the principle of legality in coercion:[19] Arrest, detention, search and seizure shall only be carried out based on a written order by an official authorized by law and only in cases and in a manner regulated by law. This principle is also used by the KPK in carrying out coercive efforts.

Problems occur when an arrest made by the Corruption Eradication Commission does not use an assignment letter or an arrest warrant. This was done on the grounds that the arrest was in the case of being caught red-handed, even

[18] Puteri Hikmawati. "Operasi Tangkap Tangan Dalam Penanganan Kasus Korupsi (Arrest Hand Operation In Handling Corruption Case)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018).

[19]. Luhut M. P. Pangaribuan, *Hukum Acara Pidana: Surat-surat Resmi di Pengadilan oleh Advokat*, Djambatan, Jakarta, 2006.

though the arrest was carried out by investigators who were handling the case so that the arrest in the event of being caught red-handed was not an unintentional arrest but had been planned in advance.

Another problem that can arise is if an arrest is made by the KPK without using an assignment letter or an arrest warrant on the pretext of the arrest, it is in the case of being caught red-handed but the arrest is preceded by wiretapping or conditioning. Although the notion of being caught red-handed has been regulated in the Criminal Procedure Code, there is still confusion so that in practice it can be found that there are irregularities committed by law enforcement officers.[20]

However, during the investigation, it is actually understandable how the KPK and the National Police mutually reinforce the legal aspects and go hand in hand, that; as referred to in Article 6 paragraph (1) of the Criminal Procedure Code, because of their obligations to have the authority stipulated in Article 7 paragraph (1) of the Criminal Procedure Code: Article 7 (1) The investigator as referred to in Article 6 paragraph (1) letter a because of his obligations to have the authority:

a) Receiving a report or complaint from a person regarding the existence of a criminal act;
b) Take the first action at the scene;
c) Ordering a suspect to stop and checking the suspect's identification;
d) make arrests, detentions, searches and confiscations;
e) Check and confiscate letters;
f) Taking fingerprints and photographing a person;
g) Summoning people to be heard and examined as suspects or witnesses;
h) Bring in the necessary experts in connection with the examination of the case;
i) To terminate the investigation;
j) Take other legally responsible actions.

In addition to the above authority, the National Police investigator is also authorized to conduct wiretapping, although it is not detailed or clearly stated in

[20] Muhammad Ansari. "Analisis Yuridis Operasi Tangkap Tangan Oleh Aparat Penegak Hukum Komisi Pemberantasan Korupsi (Studi Kasus: Rudi Rubiandini Dan Atty Suharti Tochija)." PhD diss., Universitas Pembangunan Nasional Veteran Jakarta, 2018.; HRP, Miftah Rinaldi. "Problematika operasi tangkap tangan Komisi Pemberantasan Korupsi ditinjau dari presfektif keadilan, kepastian hukum, dan kemanfaatan." PhD diss., Universitas Gadjah Mada, 2020.

the Criminal Procedure Code and Law No. 2 of 2002 concerning the Indonesian National Police, but this is stated in Law No. 31 of 1999 concerning the Eradication of Criminal Acts. Corruption is explained in Article 26: The authority of investigators in this article includes the authority to conduct wiretapping.

The law gives powers to investigators in such a broad way, including the authority to reduce a person's freedom and human rights. The use of this authority must remain based on law and principles that uphold human dignity and ensure a balance between protecting the interests of the suspect on the one hand, and the interests of the wider community, the public interest on the other..[21]

Being caught in the act is one form of arrest, the thing that distinguishes it from arrest is that being caught red-handed does not require an arrest warrant, therefore parties who can make an arrest in the event of being caught red-handed are different from ordinary arrests. Article 18 paragraph (2) of the Criminal Procedure Code and Article 111 paragraph (1) of the Criminal Procedure Code explain as follows: [22]

Article 18

(2) In the case of being caught red-handed, the arrest is carried out without a warrant, with the stipulation that the catcher must immediately hand over the caught and the available evidence to the nearest investigator or assistant investigator..

Articlel 111

(1) In the case of being caught red-handed, everyone has the right, while everyone who has authority in the task of public order, peace and security is obliged to arrest the suspect to be handed over with or without evidence to the investigator or investigator. Meanwhile, according to Article 16 paragraph (1) and Article 56 paragraph (3) the Draft Criminal Procedure Code is explained:

Articlel 16

(1) In the event of being caught red-handed: a. Anyone can arrest a suspect to be handed over with or without evidence to investigators; and b. Everyone who has authority in the task of public order, peace and security is obliged to arrest the suspect to be handed over with or without evidence to the investigator.

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[21] Riman Irfanto Makagansa. "Tertangkap Tangan Sebagai Pengecualian Terhadap Penangkapan Menurut KUHAP." *Lex Privatum* 4, no. 2 (2016).; Wattie, Andre Johanes. "Sifat Eksepsional Tertangkap Tangan Dalam Penangkapan Pelaku Tindak Pidana." *Lex Crimen* 4, no. 5 (2015).

[22]. *Ibid.*

Articlel 56
*(3) If the suspect is caught red-handed, the arrest can be made without an arrest warr*ant.

4. Conclusion

The increasingly massive corruption that occurs should be considered a legal virus that weakens the nerves of law in this country. The process of *Operasi Tangkap Tangan* (OTT) is one of the powerful ways to ensnare the perpetrators of corruption. Because whatever it is, corruption must be eradicated with a long struggle, both theoretically and practically.

The Criminal Procedure Code defines or determines conditions that are said to be caught red-handed, namely if a person is caught while committing a crime, immediately after a while the crime is committed, or a moment later it is called for by the general public as the person who did it, or if a moment later then found objects that are strongly suspected of having been used to commit the crime which indicates that he is the perpetrator or has participated in or assisted in committing the crime, in accordance with Article 1 point 19 of the Criminal Procedure Code.

Being caught in the act is a special condition where the arrest is made without a warrant, provided that the catcher must immediately hand over the caught and the evidence to the nearest investigator or assistant investigator, in accordance with Article 18 paragraph (2) of the Criminal Procedure Code. From some of the conclusions above, it is true that legal science is one of the sciences that is developing very rapidly, the speed of its main development in practice in the field has an impact in the form of gaps in the provisions of the laws that govern it. This provides a very wide space for researchers to conduct research. This includes the perpetrators and implementers of the law, such as the KPK, the National Police, the High Court, the High Court and so on.

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