

# Reviewing: limitations of general officials in article 1 number 20 of 2021 Indonesian draft civil procedure law

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## Reviewing: limitations of general officials in article 1 number 20 of 2021 Indonesian draft civil procedure law

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### Abstract

*Criminal Procedure Laws holds greater significance in Indonesia as it helps in maintaining an environment of legal justice and punishments in accordance with legal frameworks. The present study has studied the limitations of general officials in article 1 number 20 of 2021 Indonesian civil procedure law. According to article 1 number 20, arrest is an act by an investigator of temporarily restricting the freedom of a dependent or a suspect if there is enough evidence for the purpose of investigation and trial in accordance with the ways regulated by this law. There are certain limitations observed under this article both related to human right's violation and an inadequate provision of training and information to the investigator official. The present study holds numerous theoretical and practical implications. The study has addressed the literature gap which shows a previously scarcity of research regarding article 1 Number 20 and its in-depth discussion of limitations. This research provides practical insights to the investigators and legal officials of Indonesia regarding the ways to overcome limitations faced by investigators in this regard. To enhance the generalizability of this research, limitations and future research indications have also presented in this study.*

Keywords: Article 20, Investigation, Indonesia, Criminal Procedure Law

### 1. Introduction

The 1945 Constitution of the Republic of Indonesia confirms that Indonesia is a nation governed by the principles of the rule of law (Aldyan & Negi, 2022). Law consists of a set of regulations that individuals within a society are required to adhere to. Failure to comply with these regulations may result in consequences, such as compensating for damages or facing criminal charges. This system is established to promote a structured and equitable life within the community (Supriyono, Amrullah, & Suarda, 2023). The general officials, including law enforcement personnel such as investigators hold a crucial role in upholding the rule of law within society. Their

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actions profoundly influence the rights and freedoms of individuals. Among their responsibilities, the process of arrest stands out, and in Indonesia, it is regulated by Article 1 Number 20 of the 2021 Indonesian Draft Civil Procedure Law. This article outlines the conditions and procedures for temporarily restricting an individual's freedom during criminal investigations or trials.

Arrest is a complex legal procedure that intersects with various facets of justice, individual rights, and the broader legal system. It serves as a tool for law enforcement agencies to ensure public safety and bring alleged criminals to justice. It's imperative to acknowledge that while arrests serve as a vital law enforcement tool, they must be executed in strict accordance with the law, upholding the rights and freedoms of individuals. According to article 1 point 20 of the criminal procedure code, an arrest is nothing more than a "temporary restraint" of the suspect's freedom for the sake of inquiry or prosecution. It must, however, be conducted in accordance with the criminal procedure code. If the arrest procedure of a suspect is not carried out in agreement with the rules of the criminal procedure code, there must be a divergence of law, which results in a breach of the decorum of the person being under arrest or a contravention of human rights (Kälin & Künzli, 2019). The suspect just obeys what the official authority, the assistant investigator, and the investigator command, despite the fact that it obviously violates human rights. If this occurs, the defendant has the right to request a pretrial hearing to evaluate the legitimacy of arrest (Saragih & Wahyuningsih, 2019).

Law enforcement can be carried out to the greatest extent possible by utilizing criminal law facilities or penal efforts organized by law enforcement professionals such as cops, prosecutors, the judiciary (court), and correctional institutions (Pyo, 2021). It can also be carried out utilizing facilities outside of criminal law in its independence with non-legal variables referred to as employing non-penal efforts that can be carried out by parties outside of criminal law enforcement officials (Muhammadaminovna, 2022). A state of law must satisfy certain criteria, including firstly, the government must be founded on laws or regulations in performing its duties and obligations. Secondly, there must be an assurance of human rights. Thirdly, there should be the power distribution within the state and fourthly, there is judicial body oversight. The arrest is a necessary legal procedure. As a result, the investigator must carry it out properly, attentively, and precisely (White & Davies-Bright, 2021). Arrests in the context of human rights must be related to the state's protection of the arrested individual, both in principle and in practice. Law enforcement officers are obligated to follow the appropriate regulations in order to avoid violating human rights, both in terms of processes and the rights of the detained individual and his or her family (Saragih & Wahyuningsih, 2019). There are a few things to bear in mind when it comes to arrests. First, officials were granted the authority to arrest people. Second, the criminal process code only allows investigators to make arrests for the purpose of investigating.

This study embarks on a comprehensive exploration of the constraints imposed on general officials in relation to arrest procedures, as articulated in article 1 point number 20. Through a careful analysis of these legal limitations, this study aims to develop a clear understanding of how the Indonesian legal framework strives to harmonize a balance between the necessity of public safety and the preservation of

individual rights during the arrest process. The careful examination of these legal provisions seeks to illuminate the fascinating relationship between law, justice, and the safeguarding of individual liberties in Indonesia.

### **1.1. Research Methods**

Methodology illustrates the strategies or means which are used to find, select, process, and analyze information on a specific project or study. The methodology refers to objectively examine the overall validity and reliability of the study. In this process, research involves the examination of some primary sources and secondary sources to analyze and fulfill the aim of the associated study.

#### **1.1.1. Data Collection**

The present study based on the limitations faced by the general officials during the investigation of a suspect under the civil procedure law in the context of Indonesia. In this paper, the primary data is collected from official documents and legislative texts specifically related to restricting the freedom of a suspect by the general authorities in accordance the provision of regulated laws under the civil procedure law enforcement of Indonesia. Furthermore, the secondary data is collected by reviewing books, academic journals, and relevant past research studies. For this purpose, different online databases such as JSTORE, LexisNexis, and others are incorporated in this study to illustrate or present facts that are helpful in creating a depiction in order to support legal arguments in a systematic and structured manner based on normative influence.

#### **1.1.2. Data Analysis**

After collecting the data from various primary and secondary sources, this research paper conducted a thorough content analysis. Content analysis is a structured method used to carefully study and understand visual or textual information (Selvi, 2019). In this case, it involved a close examination of all the data they collected, which could include legal documents. The goal was to find patterns, important themes, or important details about the rules that apply to general officials when they're involved in making arrests. These rules are described in Article 1, Point Number 20 of the Civil Procedure Law. This systematic analysis is like the base or foundation on which the important conclusions and insights can be built.

#### **1.1.3. Research Approach**

In this study, an exploratory approach will be utilized to understand the constraints placed on general officials within the framework of the 2021 Indonesian draft of civil procedure law. This approach is aimed at uncovering fresh perspectives and gaining a more profound comprehension of the limitations faced by general officials. Additionally, the research will incorporate inductive reasoning as a methodological tool for drawing conclusions.

## **2. Literature Review**

The act and authority granted to general officials by law to limit one's freedom and human rights during the process of arrest, imprisonment, amputation, and

investigate is an act that must be proportionate to the interests of the exploration and is enormously essential to meet the law's objective. In Indonesia's legal system, there are rules similar to injunctions in other common law countries, particularly preliminary injunctions. These rules ensure fairness for both the party starting the case (plaintiff) and the party being sued (defendant) while the case is ongoing. Like in other countries, these rules enable judges in Indonesia to issue temporary decisions to maintain fairness until the case concludes, preventing unfair actions during the legal process (Mahawijaya, Nuraldi, & Chang, 2023). The arrest of suspect is a type of legal power that does not, however, mean that it may be done arbitrarily. It is a necessary legal procedure so the investigator must carry it out properly, attentively, and precisely.

The regulatory framework on arrest and detention under the Indonesian Criminal Procedure Code from the standpoint of human rights has been examined. The research findings show that the principles of law enforcement and human rights, which consist of the philosophy of legitimacy, inevitability, and proportionality, are fundamentally universal principles that can be used to examine whether or not state actions that interfere with citizens' rights and freedoms violate or do not violate human rights, this is the main implication faced by the general officials of Indonesia (Setiawan, 2022). Human rights are always respected and appreciated in Indonesia, both by the public and the government. The Criminal Procedure Code governs the suspect's rights, which are recognized and developed in its provisions, but the suspect's arrest procedure is frequently not in compliance with what has been established because, in general, the suspect is unaware of the real arrest method. As a result, the suspect just obeys what the investigator, the assistant investigator, and the investigator command, despite the fact that it obviously violates his/her human rights. If this occurs, the defendant has the right to request a pretrial hearing to evaluate the legitimacy of his or her arrest (Saragih & Wahyuningsih, 2019). There have been examples of police personnel misbehaving during arrest and custody processes owing to a lack of knowledge and professionalism. This has resulted in human rights breaches and an emphasis on reaching objectives rather than following the law. This is another limitation which is faced by the general authorities (Gayanti & Harahap, 2019).

A study used to conduct the analysis regarding the Chinese police officers' overall support for police intervention in domestic violence, with an emphasis on proper victim protection and particular support for using arrests to deal with perpetrators. Officers' favorable opinions about police intervention in domestic violence and using arrests to deal with offenses are positively associated to agency endorsement and supervisory support. It has a negative impact on police support for general involvement in domestic violence but has no impact on officer attitudes towards arrests (Wu, Lin, Li, & Wang, 2020). The findings of a comparative study of police decision-making are presented in this paper. Officers were more likely to arrest if there was proof of a significant criminal crime (most typically physical assault) and a continuing danger of harm to the victim (Myhill, 2019). The proportionate scale of every police action's crime-reducing advantages and legitimacy costs determines its efficiency. Policing techniques that are socially efficient at the city level may be detrimental at the local level, since the distribution of direct costs and benefits of

police measures that reduce victimization differs from the distribution of indirect advantages of feeling safe (Owens & Ba, 2021).

According to the Indonesian Civil Procedure Bill, there are specific restrictions placed on general officials when it comes to making arrests. Mawuntu, Sondakh, and Regar (2023) declared that these restrictions center around the responsibilities of judges when assessing legal cases that do not adhere to specific formal prerequisites. In such instances, judges possess the authority to categorize these cases as "inadmissible," indicating that they cannot advance further within the legal framework. However, the determination of inadmissibility is not a straightforward judgment but is contingent on particular criteria. These criteria encompass factors like the simplicity, speed, affordability and comprehensiveness of the legal progress. If a lawsuit falls short in these aspects, the judge may opt to exercise their discretion and declare it as inadmissible, effectively halting its progression through the legal system. These limitations are in effect to promote a more efficient, accessible, and equitable legal process. These limitations are all about the specific situations or reasons that a judge can use to say a lawsuit cannot continue in court (Mahawijaya, Nuraldi, & Chang, 2023). Prior to a judge rendering a decision that a case is unfit to proceed, they must consider the newly established regulations and verify whether the case aligns with or deviates from the criteria specified in the bill. This implementation guarantees a more uniform and equitable method for assessing whether a case should advance or not, thus enhancing the predictability and fairness of the legal process (Adiyanta, 2022).

Prior research shows that Article 1, Point 20 of the 2021 Indonesian civil procedure law talks about what general officials can and cannot do in the legal system. It explains their roles and responsibilities when handling civil cases. These rules are important for making sure the legal system is fair and works smoothly in Indonesia. Moreover, it is a new phenomenon regarding restricting the freedom of a suspect by the general authorities in accordance the provision of regulated laws under the civil procedure law enforcement of Indonesia which is not analyzed commonly in previous studies.

### 3. Findings

#### 3.1. Criminal Procedure Law of Indonesia

In Indonesia, the arrest and detention of suspects is governed through the "Indonesian Criminal Procedural Code" (*Kitab-Undang Hukum Acara Pidana or KUHP*). The authorities who are responsible for the enforcement of law including the police can arrest the individuals on the basis of reasonable and adequate basis to ensure that they have committed a criminal offense. Similarly, the detainees in Indonesia must also be informed of their rights and duties including the right to remain silent and a right to legal representation. The Detainees in Indonesia must also be taken in front of the judges within a particular time duration often 24 hours for the identification of their legal status. The criminal law in Indonesia involves all the rules and regulations that identifies the grounds related to what is prohibited and included in a crime. It also includes the penalties to be imposed on the people who are accused of violating the "code of criminal law" (*KUHP*) (Setiawan, 2022; Yuliantini, 2015).

The code of criminal law in Indonesia is entailed in three chapters. The first chapter explains the terms and procedures to be implemented in the criminal cases and underlines the mitigation of circumstances through which the severity of a sentence may be influenced. In the second and third chapter, the categories of felonies along with the misdemeanors has been explained along with the penalties for each type of offense that has been undertaken. The powers of criminal investigation is mainly vested in the police (Renggong, 2014). A suspect is entitled to be held only 24 hours prior to the investigating officials present their charges and attains an order of detention from the judge. Specific limits are formulated regarding the way through which a suspect can be held prior to a trial.

- **Limits of Detention**

According to the "criminal procedure code of Article 19", the **15** must be a time of 24 hours for arrest and preliminary investigation. According to **the Criminal Procedure Code of Article 20 and 24**, the investigation must be undertaken within 20 days with the possibility of extension for further 40 days. According to the "Criminal Procedure Code of 20 (2) 25", the prosecutor will be obliged for the indictment and the detainee will be detained in the prison so that he can wait for the trial. Similarly, the "criminal procedure code of article 20 (3) 26", there must be a trial of 30 days with a probability of extension for 60 days further. Apart from these conditions, the detention for the purpose of investigation can be extended for 60 days if the accused or suspect is suffering from a severe mental or physical disorder that can be guaranteed through a medical document (Strang, 2008). Or if the investigated case entails a penalty of nine years of imprisonment or more than that.

### **3.2. Article 1 of criminal procedure law 2021 in Indonesia**

According to the article 1 of criminal procedure law the key provisions of this article are listed below:

- The investigator is the police officer of the state in the Republic of Indonesia or any particular official of civil service who possess special power by the law so that he can undertake an investigation (Chuasanga & Victoria, 2019).
- Investigation is a sequential pattern of acts by the investigators in different matters and in accordance with the ways supervised and controlled by this law so that evidence can be collected and explored. This is done to confirm the criminal act undertaken and to find the suspect.
- The assistant investigator is the police official of the state in the Republic of Indonesia who due to a particular authority can perform a task of investigation in accordance with this law.
- Examiner is entitled as the police official in a state in the Republic of Indonesia who has an official authority in accordance with this law to undertake an examination.

### **3.3. Article 1 No 20 of 2021 Criminal procedure law of Indonesia**

According to the "Article 1 Number 20 of 2021" **10** criminal procedural law, arrest is a way implemented by an investigator to restrict the freedom of suspect temporarily or the defendant if there is an existence of sufficient evidence for the purposes of investigation or prosecution and the trial in different matters and in accordance with



the ways regulated through this law. There are certain limitations in the implementation of this article in Indonesia regarding criminal procedure and arresting the suspect. As Indonesia implements a mixed legal system in which the civil law system is the primary and key legal system that was implemented by the Dutch colonial law, therefore Indonesia also recognizes the “customary legal system” and the “religious legal system” (Waskito, Warka, Nasution, & Setyorini, 2021). The limitations of article 1 number 20 of 2021 in Indonesia draft civil procedure law may involve violation of freedom of human rights. Because this law states that an investigator is legally allowed to restrict the freedom of suspect temporarily if adequate evidence might be available that supports his arrest. According to the article 28 of the constitution, it has been declared that a person has a right of freedom from illegal enslavement, therefore if the police officials are unable to fairly suspect a person or collect appropriate amount of evidence against him, then the article 1 number 20 of 2021 cannot be implemented adequately. The investigators of police officials who are obliged to arrest the suspect must be ensured with sufficient training and evidence to ensure fair arrest of the suspect. There may also a prevalence of inadequate and comprehensive assessment of the constraints regarding arrestment of a suspect upon the general officials which may also hinder the effective and legal arrest of the suspect individuals (Aditya & Al-Fatih, 2021; Hamidah, Bakri, Budiono, & Winarno, 2017). According to Hamzah, M Narang, and Yusari (2021), in both the criminal and civil cases, evidence is not examined or investigated individually prior to the trial. All types of evidence are investigated during the hearing. This limits the power of investigator to carefully analyze the suspect and his capability to get imprisoned. However, in the civil cases, the range of reliefs or penalties available are not controlled through laws and regulations. The Article 1365 of Civil Code states in this regard that “Every illegal act, through which damage is caused to the third party and punish the party at fault to pay the damage caused”.

#### 4. Recommendations

Arrests in the context of human rights must be related to the state's protection of the arrested individual, both in principle and in practice. Law enforcement officers are expected to follow the appropriate provisions in order to avoid violating human rights, including both procedural and individual rights. The general officials face however different obstacles and challenges. For this purpose, different recommendations are suggested to overcome such issues.

- First and foremost, it is crucial to address any doubts in legal terminology. To accomplish this, policymakers should introduce precise and clear-cut definitions that describe the roles, duties, and extent of authority held by general officials. Such clarity would serve to reduce the risk of misinterpretation or inconsistent application of legal terms.
- Furthermore, a comprehensive assessment and modification of the existing constraints placed upon general officials are necessary. This undertaking should be conducted with the aim of aligning these limitations with the broader legal framework and international legal norms. Outdated or redundant restrictions ought to be eliminated, and novel provisions may be introduced to effectively tackle contemporary legal challenges.















