

Legal Construction of Sting Operations in the Emptiness of Criminal Procedure Norms

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ABSTRACT

Hand-caught Operations (OTT) are a law enforcement practice frequently used to eradicate corruption, but their implementation has generated legal debate because they are not explicitly regulated in criminal procedural law. This study aims to analyze the legal construction of Hand-caught Operations in the absence of criminal procedural law norms and to assess their compliance with the principle of due process of law. The research method used is normative legal research with a statutory and conceptual approach. Legal materials are analyzed qualitatively through a review of criminal procedural law provisions, laws and regulations related to corruption eradication, and relevant legal doctrines. The results show that Hand-caught Operations are legally constructed through a broad interpretation of the concept of being caught red-handed, rather than based on firm procedural regulations. This condition creates legal uncertainty and has the potential to weaken the guarantee of protection of the suspect's rights. The study's conclusion confirms that although Hand-caught Operations have been effective in law enforcement practices, their sustainability requires clear procedural regulations to ensure legal certainty, justice, and the protection of human rights in the criminal justice system.

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1. INTRODUCTION

Eradicating corruption is a strategic agenda in the effort to realize clean governance with integrity. In Indonesian law enforcement practice, sting operations (OTT) have emerged as a tool deemed effective in quickly and directly uncovering corruption. Sting operations are often perceived as a symbol of law enforcement's decisiveness, as they are able to apprehend perpetrators and evidence within a single incident. However, this effectiveness is not always accompanied by adequate clarity of legal construction within the framework of criminal procedure.

Normatively, the Criminal Procedure Code does not recognize the term "Sting Operation" (Operation Tangkap Tangan), but rather only regulates the concept of being caught red-handed as an exception to the requirement for an arrest warrant. The practice of sting operations (OTT) has been built

on a broad interpretation of the concept of being caught red-handed, which in its implementation is often preceded by intensive investigations and covert information gathering. This situation raises fundamental questions regarding the limits of law enforcement authorities' authority and the procedural legitimacy of sting operations in the criminal justice system (Hamzah, 2011).

The legal debate regarding the Hand Catch Operation (OTT) has become increasingly prominent when linked to the principle of due process of law, which demands that every law enforcement action be carried out based on a clear legal basis, transparent procedures, and respect for human rights as a logical consequence of the principle of the rule of law (*rechtstaat*). This principle is constitutionally legitimized through Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and is further elaborated in the Criminal Procedure Code (KUHAP), which emphasizes the principles of legality, the presumption of innocence, and the guarantee of protection of the suspect's rights in every stage of the criminal justice process. However, OTT as a law enforcement practice is not explicitly and systematically regulated in Indonesian positive law, so that its implementation relies more on the interpretation of the concept of being caught red-handed as regulated in Article 1 number 19 of the KUHAP. This condition gives rise to normative problems because OTT has developed as an institutional practice that goes beyond the classical normative formulation of the KUHAP, especially in the context of extraordinary crimes of corruption.

Within the context of the Corruption Eradication Commission's (KPK) authority, OTT is often positioned as a strategic instrument to ensure the effectiveness of corruption eradication through a swift and direct repressive approach. This authority stems from the KPK Law, which legitimizes the KPK to conduct integrated investigations, inquiries, and prosecutions. However, the Constitutional Court, in a number of its decisions, has emphasized that the KPK's extraordinary authority cannot be separated from the principles of constitutionality and human rights protection. The Constitutional Court has consistently emphasized that effective corruption eradication must not compromise the principle of due process of law, as a state based on the rule of law demands not only successful prosecution of crimes but also adherence to fair and legitimate legal procedures. Therefore, OTT cannot be understood as a law enforcement practice that stands outside or above criminal procedural law, but must remain subject to the principle of legality and strict limitations on authority.

Furthermore, the unclear regulation of OTT has the potential to create legal uncertainty and open up space for excessive law enforcement, especially in the stages of arrest, search, confiscation, and determination of suspect status which are carried out simultaneously and quickly (Asshiddiqie, 2010). From a human rights perspective, the practice of OTT also raises serious problems related to the protection of the right to personal liberty, the right not to be treated arbitrarily, and the right to a fair trial. Massive public exposure of individuals who have just been named as suspected perpetrators has the potential to violate the principle of presumption of innocence and give rise to trial by the press, which in modern criminal law doctrine is seen as a form of social punishment before a final and binding court decision.

Therefore, the existence of the Hand Catch Operation (OTT) not only needs to be evaluated from the aspect of its effectiveness in eradicating criminal acts of corruption, but must also be critically examined from the perspective of legality, constitutionality, and the protection of individual rights in the criminal justice system. Sudarto emphasized that criminal law is a last resort (*ultimum remedium*) whose use must be carried out carefully and proportionally, so that every coercive action of the state, including arrest and detention, must be based on clear legal provisions and not give rise to arbitrariness. In line with that, Andi Hamzah emphasized that criminal procedural law functions as an instrument for protecting human rights, so that the success of criminal law enforcement cannot be measured solely by the success of solving cases, but by the compliance of law enforcement officers with the procedures determined by law.

Furthermore, Muladi stated that the modern criminal justice system must be oriented towards a balance between the interests of crime prevention and the protection of individual rights (a balanced approach), so that the practice of OTT carried out massively without clear normative regulations has the potential to disrupt this balance. This view is reinforced by Barda Nawawi Arief, who emphasized that criminal law policy is not only related to the effectiveness of punishment, but must also consider the values of justice, legal certainty, and utility simultaneously. In the context of OTT, Barda believes that law enforcement actions that do not have an explicit legal basis have the potential to violate the principles of legality and legal certainty, which are the foundations of criminal law.

Furthermore, Romli Atmasasmita highlighted that criminal law enforcement, especially in corruption cases, should not be trapped in a symbolic and populist approach that prioritizes shock effects. (shock therapy) alone, because it can obscure the primary objective of criminal law, which is to uphold justice through a legitimate process. OTT that is widely exposed to the public risks giving rise to trial by the press, which, according to Romli, contradicts the principle of the presumption of innocence. Meanwhile, Yahya Harahap emphasized that every form of arrest must meet the formal and material requirements as stipulated in the Criminal Procedure Code, so the construction of OTT must remain placed within the strict framework of being caught red-handed and cannot be interpreted extensively by law enforcement officials.

Thus, based on the views of these criminal law experts, it can be concluded that OTT can only be legally justified if it is carried out within the corridor of clear, proportional, and accountable criminal procedural law. Within the framework of a democratic rule of law, the success of law enforcement is not solely measured by the number of corruption cases successfully uncovered through OTT, but by the extent to which the practice respects the principles of due process of law, the principle of legality, and the protection of human dignity as a legal subject. Therefore, strengthening the normative regulations of OTT is an urgent need to ensure that corruption eradication continues to be effective without sacrificing the principles of justice and human rights.

Based on this background, the main problem in this study is how the legal construction of the Sting Operation is constructed in the absence of criminal procedural law norms and the extent to which this construction aligns with the principle of due process of law. This study aims to normatively analyze the legal construction of the Sting Operation and examine its implications for legal certainty in the Indonesian criminal justice system.

2. METHODS

This research is a normative legal study that focuses on the study of legal norms and principles related to sting operations in the criminal procedural law system. The research materials include primary legal materials in the form of laws and regulations relevant to criminal procedural law and the eradication of corruption, secondary legal materials in the form of textbooks, scientific journal articles, and opinions of legal experts, as well as tertiary legal materials that support the understanding of legal terms and concepts.

The research approaches used are a statutory and conceptual approach. The statutory approach is carried out by examining the provisions of criminal procedural law that regulate arrests and the concept of being caught red-handed, while the conceptual approach is used to examine the legal construction of the Hand Catch Operation and the principle of due process of law from a legal doctrine perspective. The legal material collection technique is carried out through library studies by exploring laws and regulations, legal literature, and relevant scientific works. The analysis of the legal material is carried out qualitatively using legal reasoning methods through interpretation and legal argumentation. The results of the analysis are then presented descriptively and analytically to explain the legal construction of the Hand Catch Operation in the condition of a vacuum of criminal procedural law norms and its implications for legal certainty in the criminal justice system.

3. FINDINGS AND DISCUSSION

The results of the legal material processing indicate that sting operations (OTT) do not have explicit procedural provisions in the Criminal Procedure Code. The Criminal Procedure Code only regulates the concept of being caught red-handed as a basis for exceptions to warrantless arrests. Based on an examination of criminal procedure norms and law enforcement practices, sting operations are constructed through a broad interpretation of the concept of being caught red-handed, although in practice, they are often preceded by a series of systematic investigative and monitoring actions. Data processing was conducted on primary and secondary legal materials relevant to the practice of sting operations (OTT). The data were analyzed to identify the correspondence between the normative provisions of criminal procedural law and the practice of sting operations (OTT) that have developed in law enforcement of corruption crimes. The analysis revealed a fundamental difference between the concept of being caught red-handed as stipulated in the Criminal Procedure Code and the practice of sting operations, which are conducted through closed-door investigation mechanisms and surveillance techniques. This situation gave rise to a new legal construct born from the vacuum of procedural norms, so that the legitimacy of sting operations rests more on doctrinal interpretation and law enforcement practices than on the certainty of written norms.

Analysis Aspects	Provisions in the Criminal Procedure Code	Hand-caught Operation Practice
Legal basis	Article 1 number 19 of the Criminal Procedure Code regarding being caught red-handed	Not explicitly regulated
Mechanism	Spontaneous and immediate events	Preceded by a closed investigation
Time of arrest	At or immediately after the crime	After a series of information gathering
Procedural guarantees	Based on formal rules of the Criminal Procedure Code	Relying on the discretion of law enforcement
Legal certainty	Relatively clear and limited	Gives rise to normative ambiguity

Table 1. Normative Construction of Sting Operations in Criminal Procedure Law.

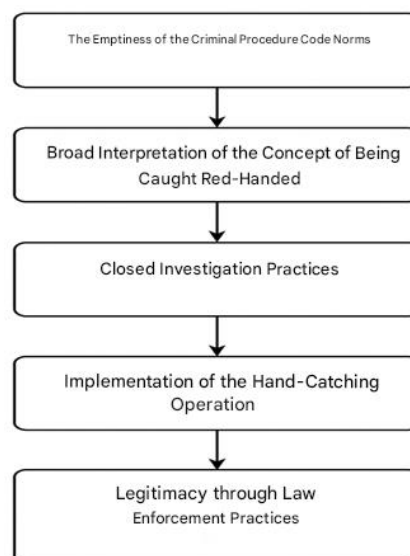


Figure 2. Legal Construction Flow of the Sting Operation

Figure 1 shows that sting operations do not arise from explicit procedural regulations, but rather from a legal construction process resulting from a lack of norms in criminal procedure law. Based on the results of normative data processing and analysis of sting operation practices, it can be understood that sting operations are not merely technical law enforcement actions, but rather the result of legal construction arising from a lack of norms in criminal procedure law. The absence of explicit procedural regulations in the Criminal Procedure Code encourages law enforcement to broadly interpret the concept of being caught red-handed in order to address the need for effective eradication of corruption.

However, legal constructions based on practice and discretion have the potential to create legal uncertainty if they are not accompanied by clear boundaries. This situation places Sting Operations (OPs) in a dilemma: on the one hand, they are considered factually legitimate and effective, but on the other, they are vulnerable to legal debate regarding human rights protection and the principle of due process of law. Therefore, the continued legitimacy of Sting Operations (OPs) in the criminal justice system depends heavily on the clarity of the normative framework governing them.

In the practice of law enforcement against corruption, sting operations (OTT) have become the primary instrument used by the Corruption Eradication Commission (KPK). Normative data analysis shows that sting operations are not merely understood as a legal action, but rather as a strategic law enforcement policy. The KPK utilizes sting operations as a means to penetrate the complexities of proving corruption, which is generally hidden, transactional, and involves strong power relations. This situation makes sting operations a symbol of the effectiveness of the KPK's enforcement efforts in the public eye, as well as a tool for institutional legitimacy.

However, the effectiveness of these OTTs is not accompanied by explicit procedural regulations in criminal procedure law. The Corruption Eradication Commission (KPK) carries out OTTs based on its investigative and inquiry authority stipulated in laws and regulations, without any specific norms defining OTTs as a separate legal action.

As a result, the KPK's OTT (strangling operation) has developed into an implicit authority constructed through law enforcement practices and judicial acceptance. In this context, OTT can be understood as a legal construct born of the practical need to eradicate corruption amidst the limitations of criminal procedural law norms.

An analysis of the KPK's sting operations reveals a conceptual shift in the meaning of being caught red-handed. In classical criminal procedure, being caught red-handed is understood as a spontaneous event when the perpetrator is directly detected while or immediately after committing a crime. In contrast, KPK sting operations are generally the result of a series of planned actions, such as wiretapping, intensive monitoring, and mapping of transaction flows. These actions are carried out at predetermined moments, thus blurring the sense of spontaneity. This shift indicates that KPK sting operations represent a new form of being caught red-handed that does not fully align with normative concepts in criminal procedure.

Furthermore, the Corruption Eradication Commission (KPK)'s OTT practices also have serious implications for the principle of due process of law. Suspects in OTTs are generally under intensive surveillance before prosecution, but do not yet have a clear formal legal status. This situation has the potential to create an imbalance between law enforcement officials and the individuals targeted, especially when the prosecution process is carried out quickly and openly to the public. From a state of law perspective, effective law enforcement should still guarantee the protection of everyone's basic rights, including the presumption of innocence and procedural certainty. The absence of specific regulations regarding OTTs also impacts the oversight mechanism for KPK actions. OTT operational standards are entirely determined through the institution's internal policies, thus opening up extensive room for discretion.

The legal construction of sting operations (OTT) in law enforcement practice in Indonesia cannot be separated from the theoretical debate regarding the principle of legality in criminal procedural law. Andi Hamzah emphasized that criminal procedural law is a formal law that limits the state's authority over citizens, so that every coercive action must have a clear and firm legal basis. In the context of sting

operations, the absence of explicit provisions in the Criminal Procedure Code indicates a normative vacuum that has the potential to lead to deviations from the principle of legality (*nullum iudicium sine lege*), especially when the action is carried out as a result of systematic planning and intelligence operations.

This view aligns with M. Yahya Harahap's opinion that the concept of "caught red-handed" in the Criminal Procedure Code is limited and not intended as a stand-alone law enforcement method. According to him, being caught red-handed should be understood as a legal event that occurs spontaneously and directly, not as a result of engineered circumstances by law enforcement officials. Therefore, OTT practices designed through long-term wiretapping, monitoring, and surveillance have the potential to experience conceptual distortion, as they shift the meaning of *in flagrante delicto* from a factual event to an operational instrument.

Furthermore, Romli Atmasasmita criticized OTT from the perspective of an integrated criminal justice system. He emphasized that successful corruption eradication cannot sacrifice the principle of due process of law. According to Romli, law enforcement that ignores procedures will actually weaken the legitimacy of the legal system itself. OTTs that lack uniform procedural standards risk creating inconsistent and difficult-to-monitor law enforcement practices, thus opening up opportunities for abuse of discretion.

From the perspective of the theory of the rule of law, Jimly Asshiddiqie emphasized that the main characteristic of a constitutional state is the limitation of power through law. Every law enforcement action must be legally and constitutionally accountable. OTT that is not explicitly regulated in criminal procedure law has the potential to conflict with the principle of due process of law as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, because it does not provide certainty regarding procedures, limits of authority, and judicial control mechanisms.

Similarly, Satjipto Rahardjo reminded that while the law must be progressive and responsive to extraordinary crimes like corruption, legal progressiveness must not be separated from humanitarian values and substantive justice. He argued that law enforcement that overemphasizes effectiveness without a clear normative framework risks turning the law into a tool of power, rather than a means of protecting society.

From a human rights law perspective, Todung Mulya Lubis emphasized that every arrest constitutes a restriction of human rights that must comply with the principles of legality, necessity, and proportionality. Sting operations conducted without transparent and verifiable procedures have the potential to violate the rights to personal liberty and protection from arbitrary arrest, as stipulated in national and international human rights instruments.

This view is reinforced by Barda Nawawi Arief, who emphasized the importance of rational criminal law policy oriented toward protecting human rights. He believes that the formulation and implementation of criminal law, including criminal procedure law, must consider the balance between state interests and individual interests. In the context of OTT (OTT), the absence of clear norms demonstrates the weakness of criminal procedure policy in responding to developments in modern law enforcement practices.

Meanwhile, Muladi highlighted that the modern criminal justice system demands accountability and transparency at every stage of the law enforcement process. Sting operations conducted based on internal law enforcement agency policies without adequate external oversight have the potential to undermine public accountability. According to Muladi, this could lead to a crisis of trust in law enforcement institutions, even though their initial goal is to eradicate corruption.

From a comparative legal perspective, Herbert L. Packer, through his crime control model and due process model theories, provides an analytical framework for assessing OTT. OTT practices, which emphasize the speed and effectiveness of enforcement, demonstrate the dominance of the crime control model, while aspects of protecting the rights of suspects tend to be neglected. This contradicts Lon L. Fuller's view that legal legitimacy lies in the internal morality of law, namely the clarity, consistency, and openness of legal norms.

Thus, the various views of legal experts indicate a common thread: OTT, despite its empirical effectiveness in eradicating corruption, still leaves serious problems at the normative and theoretical levels. The vacuum of criminal procedural norms regarding OTT demands a comprehensive legal reconstruction, either through updating the Criminal Procedure Code or the creation of special norms, so that OTT practices are not only effective, but also legally valid, accountable, and in line with the principles of the rule of law and the protection of human rights.

Thus, the KPK's OTT (staging raids) can be understood as a law enforcement practice that has gained social and judicial legitimacy, but still leaves fundamental normative problems. The legal construction of OTTs, built through practice and broad interpretation, cannot replace the need for clear and firm procedural regulations. Therefore, this discussion emphasizes that strengthening the KPK's authority in conducting OTTs must be accompanied by the formulation of criminal procedural norms that provide legal certainty, limit discretion, and guarantee the protection of suspects' rights without compromising the effectiveness of crime eradication.

4. CONCLUSION

Sting Operations (OTT) are a law enforcement practice constructed in response to the limitations of criminal procedure law in handling transactional and covert corruption crimes. In practice, OTTs conducted by the Corruption Eradication Commission (KPK) lack an explicit procedural basis, but are instead carried out through a broad interpretation of the concept of being caught red-handed and the KPK's investigative and investigative powers. This situation indicates that OTTs have developed as an implicit authority that gains legitimacy through law enforcement practices and acceptance by the judiciary.

Furthermore, this study found that the implementation of OTT (staging operations) by the Corruption Eradication Commission (KPK) has shifted the meaning of being caught red-handed from the spontaneous concept in classical criminal procedure law to a planned action. This shift has legal implications for the principle of due process of law, particularly regarding procedural certainty and the protection of suspects' rights. Therefore, although OTT has proven effective in eradicating corruption, its sustainability requires clear, measurable, and accountable criminal procedure regulations. Such regulations are crucial to ensure a balance between effective law enforcement and human rights protection in the Indonesian criminal justice system.

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