

LAWBOOK ON THE CODE OF CRIMINAL PROCEDURE
(Act No.8/1981)
ELUCIDATION ON THE LAW ON TI-IC CODE OF CRIMINAL PROCEDURE
ACT NO. 8/1981
OF THE REPUBLIC OF INDONESIA ON
THE CODE OF CRIMINAL PROCEDURE

CHAPTER I
GENERAL PROVISIONS

Article 1

What is meant in this law by :

1. Investigator is a state police official of the Republic of Indonesia or a certain civil service official who is granted special authority by law to conduct an investigation.
2. Investigation is a series of acts by the investigator in matters and according to ways regulated by this law to seek and gather evidence with which to make clear a criminal act committed and to find the suspect.
3. Assistant Investigator is a state police official of the Republic of Indonesia who because of a certain authority granted to him can perform the task of investigation as regulated by this law.
4. Examiner is a state police official of the Republic of Indonesia who is granted authority by this law to perform an examination.
5. Examination is a series of acts by the examiner to find and discover an event which is suspected to be a criminal act in order to determine whether or not an investigation can be made in ways regulated by this law.
6.
 - a. Prosecutor is an official granted authority by this law to act as public prosecutor and to execute the verdict of a court which has acquired permanent legal force.
 - b. Public prosecutor is a prosecutor granted authority by this law to prosecute and carry out the verdict of the judge.
7. Prosecution is an act of the public prosecutor of referring a criminal case to a competent court of justice in matters and according to ways regulated by this law with the request that it be examined and decided by the judge at a court session.
8. Judge is an official of the state court who is granted authority by law to administer justice.
9. Administering justice is a series of acts by the judge of accepting, examining, and deciding a criminal case on the basis of the principles of freedom, honesty and impartiality at a court session in matters and according to ways as regulated by this law.
10. Pretrial is the competence of the court of justice to conduct an investigation and decide in ways which are regulated by this law, on:
 - a. whether or not an arrest and/or detention is legal at the request of the suspect or his family or other party on behalf of the suspect;
 - b. whether or not the termination of investigation or prosecution upon request is valid for the sake of upholding law and justice;
 - c. a request for indemnity or rehabilitation from a suspect or his family or another party on his behalf whose case has not been brought before the court.
11. The court's verdict is the pronouncement made by the judge at an upon court session, which can be in the form of transference, acquittal or absolution from all legal charges in matters and according to ways as regulated by this law.
12. Legal endeavour is the right of a defendant or public prosecutor not to accept the verdict of a court through contestation, an appeal or annulment or the right of an accused to ask for a review in matters and according to ways as regulated by this law.
13. Legal adviser is a qualified person who is decided by or on the basis of law to provide legal assistance.
14. Suspect is a person who because of his act or condition, on the basis of initial proof can reasonably be suspected of being a perpetrator of a criminal act.

15. Defendant is a suspect who is prosecuted, examined and tried at a court session.
16. Confiscation is a series of acts by an investigator of taking over and/ or placing under his control movables or immovables, tangibles or intangibles to be used as evidence in investigations, prosecutions and trials.
17. House search is an act by an investigator of entering a residential house or other closed place to carry out an investigation and/or confiscation and/or arrest in matters and according to ways as regulated by this law.
18. Body search is an act by an investigator of inspecting the body and/ or the clothes of a suspect to find goods which are strongly suspected of being present on his body or being carried by him, for confiscation.
19. Caught in-the-act is the arrest of a person while committing a criminal act or some time after the perpetration of the criminal act, or shortly after he has been charged by the public as the perpetrator, or if shortly afterwards something is found on him which is strongly suspected of having been used to commit the criminal act and indicates that he is the perpetrator or an accomplice or an aid in the criminal act.
20. Arrest is an act by an investigator of temporarily restricting the freedom of a suspect or defendant if there is enough evidence for purposes of investigation or prosecution and/or trial in matters and according to ways regulated by this law.
21. Detention is the confinement of a suspect or defendant to a certain place by an investigator or public prosecutor or a judge by his verdict, in matters and according to ways regulated by this law.
22. Indemnity is the right of a person to demand fulfillment of his claim for compensation in the form of an amount of money because of his arrest, detention, prosecution or trial without any reason based on law or because of a mistake as regards the person or the law applied in accordance with ways as regulated by this law.
23. Rehabilitation is the right of a person to have his rights restored to their capacity, status, dignity and integrity ceded at the level of inquiry, prosecution or trial because of his arrest, detention, prosecution or trial without any reason based on law or because of a mistake regarding the person or the law applied in accordance with ways as regulated by this law.
24. Report is a notification submitted by a person by reason of right or obligation based on law to a competent official that a criminal event has taken or is taking or is presumed to be taking place.
25. Complaint is a notification accompanied by a request from the interested party to a competent authority for legal action to be taken against a person who has committed a criminal offense detrimental to him.
26. Witness is a person who can provide information in the interest of investigation, prosecution and trial on a criminal case which he himself has heard of, witnessed or experienced.
27. Testimony is one of the means of providing evidence in a criminal case in the form of information from a witness concerning a criminal event which he himself has heard of, witnessed or experienced by mentioning the reasons for his knowledge.
28. Expert information is information provided by a person who has special expert knowledge on a subject needed to throw light on a criminal case in the interest of investigation.
29. Child information is information given by a child on a subject needed to throw light on a criminal case in the interest of investigation in matters and according to ways as regulated by this law.
30. Family is those who have blood relationships to a certain degree or marital relationships to those involved in a criminal process as regulated by this law.
31. One day is twenty-four hours and one month a time of thirty days.
32. Convict is a person convicted on the basis of a court's decision which has acquired a permanent legal force.

CHAPTER V

ARREST, DETENTION, BODY SEARCH, HOUSE ENTRY, CONFISCATION AND LETTER EXAMINATION

Part Four

Confiscation

Article 38

(1) Confiscation can only be carried out by an investigator with a warrant from the chairman of the local district court.

(2) In a very needy and urgent situation if an investigator has to act immediately and cannot possibly obtain a warrant first, without mitigating the provision of section (1) the investigator can only confiscate movables, for which purpose he has to report immediately to the chairman of the local district court to get his approval.

Article 39

(1) Objects which can be subject to confiscation include :

- a. goods or claims of the suspect or defendant which all or part have originated from a criminal act or are the results of a criminal act ;
- b. goods which have been used directly for committing a criminal act or for preparing it;
- c. goods used to obstruct the investigation of a criminal act;
- d. goods especially designed and intended for committing a criminal act;
- e. other goods which have direct connections with the criminal act committed.

2) Goods in confiscation because of a civil case or bankruptcy can also be confiscated in the interest of the investigation, prosecution and trial of a criminal case, so long as they meet the provision of section (1).

Article 43

The confiscation of letters or other written materials from those who are obliged according to law to keep them a secret, so far as they do not concern state secrets, can only be carried out with their agreement or by special warrant from the chairman of the local district court except when the law provides otherwise.

CHAPTER VIII

REPORT

Article 75

(1) A report shall be drawn up for each of the following measures :

- a. examination of a suspect;
- b. arrest;
- c. detention;
- d. search;
- e. house entry;
- f. confiscation of goods;
- g. examination of letters;
- h. examination of a witness;
- i. inspection at the place of occurrence
- j. implementation of the court's verdicts and decisions
- k. other measures taken in line with stipulations in this law.

(2) A report shall be prepared by the official involved in taking the measure as mentioned in section (1) and drawn up on the strength of his oath of office.

(3) The report shall be signed not only by the official mentioned in section (2) but also by all the parties involved in the measures mentioned in section (1).

CHAPTER XIV- INVESTIGATION

Part Two

Investigation

Article 128

In case an investigator carries out a confiscation, he shall first show his identity card to the person from whom the goods are confiscated.

Article 129

(1) The investigator shall show the goods to be confiscated to the person from whom they will be confiscated and can ask information about the goods to be confiscated in the presence of the village head or the environmental chairman and two witnesses.

(2) The investigator shall prepare a report about the confiscation which shall be read out first to the person from whom the goods have been confiscated or to his family after which it shall be provided with a date and signed by the investigator as well as by the person concerned or his family and/or the village head or the environmental chairman and two witnesses.

(3) In case the person from whom the goods have been confiscated or his family is not willing to sign, this shall be recorded in a report by mentioning the reason.

(4) Copies of the report shall be submitted by the investigator to his superior, the person from whom the goods have been confiscated or his family and the village head.

Article 130

(1) The confiscated goods before being wrapped, shall be recorded as to their weight and/or number according to type, their characteristics as well as their special features, the place, day and date of confiscation, the identity of the person from whom the goods have been confiscated etc. and then sealed, marked with the office stamp and signed by the investigator.

(2) In case the confiscated goods cannot be wrapped, the investigator shall draw up the records as intended in section (1), which shall be written on labels attached and/or hung on the goods.

Article 131

(1) In case a criminal act is of such nature as to give a strong reason to believe that information about it can be obtained from various letters, books or scripts, records etc., the investigator shall immediately proceed to the presumed place to conduct a search, examine letters, books or scripts, records etc. and to confiscate them if necessary.

(2) The confiscation shall be carried out according to the provision as intended in article 129 of this law.