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Legal Certainty Regarding Detention by Investigators Based on Law Number 20 of 2025 Concerning the Criminal Procedure Code

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ABSTRACT

Detention is a form of coercive measure in the criminal justice process that limits a person's right to personal liberty, so its implementation must be based on the principles of legal certainty, limitation of authority, and protection of human rights. The formation of Law Number 20 of 2025 concerning the Criminal Procedure Code is part of the reform of the criminal justice system in Indonesia that aims to strengthen the protection of suspects' rights and create a more objective, proportional, and accountable detention mechanism. However, the application of subjective conditions for detention still has the potential to give rise to multiple interpretations and opens up wide discretion for investigators. This study aims to analyze the legal certainty of detention by investigators based on Law Number 20 of 2025, specifically regarding the regulation of detention conditions and limitations on the authority of coercive measures, as well as examine the concept of subjective conditions for detention from the perspective of due process of law and human rights protection. This study uses a normative legal research method with a statutory, conceptual, and case approach, which is analyzed qualitatively based on primary, secondary, and tertiary legal materials. The research results show that Law Number 20 of 2025 brings significant changes through the formulation of more objective and measurable detention indicators. This reformulation strengthens the principle of legal certainty and limits the authority of law enforcement officers in the use of coercive measures. Furthermore, this new regulation aligns with the principles of due process of law and human rights protection, as detention must be based on objectively verifiable facts and circumstances. However, its effective implementation still requires technical guidelines, effective oversight, and increased professionalism of law enforcement officers to prevent abuse of authority in criminal justice practices.

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Introduction

Detention in the criminal justice system is one of the most serious forms of coercive measures because it directly restricts an individual's right to personal liberty until a final and

binding court decision is issued. In a state governed by the rule of law, any restrictions on human rights must be based on clear, rational, and accountable law, so that detention cannot be carried out arbitrarily by law enforcement officials. Therefore, regulations regarding detention are crucial in maintaining a balance between the interests of law enforcement and the protection of individual rights as citizens.

The development of the criminal justice system in Indonesia shows a paradigm shift in the regulation of criminal procedural law, particularly through the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code as a replacement for Law Number 8 of 1981 concerning the Criminal Procedure Code. The formation of this new law was motivated by the need to adapt criminal procedural law to societal developments, the dynamics of modern crime, and demands for the protection of human rights and the principle of due process of law in criminal justice practices in Indonesia.

Law Number 20 of 2025 introduced fundamental changes to the regulation of detention, particularly regarding detention conditions and restrictions on the authority of law enforcement officers to use coercive measures. Whereas previously, the old Criminal Procedure Code *(KUHAP)* based subjective detention conditions primarily on investigators' "concerns" regarding the suspect's actions, the new *KUHAP* clarifies these regulations, focusing on more objective and measurable indicators. This reform demonstrates the state's efforts to strengthen legal certainty in detention, eliminating the need for complete reliance on subjective judgment by law enforcement officers.

However, in law enforcement practice, the issue of legal certainty regarding detention remains a hotly debated issue. This is because detention is often implemented as a first step in the investigation process without thorough consideration of the principle of proportionality and actual legal necessity. In some cases, detention is even carried out in cases where alternatives to detention are objectively feasible, drawing criticism from various academics and human rights observers.

Empirically, various reports indicate that detention practices in Indonesia still pose serious problems related to the protection of suspects' rights. Data from the National Commission on Human Rights shows that complaints related to alleged rights violations during the investigation and detention process have remained quite high in recent years. This situation indicates that oversight mechanisms for detention are not functioning optimally and that there is still potential for abuse of authority by law enforcement officials.

Furthermore, a number of pretrial rulings also indicate that detention by investigators is often declared invalid by the courts because it is deemed not to meet the formal or material requirements stipulated in laws and regulations. These rulings indicate that there is still a mismatch between the legal norms governing detention and their implementation in criminal justice practice. This situation indirectly creates legal uncertainty for the public and can erode public trust in Indonesia's law enforcement system.

From a legal theory perspective, legal certainty is a key element in the concept of a state based on the rule of law *(rechtsstaat)*. Legal certainty requires that every action by the

government and law enforcement officials be based on clear, consistent, and predictable rules. In the context of detention, legal certainty relates not only to the existence of written rules but also to how those rules are applied fairly and non-discriminatorily to everyone facing the legal process.

The principle of due process of law asserts that any action that restricts individual rights must be carried out based on fair legal procedures and subject to judicial review. In the context of detention, this principle requires that detention be carried out only when absolutely necessary and based on objective legal grounds. Therefore, the provisions regarding detention in Law Number 20 of 2025 must be understood as part of an effort to strengthen the protection of suspects' rights in the Indonesian criminal justice system.

From a human rights perspective, the right to personal liberty is a fundamental right guaranteed by the constitution and international legal instruments, including the International Covenant on Civil and Political Rights, which Indonesia has ratified. Arbitrary detention without a clear legal basis can be categorized as a human rights violation. Therefore, all detention must be carried out proportionally, accountably, and accompanied by effective oversight mechanisms.

Law Number 20 of 2025 essentially seeks to strengthen the principle of human rights protection by limiting the use of subjective conditions for detention. However, in practice, several indicators used in this provision remain open to multiple interpretations, such as "obstructing the investigation process" or "providing false information," which can be interpreted differently by law enforcement officials without clear technical guidelines.

On the other hand, the reform of detention provisions in the new Criminal Procedure Code also demonstrates a paradigm shift in the Indonesian criminal justice system, from a repressive approach to one more oriented toward protecting human rights and limiting state power. In this context, detention is no longer viewed as an automatic measure for every suspect, but rather as a measure of last resort (ultimum remedium) used only when absolutely necessary for the purposes of the criminal justice process.

Based on this description, it can be hypothesized that the detention provisions in Law Number 20 of 2025 have strengthened the principle of legal certainty through more objective indicators in detention conditions. However, the effectiveness of these provisions still depends heavily on implementation by law enforcement officials, effective oversight mechanisms, and consistent application of the principle of due process of law in criminal justice practices in Indonesia.

This research is crucial because it aims to analyze the legal certainty surrounding detention by investigators under Law Number 20 of 2025 concerning the Criminal Procedure Code, particularly regarding limitations on the use of coercive measures and the protection of human rights. Therefore, this research is expected to contribute to the development of a more just, accountable, and human rights-oriented criminal procedure within the Indonesian criminal justice system.

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Based on the background description that has been presented, particularly regarding the regulations that are excluded by the researcher based on Law Number 20 of 2025 concerning the Criminal Procedure Code and the problem of legal certainty in the excluded provisions, the problem formulation in this research is formulated as follows:

1. How are detention arrangements by investigators based on Law Number 20 of 2025 concerning the Criminal Procedure Code reviewed from the principle of legal certainty and limitations on the authority of coercive measures in the Indonesian criminal justice system?
2. How is the concept of subjective conditions for detention by investigators based on Law Number 20 of 2025 concerning the Criminal Procedure Code analyzed from the perspective of due process of law and protection of human rights?

Method

This study uses a normative legal research method, namely research conducted by examining and reviewing applicable legal norms in the positive legal system, particularly those related to the regulation of detention by investigators based on Law Number 20 of 2025 concerning the Criminal Procedure Code. Normative legal research was chosen because this study focuses on analyzing the principles, norms, and legal principles that regulate detention as part of coercive measures in the Indonesian criminal justice system.

The approaches used in this research include a statutory approach, a conceptual approach, and a case approach. The statutory approach is conducted by examining various legal provisions related to detention, particularly Law Number 20 of 2025 concerning the Criminal Procedure Code, as well as other regulations related to human rights protection and the authority of law enforcement officers in the investigation process.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code, Law Number 39 of 1999 concerning Human Rights, and court decisions relating to detention and pretrial motions.

The legal material collection technique is carried out through library research, which involves collecting, reading, recording, and reviewing various legal materials relevant to the research problem. Literature research is conducted systematically to obtain data and information that is relevant and valid to support the research discussion.

Results and Discussion

1. Legal Certainty Regarding Detention by Investigators Based on Law Number 20 of 2025 Concerning the Criminal Procedure Code

Detention in criminal procedure law is essentially a form of restriction on a person's right to liberty imposed by the state through law enforcement officials in order to ensure the smooth running of the criminal justice process. In the modern criminal justice system,

detention cannot be viewed solely as an instrument of state repression, but must also be understood as a legal action that must comply with the principles of legal certainty, protection of human rights, and limitations on state power. Therefore, any regulations regarding detention must be formulated clearly and not open to multiple interpretations to avoid opening the opportunity for arbitrary action by law enforcement officials.

In the development of criminal procedure law in Indonesia, the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code represents a legal reform aimed at addressing various weaknesses in the old Criminal Procedure Code, particularly those related to coercive mechanisms and the protection of suspects' rights. This reform arose because the old Criminal Procedure Code was deemed no longer capable of addressing societal developments and the complexity of modern law enforcement practices, which demand a more transparent, accountable, and human rights-oriented criminal justice system.

One of the key changes in Law Number 20 of 2025 is the regulation of detention by investigators, which is aimed at strengthening legal certainty in the use of coercive measures. Under the previous Criminal Procedure Code, subjective requirements for detention were primarily based on investigators' "concerns" that the suspect would flee, destroy evidence, or reoffend. These provisions were considered too abstract and provided law enforcement officials with extensive discretion, potentially leading to abuse of authority in investigative practice.

Law Number 20 of 2025 attempts to address this issue by formulating more objective indicators for detention requirements. Detention is no longer based solely on the subjective assumptions of investigators but must be supported by concretely demonstrable facts and circumstances. This reform demonstrates a paradigm shift from a repressive approach to one that upholds the principles of legal certainty and human rights protection in the criminal justice process.

From the perspective of legal certainty theory, the law must be able to provide clear norms and guarantee that every government action is carried out based on clear and predictable rules. Sudikno Mertokusumo stated that legal certainty requires the existence of rules that can be implemented consistently so that the public is protected against arbitrary actions. In the context of detention, legal certainty is crucial because such actions are directly related to the restriction of a person's right to liberty before a final and binding court decision is issued.

Furthermore, Satjipto Rahardjo argues that the law serves not only as a tool of social control but also as a means of protecting the rights of the people from abuse of state power. This opinion suggests that detention by investigators must be placed within the framework of human rights protection, ensuring that any restrictions on individual freedom must be implemented proportionally and based on clear legal principles.

In law enforcement practice, various issues related to detention by investigators continue to arise, creating legal uncertainty. Many detention cases are subsequently challenged through pretrial motions because they are deemed to not meet the legal

requirements stipulated in laws and regulations. This situation demonstrates that although normative regulations regarding detention have been updated, their implementation in the field still faces various challenges, particularly regarding the professionalism of law enforcement officers and oversight mechanisms for the use of coercive measures.

The pretrial mechanism is essentially a tool for monitoring the actions of law enforcement officers during the investigation process, including detention. However, in practice, this mechanism remains reactive, as it can only be implemented upon a request from the aggrieved party. Therefore, the effectiveness of pretrial as a tool for monitoring detention still needs to be strengthened to provide optimal legal protection for suspects.

On the other hand, Law Number 20 of 2025 also strengthens the principle of due process of law in detention. This principle requires that any action restricting an individual's rights must be carried out based on fair legal procedures and subject to judicial review. In the context of detention, this principle is reflected in the strengthening of objective and subjective requirements for detention and the obligation for investigators to base detention decisions on clear evidence and legal grounds.

From a human rights perspective, the right to personal liberty is a fundamental right guaranteed by the constitution and international legal instruments. Therefore, detention must be carried out proportionally and used only when absolutely necessary for the purposes of the criminal justice process. Muladi emphasized that a modern criminal justice system must prioritize human rights as a primary principle in all actions by law enforcement officials, including the use of coercive measures.

Furthermore, the reform of detention regulations in Law Number 20 of 2025 also demonstrates efforts to limit the discretionary powers of law enforcement officers. These limitations are crucial to prevent abuse of authority that could harm suspects' rights and undermine public trust in the law enforcement system. With more objective indicators for detention requirements, it is hoped that detention measures can be carried out more transparently and accountably.

Based on this description, it is clear that the regulation of detention by investigators under Law Number 20 of 2025 has essentially demonstrated significant progress in realizing legal certainty and protecting human rights in the Indonesian criminal justice system. However, the success of this regulation depends not only on the quality of legal norms but also on the integrity of law enforcement officials, the effectiveness of oversight, and the consistent application of the principle of due process of law in law enforcement practices in Indonesia.

2. The Conception of Subjective Conditions for Detention by Investigators Based on Law Number 20 of 2025 Reviewed from the Perspective of Due Process of Law and Human Rights

Subjective detention requirements in the Indonesian criminal procedure system are both crucial and problematic aspects of law enforcement practice, as they directly relate to

law enforcement officials' assessment of the suspect's potential actions. Under the old Criminal Procedure Code, subjective detention requirements were based on concerns that the suspect would flee, destroy evidence, or reoffend. These provisions essentially gave investigators extensive discretion in determining whether or not to detain an individual.

The main problem with these subjective requirements is the lack of clear and measurable parameters regarding the limits of "concern" as defined by the law. As a result, detention often relies solely on the subjective judgment of law enforcement officials, without any concrete and objective indicators. This situation has the potential to lead to arbitrary action and violates the principles of legal certainty and the protection of human rights.

From the perspective of due process of law, any state action that restricts individual rights must be carried out based on fair, rational, and legally testable legal procedures. This principle places the protection of individual rights at the heart of the criminal justice system, so detention should not be carried out solely based on subjective assumptions or suspicions by law enforcement officials. Therefore, the subjective conditions for detention must be clearly formulated to prevent the possibility of abuse of authority in investigative practices.

Law Number 20 of 2025 concerning the Criminal Procedure Code essentially attempts to reformulate the subjective requirements for detention, moving toward a more objective and fact-based approach. Under this new regulation, detention is no longer based solely on concerns but must be accompanied by specific indicators demonstrating concrete actions by the suspect that could potentially obstruct the criminal justice process. This reform demonstrates a paradigm shift in Indonesia's criminal procedure system toward stronger protection of suspects' rights.

This change represents a significant step in strengthening the principle of due process in Indonesia's criminal justice system. With clearer and more objective indicators, detention measures can be legally tested and no longer rely solely on the subjective judgment of law enforcement officials. This also provides greater protection for suspects' rights, as detention decisions must be based on concrete, verifiable facts.

From a legal theory perspective, the concept of due process of law requires restrictions on the use of state power in law enforcement. According to Satjipto Rahardjo, the law should serve as a means of protecting society from excessive power. Therefore, any action by law enforcement officials that restricts individual rights must be subject to the principle of legality and strict legal oversight to prevent injustice in criminal justice practices.

Furthermore, Muladi emphasized that human rights protection in the criminal justice system must be the primary focus in the use of coercive measures, including detention. Arbitrary detention without clear legal grounds not only violates the principle of due process of law but can also be categorized as a violation of the right to personal liberty guaranteed by the constitution and international legal instruments.

In practice, various pretrial cases demonstrate that detention by investigators is still frequently questioned because it is deemed to not meet applicable legal requirements. Numerous court decisions declare detentions invalid because they lack sufficient legal

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justification or are carried out without proper procedures. This demonstrates that the primary problem with detention lies not only in the substance of the legal provisions, but also in their implementation and oversight of the actions of law enforcement officers.

The reform of detention regulations in Law Number 20 of 2025 also demonstrates an effort to balance the interests of law enforcement with the protection of human rights. The state retains the authority to detain individuals for the purposes of the criminal justice process, but this authority is limited by stricter conditions and clearer oversight mechanisms. Thus, detention is no longer viewed as an absolute authority of law enforcement officials, but rather as an authority that must be legally accountable.

From a human rights perspective, restrictions on the right to personal liberty can only be implemented if they meet the principles of legality, necessity, and proportionality. Therefore, detention must truly be a last resort (ultimum remedium) and not an automatic step in every investigation. This principle is crucial to prevent criminalization and excessive repression against someone who is still legally a suspect.

Although Law Number 20 of 2025 has strengthened the principles of legal certainty and human rights protection in detention, the effectiveness of these regulations remains highly dependent on the quality of law enforcement officers and the oversight mechanisms operating within the criminal justice system. Without the integrity and professionalism of law enforcement officers, well-formulated legal norms remain susceptible to abuse in practice.

Based on this description, it is clear that the reformulation of subjective detention requirements in Law Number 20 of 2025 represents a progressive step in strengthening the principle of due process of law and the protection of human rights in the Indonesian criminal justice system. However, the success of this reform will be determined not only by the quality of legal norms, but also by the consistency of implementation, the effectiveness of oversight, and the commitment of law enforcement officials to upholding the principles of the rule of law fairly and responsibly.

Conclusion

1. Regulations on detention by investigators based on Law Number 20 of 2025 concerning the Criminal Procedure Code have essentially shown significant progress in realizing legal certainty and limiting the authority to use coercive measures in the Indonesian criminal justice system. This regulatory reform is evident in changes to detention requirements, which were previously more subjective, to become more objective and measurable. With clearer indicators for detention, investigators' authority is more limited and can be legally tested, thereby reducing the potential for abuse of authority in investigative practices. However, the effectiveness of these regulations still depends heavily on the integrity of law enforcement officers, the consistency of law enforcement, and the effectiveness of oversight mechanisms within the criminal justice system.

2. Investigators' conception of subjective detention requirements based on Law Number 20 of 2025 from the perspective of due process of law and human rights demonstrates a strengthening of the protection of suspects' rights in the criminal justice process. Reformulating subjective detention requirements toward more objective indicators limits the use of discretion by law enforcement officers to prevent arbitrary detention. This regulation also demonstrates harmonization between national criminal procedure law and the principles of human rights protection and international legal standards. However, its implementation still requires clearer technical guidelines and increased professionalism of law enforcement officers so that the principle of due process of law can truly be effectively implemented in law enforcement practices in Indonesia.

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