

Juridical Study of Reforming the Criminal Procedural Law System regarding Pretrial Institutions after Constitutional Court Decision in Indonesia

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Abstract. *The purpose of this study is to analyze in an effort to reform the criminal procedural law system regarding pretrial institutions in Indonesia. This study examines the problem of reforming the criminal procedural law system regarding pretrial institutions in Indonesia after the decision of the Constitutional Court No. 21/PUU-XII/2014. This research method used normative legal research. The results of this study describe that the changes in the Criminal Procedure Law System Regarding Pretrial Institutions in Indonesia after the Constitutional Court Decision No. 21/PUU-XII/2014 are the scope of pretrial examination is not only limited to whether or not an arrest, detention, termination of investigation or termination of prosecution is legal; compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution; whether or not the determination of a suspect, confiscation and search is valid, but also has the authority to test whether the investigation is legal or not, in the case that the case being investigated has ne bis in idem elements, the case being investigated has an error in persona, the case being investigated is strongly suspected of being a criminalization. Examination material in pretrial cases is not only on procedural law enforcement actions, but can enter case material so that a simple, fast, and low-cost trial can be well integrated in the criminal procedural law system. The pretrial institution as a control function can concretely guarantee the balance of rights of Indonesian citizens who are in contact with criminal cases, both as investigators, witnesses, and suspects.*

Keywords: Criminal; Decision; Judge; Reform; System.

1. INTRODUCTION

The Basic Law is the highest Legislation in a country, which is the basis of all Legislation. In other words, all laws and regulations must be subject to

the Constitution or must not conflict with the Constitution.¹ In the 1945 Constitution it is emphasized that the Indonesian state is based on law (*rechtstaat*), not based on mere power (*machstaat*). This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution, upholds human rights, and guarantees that all citizens are equal before the law and government and are obliged to uphold the law and government without exception.²

The 1945 Constitution regulates three main things, namely the guarantee of the rights and obligations of citizens; the structure of government which is fundamental in nature and the limitations and division of administrative tasks which are also fundamental. The Constitution of the Republic of Indonesia has guaranteed legal certainty for the protection of the human rights of every citizen before the law as affirmed in Article 28 J Paragraph (2) of the 1945 Constitution.

Article 4 of Act no. 49 of 2009 concerning Judicial Powers explicitly stipulates that courts are obliged to assist justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast and low cost trial.³ Judicial institutions in order to provide a value of justice for every seeker of justice in criminal cases, are prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it.

Act No. 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the KUHAP) is a legal instrument that regulates how to enforce material criminal law and determine the rights and obligations of the state to every citizen suspected of committing a crime so that there is no criminalization of Indonesian citizens as a form of violation to human rights.

Article 77 of Act No. 8 of 1981 concerning the Criminal Procedure Code, determines the authority of the district court in pretrial is to determine two things. First, the validity of the arrest, detention, termination of investigation or termination of prosecution. And second, compensation and/or rehabilitation for a person whose criminal case is terminated at the

¹ Saldi Isra, "TITIK SINGGUNG WEWENANG MAHKAMAH AGUNG DENGAN MAHKAMAH KONSTITUSI," *Jurnal Hukum Dan Peradilan* 4, no. 1 (March 31, 2015): 17–30, <https://doi.org/10.25216/jhp.4.1.2015.17-30>.

² Endah Rantau Itasari, "Perlindungan Hukum Terhadap Penyandang Disabilitas Di Kalimantan Barat," *Integralistik* 31, no. 2 (August 18, 2020): 70–82, <https://doi.org/10.15294/integralistik.v32i2.25742>.

³ Act No. 49 of 2009 concerning Judicial Power.

level of investigation or prosecution.⁴

One of the fundamental issues that is often hotly debated in the legal community is the coercive measures taken by law enforcement officials, in this case investigators and public prosecutors. In general, the coercive measures known in the modern criminal justice system in the world are coercive measures in the fields of arrest, detention, search, confiscation, and wiretapping, against coercion carried out by law enforcement officials should be subject to the supervision of the Court. There should be no coercive measures that can escape the supervision of the Court so that the coercive efforts carried out by law enforcement officials are not carried out arbitrarily which results in the violation of the rights and civil liberties of a person.⁵

Pretrial in the criminal procedural law system is as a legal instrument that is corrective against coercive efforts carried out by law enforcers which have historically been intended to provide guarantees and protections for the rights of citizens who are suspected of being perpetrators of criminal acts from the arbitrariness of law enforcers.

Criminal procedural law in Indonesia does not explicitly stipulate that the district court in pretrial has the authority to examine whether or not the determination as a suspect is legal, this has become a matter of debate both within academics and legal practitioners, as happened in the pretrial decision handed down by the South Jakarta Court. 04/Pid.Prap/2015/PN.Jkt.Sel. dated February 16, 2015, between the Commissioner General of Police Budi Gunawan, as the Petitioner against the Corruption Eradication Commission/KPK cq. The KPK leadership, towards the decision has triggered reactions, for example, Former Supreme Court Justice Djoko Sarwoko said the decision of pretrial judge Komjen (Pol) Budi Gunawan violated the provisions of the Criminal Procedure Code (KUHP), the article was that the judge had exceeded his authority by including the determination of the suspect as an object of pretrial.⁶

⁴ Act No. 8 of 1981 concerning Criminal Procedure Code

⁵ Farida Azzahra, "Pemberlakuan Sanksi Administratif: Bentuk Upaya Paksa Meningkatkan Kepatuhan Pejabat Atas Pelaksanaan Putusan Peradilan Tata Usaha Negara (Teori Efektivitas Hukum)," *Binamulia Hukum* 9, no. 2 (December 16, 2020): 127–40, <https://doi.org/10.37893/jbh.v9i2.122>.

⁶ Afrizia Aditya Nandani, "TINJAUAN YURIDIS ATAS PUTUSAN PRAPERADILAN DALAM PERKARA NO. 04/Pid.Prap/2015/PN.Jkt.Sel. (STUDI KASUS PUTUSAN PRAPERADILAN UNTUK TIDAK SAHNYA STATUS TERSANGKA BUDI GUNAWAN ATAS KASUS KORUPSI)," *NOVUM: JURNAL HUKUM* 2, no. 2 (October 6, 2015): 107–15, <https://doi.org/10.2674/novum.v2i2.13326>.

The single judge examining the case has dared to use his authority to find the law (*recht finding*) by stating whether or not the suspect is legal or not is the pretrial authority, this can be seen as a form of reform of criminal law procedures because of the unavoidable legal need, namely to harmonize norms criminal procedural law with the conditions of society.

The legal discovery made by the judge has also sparked a fierce debate, especially in academia, on the one hand there are those who argue that pretrial authority is limitative which departs from the paradigm of formalistic legal thinking and then there are also those who argue that the legal considerations of the decision can be justified from a legal perspective on progressive legal theory.

However, the debate ended when the Constitutional Court of the Republic of Indonesia through its decision number 21/PUU-XII/2014 dated 28 April 2015 in a petition for judicial review of Law Number 8 of 1981 concerning the Criminal Procedure Code against the 1945 Constitution of the Republic of Indonesia to the Court The Constitution of the Republic of Indonesia, where the provisions being tested against the Basic Law are Article 1 number 2, Article 1 number 14 in conjunction with Article 17 of the KUHAP Article 21 paragraph 1 of the KUHAP, Article 77 letters of the KUHAP which was proposed by Bachtiar Abdul Fatah on February 17, 2014. Amar the verdict states three things. First, partially grant the Petitioner's Application.⁷ Second, Reject the Petitioner's application for other than and

⁷ The phrases "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence" as specified in Article 1 point 14, Article 17, and Article 21 paragraph (1) Act No. 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 76 of 1981, Supplement to the State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 3209) was contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted that "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence" are at least two pieces of evidence contained in the Article 184 of Act No. 8 of 1981 concerning Criminal Procedure Law.

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Article 77 letter a of Act No. 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 76 of 1981, Supplement to the State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 3209) was contrary to the 1945 Constitution of the Republic of Indonesia as long as it does not mean the determination of a suspect, a search, and a confiscation.

the rest. Third, ordering the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate.⁸

The decision of the Constitutional Court ended the debate that had occurred both among academics and legal practitioners because it had explicitly provided legal certainty regarding the expansion of pretrial authority, one of which was the authority to test whether or not the determination of suspects made by investigators was legal. After the appearance of the decision, there are new legal problems in the pretrial institution. For example, the decision of the Surabaya District Court No. 11/Praper/2016/PN.SBY dated March 7, 2016. The ruling stated that the object of the pretrial was an Investigation Order for the Head of the East Java High Court Number: Print-86/O.5/Fd.1/01/2016, dated January 27, 2016 and the investigation and investigation carried out by the East Java High Prosecutor's Office is illegal and violates the law and has no binding legal force. Whereas in this case, the pretrial applicant Putra Kusuma is not a suspect, but a witness.

2. RESEARCH METHODS

In this study, the research approach used is an approach to legal principles and a theory of justice according to progressive law. Paul Scholten explained that one of the main functions of legal science is conducting a search on the legal principles contained in positive law. In this case, Paul Scholten tends to relate it to the function of judges in applying the law, especially in interpreting or interpreting statutory regulations.⁹ The theory of justice according to progressive law is in line with the philosophical values of the Indonesian nation, namely Pancasila, where the concept of justice offered is substantive justice, not procedural justice. The second approach uses clinical law which aims to find out what the law is for an *in-concreto* case.¹⁰

The primary source of legal material used in this research is the Legislation, which includes the 1945 Constitution, other laws and

Article 77 letter a of Act No. 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 76 of 1981, Supplement to the State Gazette of the Republic of Indonesia (*Lembar Negara Republik Indonesia*) No. 3209) has no binding legal force as long as it is not interpreted, including the determination of suspects, searches and confiscations.

⁸ Decision of the Constitutional Court of the Republic of Indonesia (Mahkamah Konstitusi Republik Indonesia) No. 21/PUU-XII/2014 Concerning Examination of Act No. 8 of 1981 concerning Criminal Procedure Code (*Kitab Hukum Acara Pidana* [KUHP])

⁹ Paul Scholten, *Struktur Ilmu Hukum*, trans. B. Arief Sidharta, 4th ed. (Bandung: Alumni, 2013), 52.

¹⁰ Bachtiar Bachtiar, *Mendesain Penelitian Hukum* (Yogyakarta: Deepublish, 2021), 125.

regulations, doctrine, and jurisprudence. While the secondary legal materials used are the Constitutional Court Decision No. 21/PUU-XII/2014 dated April 28, 2015 and the Surabaya District Court Decision No. 11/Praper/2016/PN.SBY dated March 7, 2016.

3. RESULTS AND DISCUSSION

3.1. The Scope of Authority of the District Court in Pretrial After the Decision of the Constitutional Court No. 21/PUU-XII/2014

The Constitution of the Republic of Indonesia has provided legal certainty guarantees for the protection of human rights of every citizen before the law as confirmed in Article 28 J Paragraph (2) of the 1945 Constitution. However, there are restrictions which are solely carried out to ensure the recognition and respect for the rights and freedoms of others. In other words, the procedural law is not to indulge people who are suspected of being guilty, but to protect innocent people from the threat of punishment. Protection for people suspected of being guilty or defendants undergoing legal processes is essentially a virtue in legal processes.¹¹ There is an adage that it is better to acquit a thousand guilty people than to punish an innocent person and suffer unjustly.

The criminal procedure law is the embodiment of Article 2 I paragraph (5) of the 1945 Constitution which guarantees and protects human rights according to the principles of a democratic rule of law so that the provisions of the criminal procedure law respect the principles of human rights. The substance of the criminal procedural law is to provide equality in the granting of rights in the process of enforcing material criminal law between suspects, defendants and investigators and public prosecutors, then the assessment of the fulfillment of these rights is given to the judge.¹²

Pretrial in the criminal procedural law system is a legal instrument that functions as a control and corrective against coercive measures carried out by law enforcers by investigators and public prosecutors which have historically been intended to provide guarantees and protections for the rights of citizens suspected of having as perpetrators of criminal acts from the arbitrariness of law enforcement because the law gives the authority

¹¹ Fathony Karuniawan, "Konsep Whistleblower Dan Justice Collaborator Dalam Tindak Pidana Korupsi," *Jatiswara* 32, no. 2 (November 21, 2017), <http://www.jatiswara.unram.ac.id/index.php/js/article/view/120>.

¹² Kadek Metria, "Objek Praperadilan Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 21/PUU-XII/2014," *Jatiswara* 32, no. 2 (November 21, 2017), <http://jatiswara.unram.ac.id/index.php/js/article/view/123>.

of coercive measures to investigators and public prosecutors and these actions must be carried out responsibly according to the provisions of the law and applicable laws (*due process of law*).

Whereas Article 1 point (10) Jo. 77 of the Criminal Procedure Code regarding pretrial if examined does not fully reflect the existence of criminal procedural law in Indonesia, namely being able to provide fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law given by the state through its law enforcers to citizens who are in contact with each other. with criminal cases and does not fully reflect the principle of the rule of law adopted by Indonesia, namely the *due process of law* as a manifestation of the recognition of human rights in the criminal justice process and is a legal principle that must be upheld by all parties, especially law enforcement agencies.¹³

The protection in question, for example, is protection from acts of searching for evidence of wrongdoing that does not include reason and leads to unfair prejudice or confiscation of goods by violating the law in the investigation and prosecution process that is not based on law and impartial legal proceedings (unlawful legal evidence). the engineering of evidence so that this is viewed from the point of view of the criminal justice system, the supervision and correction of forced efforts by law enforcers in carrying out criminal law enforcement, is not effective and textually, criminal procedural law must be harmonized with current conditions. In line with the concept of criminal justice system where one of the functions that support the activities of the criminal justice system is the function of making laws where it is hoped that laws are not rigid, but flexible that are accommodating to conditions of social change.¹⁴

Prior to the decision No. 21/PUU-XII/2014 dated 28 April 2015 normatively the criminal procedural law system in Indonesia did not regulate in pretrial, whether the pretrial district court other than what was stipulated in the Criminal Procedure Code had the authority to take coercive measures such as determination as a suspect, confiscation , searches, while the condition of the community demands protection against this matter, it is this legal need that cannot be quickly fulfilled by legislators, so the role of judges with their authority to find the law (*recht finding*) is to be the legal solution.

¹³ Ely Kusumastuti, "Penetapan Tersangka Sebagai Obyek Praperadilan," *Yuridika* 33, no. 1 (February 8, 2018): 1–18, <https://doi.org/10.20473/ydk.v33i1.7258>.

¹⁴ E. Agus Suryadi and H. Supardi, "Mewujudkan Sistem Peradilan Pidana Terpadu Melalui Case Management System (Studi Di Kejaksaan Negeri Kota Bogor)," *Jurnal Suara Hukum* 3, no. 1 (March 9, 2021): 1–25, <https://doi.org/10.26740/jsh.v3n1.p1-25>.

Legal findings made by judges in pretrial decisions handed down by the South Jakarta Court No. 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16, 2015, in pretrial judges authorized to examine and adjudicate in connection with the determination of whether a suspect is legal or not, it can be seen as an effort to change the criminal law system regarding pretrial institutions in progressive legal nuances where the law is present to serve humans or justice seekers and has able to release the shackles of normative texts which in fact do not show the true value of justice.

The reform of the criminal law system is a legal requirement of the Indonesian people and part of legal reform which is one of the mandates of national reform. The legal reform agenda includes the notion of institutional reform, statutory reform (instrumental reform), and legal culture reform (cultural reform).

The change in the criminal law system in the pretrial institution mentioned above, which has a systemic impact on institutions, laws and legal culture, gained constitutional legitimacy after the decision No. 21/PUU-XII/2014 dated April 28, 2015 in the application for judicial review of Act No. 8 of 1981 concerning the Criminal Procedure Code against the 1945 Constitution of the Republic of Indonesia to the Constitutional Court of the Republic of Indonesia, where the provisions being tested against the Constitution are Article 1 number 2, Article 1 number 14 *juncto* with Article 17 of the KUHAP Article 21 paragraph 1 of the KUHAP, Article 77 letter a of the KUHAP.

The *a quo* decision of the Constitutional Court has given changes to investigators in determining someone as a suspect. Initially, in establishing a suspect as a police investigator, for example, based on a report and one valid evidence as referred to in Article 184 of the KUHAP, then the legal paradigm shifts to a minimum of two valid pieces of evidence. Change is not only in that. There is a change in the legal culture where investigators must be careful in determining someone as a suspect if it is proven in the pretrial there is an error in the determination of the suspect which will sporadically raise legal awareness from the public regarding the constitutional rights of a citizen when dealing with criminal cases.

That from the results of the research above, after the decision of the Constitutional Court No. 21/PUU-XII/2014 dated April 28, 2015, the Surabaya District Court in Decision No. 11/Praper/2016/PN.SBY has re-expanded the object of the pretrial, namely the Investigation Order of the Head of the East Java High Court No. Print-120/O.5/Fd.1/02/2016, dated February 15, 2016, due to the ongoing investigation. made based on the letter has violated the principle of *ne bis in idem*. On this matter, the

author agrees with the legal considerations given by the single judge examining the case in a factual context, it can realize the value of substantive justice as an effort to reform the criminal procedural law system that cannot be briefly carried out by legislators.

Criminal law has a system on principles that are found and developed in detail through the writings of legal experts, court decisions, and legal sets in the law. The usefulness of law in concrete events does not only rely on legal provisions in the law, because the law cannot contain detailed rules for what events will occur.¹⁵

Pretrial examination in connection with the investigation of criminal cases that are inherent in the *ne bis in idem* element as stipulated in Article 76 of the Criminal Code in terms of the principle of a simple, fast, and low-cost trial, the settlement through a pretrial mechanism is very appropriate. Case examination is not only limited to the procedural side but can be included in the case material. This is in line with the theory of justice according to progressive law where the justice sought is substantive justice.¹⁶

In cases of wrongful arrest and criminalization, for example, which usually tend to be related to politics and civil cases. Pretrial institutions can be used as a solution to test the validity of investigative actions carried out by investigators by examining the case material to seek material truth regarding alleged criminal events.¹⁷ If in the pretrial examination it is not proven that the investigator's suspicions are based on at least two valid pieces of evidence, those caught immediately get their right to be rehabilitated without having to wait for months to get justice because they have to go through a long and tedious legal procedure. On the other hand, if it is proven, it will facilitate law enforcement at the next level carried out by public prosecutors and criminal cases that are tried in court will indeed be of high quality.

Based on the description above, the authors conclude that the pretrial authority space after the Constitutional Court's decision No. 21/PUU-

¹⁵ Theresia Ngutra, "HUKUM DAN SUMBER-SUMBER HUKUM," *SUPREMASI: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum Dan Pengajarannya* 11, no. 2 (February 14, 2017), <https://doi.org/10.26858/supremasi.v11i2.2813>.

¹⁶ Ade Mahmud et al., "Keadilan Substantif Dalam Proses Asset Recovery Hasil Tindak Pidana Korupsi," *Jurnal Suara Hukum* 3, no. 2 (September 30, 2021): 227–50, <https://doi.org/10.26740/jsh.v3n2.p227-250>.

¹⁷ Sahri Sebayang, "Praperadilan Sebagai Salah Satu Upaya Perlindungan Hak-Hak Tersangka Dalam Pemeriksaan Di Tingkat Penyidikan (Studi Pengadilan Negeri Medan)," *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 19, no. 2 (March 13, 2020): 329–83, <https://doi.org/10.30743/jhk.v19i2.2445>.

XII/2014 is to determine:

- a. Whether the arrest, detention, termination of investigation or termination of prosecution is legal or not
- b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution
- c. Whether the determination of the suspect, confiscation and search is valid or not
- d. Whether the investigation is valid or not, in terms of:
 - 1) the case being investigated has the element of *ne bis in idem*
 - 2) the case being investigated has an *error in persona*
 - 3) the case being investigated is strongly suspected of being a criminalization.

The expansion of pretrial authority carried out by judges, as the author conveyed above, is a form of guarantee and state protection for the human rights of every citizen who is in contact with criminal cases, which will provide benefits in enforcing the criminal procedure law system. First, it can prevent the deprivation of freedom and human rights from someone who is positioned as a suspect, defendant, convict, when the case must be examined in court with an ordinary examination procedure. Second, it can save time in the implementation of the criminal justice process. Third, avoiding the accumulation of cases. Fourth, avoiding someone being arrested, detained, arbitrarily. Fifth, control function for investigators regarding compliance with legal norms in conducting investigations. Sixth, prevent and change the legal culture of investigators so that they are not arbitrary in conducting criminal investigations. And seventh, provide education to the public to raise awareness of the law and the function of social control over law enforcement in Indonesia.

3.2. Forms of Reforming the Criminal Procedure Law System Regarding Pretrial Institutions in Indonesia After the Decision of the Constitutional Court No. 21/PUU-XII/2014

The case examination system at the investigation level adopted by the Criminal Procedure Code is an *inquisitoir* system where this system shows a process of resolving criminal cases starting from the initiative of the

investigator which is carried out in a secret and closed manner.¹⁸ This system places the suspect as an object of examination without obtaining any rights, including not being allowed to communicate with his family, including being accompanied by a legal adviser. However, in Indonesia, after the promulgation of the Criminal Procedure Code, its enforcement was slightly softened. Although they still place the suspect as an object of examination and are carried out in secret, the suspect has been given the right to be accompanied by a legal adviser in every examination, including at the investigation level. It's just that the presence of legal counsel accompanying the suspect at the investigation level is passive, meaning that it is not allowed to intervene in the examination conducted by the investigator.¹⁹

The system mentioned above, in reality the practice of law enforcement opens up a lot of space for law enforcers in the process of investigating arbitrary acts. For example, evidence to determine a person as a suspect does not meet the qualifications of evidence, evidence does not meet the minimum evidence, evidence is obtained against the law, coercion of elements of a crime through the investigator's unilateral interpretation, wrongful arrest, illegal confiscation. So the pretrial institution is a solution to decide on the deprivation of one's freedom in the name of law.²⁰

Based on the above discussion, the form of change in the procedural law system regarding pretrial in Indonesia is that the scope of pretrial examination is not only limited to whether or not an arrest, detention, termination of investigation or termination of prosecution is legal; compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution; whether or not the determination of a suspect, confiscation and search is valid, but also has the authority to test whether the investigation is legal or not, in the case that the case being investigated has *ne bis in idem* elements,²¹ The case

¹⁸ Edi Setiadi and Kristian Kristian, *Sistem Peradilan Pidana Terpadu dan Sistem Penegakan Hukum di Indonesia* (Jakarta: Prenada Media, 2017), 46.

¹⁹ Bambang Sunoto and Jawade Hafidz, "Pendampingan Penasehat Hukum Terhadap Tersangka Dan Terdakwa Dalam Perkara Korupsi (Studi Kasus Wilayah Hukum Pengadilan Tindak Pidana Korupsi Semarang)," *Jurnal Hukum Khaira Ummah* 13, no. 1 (March 17, 2018): 297–310.

²⁰ Sahat Maruli Tua Situmeang, Musa Darwin Pane, and Wahyudi Wahyudi, "Optimalisasi Peran Penegak Hukum Dalam Menerapkan Pidana Kerja Sosial Dan Ganti Rugi Guna Mewujudkan Tujuan Pemidanaan Yang Berkeadilan," *Jurnal Hukum IUS QUIA IUSTUM* 27, no. 3 (December 15, 2020): 501–25, <https://doi.org/10.20885/iustum.vol27.iss3.art4>.

²¹ John Vervaele, "Ne Bis In Idem: Towards a Transnational Constitutional Principle in the EU?," *Utrecht Law Review* 9, no. 4 (September 26, 2013): 211–29, <https://doi.org/10.18352/ulr.251>.

being investigated has an *error in persona*,²² the case being investigated is strongly suspected of being a criminalization.

Examination material in pretrial cases can in certain cases enter the case material so that a simple, fast, and low-cost trial of material truth principles can be well integrated in the criminal procedural law system without overriding the due process of law regulated in the Criminal Procedure Code. For example, in determining a suspect, the judge can enter the main point of the case to find and determine the quality and quantity of evidence used by investigators.

Another example, in a case that has a *ne bis in idem* element, does the case before which has been decided and has legal force still has the same materiality with the case which was investigated afterwards, so that an examination of the main case must be carried out to test the truth. Or in a criminal case where there is a strong suspicion of criminalizing a person based on the interpretation of the forced element, so that in this case the pretrial examination must also be included in the matter of the case.

The pretrial institution as a control function can concretely guarantee the balance of the rights of Indonesian citizens who are in contact with criminal cases, both as investigators, witnesses, and suspects. So that the softened inquisitorial system adopted in the examination at the investigation, if there are deviations and arbitrariness from law enforcement can be immediately corrected by the court. Furthermore, the pretrial institution also functions as a filter so that the material truth that will be revealed in court is truly of high quality.

However, in terms of substance, the Constitutional Court's Decision No. 21/PUU-XII/2014 has its pluses and minuses. From the plus side, first, the Constitutional Court's decision bridges the seekers of justice. For example, from several cases, where someone's label as a suspect is hanging. This means that they have not been brought to justice, even though sometimes the suspect's label has been attached to the person concerned since one year ago. With the Constitutional Court's decision, the judicial system is a place to complain. Where do you want to take the label of the suspect? This is because the attached suspect's label does not only have legal consequences, but also socially and psychologically.

By law, for example, the person concerned is disabled from his position,

²² Eduard Giurgi, "Error in Persona (Dibattito Sul Concetto Di Persona Nella Trattazione Dell' Error Facti. Analisi Della Dottrina e Della Giurisprudenza)," *The Jurist: Studies in Church Law and Ministry* 72, no. 2 (2012): 668–69, <https://doi.org/10.1353/jur.2012.0060>.

may not go abroad, and so on. From the social side, the person concerned including his family gets sanctions from the community, for example being ostracized, ridiculed, made fun of, and so on. Likewise, from a psychological point of view, of course, he was psychologically shaken, especially since the person concerned did not know anything about the things he was accused of.

Second, so that law enforcers are more careful in setting someone up as a suspect. Because in practice it allows law enforcement to abuse their authority. For example, for personal reasons, political, entrusted, and so on. Likewise, for example, if you are not sure, then do not attach the suspect's label. Thus, pretrial is present as a control institution for investigators. Furthermore, from the negative side, it has the potential to undermine the authority of law enforcement and also encourage the rise of lawsuits.

4. CONCLUSION

The Form of Change in the Criminal Procedure Law System Regarding Pretrial Institutions in Indonesia After the Decision of the Constitutional Court Number 21/PUU-XII/2014 is that the scope of pretrial examination is not only limited to whether or not an arrest, detention, termination of investigation or termination of prosecution is legal; compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution; whether or not the determination of a suspect, confiscation and search is valid, but also has the authority to test whether the investigation is valid or not, in the case that the case being investigated has *ne bis in idem* elements, the case being investigated has an error in persona, the case being investigated is strongly suspected of being a criminalization. Examination material in pretrial cases is not only on procedural law enforcement actions, but also can enter case material so that a simple, fast, and low-cost trial can be well integrated in the criminal procedural law system. Furthermore, pretrial institutions as a concrete control function can guarantee the balance of the rights of Indonesian citizens who are in contact with criminal cases, both as investigators, witnesses, and suspects. The pretrial institution also functions as a filter so that the material truth that will be revealed in court is of high quality.

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