



Enigma In Detention: Unraveling The Firli Bahuri Case

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Abstract—The investigation and oversight of criminal prosecutions in Indonesia, focusing on the case of Firli Bahuri, a former leader of the Corruption Eradication Commission (KPK) who currently faces corruption charges. Employing a normative juridical approach, this research delves into legal provisions and literature to elucidate the grounds for detention and the challenges investigators face. Despite meeting the criteria for detention, Firli Bahuri was not apprehended, raising significant concerns about the reliability of the judicial system and law enforcement practices. A thorough analysis of the legal principles outlined in Articles 20 and 21 of the Code of Criminal Procedure (KUHAP) and relevant scholarly literature is essential. The ambiguity in detention criteria and the influence of external factors highlight the need for more apparent legislative statutes, enhanced training for investigators, and a more robust legal framework to ensure fair and effective law enforcement. By addressing these issues, the criminal justice system can be improved, ensuring equitable and unbiased treatment for all individuals, regardless of social standing or political influence.

Keywords—Detention; Firli Bahuri Case; Investigation; Subjective Conditions of Detention.

I. INTRODUCTION

The criminal justice system in Indonesia operates through a sequential process to handle criminal matters, beginning with an inquiry, then proceeding to an investigation and prosecution, and concluding with a judge's verdict. Each level involves different law enforcement agencies with the power to detain individuals as specified by the Criminal Procedure Code (KUHAP).[1] Investigators can arrest persons once they meet specific criteria during the investigative process. Nevertheless, detention is not obligatory until investigators determine the need to utilize force against the suspect. One of the cases that attracted public attention was the determination of Firli Bahuri as a suspect, who, at the time of his determination, served as the active leader of the Corruption Eradication Commission (KPK). This determination was made by Polda Metro Jaya investigators based on alleged violations of Article 12e, Article 12b, and Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001 in conjunction with Article 65 of the Criminal Code.[2] This case started with a public report on August 12, 2023, regarding alleged corruption in case management at the Ministry of Agriculture. After several inquiries and investigations, Firli Bahuri was finally named a suspect on November 22, 2023.

The focal legal issue captivating public interest is whether the investigator's decision to refrain from apprehending Firli Bahuri conformed to pertinent legal protocols.[3] The pressure from various entities, including ICW (Indonesia Corruption Watch) and MAKI (Masyarakat Anti Korupsi Indonesia), advocating for Firli Bahuri's detention arises from apprehensions that he might abscond or unduly influence other witnesses. According to the Criminal Procedure Code, detention is warranted when there are concerns that the suspect may flee, tamper with evidence, or commit another offense. From this perspective, the primary point of contention is whether the investigator's decision not to detain Firli Bahuri aligned with established legal protocols.

Evaluating this matter necessitates examining the investigator's authority to detain, the response to public pressure, and the justification for not detaining despite substantial evidence and numerous witnesses.[4] The central inquiry is whether the decision by Polda Metro Jaya investigators to not apprehend Firli Bahuri adhered to the Criminal Procedure Code's protocols and stipulations. It's equally important to understand how public influence and anti-corruption organizations affected detention decisions in similar cases. This analysis is crucial in providing a comprehensive understanding of the application of law in corruption cases involving officials in positions of power, particularly concerning their potential imprisonment.

II. LITERATURE REVIEW

A. *Problems of the Detention Process in the Criminal Justice System*

The challenges encountered in the detention process within the criminal justice system expose numerous issues that arise during the implementation of detention in criminal law. One significant problem identified is the inefficacy of the detention process, attributed to ambiguous limitations, particularly the provision for temporarily suspending the detention of suspects as stipulated in Article 31 of the Criminal Procedure Code (KUHAP).[5] The detention process is further influenced by factors such as legal substance, legal structure, and legal culture.

The legal efficiency theory is a pivotal consideration in the detention process, emphasizing the necessity of balancing law enforcement and human rights protection. This theory cautions that inefficiencies in detention techniques can disrupt this balance. Equally important is the substantive legal approach, which underscores the crucial role of legal content in guiding the detention process. Ambiguities in the rules, as illustrated in Article 31 of the Criminal Procedure Code, can lead to disputes and challenges in implementation.

Legal structure theory elucidates the significance of legal structure and hierarchy in shaping legal processes, including detention cases. Uncertainty in regulations is a critical factor influencing executing and implementing legal actions. Meanwhile, legal culture theory highlights the importance of values, norms, and cultural influences in shaping legal processes, ultimately affecting decision-making and implementing detention policies. An in-depth understanding of the legal culture underlying the detention process can provide valuable insights into the various factors influencing the practical application of detention.

B. *Principle of Clarity in the Meaning of the Formulation of Norms for Detention According to the Criminal Procedure Code.*

Ensuring clarity in legislative regulations is paramount. H.L.A. Hart contends that the effectiveness of law hinges on using unambiguous and precise language to formulate legal norms or regulations. Hart emphasizes the necessity for accurate and consistent interpretation to ensure that all individuals involved in the legal process can comprehend and apply the law uniformly.[6] Conversely, Lon Fuller highlights the potential for authority abuse or arbitrary interpretation by those in power due to ambiguous legal standards. Fuller advocates strongly for clear and easily understandable laws to prevent chaos and injustice within the legal framework.

The vague and unclear language often found in the Criminal Procedure Code (KUHAP) frequently leads to various interpretations, which can infringe upon the rights of individuals suspected or accused of crimes. Law enforcement professionals, including investigators, prosecutors, and judges, play a crucial role in this issue, often exercising their authority subjectively due to these multiple interpretations of the law. The absence of explicit guidance regarding the subjective reasons for detention in legal procedures is a significant concern. This gap results in investigators potentially neglecting their responsibility to detain individuals suspected of wrongdoing. These subjective requirements lack clear norms or criteria for investigators to determine whether detention is warranted, leading to varying subjective interpretations that influence their final decisions.

III. METHOD

The research methodology employed in this study is a normative legal approach, predominantly focusing on literature. This doctrinal research examines legal standards codified in statutes and other legal literature.[7] Normative juridical techniques are utilized to scrutinize the content of primary and secondary legal sources, including statutes, regulations, court decisions, academic papers, and legal literature. The chosen methodology involves an in-depth analysis of laws and regulations pertinent to the specific issue under investigation, with a primary focus on the legal obligations stipulated in the Criminal Procedure Code (KUHAP), particularly those concerning the criteria and process of detention. This study relies on secondary data sourced from literature as its primary resource. The secondary material comprises various written legal documents, such as books, legal journals, essays, seminar papers, and research reports that specifically address detention within the criminal justice system in Indonesia. An exhaustive analysis of these data was undertaken to understand the factors and rationales behind the decision not to detain the suspect, Firli Bahuri, and the difficulties investigators encountered in executing the detention. The data collection process was meticulous, involving an extensive review of various journals and books. Law journals, in particular, provide critical, empirically-based analyses of detention procedures and their application across different contexts. Publications in the legal field, especially those centered

on criminal procedural law, offer a robust theoretical foundation and historical context regarding the fundamentals of detention procedures. Both types of information are crucial for understanding the actual implementation of the law and the factors influencing detention decisions. This research is vital in determining the reasons or considerations that led to the decision not to detain the suspect, Firli Bahuri. It is imperative to ascertain whether the basis for detention is lawful, as defined in the Criminal Procedure Code, or if it is influenced by practical and administrative considerations such as health risks, security threats, or other circumstances that may affect the investigator's judgment. Additionally, this study aims to identify the obstacles investigators face in detaining Firli Bahuri. These challenges may include ambiguous legal interpretations, political or social pressures, limited resources, or potential risks to the safety of the involved parties. The findings of this research will provide valuable insights into the factors that influence detention decisions within the criminal justice system in Indonesia.

IV. RESULT AND DISCUSSION

According to Article 1 Number 21 of the Criminal Procedure Code (KUHAP), detention is placing a suspect or defendant in a particular place by an investigator, public prosecutor, or judge with his or her determination, by and according to the method regulated by this law. Based on the provisions of Article 20 of Law Number 8 of 1981 concerning Criminal Procedure Law (from now on referred to as KUHAP), investigators or assistant investigators, public prosecutors, and judges also have the authority to carry out detention for investigation, prosecution, and examination in court.[8] Furthermore, Article 21 of the Criminal Procedure Code stipulates that detention can only be carried out if subjective or objective requirements are met. Subjective conditions, regulated in Paragraph (1) of the article, raise concerns that the suspect or accused will flee, damage or destroy evidence, and repeat criminal acts. This subjective provision can be interpreted so that law enforcement officials may detain a suspect even though it is unnecessary or that the suspect should be detained. However, law enforcement officers do not detain him.

In addition to subjective conditions, KUHAP also regulates the objective conditions for detention in the provisions of Article 21 Paragraph (4), namely detention can only be imposed on a suspect or defendant in cases where: a) the criminal act is punishable by imprisonment of five years or more; and b) for committing certain offenses that are specifically regulated. Based on the provisions of Article 21 of KUHAP, it is apparent that suspects/defendants are not obligatorily detained. Detention is only carried out if the detention requirements as stipulated in Article 21 Paragraph (4) KUHAP (objective conditions) and the circumstances as stated in Article 21 Paragraph (1) KUHAP (subjective conditions) are met. However, besides the subjective and objective conditions, the appropriateness or sense of justice in society needs to be considered in applying Article 21 KUHAP.

The notion of ensuring clear and unambiguous interpretation in legislation is of utmost importance, particularly when it comes to matters of detention. Legal experts, including H.L.A. Hart, argue that a well-functioning law requires clear and precise language when creating standards or legal requirements.[9] Hart emphasizes the importance of clarity in communicating meaning, as it ensures a consistent comprehension and implementation of the law among all pertinent entities, such as law enforcement agencies, courts, and law-abiding citizens. Lon Fuller highlights the need of exactness in defining legal rules as a fundamental aspect of the concept of "justice that opposes arbitrariness." Fuller argues that the existence of ambiguity in the establishment of legal standards might lead to the abuse of power or the arbitrary interpretation of these norms by authorities. Hence, he underscores the necessity of unambiguous and comprehensible legal stipulations that apply universally, in order to avert disorder and inequity inside the legal framework.

In the detention in the criminal justice system, the lack of clarity in the subjective conditions of detention has encouraged investigators to ignore their authority to detain suspects.[10] This ambiguity in the subjective conditions can make investigators feel confused or uncertain about whether a detention action is lawful. As a result, they may tend to avoid detaining suspects to avoid getting entangled in confusing or potentially undesirable legal consequences. According to P.A.F Lamintang in his book "*Dasar-dasar Hukum Pidana Indonesia*," the detention of a suspect or defendant is a last resort (*ultimum remedium*).[11] Modderman, a former Minister of Justice of the Netherlands, when responding to a question from a member of the Dutch Parliament, Mr. Mackay, about the legal basis for imposing punishment, where he first mentioned the term "*ultimum remedium*," stated:

"Ik geloof dat dit beginsel niet alleen voortduren tusshen de regels te lezen is, maar ook herhaardelijk, misshien in een anderen vorm wordt uitgesproken. Het beginsel is dit: dat alleen datgene mag gestrafworden, wat in de eerste plaats onregt is. Dit is eene conditio sine qua non. In de tweede plaats komt de eisch er bij dat het een onregt zij, waarvan der ervaring heeft geleerd dat het door geene andere middel behoorlijk is te bedwingen. De straf moet blijven een ultimum remedium. Uit den aard der zaak zijn aan elke strafbedreiging bezwaren verbonden. Ieder verstandig mensch kan dit ook zonder toelichting wel begripen. Dat wil niet zeggen dat men de strafbaarstelling achterwege moet laten, maar wl dat men steeds, tegenover elkander moet wegen de voordelen en de nadelen van de strafbaarstelling, en toezin dat niet de strafvorde een geneesmiddel erger dan den kwaal."

This principle can not only always be read in the regulations, but has also been repeatedly stated, although perhaps in a different form.[12] The principle states that punishable acts are, first and foremost, legal violations. This situation is a condition *sine qua non*. Second, punishable acts are those legal violations which, according to experience, cannot be eliminated by other means. Punishment should be a last resort. Every threat of punishment will indeed have objections.[13] However, this does not mean that we may ignore the determination of when someone can be punished, but rather that an assessment of the benefits and drawbacks must be made and care taken to ensure that punishment genuinely serves as a remedy and does not worsen the condition.

Firli Bahuri is a retired officer of the Indonesian National Police who served as the Chairman of the Corruption Eradication Commission (KPK) for the 2019-2023 term. He is the 6th Chairman of the KPK and has a long and varied career background within the police force. Some significant positions that Firli Bahuri has held include being an aide to the Vice President of the Republic of Indonesia, Boediono, Deputy Chief of Banten Regional Police, Chief of Police Internal Affairs Division (Karopaminal) of the Police Profession and Security Division (Divpropam Polri), Chief of Banten Regional Police, Chief of Operational Bureau (Karodalops) of the Police Operations Staff (Sops Polri), Deputy Chief of Central Java Regional Police, Chief of West Nusa Tenggara Regional Police, Deputy for Enforcement at the KPK, Chief of South Sumatra Regional Police, and Chief of the Police Security Maintenance Agency (Baharkam Polri).[14]

Given the extensive and diverse background of Firli Bahuri, his designation as a suspect on November 22, 2023, was a significant development for the police investigators. However, this investigation process has sparked negative responses from the public as, to date, Firli Bahuri has not been detained. Considering Firli Bahuri's background as a retired police officer with various strategic positions previously entrusted to him, he meets the subjective criteria for detention, as there are concerns he could destroy evidence or influence witnesses. Based on secondary data analysis, several main reasons and considerations were found regarding why Firli Bahuri was not detained.[15] First, regarding legal considerations, the Criminal Procedure Code establishes specific subjective and objective criteria for detention, such as the risk of fleeing, destroying evidence, or repeating a criminal offense.[16] The interpretation of these criteria could be more precise, causing differences of opinion as to whether Firli Bahuri meets the detention conditions. For example, the possibility of destroying evidence or influencing witnesses is subjective and can vary between legal practitioners. Second, practical and administrative considerations influence this decision. Firli Bahuri's health condition may be one of the main reasons why the suspect's health is an essential consideration in deciding to detain him. Apart from that, security risks are also a factor because the detention of well-known figures such as Firli Bahuri can pose security challenges for both the suspect and the detention facility. Furthermore, political and social pressures also play a significant role. The political and social ramifications of the detention of a former high-ranking police official and current chairperson of the Corruption Eradication Commission may deter investigators from carrying out an arrest, given the tremendous impact it could have on society and the political arena.

However, the police investigators have yet to detain Firli Bahuri. In contrast, in narcotics abuse cases, most perpetrators are immediately designated as suspects and detained soon after being caught red-handed.[17] Even in theft or embezzlement cases involving lower-class individuals, the police frequently carry out detentions. This is despite the fact that proving such cases is relatively easier compared to proving corruption cases involving high-ranking officials like a Minister. This situation has sparked significant public reactions, as it seems the law is sharp downwards but blunt upwards. There are many cases where detention of the suspect is unnecessary, but the investigators insist on detaining them until the case becomes viral and triggers public reactions, only then do law enforcers correct their legal actions.

In handling the case of Firli Bahuri, there are clear indications that justice still needs to be fully upheld. His political influence and position appear to have swayed the legal process, leading to the decision not to detain him despite his status as a suspect. This phenomenon underscores an imbalance in law enforcement, where justice appears sharp downward but blunt upward. Such cases provoke societal concerns about the need for the law to be applied fairly and equally to all parties. Although legal statutes and procedures are in place, handling this case highlights the crucial need for law enforcement to remain independent from political pressure and personal interests. Efforts must be made to ensure that external factors do not influence law enforcement and that everyone, regardless of social status or political position, is treated equally before the law to achieve true justice.

In Indonesia, investigators are required to consider both subjective and objective criteria, as well as the prevailing sense of fairness in society, when deciding whether to detain someone. However, the lack of clarity in subjective criteria often leads to confusion and hesitancy among investigators, as they try to avoid ambiguous legal repercussions. Article 21 of the Criminal Procedure Code outlines specific criteria for detention, but these are often seen as ambiguous and lacking in precision. Legal scholars such as H.L.A. Hart and Lon Fuller have stressed the importance of unambiguous rules to ensure legal clarity and fairness. Fuller, in particular, highlighted the need for clear wording in statutes to prevent the misuse of power or misinterpretation of the law.

To address the ambiguity in detention decisions, legal experts, scholars, and practitioners have proposed several strategies.[18] These include providing more precise guidance and clarifications on both subjective and objective

detention criteria, thereby empowering investigators to make more accurate judgments.[19] A key aspect of these strategies is the emphasis on legal education. Leading academics from prestigious universities and professional legal groups recommend enhanced training for investigators and legal practitioners. This training focuses on the interpretation and application of detention criteria, aiming to boost investigators' competence and confidence in their decision-making abilities. Non-governmental organizations such as the Institute for Research and Advocacy for Judicial Independence and the Commission for Missing Persons and Victims of Violence actively advocate for these improvements through legal education and advocacy initiatives.

Legal authorities like Bambang Widjojanto, a former Deputy Chairman of the Corruption Eradication Commission, and Todung Mulya Lubis, a prominent legal practitioner, have suggested enhancing the existing legal framework to safeguard investigators from undue political or societal interference. They stress the importance of providing legal protections and autonomy to investigators in carrying out their duties. Moreover, ensuring that law enforcement agencies are adequately resourced to handle detention cases effectively and safely is crucial. The government and the DPR are continually amending the Criminal Procedure Code to enhance the clarity and specificity of detention regulations.

Several notable advancements have been observed in Indonesia regarding applying these guidelines. The government and the DPR are revising the Criminal Procedure Code and refining detention regulations to ensure clarity. Legal training and education programs have been implemented to improve investigators' and legal practitioners' understanding of detention criteria. These programs cover the analysis and application of detention criteria and a comprehensive understanding of related legal principles. For instance, the Indonesian National Police (Polri) organizes training sessions with legal education institutions like the National Police Education Institute (Lemdikpol).

Establishing autonomous agencies such as the Corruption Eradication Commission (KPK) aims to protect investigators from political and societal meddling, ensuring more equitable law enforcement. The KPK has exclusive jurisdiction over corruption cases and provides safeguards to shield its investigators from external influence. Additionally, the government has increased funding and resources for the police and other law enforcement agencies. This boost aims to enhance the effectiveness of law enforcement operations by ensuring sufficient resources for the efficient and safe handling of detention cases. For example, the National Police budget has been increased in the RAPBN, and modernization initiatives have been undertaken to upgrade the equipment and technology used in law enforcement.

An improved legal framework has been established to protect investigators against undue political or societal interference. It includes providing legal safeguards and assurances of autonomy for investigators in performing their duties. An example is the Law on Witness and Victim Protection, which protects investigators in specific situations. Despite ongoing challenges, continuous efforts and reforms in Indonesia aim to address the issue of unclear detention standards and improve impartiality in law enforcement.

V. CONCLUSION

The decision to refrain from incarcerating Firli Bahuri, despite his status as a suspect, raises critical questions about the equity of law enforcement, given the existing legal constraints on detention outlined in the Criminal Procedure Code. This situation underscores a troubling discrepancy within the enforcement of laws, where minor infractions often face swift and severe consequences. At the same time, perpetrators of serious offenses are treated with leniency and less stringent measures. Such a phenomenon illustrates a tendency within law enforcement to impose harsher measures on individuals with lower social and political standing. In contrast, those with higher social and political positions enjoy greater leniency.

The handling of the Firli Bahuri case further emphasizes the importance of steadfastness, meticulousness, and veracity in legal statutes—attributes essential for laws to exert their intended influence. The lack of clarity in the subjective standards for detaining individuals can lead investigators to shirk their responsibility in apprehending suspects, thereby disrupting the administration of justice. Thus, developing unambiguous and meticulous detention criteria that consider subjective and objective variables becomes imperative.

Moreover, there is a pressing need to enhance the training of investigators and legal professionals while strengthening the legislative framework to protect investigators from unjust political or social influences. Sufficient resource allocation is crucial to facilitate the efficient and secure execution of law enforcement duties. Implementing these measures will significantly bolster the equity and efficacy of the legal system, ensuring a more just application of the law across all levels of society.

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