



The Absence of Legal Consequences for Ignoring the Obligation to Submit SPDP to the Reporter and the Reported Party: A Review of the Implementation of Constitutional Court Decision Number 130/PUU-XIII/2015

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Abstract: This study aims to examine in depth the legal aspects of the neglect of the obligation to submit SPDP to the reporter and the reported party after the Constitutional Court Decision No. 130/PUU-XIII/2015. This research is of a normative legal nature, with data collection techniques conducted through library research, namely laws and regulations, case studies, namely Constitutional Court decisions, and conceptual approaches. Additionally, the author also conducted library research using data and books related to the research topic. The data obtained were analyzed qualitatively and then presented descriptively. The research results indicate that: 1) Constitutional Court Decision No. 130/PUU-XIII/2015 explicitly expands the obligation of investigators to submit the SPDP not only to the public prosecutor but also to the reported party and the complainant/victim within a maximum period of 7 (seven) days from the issuance of the investigation order. This reflects the principle of due process of law and guarantees constitutional rights as enshrined in Article 28D(1) of the 1945 Constitution. Although this provision is self-executing in nature and has been adopted in Regulation of the Chief of the Indonesian National Police No. 6 of 2019, significant disparities still exist in its implementation; and 2) The absence of clear legal consequences for violations renders this norm ineffective, as stated by Hans Kelsen. The SPDP plays a crucial role in ensuring human rights and legal protection for all parties involved in the criminal justice process.

Keywords: Constitutional Court's decision, Legal Consequences, Obligations, SPDP.

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1. Introduction

The terminology regarding the Notice of Commencement of Investigation (SPDP) is regulated in Article 109 paragraph (1) of the Criminal Procedure Code, which stipulates that if an investigator, in carrying out his duties, becomes aware of an incident that is suspected to constitute a criminal act, the investigator is required to promptly initiate an investigation by issuing an investigation warrant and informing the public prosecutor.

Normatively, the Criminal Procedure Code does not provide clear limitations on the obligation to issue an SPSP and the deadline for receiving an SPDP. This ambiguity has led to many different perceptions among academics and law enforcement officials in their understanding of Article 109 paragraph (1). The lack of clarity in Article 109 paragraph (1) is further exacerbated by the lack of good faith on the part of investigators to notify the public prosecutor that an investigation has been carried out.

On the basis of the a quo, the formal obligation of investigators to make and submit SPDP to the public prosecutor was born. SPDP is the initial administrative document that legally marks the beginning of the investigation process of a criminal case (Susanti, 2020), the urgency of the SPDP in general is to be the basis for the public prosecutor to supervise investigators in the case handling process (Muladi & Arief, 2010), maintain the integrity of the legal process so that there is no silent investigation

that violates the principle of due process (ICJR, 2017), provide legal certainty for the reporter and the reported party regarding the legal status of a case, and become part of horizontal control in the criminal justice system, so that it is not only dominated by the investigating institution, which is a manifestation of the principle of legal certainty and the right to information guaranteed by Article 28D paragraph (1) of the 1945 Constitution (*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 1945).

This urgency is rooted in the principle of due process of law, which requires all legal procedures to be carried out with the principles of openness, justice and legal certainty (Bedner, 2001). Without a valid and delivered SPDP, the investigation process loses formal legitimacy because it does not provide access to information to interested parties (Marzuki, 2021). The Constitutional Court Decision Number 130/PUU-XIII/2015 represents a significant legal development aimed at safeguarding citizens' constitutional rights within the criminal justice process. In its ruling, the Court declared that Article 109 paragraph (1) of the Criminal Procedure Code is conditionally unconstitutional unless it is understood to mean that the SPDP must be delivered not only to the public prosecutor but also to both the complainant and the reported party, no later than seven days from the initiation of the investigation.

The Court interpreted that the meaning of "notify the public prosecutor" in Article 109 paragraph (1) of KUHAP (*Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana (KUHP)*, 1981) should be expanded to also include the reporter and the reported party. This ruling reflects a systemic interpretation consistent with the principles of procedural justice contained in the Constitution. It is grounded in Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to fair legal certainty, and Article 28G paragraph (1), which ensures the right to legal self-protection. The Constitutional Court further emphasized that both the complainant and the reported party must receive a copy of the SPDP within seven days from the start of the investigation. This requirement is intended to ensure equal access to legal information for both sides and to enable them to prepare a proportional defense. (ICJR, 2016).

This decision is not only an administrative technicality, but also a manifestation of the principle of due process of law, as a universal principle that has been recognized in international and national law. The Court cited doctrine from the ICCPR and legal practices in various countries that have guaranteed the right of suspects and whistleblowers to obtain preliminary information in legal proceedings. As stipulated in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution and Article 56 of the Constitutional Court Law, the decision of the Constitutional Court is final and binding, which means that all state institutions must implement it without exception.

Although the Constitutional Court Decision Number 130/PUU-XIII/2015 has been final and binding since it was read out on November 10, 2016, its implementation in the field still faces serious obstacles. Investigators often do not submit SPDPs to the complainant and reported party, which should be a constitutional obligation based on the Court's interpretation of Article 109 paragraph (1) of KUHAP. Reports from various organizations such as ICJR, Komnas HAM, and YLBHI show that (Institute for Criminal Justice Reform (ICJR), 2020) (Komnas HAM, 2019): Most of the complainants did not receive a copy of the SPDP, so they did not know that the case they reported had progressed to the investigation stage; The complainant only found out that he was the subject of an investigation when he was summoned as a suspect, without ever being informed about the commencement of the investigation; Investigators do not have an integrated information system or standard operating procedure (SOP) that regulates the delivery of SPDP to the reporter and the reported party.

According to ICJR's 2019 research data in several Poldas, only around 10-20% of SPDPs are delivered to the complainant or to reporters in accordance with the specified time (7 days after the investigation begins) (ICJR, 2019). There are several main contributing factors to this non compliance with the Constitutional Court's decision: There are no derivative regulations that bind investigators, such as National Police Chief

Regulations or Supreme Court Regulations that regulate the technical procedures for submitting SPDP. The absence of sanctions or oversight mechanisms, both from within the police and from public prosecutors. Lack of understanding and training of law enforcement officials regarding the meaning of the Constitutional Court's decision and the obligations it creates.

Based on the description above, this research aims to critically identify legal loopholes in the implementation of the obligation to submit SPDP, analyze the juridical and constitutional impacts of violations of the Constitutional Court's decision and provide concrete legal reform recommendations to strengthen the protection of the constitutional rights of the reporter and the reported. Therefore, researchers feel that a comprehensive study is needed on "The Absence of Legal Consequences for Ignoring the Obligation to Submit SPDP to Reporters and Reported Persons: A Review of the Implementation of Constitutional Court Decision Number 130/PUU XIII/2015".

2. Materials and Methods

This research uses a normative juridical approach (legal research) because the main focus is on analyzing applicable legal norms and their application in the practice of criminal procedure law in Indonesia (Marzuki, 2017). This research aims to examine in depth the juridical aspects of the neglect of the obligation to submit SPDP to the reporter and reported after the Constitutional Court Decision No. 130/PUU-XIII/2015. The type of research used is normative legal research, which is research that focuses on primary and secondary legal materials, which are analyzed to reveal the suitability between legal norms and their application practices in the field (HS & Nurbani, 2014). This research also seeks to identify the existence of a legal vacuum, the ineffectiveness of norms (normative disfunction), and offer new legal constructions through theoretical approaches and comparative law. The analysis technique used is descriptive analytical, namely by describing legal facts and existing norms systematically and explaining practices and problems and deductive argumentative, namely compiling legal arguments based on general norms (legal rules) to explain special cases (neglect of SPDP) and formulating appropriate legal solutions.

3. Results and Discussion

3.1. Juridical Implications of the Absence of Legal Sanctions Against Investigators Who Ignore the Obligation to Submit SPDPs

In Constitutional Court Decision Number 130/PUU-XIII/2015, the Court affirmed that the delivery of an Order to Commence Investigation (SPDP) must be addressed not only to the public prosecutor but also to the reported party and the victim/complainant. The Court further determined that a maximum period of seven (7) days is sufficient for investigators to arrange and finalize this obligation. (Mahkamah Konstitusi, 2015). The Constitutional Court's reasoning rests on the view that once the reported party receives the SPDP, he or she is given the opportunity to prepare a defense and appoint legal counsel, while for the victim/complainant, the SPDP serves as a momentum to prepare supporting information or evidence for the progress of the investigation.

In Decision Number 130/PUU-XIII/2015, the Court reviewed Article 109 paragraph (1) of the Criminal Procedure Code, which had previously only obliged investigators to notify the public prosecutor regarding the commencement of an investigation. The Court concluded that such a provision failed to ensure legal certainty for both the reported party and the complainant, and was inconsistent with the principle of due process of law guaranteed by the 1945 Constitution. Consequently, the Court established that investigators are also required to deliver the SPDP to the reported party and the complainant within seven (7) days after the issuance of the investigation warrant, thereby reinforcing due process of law as a constitutional right that allows individuals to be informed from the outset that they are being processed under the national criminal justice system.

The ruling also opens the possibility for suspects to file a pretrial challenge if they have not received the SPDP by the time they are designated as suspects, or if the seven-day deadline for its delivery has lapsed. This stems from the principle that the commencement of a legal process is a constitutional right, and thus the delivery of an SPDP must be guaranteed as part of lawful procedure.

Despite the clarity of this Constitutional Court decision, its implementation in practice has revealed a gap between legal norms and field realities. For example, research in the Banda Aceh District Court jurisdiction found that initially, many SPDP submissions were delayed beyond the seven-day limit following the issuance of the investigation warrant. Even after a year, some SPDPs were still being delivered late, albeit in smaller numbers. These delays were not necessarily due to full compliance with the Constitutional Court's ruling, but rather as an attempt by investigators to avoid potential pretrial challenges from the reported party or the complainant. In several instances, SPDPs were not submitted at all to either the complainant or the reported party. (Herizal & Zulkifli, 2018). This shows that the provisions of the Constitutional Court's decision have not been fully internalized in the work system of investigators.

Article 14 of the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation provides that: (a) The SPDP as referred to in Article 13 paragraph (3) must be delivered to the public prosecutor, the reporter/victim, and the reported party within a maximum of 7 (seven) days from the issuance of the Investigation Order; (a) The SPDP must at least contain: The legal basis for the investigation, namely the police report and the investigation order; The time when the investigation begins; The type of case, the charged article, and a brief description of the alleged criminal act; The identity of the suspect; and The identity of the official who signed the SPDP; (b) The suspect's identity, as referred to in point (2) letter d, is not required to be included in the SPDP if the investigator has not yet determined the suspect; If the determination of a suspect occurs more than 7 (seven) days after the issuance of the Investigation Order, a notification letter on the suspect's determination must be sent, with the initial SPDP attached; (c) In cases where the investigator has not submitted the case file to the public prosecutor within 30 (thirty) days, the investigator is obliged to inform the progress of the case by attaching the SPDP.

In light of the above, the Regulation of the Indonesian National Police Number 6 of 2019 on Criminal Investigation stipulates that the SPDP must be delivered to both the reported party and the complainant in a criminal case within no later than 7 (seven) days. Thus, the absence of SPDP delivery or the failure of either party to receive it constitutes a clear violation of the provisions expressly set forth in the said regulation.

The Order for Commencement of Investigation (SPDP) holds a vital role in criminal proceedings, serving as a safeguard for the human rights of both the complainant and the reported party. Compliance with the SPDP requirement, as regulated in Article 109 paragraph (1) of the Criminal Procedure Code, became the central legal foundation for the Constitutional Court in Decision Number 130/PUU-XIII/2015, which mandates investigators to submit the SPDP to the Public Prosecutor, the reported party, and the complainant/victim within a maximum period of 7 (seven) days. Referring to the legal reasoning of the judges in Constitutional Court Decision Number 130/PUU-XIII/2015, several key considerations can be identified, namely: (a) The pre-prosecution stage, which serves as a coordination mechanism between investigators and public prosecutors as mandated by the Criminal Procedure Code, frequently encounters obstacles. One of the main issues is the recurring failure of investigators to promptly deliver the Notice of Commencement of Investigation (SPDP) or to return case files on time. Such shortcomings directly affect both the reported party and the victim/complainant, leaving their rights uncertain due to procedures that lack firmness and clarity. As a result, criminal cases suffer from the absence of legal certainty, which harms both parties in their pursuit of justice, and contradicts the principles of swift, straightforward, and low-cost proceedings as envisioned in the Criminal Procedure Code. (b) Delays in transmitting the SPDP from investigators to public prosecutors,

coupled with the absence of clear deadlines for when the notification must be delivered, have caused uncertainty in case handling. The Court emphasized that the investigator is obliged to submit the SPDP to the public prosecutor from the very start of the investigation, ensuring that the investigation process remains under prosecutorial oversight and open to monitoring by both the reported party and the complainant. In practice, however, SPDPs are often submitted only after the investigation has been ongoing for an extended period. Although such delays are usually attributed to technical difficulties, the Court held that they can, in fact, lead to violations of the principle of due process of law as guaranteed under Article 28D paragraph (1) of the 1945 Constitution.

Delays in the delivery of the SPDP by investigators to the public prosecutor not only create legal uncertainty but also infringe upon the constitutional rights of both the reported party and the victim/complainant. For this reason, the Court emphasized that the submission of the SPDP is obligatory not only to the public prosecutor but also to the reported party and the victim/complainant. The Court's consideration rests on the fact that receipt of the SPDP enables the reported party to prepare a defense and appoint legal counsel, while for the victim/complainant, it provides an opportunity to organize the necessary information or evidence to support the progress of the investigation. Failure to implement the SPDP in accordance with the Criminal Procedure Code and the Constitutional Court's ruling constitutes a violation of the law—at the very least, a breach of legal principles as established in Constitutional Court Decision Number 130/PUU-XIII/2015, as well as a violation of the doctrine of due process of law. Consequently, any handling of SPDP that disregards Article 109 paragraph (1) of the Criminal Procedure Code in conjunction with the Constitutional Court Decision Number 130/PUU-XIII/2015 amounts to a breach of statutory provisions. (Mahkamah Konstitusi Republik Indonesia, 2015).

In the Constitutional Court Decision Number 21/PUU-XII/2014 which means that in the process of examining a criminal case at the investigation stage, the aim is to find evidence and find the suspect or if the investigator has determined the suspect. Determination of suspect status is the final result of investigation activities. The investigation process itself is the forefront of the chain of the criminal justice system, so the determination of a suspect made by the investigator can be carried out pretrial legal remedies if there is a violation of formal law in the investigation process. Discussions about investigations certainly cannot be separated from the protection of human rights and legal certainty in it. The importance of the fulfillment of human rights can be seen from the reason for the establishment of the Criminal Procedure Code, which is essentially a temporary limitation and/or reduction of human rights against a person who is strongly suspected of committing a criminal offense regulated in the legislation. The protection of human rights is clearly known from the principles of criminal procedure law which are then explicitly regulated in the Criminal Procedure Code as follows: (a) Equal treatment of everyone before the law with no distinction in treatment (equality before the law); (b) Persons who are arrested, detained, prosecuted, or tried in court without grounds based on law or due to errors on the part of the investigator, shall be compensated and rehabilitated from the initial level of criminal law enforcement; (c) Every person who is strongly suspected of committing a criminal offense even in the case of being caught red-handed, must be given the opportunity to defend himself by knowing the progress of the case he is facing and getting legal assistance and defense from his legal counsel; and (d) Every person who is strongly suspected of committing a criminal offense is obliged to obtain information about the legal basis of the suspicion.

In principle, when an investigator starts an investigation, it must be based on an order given to him through an investigation warrant (*sprindik*). Once an investigation warrant (*sprindik*) is issued, it must be followed by the issuance of a Notice of Commencement of Investigation (SPDP), which is then delivered to the public prosecutor, the reported party, and the complainant. This requirement is grounded in Article 109 paragraph (1) of the Criminal Procedure Code. Any delay in delivering the

SPDP—or the failure of investigators to provide it at all—not only generates legal uncertainty but also infringes upon the constitutional rights of both the reported party and the victim/complainant. These constitutional rights are guaranteed under Article 28D paragraph (1) of the 1945 Constitution, which affirms that every individual is entitled to recognition, assurance, protection, and the certainty of fair law as well as equal treatment before the law.

In pretrial cases such as Case Number 04/Pid.Pra/2017/PN.Kla (P-11) at the Kalianda District Court and Case Number 07/Pid.Pra/2019/PN.Bpp (P-12) at the Balikpapan District Court, it was revealed that investigators acted arbitrarily by intentionally delaying the delivery of the Notice of Commencement of Investigation (SPDP), exceeding the 7-day limit from the start of the investigation. This is despite the clear requirement established in Constitutional Court Decision Number 130/PUU-XIII/2015, which mandates that SPDP must be submitted within 7 days from the issuance of the investigation warrant (*sprindik*).

Romli Atmasasmita explains this issue through three approaches: normative, social, and administrative. From an administrative perspective, the SPDP serves as the primary gateway for coordination between investigators and public prosecutors regarding the progress of an investigation. From a normative standpoint, it relates to the investigator's obligation to notify the public prosecutor about the commencement of the investigation through the SPDP. Meanwhile, the social approach emphasizes that the Constitutional Court's decision requiring SPDP submission to the public prosecutor, the reporter/victim, and the reported party encourages public involvement in monitoring the criminal justice process as a form of social control. Such oversight is crucial to prevent arbitrariness, unlawful practices, and unprofessional conduct by investigators during the investigation process.

SPDP is a series or part of the process that is still in the investigation stage, therefore if there is a determination of a suspect that is not preceded by the submission of SPDP to the parties then such a thing creates legal uncertainty and harms the constitutional rights of the reported and is an act of procedural defects or formal defects in applying the law and there is no transparency by the investigator in terms of the reported. SPDP as a form of integrated criminal justice system, as befits a criminal procedural law is a procedural process in handling criminal cases, the Criminal Procedure Code also presents a system known as the Criminal Justice System (criminal justice system) so that the consequences as a system given in handling a case suspected of violating the provisions of criminal law, each sub-system and legal institution contained in the Criminal Procedure Code.

According to the researchers, there are several main inhibiting factors, including the lack of socialization to law enforcement officials in the case of investigators so that investigators and other law enforcement officials do not fully understand and implement the Constitutional Court's decision, the absence of derivative technical SOPs in the Regulation of the Chief of Police of the Republic of Indonesia (*Perkapolri*), and the absence of real legal consequences for violations. Failure to submit the SPDP has a direct impact on the violation of the basic rights of the reporter and the reported party. The reported party cannot prepare a legal defense from the start, while the complainant loses access to information on the progress of the case. As a result, trust in the criminal justice system is eroded (Mulyadi, 2017).

The Constitutional Court's decision is self-executing, but KUHAP as a formal criminal procedure law has not accommodated the provision explicitly. This means that there are no positive norms in KUHAP or technical regulations that mention legal sanctions if SPDP is not submitted. This causes the position of the obligation to become an ineffective norm in Hans Kelsen's terminology, because it does not have a sanction norm that binds law enforcement officials (Kelsen, 1945).

The Decision of the Constitutional Court Number 130/PUU-XIII/2015 has provided an interpretation of the enforcement of the provisions of Article 109 paragraph (1) of the

Criminal Procedure Code, which the Court declared conditionally unconstitutional insofar as it does not mean that the SPDP must not only be submitted to the public prosecutor but also to the reporter and the reported party within a maximum period of 7 (seven) days from the issuance of the investigation warrant. The connotation of the phrase in the decision emphasizes the mandatory provision of SPDP, which of course provides legal certainty for the process of a criminal investigation. On the other hand, the mandatory provision of SPDP by investigators to the parties has no legal consequences for not providing SPDP as part of the formality of the criminal investigation process, so the addition of the mandatory phrase in the interpretation provides space for freedom or only as a display in a norm change.

Some parties have tried to use the pretrial route to challenge the non-delivery of the SPDP. However, the Supreme Court in a number of its decisions has tended to overrule this as a reason to cancel the investigation process. This reinforces the fact that SPDP is not considered an absolute formal requirement in the validity of an investigation or prosecution. From a progressive legal perspective, as stated by Satjipto Rahardjo, the law must be present as a tool to defend the interests of the little people and provide substantive justice (Rahardjo, 2014). Therefore, it is necessary to push for a revision of the KUHAP that includes SPDP as an important formal requirement in investigations, administrative and ethical sanctions against investigators who ignore it, and strengthening the role of external oversight institutions such as Kompolnas and Ombudsman.

4. Conclusions

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