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Regulation of Conditions for Money and/or Persons in Suspension of Detention at the Investigation Level Based on the Criminal Code

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Abstract
The purpose of this study is to analyze the arrangements related to the suspension of detention as one of the rights possessed by suspects in criminal procedural law in Indonesia. This study uses a normative legal research method with an approach to legislation and legal concept analysis. The results of this study indicate that the laws and regulations governing the nominal value of money guarantees and the requirements for people as guarantors in the suspension of detention are still unclear. Therefore, efforts are needed from the legislators to revise legal products that specifically regulate the nominal value of money guarantees and the requirements for people as guarantors in the suspension of detention so that the implementation of the suspension of detention can run transparently in order to avoid subjective conflicts of interest by law enforcers.

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1. Introduction

The presence of law in people's lives becomes a whole and unifying unit so that the relationship between law and human beings cannot be separated. This relationship is very close because the law will always be in the life of a human being even if he is still in the womb until the human being dies. Law has an essential role in social life in society. With the existence of the law, people become more protected in living their lives and are able to coexist throughout their lives. The State of Indonesia is a State of Law, this provision is very clearly stated in Article 1 paragraph (3) Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Therefore, the Indonesian people are very heeded the applicable law because all actions must be based on the law. The purpose of the existence of law in people's lives is to create justice, provide certainty and usefulness even though the application of a criminal law is the last way to solve a problem that occurs in society. Law has the nature of regulating and also forcing all components of society to obey it in order to create harmony in social life [1]. Humans in living their lives as social beings must obey the rules that exist in society. If a human violates these regulations, it will cause sanctions as a consequence of the violation of the law that he has committed. And vice versa, in order to preserve legal regulations so that they are accepted by all components of society, legal regulations must be in accordance with the principle of justice in society. The embodiment of law that is often seen prominently implemented in people's lives is criminal law with a formal mechanism of criminal procedure law. Criminal procedure law has the purpose of finding or finding a material truth of a criminal case appropriately [2]. The process aims to find the perpetrator who has committed a violation of the law, then he asks for an examination and a court decision to decide whether it is proven that a criminal act has occurred and whether the person charged can be blamed, obtain a judge's decision, and implement the judge's decision.

[1] Thomas Abbon, Penahanan Dan Penangguhan Penahanan Dalam Teori Dan Praktek, JurnalUniversitas Kristen Indonesia, Vol 4 No. 1, 2018, Jakarta, h. 34-48
[2] Andi Hamzah, 2004, Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta, h.3-4

Indonesia, which is a country of law, always provides guarantees for the enforcement of human rights for all its citizens, including in the course of criminal law, for example, Indonesia always guarantees the rights of its citizens who are undergoing the criminal justice system.

The course of the criminal justice system is often contrary to the enforcement of human rights as well as in the detention process of a person who is suspected or suspected of having committed a criminal act. Although in this case, the act of detention has a function as a prevention so that people who are undergoing examination do not escape the criminal justice system. But after all, detention is an act that greatly restricts a person's movements so that he does not have freedom and also tortures a person's mind, while freedom itself is a human right that every human being desires.

The restriction of a person's freedom of rights can be seen when a person has been suspected of committing a criminal act and then law enforcement has the authority to use to restrict the person's freedom by making arrests and detentions. An arrest can only be carried out If an investigation warrant has been issued by the investigator in a criminal act [3]. Investigators at the investigation level are police officials or can also be certain civil servant officials who have special authority in accordance with the law. The order interpreted here is a warrant that has been made and issued before the arrest process is carried out, but it is different if a criminal event occurs because of being caught, an arrest warrant is not required.

Referring to the national legal instrument, namely Law No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) Article 1 number 21 determines: "Detention is the placement of a suspect or defendant in a certain place by an investigator or public prosecutor or judge with its determination, in the case and in the manner regulated in this law". Detention also has the meaning of a restriction on freedom, especially freedom of movement owned by a person where it is done for the sake of the law enforcement process.

The Criminal Procedure Law determines objective and also subjective conditions that must be met in order to carry out a detention process against a suspect. The objective condition for detention is that not every suspected perpetrator of a criminal act can be detained, this is because detention is only carried out against perpetrators with a criminal threat of five years or more, or it can also be certain criminal acts that have been regulated in Article 21 paragraph (4) b of the Criminal Code. Meanwhile, the subjective conditions regarding detention are regulated in Article 21 paragraph (1) of the Criminal Procedure Code, namely that a detention order is made against a suspect who is suspected of having committed a criminal act with strong enough evidence, with concerns that the suspect will flee, eliminate evidence, and/or repeat the same criminal act. This provision is the basis for the police as law enforcers in carrying out detention based on the fulfillment of subjective conditions.

The Criminal Procedure Law also provides legal protection for suspects or defendants who are subject to detention at each level of examination to be able to apply for a suspension of detention to the official who imposed the detention so that their detention status can be suspended, this is called a suspension of detention. The purpose of holding the suspension of detention is to respect human rights in this case, especially to protect and not harm the interests of the suspect because in its implementation, the Criminal Code provides guarantees and protection for all public interests.

The provisions regarding the suspension of detention, regulated in Article 31 paragraph (1) of the Criminal Code, contain a suspension of detention granted by a law enforcement official with the conditions specified to a suspect at his request with or without guarantee of money and/or persons before the limit of his detention is completed, in other words, the person's detention period has not officially expired. Then in Article 31 paragraph (2) of the Criminal Procedure Code contains the authority of positions owned by law enforcement officials can revoke the status of A suspension of detention has been granted when a suspect violates the conditions of suspension of detention.

The explanation of the phrase of the requirements in Article 31 of the Criminal Procedure Code includes actions in the form of mandatory reporting, not leaving the house or city. The suspension period of a suspect's detention is not included in the detention status with the aim that the suspect is not harmed due to detention. However, in the explanatory part of Article 31 of the Criminal Code, it is not explained regarding the amount of nominal value used in the suspension of detention, as well as in the case of using personal guarantees, it is not explained in detail about the criteria for people who should be used as security for people in the suspension of detention.

The arrangement regarding the suspension of detention using money and/or person security is further described in Article 35 and Article 36 of Government Regulation Number 27 of 1983. Article 35 paragraph (1) of Government Regulation No. 27 of 1983 contains the rest of the security deposit from the suspension of detention determined by the authorized official and the money is kept in the clerk of the district court. Furthermore, Article 35 paragraph (2) stipulates that if the suspect is uncooperative or flees during the detention suspension process after three months and his whereabouts cannot be found, then the money pledged by him will be deposited into the state treasury and become fully owned by the state.

Article 36 paragraph (1) contains the rest regarding the guarantee of persons, which stipulates that if the suspect escapes and is not found after three months, the guarantor who guarantees himself is obliged to pay the nominal amount that has been determined by the authorized official. Furthermore, Article 36 paragraph (2) contains the matter that the money referred to in paragraph (1) is deposited into the State Treasury through the clerk of the district court. Then in Article 36 paragraph (3) it is regulated that if a guarantor is unable to pay the amount of money as referred to in paragraph (1), the bailiff will confiscate the guarantor's property to be auctioned and then the proceeds of the auction will be deposited into the State Treasury. Referring to the legal phenomenon that is happening today, for example, such as the case of corruption with a suspect named Rahudman Harahap who is the Mayor of Medan Nonactive. Rahudman Harahap is a suspect in corruption of the Village Government Apparatus Income Allowance (TPAPD) of South Tapanuli Regency. The total amount of money that should have been channeled to pay allowances was Rp5.95 billion, but the total funds disbursed were only Rp4.36 billion, so there was a difference of Rp1.59 billion that could not be accounted for. Rahudman Harahap then applied for a suspension of

[3] Bambang Poernomo, 2000, Orientasi Hukum Acara Pidana Indonesia, Amarta Buku, Yogyakarta, h. 67

detention against him using a monetary guarantee of Rp100,000,000.00 which the suspension of detention was granted by law enforcement officials [4]. Looking at other legal phenomena that are still in the same case regarding corruption committed by the Head of Bukit Tinggi Village with the initials AM who is being designated as a suspect in the case of alleged illegal collection of direct cash assistance funds (BLT) for residents affected by COVID-19. Suspect AM is suspected of having cut the BLT which was originally worth Rp600,000.00 to Rp450,000.00 so that the remaining Rp150,000.00 went into the AM pocket. Suspect AM then applied for a detention order against him using a monetary guarantee of Rp20,000,000.00 which was rejected by law enforcement officials [5]. Based on the example of the case above, the practice regarding the suspension of detention for suspects, especially in using money guarantees, which later the money will function as collateral if the suspect escapes during the suspension period, the money will enter the State Treasury. In addition, the regulation regarding the nominal amount of money used as security for the suspension of detention is still unclear. The provisions in the Criminal Procedure Code also do not clearly mention the conditions for a person as a guarantor in order to meet the criteria in terms of applying for a suspension of detention using personal bail so that it causes an ambiguity that creates vague norms and causes multiple interpretations in the implementation of the arrangement

The implementation of the suspension of detention as one of the processes in the criminal procedure law in Indonesia seems biased. It is as if the implementation of the suspension of detention with bail is customary law while Indonesia itself is a legal country that always upholds the principles of justice, usefulness and legal certainty based on written law. The terms of the detention suspension agreement seem to refer to a form of contract in civil law in which there is an agreement between the suspect or the person who guarantees him, and the agency that detains him [6].

Based on the description above, there is a formulation of the problem, namely, How is the regulation of the amount of nominal value as collateral for the suspension of detention of suspects based on the Criminal Code? And what is the urgency of legal arrangements related to money or person guarantees as a condition of security in the suspension of detention?

This paper is different from previous studies, for example the study on "Guarantee of Suspension of Detention at the Investigation Stage in the Criminal Justice System"[7] and "Suspension of Detention with Guarantee in Criminal Cases" [8]. So that when compared to previous studies, there are differences both in the object and method of research with this research and by Therefore, it can be said that this research is original.

2. Research Methods

The type of research used in this study is classified as a type of normative legal research, where this research is made by focusing on the use of a legislative approach by exploring the philosophical side of a regulation and the binding power of norms to make it easier for the author to connect an issue and legal facts to various legal systems that apply juridically and formally. Normative legal research is a legal research conducted based on secondary data collection, namely by discovering legal principles, examining the synchronization and systematics of legal products whose existence is categorized as given data [9]. Descriptive analysis techniques are used in this study to analyze the answers to the research problems. The source of primary legal materials is obtained from Law No. 8 of 1981 concerning the Criminal Procedure Code, Government Regulation No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code, and other relevant regulations. The data used as material for this research is collected through literature studies, namely collecting various information and legal materials that are included in primary, secondary and tertiary legal materials and then grouped, recorded, cited, summarized and reviewed according to needs.

3. Results and Discussion

3.1 Regulation on the Amount of Nominal Value as Guarantee for the Suspension of Detention of Suspects Based on the Criminal Code

The provisions regarding the suspension of detention, regulated in Article 31 paragraph (1) of the Criminal Code, contain the suspension of detention granted by a law enforcement official with the conditions specified to a suspect at his request with or without financial security and/or persons before the limit of his detention is completed, in other words the person's detention period has not officially expired. Then in Article 31 paragraph (2) of the Criminal Procedure Code, it contains the authority of the position held by law enforcement officials to revoke the status of suspension of detention that has been granted if a suspect violates the conditions of suspension of detention.

The suspension of detention of a suspect can be given by the authorized official at the investigation level, namely the police investigator, if the suspect who has submitted an application for a suspension of detention has accepted and will meet all the conditions for the suspension of detention either with or without money and/or person guarantee. The requirements for the suspension of detention must contain a criterion, namely, the suspect is not allowed to flee if there is a detention order again, if the suspension of detention against him is revoked. Suspects who will be given a suspension of detention are required to promise not to complicate investigators if the suspension of the suspect's detention is revoked and will be returned to detention if ordered by the investigator. Another criterion in the requirements for a suspension of detention for suspects is that suspects who have been granted a suspension of detention are not allowed to leave their homes or leave the city.

The suspect is required to always report to the police

[4] Merdeka, 2013, Korupsi Tunjangan Penghasilan Aparat Desa, Negara Rugi Rp 1,59 M, URL: https://www.merdeka.com/peristiwa/korupsi-tunjangan-penghasilan-aparat-desa-negara- rugi-rp-159-m.html,

[5] Antara News, 2020, Polisi Tolak Penangguhan Penahanan Tersangka Pungli BLT, URL: https://www.antaranews.com/berita/1612698/polisi-tolak-penangguhan-penahanan-tersangka-pungli-blt,

[6] M. Yahya Harahap, 2005, Pembahasan Permasalahan dan Penerapan KUHAP, Pustaka Kartini, Jakarta, h. 228

[7] Nurdin, N., & Badaru, B. (2021). Jaminan Penangguhan Penahanan Pada Tahap PenyidikanDalam Sistem Peradilan Pidana. Journal of Lex Philosophy (JLP), 2(1), 32-47.

[8] Khambali, M. (2019). Penangguhan Penahanan Dengan Jaminan Dalam Perkara Pidana. Jurnal Hukum Responsif, 6(6), 44-54.

[9] Sunggono Bambang, 2015, Metodologi Penelitian Hukum, RAJAWALI PERS, Jakarta, h. 37

investigator who has given a suspension of detention against him [10]. To ensure that a suspect is willing to meet all the criteria in the conditions of the suspension of detention, a guarantee is required, which can be in the form of a monetary and/or personal guarantee.

A money guarantee in the suspension of detention is a security that has been agreed to be carried out by depositing a certain amount of money with a certain nominal amount as stipulated in the agreement between the suspect and the authorized official. Meanwhile, the guarantee of a person in the suspension of detention is a guarantee that has been agreed to be carried out by means of a third party who will act as a guarantor for the suspect in carrying out the conditions that have been stipulated in Article 31 of the Criminal Code.

The suspension of detention can be said to be a form of policy given by the authorized officials, in this case the police investigator against the suspect where at any time the policy can be revoked if the suspect does not comply with the agreed requirements. If the suspension of detention is revoked but the suspect escapes from his obligation to be detained, the money pledged as a suspension of detention will be deposited into the State Treasury, and if the person who is pledged is a person/third party, the third party is obliged to pay a sum of money with the agreed nominal.

The grant of a suspension of detention given to a suspect must meet all the criteria and requirements that have been stated in the provisions of article 31 of the Criminal Code. If the police investigator who is authorized to grant a suspension of detention has a negative assessment of the suspect in fulfilling his requirements, the application for suspension of detention can be rejected. This is because the suspension of detention at the investigation level is a form of discretion of the authorized officials, namely police investigators, who in their provision must be very selective so that they do not pose any risks, such as for example, the suspect who was given a suspension of detention turned out to flee or eliminate evidence.

Article 31 of the Criminal Procedure Code which has been explained above is the main regulation regarding the suspension of detention, and for the implementation of the main regulation, an implementation regulation has been prepared that contains the regulation of the guarantee of suspension of detention, namely, Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. There are 2 (two) Articles contained in Government Regulation No. 27 of 1983 which regulate the suspension of detention, namely Article 35 and Article 36. Article 35 paragraph (1) of Government Regulation No. 27 of 1983 contains the rest of the security deposit from the suspension of detention determined by the authorized official and the money is kept in the clerk of the district court. Furthermore, Article 35 paragraph (2) stipulates that if the suspect is uncooperative or flees during the detention suspension process after three months and his whereabouts cannot be found, then the money pledged by him will be deposited into the state treasury and become fully owned by the state.

The procedure for depositing the security deposit into the state treasury has been regulated in the Decree of the Minister of Justice No. M. 14-PW.07.03/1983 at point 8 letter f which contains the security deposit deposited by the applicant directly or through his legal representative to the clerk in the court equipped with a deposit form in accordance with the level of examination. After depositing money, the applicant will get proof of deposit as many as 3 (three) copies which function as an archive for the clerk, an archive for the applicant, and one other sheet is shown to the authorized official as the basis for issuing a warrant for suspension of detention. If the suspect escapes and cannot be found within 3 (three) months, the district court clerk will deposit the money into the state treasury.

Article 36 paragraph (1) contains the rest regarding the guarantee of persons, which stipulates that if the suspect escapes and is not found after three months, the guarantor who guarantees himself is obliged to pay the nominal amount that has been determined by the authorized official. Furthermore, Article 36 paragraph (2) contains the matter that the money referred to in paragraph (1) is deposited into the State Treasury through the clerk of the district court. Then in Article 36 paragraph (3) it is regulated that if a guarantor is unable to pay a certain amount of money as referred to in paragraph (1), the bailiff will confiscate the guarantor's property to be auctioned and then the proceeds of the auction will be deposited into the State Treasury. Article 35 and Article 36 in Government Regulation No. 27 of 1983, if you look more clearly, it appears that the two articles do not mention the amount of nominal value used when applying for a suspension of detention using money security. This gives an idea that currently the laws and regulations in Indonesia that regulate the amount of nominal value used as a guarantee for the suspension of detention seem to contain vague norms so that they do not reflect legal certainty.

The amount of the nominal value of the bail used to suspend detention is submitted by the applicant for suspension of detention, which is then the authorized official, namely the police investigator, makes considerations regarding the nominal amount of bail before determining it. The considerations made by police investigators in determining the amount of bail for suspension of detention are seen from the life and ability of the applicant for suspension of detention and the severity of the crime committed [11]. The regulation of the nominal value of the guarantee for the suspension of detention, which when stated in the laws and regulations, is not an effective thing [12]. This is because, with the promulgation of the amount of the nominal value of the guarantee for the suspension of detention, it will actually cause a negative stigma in the community. The community will judge that there has been a difference in people before the law where later the rich will easily apply for a suspension of detention with a money guarantee while the poor will find it difficult to fulfill it because of the applicant's inability.

3.2 The urgency of legal arrangements related to money or person security as a condition for bail in suspension of detention

Indonesia as a country of law certainly upholds the law as a basis in carrying out all activities and other things in the state.

[10] Abdussalam, H.R, 2009, Hukum Kepolisian Sebagai Hukum Positif dalam Disiplin Hukum, RestuAgung, Jakarta, h. 44

[11] Fathika maulina, 2005, Pelaksanaan Penangguhan Penahanan Dengan jaminan Di Pengadilan Negeri Surakarta, Skripsi Sarjana Ilmu Hukum Universitas Sebelas Maret Surakarta, Surakarta, h.24

[12] Kristanto, 1985, Penangguhan Penahanan Dengan Jaminan, Skripsi Sarjana Ilmu Hukum UniversitasAirlangga, Surabaya, h.19

Indonesia as a country of law is clearly regulated in the Indonesian constitution, especially Article 1 paragraph (3) of the 1945 Constitution. These provisions are binding both for the government, law enforcement, and society in general to respect the law as norms that apply in the state. The law as a provision to regulate all citizens and on the other hand protect the interests and human rights should have an element of certainty so that its implementation becomes firm and clear.

The suspension of detention using money and/or person security has been regulated in Article 31 of the Criminal Procedure Code and Articles 35 to 36 of Government Regulation No. 27 of 1983. Suspension of detention with money guarantee is a suspension agreement in which the applicant is willing to deposit a sum of money whose amount has been agreed upon by the authorized officer whose function is as collateral. Meanwhile, the suspension of detention with personal bail is a suspension agreement in which a person voluntarily places himself as a guarantor who is willing to take responsibility for all risks that arise if the prisoner he is bailed escapes [13].

The regulation regarding the nominal amount of money guarantee and the requirements for people as guarantors in the suspension of detention as a positive legal basis in Indonesia contained in both Article 31 of the Criminal Code and Articles 35 to 36 of Government Regulation No. 27 of 1983 until now seems unclear. The arrangement does not comprehensively cover the nominal amount of money and the conditions for persons who deserve to be classified as guarantors in the suspension of detention. This ambiguity results in the impression of legal uncertainty that regulates these provisions so that the concept of the state of law does not run as it should.

Certainty and fairness in the implementation of these arrangements will only be achieved if there is clarity in a regulation, especially the suspension of detention, so that to realize this is necessary to formulate a criminal law policy that determines the nominal amount of money guarantee and the conditions for people who can be categorized as guarantors in the suspension of detention. Referring to Barda Nawawi's opinion, the essence of the formulation of legislation can be said to be the process of law enforcement in "in abstracto".[14] The formulation stage is an initial process that occupies a strategic position before the enactment of law enforcement "in concreto".

The formulation of legal policies in an "in abstracto" manner in the context of suspension of detention with monetary guarantees, especially in the imposition of nominal amounts, must contain the following matters, such as:

a. The nominal amount of money guarantee in the suspension of detention should be prepared clearly and in detail, so as to provide clarity to the applicant for suspension of detention;
b. The nominal amount of money guarantee is arranged proportionally based on the number of criminal threats imposed on the applicant, for example, if the applicant is threatened with a serious crime, a larger money guarantee will be imposed, and vice versa if the applicant is threatened with a minor crime, the imposition of a money guarantee will be lighter.
c. The nominal amount of the money guarantee must also pay attention to the applicant's health condition, if the applicant is sick, the imposition of the money guarantee can be reduced. Then the regulation of the nominal amount of money guarantee is prepared by looking at the work of the applicant so that the judicial process can be reached by all circles of society, this is in accordance with the principle of the judicial trilogy, namely the judicial process is held at a low cost;
d. If the authorized official has a belief that the suspect has bad faith in the process of suspending detention, then the authorized official may reject the application for suspension of detention with monetary bail.

The regulation regarding the conditions for persons who deserve to be classified as guarantors in the suspension of detention should be reviewed again so that legal certainty can be realized. This is important because seeing this uncertainty makes justice in society impossible to realize. The establishment of new rules regarding the conditions for persons who deserve to be classified as guarantors in the suspension of detention also has an impact on the realization of legal objectives, namely justice, certainty, and usefulness, so that if the rules are reviewed, it is expected to meet the legal objectives mentioned above.

The formulation of the conditions for a person as a guarantor in the suspension of detention should contain the following elements:

a. Not having a mental disorder, a guarantor in suspension of detention must be physically and mentally healthy;
b. A guarantor must be an adult, namely at least 21 years old, this is based on Article 330 of the Civil Code, because a person who has reached the age of 21 years is considered capable because he has been able to weigh an action and its consequences;15 reviews
c. The guarantor of the person in the suspension of detention must be from the family suspect or his legal representative, so that the guarantor is able to bear responsibility for all consequences that arise if the suspect escapes.

The existence of regulations regarding the conditions for people who deserve to be classified as guarantors in the suspension of detention will clearly present a law that accommodates a sense of justice in society so that unwanted things such as the arbitrariness of the authorities in granting the suspension of detention caused by the lack of clarity of the rule of law can be minimized with the existence of new rules in accordance with the needs of the current society.

4. Conclusion

Based on the explanation above, it can be stated that the regulation regarding the nominal amount of money guarantee in the suspension of detention in Article 31 of the Criminal Procedure Code in conjunction with Article 35 of Government Regulation No. 27 of 1983 was found to be a vague norm. The two articles do not clearly mention the amount of nominal value used when applying for a suspension of detention using money guarantee. The process mechanism for granting or not granting a request for

[13] Nurul Auliani, Kajian Yuridis Terhadap Penangguhan Penahanan Dengan Jaminan Orang BerdasarkanPasal 31 Kuhap, Jurnal Universitas Sebelas Maret, Vol. V No. 7, 2017, h. 6.

[14] Barda Nawawi Arief, 2008, Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru, Kencana, Jakarta, h.24.

suspension of detention with a monetary guarantee is carried out between the authorized official in granting a suspension of detention at the investigation level and the suspect who submits an application for suspension of detention or his legal representative. Future arrangements require the formulation of criminal law policies that determine the nominal amount of money guarantee and the conditions for people who can be categorized as guarantors in the suspension of detention. The existence of provisions regarding the policy will later accommodate a sense of justice in society and minimize legal uncertainty because the regulation has been based on the foundation of ideal legal concepts, namely philosophical, sociological and juridical foundations.

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13. Khambali M. Penangguhan Penahanan Dengan Jaminan Dalam Perkara Pidana. J Huk Responsif 2019;6(6).
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