

Conference Paper

Epistemological Mistakes in Determining Suspects Based on the Concept of Trichotomy Relationships

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The National Police Investigator of the Republic of Indonesia, based on Article 7 paragraph (1) of the Criminal Procedure Code, has the authority to determine someone as a suspect for a criminal offense. The implementation of this authority is not absolutely; however, there are several restrictions and parameters, as established both through the Criminal Procedure Code or through the Decision of the Constitutional Court of the Republic of Indonesia Number 21/PUU-XII/2014 dated April 28, 2015. Moreover, restrictions and parameters require an interpretive-cognitive touch from the investigator itself. Thus, there is often a mistake in epistemology or mistaken knowledge in issuing and issuing a decision to determine someone as a suspect. Therefore, the suspect still occupies the Binary Inferior (The Other) opposition in the process of criminal justice practices in Indonesia. This research tries to question the wrong epistemological model in determining the suspect in the realm of investigation. The research methods used are legal methods with the Trichotomy Relationships approach, Communication Speech Acts approach, and Critical Discourse Analysis approach. The results of this study show that there is a state of superior binary opposition (the central) from the investigator to decide by ignoring the legal rights of someone who was used as a suspect.

Keywords: determination of the suspect, investigator, mistaken epistemology, trichotomy relationships

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1. INTRODUCTION

Epistemological mistakes are a phenomenon of ethical problems that move from speech activities in communication[1], as a result of mistakes in understanding a concept, which results in the emergence of error of thinking[2]. However, the wrong epistemology is not something that is not intentional. Therefore, every communication action is a representation of the anthropocentric speaker[1]. So, all interests of the speaker will also accompany in language and language (communication). Thus, speech acts in communication are something patterned[3].

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The communication activity that is polar, is a manifestation of the language strategy in legitimizing - social hegemony, the knowledge spoken has become a systemic and organized daily sense system[4].

Language strategy through the communication model is a technique for delivering messages that can have a certain impact or effect on the recipient of the message (communicant).[5] Furthermore, it can be said that the communication that arises - especially in the realm of investigation, is structuralist. Because, communication as an instrument in conveying the meaning of a reading result of text and context is determined by the activities of social interaction through the main social institution in the form of language and law that is productive and complex.[6]

Research conducted by Aan Widodo[7], gave rise to an interesting phenomenon related to the communication model put forward by law enforcement. Where, that every law enforcement seeks to ensure and prove that a criminal act actually occurs. As a result, logic in communication in the realm of investigation contains a monologue closed logic system. So, according to Umi Rozah[8], such a way of thinking of the meaning that has been set is only based on the sound of the rule as the highest truth. In fact, if it refers to Edward OS. Hiariej[9], behind the legal text there are legal principles that form it.

Ironically, when the legal language-as a communication instrument in legal activities based on the grammar-Lexical model, is only interpreted in a common sense in legal practice. In fact, obtaining academic justification for the uniqueness of the legal language that functions 'only' normatively to existing legal concepts[10]. This view, as if, deliberately, would want to eliminate the correlation between language activities and legal activities (*berrechten*). Meanwhile, the problem of behavioral attitudes from law enforcement in giving meaning to the legal text of the occurrence of legal problems is the result of an activity interpreting the legal text based on the concept of trinity of power[11], [12].

Language activities - both in the form of oral communication and written communication, in legal practice, are only directed at the determination of the interests of law enforcement itself. This is based on the existence of a false awareness of its capital in the form of Trinity of Power in the form of power relations. In this position, knowledge - as a result of interpreting activities, is controlled by power relations. Although, in principle, the power is neutral and positive, however, in the law enforcement area appears differently.

The closed logic system with the monologue model, serves to achieve order and order - originating from the paradigm of legal positivism,[13] as the final goal is the child of legal certainty. Controlling the ultimate goal, both hegemony and dominance, is an

activity to maintain the balance of the country.[14] The control effort is an attempt to determine the degree of truth that is relied on the circle of truth that is recognized, not only based on their own interests, but also the degree of truth based on the bonds of each person affiliated in the institution as a big theme to pay attention to one another.[15] Such power, basically, is a strategy in concrete preaching to create realities and patterns of behavior and produce objects of knowledge with their own truth regime.[16]

So, it is not surprising when power through the language strategy is stated - based on efforts to control the interests of institutions and individual interests, is the result of interpretation activities can be forced with violence[17] and through instruments of domination that refers to legal texts as legitimacy of these interests[18]. In the end, the recipient of the message (communicant) - in this case the person who experienced the investigation process, did not have the ability to carry out binary contamination of communication speech put forward by the investigator as an agent in the power relations.

The study of the power of power in the process of determining the suspect - in the investigation, as a result of the formation of knowledge by investigators, is not so desirable by criminal law academics. These studies, more dominated by normative studies. Research conducted by Bahran[19], which questioned how long a person holds a status as a suspect as a shortage of the decision of the Constitutional Court Number 21/PUU-XII/2014. Based on these deficiencies, Bahran makes a hypothesis that it is the potential for the emergence of abuse of authority possessed by the investigator.

In the case of this research, it seems that Bahran made a hypothesis that actually ignored the historical facts and juridical facts. Where, the problems raised in the testing process of Article 77 of the Criminal Procedure Code in the decision of the Constitutional Court Number 21/PUU-XII/2014 are only related to the expansion of pretrial objects and pretrial procedural law. So, it is not possible for the panel of judges to the Constitutional Court to decide more than what the Petitioners have requested. In addition to this, Bahran also ignored that normatively, the Criminal Procedure Code did not emphasize the time limit of the length of the investigation process. So, actually it is not a potential, but since 1981, obscurity about how long a person has become a suspect has indeed become a misuse of authority by investigators.

Other research was conducted by Panca Bachelor Putra[20], which questioned the determination of suspects by judges in the trial process of criminal cases based on Article 36 letter d of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (Law No. 18/2013), against Someone who in the trial was proven as the perpetrator, but had been stated in the People's Search List (PSL). The Panca

Bachelor of Putra argues that the legal norm is a form of anxiety in the flow of history of development and recognition of human rights in the criminal justice process.

In the study, it was clear that the occurrence of epistemological errors from the researcher by equalizing the determination of the suspect by the investigator and the determination of the suspect by the judge in the forestry criminal case. The difference is very clear, where, the determination of the suspect by the investigator is based on the fulfillment of a minimum of two pieces of evidence and the existence of a person's examination process as a witness before being named as a suspect. Meanwhile, the determination of the suspect by the judge who was based on Article 36 letter d of Law No. 18/2013 is the result of the proof process in the trial before the court and the person has been determined in the People's Search List (PSL). Thus, the judge's decision to determine as a suspect has obtained legitimacy from the proof process.

In this study, the main problem to be raised is related to how the realization of the epistemological error of investigators in interpreting the tools of evidence based on the authority they have.

2. METHODOLOGY

This study uses a legal method that uses a legal approach in general, namely the case approach, concept approach, law approach and philosophical approach. However, the advantage of using the legal method is that it is permitted to use another approach[21]. Therefore, in this study also uses the Trichotomy Approach to Relationship[22]–[27], using the interpretation of Semitoka from Roland Barthes and critical discourse analysis.

The data used is secondary data obtained from literature studies in the form of legal documents, including court decisions, indictments, and investigation administration documents and discourse from mass media both print and online.

3. RESULTS AND DISCUSSIONS

The thought construction used in this research is directed to the use of power from investigators, both Polri investigators, prosecutors investigators, Corruption Eradication Commission investigators, and civil servant investigators, to determine someone as a suspect in a criminal case. The research wants to show about the "how" of an investigator based on capital - namely the trinity of power, in himself, productively to form knowledge in decisions in the form of a Suspect Determination Letter.

Thinking patterns in instrumental communication speech acts carried out by Polri Investigators when carrying out their investigative functions based on Police Report Number LP/5464/IX/IX/2019/PMJ/Disrekrim dated September 1, 2019 regarding cases of alleged criminal acts of forgery and or ordering to place information fake into an authentic deed and or embezzlement of rights to immovable property and or entering the yard without permission and or participating in committing a crime, as referred to in Article 263 of the Criminal Code and or Article 266 of the Criminal Code and or Article 385 of the Criminal Code and or Article 167 of the Criminal Code and or Article 55 of the Criminal Code, which occurred on June 16, 2017 at the Depok City BPN Office, which then entered Phase I, only focused on Article 263 of the Criminal Code and/or Article 266 of the Criminal Code.

In order to achieve these interests, Investigators without rights and a strong legal basis, have published—as a form of social framing hiding behind legal decisions, information confirming that the Reported Party is the Land Mafia and immediately designated him as a Suspect. In addition, instead of trying to prove the crime of forgery, the investigators actually carried out the return of land boundaries, which is also not the task and function of the police investigators.

This instrumentalist action gave rise to an epistemological error through ignoring the efforts of the West Java Provincial Office to issue Letter Number MP.01.01/1152-32.600/VIII/2020 which was addressed to the Head of the Depok City Land Office which explained that the Minutes Number 70/BA/SIP/ III/2020 dated February 20, 2020 is not a measurement activity for returning the limit, however, but the appointment of a location according to the boundaries indicated by the Reporting attorney's attorney. This means that the Official Report Number 70/BA/SIP/III/2020 dated February 20, 2020 cannot be used as evidence to determine the Reported Party as a Suspect. In fact, before becoming a suspect, the Reported Party was not given the opportunity to defend himself through the exercise of his legal rights to present mitigating witnesses and testimony from the relevant Legal Experts.

The same thing happened in the Police Report Number: LP/B-121/2022/SPKT/POLRES PANGKALPINANG/POLDA BABEL dated February 17, 2022 regarding the reporting of alleged criminal acts of document falsification. Where, during the examination process, the National Police Investigator determined the Reported Party as a Suspect by ignoring scientific evidence regarding the degree of falsity of the document. This means that Polri investigators do not yet have evidence that shows empirical evidence—through research from the Forensic Laboratory, regarding what matters and deserves to be viewed as false.

Referring to the two phenomena of examination in the realm of investigation mentioned above, there has been an epistemological error which is based on a legal decision that has the power to interpret the rights of the suspect in the investigation process. Where, Polri investigators consciously ignore the intertextual interpretation of the Preamble Considering letter a and the provisions regarding the rights of suspects in Articles 50 to 68 of the Criminal Procedure Code. Rationality which is constructed as a model of the truth regime by concluding that the rights of the suspect will only be granted when he is determined to be a suspect. Thus, the investigation process is carried out in an unbalanced manner. Therefore, the Investigator will only consider the evidence obtained from the Whistleblower—because in exercising his/her authority, it only relies on the statements of the Whistleblower and witnesses from the Whistleblower, thus, the Reported Party does not have the opportunity to defend himself/herself in order to avoid determining the status of a suspect.

The situation as mentioned above also appeared in the examination process in the court session on the Indictment Letter No. Reg. Perk: PDS-I-03/M.6.14/Ft.1/01/2022 dated January 25, 2022, where investigators received a police report from a person who felt he had given an amount of money that exceeded the normal limit to take care of the issuance of a Certificate of Ownership over land to employees of the National Land Agency. However, the facts of the trial that were revealed were that between the money giver and the recipient of the money had a legal relationship based on an agreement, and not under coercion from the employees of the institution, precisely because of a request from the money giver.

In this case, since the investigation process, where the Police Investigators have ignored the fact that the criminal case is not purely a crime committed only by employees of the National Land Agency, but instead the occurrence of the crime is due to the direct contribution of the Reporting Party or Money Giver. However, this fact was ignored by the Investigators, as well as by the Public Prosecutor. Thus, it is as if what happened was that the crime was an independent and unrelated crime.

Epistemological errors also occur in the Prosecutor as an Investigator in corruption cases, as stated in the District Court Decision Number 46/Pid.Sus-TPK/2021/PN.Jkt.Pst in conjunction with the Indictment Letter No. Reg. Case : PDS-01/KOR/JKT.TM/05/2021 dated August 12, 2021. Where, the Prosecutor as a Corruption Crime Investigator has postulated a truth-games-in the form of a legal decision, to determine someone as a suspect based on the results of the interpretation of the actions taken. acts that violate Law No. 8/1995 on Articles of Capital (Law No. 8/1995), and several Ministerial Regulations in the field of Insurance and Capital Markets. The Investigating Prosecutor

conducts knowledge production based on common sense logic—state financial loss as a corruption crime, which was immediately stipulated to refer to Law No. 31/1999 on the Eradication of Corruption Crimes (UU No.31/1999).

The same thing happened in the District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp in conjunction with the District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp, there is a legal phenomenon in the form of legal interpretation from Investigating Prosecutor against the actions of the Defendants stipulated in the Indictment as an act of Corruption Crime. The two defendants were charged and charged under Article 2 Paragraph (1) *jo* Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 Paragraph (1) 1 Criminal Code and Article 3 in conjunction with Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption *jo* Article 55 Paragraph (1) the 1st Criminal Code as a Subsidiary Indictment.

The Investigating Prosecutor's decision to designate a person as a suspect is then followed by the Prosecutor's decision as a Public Prosecutor as outlined in his indictment—as contained in District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp Pgp in conjunction with District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp outlines what is essentially , Defendant AGUSTINO alias AGAT Son of TJHIE SOEN SIONG as the person who imported tin ore into the Mining and Transportation Supervision Area 1 (Batu Rusa) Bangka Marine Production Unit PT TIMAH Tbk using CV MENTARI BANGKA SUCCESS together with ALI SAMSURI Bin MUHAMMAD and TAYUDI (each of which is prosecuted separately/splitzing), between April 2019 to July 2019 or at least at a certain time in 2019, located at the Mining and Transportation Supervision Office Area 1 (Batu Rusa) Unit Marine Production Bangka PT TIMAH Tbk or at least in a place that is included in the jurisdiction of the Corruption Court at the Pangkalpinang District Court which is authorized to investigate prosecution and adjudicating the case, has committed or participated in committing acts that are against the law, namely[28]:

1. Doing acts that are contrary to Article 3 paragraph (1) of Law Number 17 of 2003 concerning State Finances (Law No. 17/2003);
2. Doing acts that are contrary to Article 2 paragraph (1) letter c of Law Number 19 of 2003 concerning State-Owned Enterprises (Law No. 19/2003);

3. Doing acts that are contrary to Article 40 paragraph (1) of the Regulation of the Minister of State for BUMN Number: PER-01/MBU/2011 dated August 1, 2011 concerning the Implementation of Good Corporate Governance which has been amended by Regulation of the Minister of State for BUMN Number: PER-09/MBU/2012 dated 6 July 2012 concerning Amendments to the Regulation of the Minister of State-Owned Enterprises Number: PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance (PERMENBUMN No. PER-01/2012);
4. Doing acts that are contrary to Article 61 paragraph (1) letter a jo Article 65 letter d jo Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11 of 2018 concerning Procedures for Regional Granting, Licensing and Reporting on Mineral and Coal Mining Business Activities (PERMEN ESDM No. 11/2018);
5. Doing acts that are contrary to Article 4 paragraph (4) in conjunction with paragraph (5) of Company Regulation Number 5 of 2016 dated December 9, 2016 concerning the Management of Tin Ore in the PT TIMAH Tbk environment; and
6. Doing acts that are contrary to Article 14 paragraph (2) in conjunction with Article 15 paragraph (3) in conjunction with Article 20 paragraph (2) Decree of the Board of Directors of PT TIMAH Tbk Number 1276/Tbk/SK-0000/18-S11.2 concerning guidelines for implementing partner procurement business in the context of land mining and marine mining cooperation within PT TIMAH Tbk.

In this case, the Investigating Prosecutor works based on a grand narrative as a myth that state financial losses originating from State-Owned Enterprises (SOE) are criminal acts of corruption. However, it should be observed that the logic of the monologue constructed by the Investigating Prosecutor, actually starts from the neglect of the principle of legal certainty itself. Therefore, if referring to the *Lex Systematische Specialiteit* principle which implies that if an act can be charged with two special laws (*Lex Specialis*), it must be carefully considered which law is more systematic, namely where the scope of the act is carried out, who is the subject of the violation, and what is the object of the violation. In fact, the *Lex Systematische Specialiteit* principle has been embodied in Article 14 of Law no. 31/1999 which affirms "Anyone who violates the provisions of the Act which expressly states that the violation of the provisions of the Law as a criminal act of corruption applies the provisions stipulated in this Law." [29]

The Investigating Prosecutor's behavior is a "playing" behavior in the arena under his control. As a result, self-awareness of capital—in the form of a trinity of power, there is a dialectic between language—in this case the *Lex Systematische Specialiteit* principle, with

parole—in this case in the form of 'state financial loss', which gives rise to a connotative (semiotic) meaning that actually reverses The meaning of the Lex Systematische Specialiteit Principle becomes universal based on empirical facts and legal subjects who are considered responsible for the emergence of state financial losses. However, this grammar game cannot be seen as a mistake, because the Investigating Prosecutor—through institutional and community support as a result of social framing, is a form of civic mindedness[30] that is maintained through his power.

Instead of wanting to enforce legal certainty, through self-awareness of capital ownership in the form of a trinity of power, the Investigating Prosecutor actually made an epistemological error against the legal principle. As a result, the determination of a person as a suspect in a corruption case will always be in a state of inferior binary opposition dominated.

4. CONCLUSION AND RECOMMENDATION

Based on the descriptions above, a model of epistemological error occurs through a self-awareness of the fulfillment of interests to maintain the grand narrative in the law enforcement process. In general, it can be concluded that the emergence of the epistemological error is caused by the use of power to maintain a single narrative through the production of knowledge that is used to dominate people targeted by legal norms. Where, law enforcement officers are aware of the absence of legal remedies that can be taken—normatively, against the created truth-play. Therefore, this dominance hides behind the ability to carry out partial interpretations of the intercontextual nature of the diversity of legal texts.

Based on the conclusions above, this study provides recommendations as follows: **first**, the government together with the People's Advisory Council to revitalize the field of supervision of the performance of investigators through the implementation of panoptic supervision by applying sanctions to cancel the overall results of their performance; and **second**, the government and the House of Representatives must provide and broaden the community's right to take legal action against every legal action and decision from law enforcement that is not the object of a pretrial.

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