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Legal Construction of the Validity or Invalidity of Investigations in Pre-Trial for Determination of Suspects in Corruption Crimes from the Perspective of Legal Certainty

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Abstract. *The aim of the research is to examine whether the legal construction of whether or not investigations process regarding the determination of suspects for corruption crimes from a legal certainty perspective. The research method used is a sociological juridical approach to identify and conceptualize law as a real and functional social institution in real life systems. The results of the research stated that the Pre-trial Judge concluded that the petition submitted by the Petitioner had no legal grounds, therefore the petition must be declared rejected in its entirety.*

Keywords: *Certainty; Construction; Pretrial.*

1. Introduction

An integrated criminal justice system does not mean that each subsystem in the system has its own authority that is separate from the function of other subsystems. In order for the system to work optimally, there must be integration in separation (unity in diversity) so that even though each subsystem has its own authority, it must provide input for other subsystems.[1]Thus, the output of a subsystem is an input for another subsystem, so that the continuity of a system is not like a domino card but is a unity like a chain, that integration in the system must be created from upstream to downstream. As adopted by criminal procedure law, it means that the relationship between the police, prosecutors, judiciary, and correctional institutions must be a synchronous and synergistic relationship.[2]

The form of a state based on law is the existence of an independent judiciary, the meaning of an independent judiciary as regulated in Article 24 Paragraph (1) of the

[1]"Born Mangaratua, Gunarto."Criminal Law Policy Against Criminal Acts of Insult or Defamation Through the Internet in Indonesia as Cybercrime". Jurnal Daulat Hukum*Vol 1, No 1 (2018)*.Url :https://jurnal.unissula.ac.id/index.php/RH/article/view/2560/1917 accessed May 01, 2024

[2]Pangaribuan, Luhut MP Lay Judges & Ad Hoc Judges. (2009) A Theoretical Study of the Indonesian Criminal Justice System. Jakarta: Papas Sinar Harapan, p.44

1945 Constitution of the Republic of Indonesia states "Judicial power is an independent power to carry out trials in order to uphold law and justice".[3]So that the basis of this freedom of judges in trying every case is expressly regulated in Article 10 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which stipulates that "The court is prohibited from refusing to examine, try and decide a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it."[4]

Pre-trial is a new institution in the world of justice in Indonesia. Pre-trial is not a stand-alone law enforcement institution. The birth of Law Number 8 of 1981 concerning Criminal Procedure Law as a replacement for Het Herzeine Inlandsch Reglement. In principle, the Criminal Procedure Code (KUHAP) gave birth to the pre-trial institution as an institution to carry out supervisory actions against law enforcement officers so that in carrying out their authority they do not abuse their authority. As an illustration, the activities of investigators whose implementation can be in the form of arrests or even detentions, are coercive in nature, setting aside universally recognized principles, namely human rights. Indirectly, pre-trial supervises the activities carried out by investigators in the context of investigations or prosecutions, considering that the actions of investigators are basically attached to the relevant institution.[5]

The definition of pre-trial is Pra means before, or precedes. means pre-trial is the same as before the examination in court. In Europe, such an institution is known but its function is really to carry out preliminary examinations.[6]In Article 1 number 10 of the Criminal Procedure Code, pre-trial is defined as the authority of the district court to examine and decide according to the method regulated in this Law, regarding:

1. Whether or not an arrest and/or detention is valid at the request of the suspect or his/her family or another party with the suspect's authority.
2. Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice.
3. Requests for compensation or rehabilitation by the suspect or his/her family or other parties on behalf of their attorney whose case has not been submitted to court.

[3]Sundari and Endang Sumiarni. (2015). Legal Politics and Indonesian Legal System. Yogyakarta: Cahaya Atma Pustaka, p.217
[4]Eko Adi Susanto, Gunarto. "Criminal Responsibility for Using Fake Letters Reviewed from Article 263 Paragraph (2) of the Criminal Code". Jurnal Daulat Hukum*Vol 1, No 1 (2018)*.Url :https://jurnal.unissula.ac.id/index.php/RH/article/view/2558accessed May 01, 2024
[5]Alfiah, Ratna Nurul. (1986). Pretrial and Its Scope. Jakarta: CV. Akademika Pressindo, p.35
[6]Hamzah, Andi. (2008). Indonesian Criminal Procedure Law. Jakarta: Sinar Grafika, p.89

Regarding pre-trial in a limited manner, it is generally regulated in Article 77 to Article 83 of Law Number 8 of 1981 concerning the Criminal Procedure Code. Article 77 of the Criminal Procedure Code stipulates that the District Court has the authority to examine and decide in accordance with the provisions stipulated in the Law. While the concept of pre-trial is essentially a process of protecting human rights regarding the use of coercive measures carried out by law enforcers, because it is through the trial that the suitability of the process of using coercive measures with the procedures determined by law will be assessed.

In this context, pre-trial proceedings do not only concern the legality of an arrest or detention, or the legality of a termination of investigation or prosecution, or a request for compensation or rehabilitation, but pre-trial proceedings can also be carried out in the event of an error in confiscation that does not include evidence, or a person who is subject to other actions without a reason based on law, due to an error regarding the person or the law applied or due to other actions that cause losses as a result of illegal entry into a house, search and confiscation.[7] There is a problem in the determination made at the Ponorogo District Court which issued a pre-trial decision Number: 1/Pid.Pra/2022/PN.Png which tried the pre-trial case in the first instance has issued a decision in a corruption case in the Jenangan-Kesugihan road improvement work, Ponorogo Regency, source of the 2017 Fiscal Year APBD.This study aims to find outlegal construction of the validity or otherwise of the investigation process in the pre-trial hearing on the determination of a suspect in a corruption crime from the perspective of legal certainty at the Ponorogo District Court.

2. Research Methods

The approach method using a sociological juridical approach identifies and conceptualizes law as a real and functional social institution in a real life system.[8]The sociological legal approach emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.[9]The research specifications used are descriptive analytical in nature by providing systematic and logical explanations. So that descriptive analytical research takes problems or focuses on problems as they are when the research is carried out, the research results are processed and analyzed to draw conclusions. Data sources consist of: Primary Data, Secondary Data. Sources of Legal Materials: Primary legal materials, Secondary legal materials, tertiary legal materials.

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[7]Beno Beno, Gunarto, Sri Kusriyah Kusriyah. "Implementation Of Fully Required Elements In The Crime Of Planning Murder (Case Study In Blora State Court)". Journal of Legal Sovereignty*Vol 3, No 1 (2020)*.Url :https://jurnal.unissula.ac.id/index.php/RH/article/view/8404accessed May 01, 2024

[8]Soejono Soekanto. (1986). Introduction to Legal Research. Jakarta: Publisher University of Indonesia Press, p.51

[9]Johny Ibrahim. (2007). Theory, Method and Normative Legal Research. Malang: Bayumedia Publishing, p.30

The data collection method with the main activity carried out using the "descriptive qualitative method" is described in the form of words and systematically connected to draw conclusions in answering the problem.[10]So that the qualitative data analysis technique is a data analysis method by grouping and selecting data obtained from library research.

3. Results and Discussion

The state generally has a goal in a legal system that regulates problems that often occur in social and state life. The goal is to realize justice, legal certainty and legal benefits. From the three legal goals philosophically, it becomes a comprehensive and simultaneous goal that must be realized and become the basis for law enforcers to realize it.[11]

Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that citizens have equal standing before the law and government and are obliged to uphold the law. Therefore, it is obligatory to provide protection of the rights of every citizen without exception, including a suspect.[12]A suspect who has been suspected of committing a crime so that it is necessary to limit their personal freedom. Restrictions on personal freedom in the form of arrest, detention, or searches carried out by the police as a preliminary investigation effort to find the perpetrator of the crime.[13]

The existence of criminal law as a final effort from other legal efforts, the nature of criminal law as a punishment for actions and to deter perpetrators of criminal acts that have been regulated in the provisions of the Criminal Code (KUHP).[14]Legal acts that are often reported in society are criminal acts of corruption. Criminal acts of corruption are a very serious problem, because criminal acts of corruption can endanger the stability and security of society and the state, endanger the social and economic development of society, politics, and can even damage the values of democracy and the morality of the nation because they can have an impact on the culture of criminal acts of corruption.[15]

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[10]Sedarmayanti and Syarifudin Hidayat. (2002). Legal Research Methodology. Bandung: CV. Mandar Maju, p.23

[11]Samsul Wahidin. (2017). Law Enforcement Politics in Indonesia. Yogyakarta: Student Library, p.37

[12]Sutrisno, S. "Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia". International Journal of Business and Social Science Research, Vol. 2 No. 11 (2019). P.1–9. url:https://doi.org/10.47742/ijbssr.v2n11p1 accessed February 21, 2024.

[13]Smith, T. "The Practice of Pre-trial Detention in England & Wales Changing Law and Changing Culture". European Journal on Criminal Policy and Research Vol.1 No.3 (2022). P.28. Url:https://doi.org/10.1007/s10610-022-09504accessed February 21, 2024.

[14]Tri Andrisman. (2009). Criminal Law. Lampung: University of Lampung, p.83

[15]Claudia Permata Dinda, Usman, Tri Imam Munandar. "Pretrial Against the Determination of Suspect Status of Corruption Crimes by the Corruption Eradication Commission". PAMPAS Journal Of Criminal Vol.1 No.2 (2021). url:https://online-journal.unja.ac.id/Pampas/article/view/9568/ accessed May 01, 2024

The elements of criminal acts of corruption are listed in Article 2 Paragraph (1) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Criminal Acts of Corruption, which reads:

> *"Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).".*

Explanation of Article 1 point 14 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) states that: "A suspect is a person who, due to his actions or circumstances, based on initial evidence, is reasonably suspected of being the perpetrator of a crime." So that in determining a suspect, of course, it will not be separated from the investigation and inquiry stages by collecting sufficient evidence. The existence of the Criminal Procedure Code (KUHAP) is based on 2 (two) reasons, namely to create a provision that can support the implementation of a fair criminal trial and the urgency to replace colonialistic procedural law products.

The existence of the Criminal Procedure Code is designed in such a way as to protect the human rights of both suspects, defendants and victims, which is most prominent in the Criminal Procedure Code compared to the Herzien Inlandsch Reglement (HIR) with the presence of the Pre-trial institution which is considered a masterpiece. In addition, there is no legal regulation related to the supervisory institution that has the authority to test the validity of the actions of law enforcement officers in implementing their authority.[16]

Pre-trial is often the mainstay of justice seekers to resolve problems that occur in the realm of investigation of coercive efforts carried out by law enforcement. Pre-trial is designed to administratively control the legality of coercive efforts by law enforcement, in accordance with the provisions of Articles 77 to 83 of the Criminal Procedure Code. In addition, pre-trial as an institution that functions to test whether the coercive actions/efforts carried out by investigators/investigators/public prosecutors are in accordance with the law and these actions have been equipped with careful investigation administration or not, because basically pre-trial demands concern the legality or otherwise of the

[16]Nefa Claudia Meliala. (2012). Efforts to Renew National Criminal Procedure Law Through Commissioner Judges as a Substitute for Pre-Trial. Jakarta: Postgraduate Program, University of Indonesia, p.24

actions of investigators or public prosecutors in conducting investigations or prosecutions.[17]

The existence of a pre-trial motion to obtain justice for the suspect is part of the legal ideal "rechtssidee" of a state of law "rechtsstaats".[18]In the regulation of Article 77 of the Criminal Procedure Code which is linked to Article 1 number 10 of the Criminal Procedure Code, implicitly there are 2 (two) interests that are to be protected in a balanced manner through pre-trial, namely individual interests (in casu suspects or defendants) and public or community interests through law enforcement. Broadly speaking, it provides the opinion that pre-trial is only a judicial institution whose characteristics and existence are:

> *a. As an institution which is a division, it is not parallel to, alongside or outside the District Court.*
>
> *b. The existence of a pre-trial institution is part of the District Court and its existence is inherent and not separate from the authority of the court.*
>
> *c. From an administrative perspective, it is automatically under the leadership of the chief justice. Administrative matters include personnel, judicial, financial and equipment.*
>
> *d. The implementation of its judicial function is part of the judicial function of the District Court itself.[19]*

The pre-trial authority granted to the district court is the authority to examine and decide in accordance with the provisions set out in the Criminal Procedure Code regarding:

> *1) Whether or not the arrest and/or detention is legal.*
>
> *2) Whether or not the termination of investigation or termination of prosecution is valid (Article 77 letter a of the Criminal Procedure Code).*
>
> *3) Whether or not entry into the house, search and/or confiscation is legal (Article 82 paragraph (1) letter b in conjunction with Article 95 paragraph (2) of the Criminal Procedure Code).*

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[17]Agung Nugroho Santoso, Sri Kusriyah. "Role of Public Prosecutors in Corruption Crime Prosecution". Journal of Legal Sovereignty*Vol 3, No 2 (2021)*.url:https://jurnal.unissula.ac.id/index.php/ldj/article/view/15975accessed May 01, 2024

[18]Muntaha. "Pretrial Arrangement in the Criminal Justice System in Indonesia". Jurnal Mimbar Hukum*Vol 29, No 3 (2017)*. url:https://jurnal.ugm.ac.id/jmh/article/view/22318accessed May 01, 2024

[19]M. Yahya Harahap. (2006). Discussion of Problems and Application of Criminal Procedure Code in Court Hearing Examination, Appeal, Cassation and Judicial Review, Second Edition. Jakarta: Sinar Grafika, p.1

4) Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level (Article 77 letter b of the Criminal Procedure Code).

The process of examining a pre-trial application regarding the determination of suspect status with the chronology of the case events as follows:

"That the auction winner in the work on improving Jl. Jenangan-Kesugihan Kab. Ponorogo source of APBD TA. 2017 is CV. Diyah Kencana (Director in the name of EP) then all the work is transferred and/or carried out by CV. Cahaya Karya (Director in the name of FH), the transfer is known by the PPK (in the name of ND) and in making the work result report assisted by the PPK who pretends that the work implementer is CV. Diyah Kencana, so that in signing all work documents are falsified by the Applicant. According to the statement of the construction expert and the head of the Laboratory UPT that the volume of asphalt work according to the specification 143.60 tons installed 95.92 tons and the volume of concrete work according to the specification 573 m3 installed 506.15 m3 and the quality of concrete according to the specification K300 installed K203. Against the results of the work, a specific purpose audit has been carried out by the BPK RI at the request of APIP Ponorogo and a PKKN audit has been carried out at the request of the Respondent, it was found that the State financial loss amounted to Rp. 940.423.567.42."

Pre-trial application for the determination of a suspect in the name of FH on suspicion of committing or participating in a criminal act of corruption as regulated in Article 2 or Article 3 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 Paragraph (1) to 1e of the Criminal Code in this case, namely the Head of the Ponorogo Police Resort Cq. Head of the Ponorogo Police Criminal Investigation Unit.The entire series of investigation processes until the Applicant was finally named a Suspect, the Applicant never received a Letter of Notification of Commencement of Investigation (SPDP) from the Respondent by not being notified and/or sending the SPDP to the Applicant, this violates the Applicant's constitutional rights so that the determination of the Applicant as a Suspect is invalid. In the trial process at the Ponorogo District Court to strengthen the arguments of his application, the Applicant has submitted documentary evidence in the form of photocopies according to the original marked P-1 to P-13 and 1 (one) Expert.

The provisions in the Criminal Procedure Code, to achieve the process of determining the suspect, must first be carried out a series of actions to search for and find an event suspected of being a criminal act (investigation). For this, information is needed from the related parties and initial evidence that can be woven as a series of events so that it can be determined whether or not a criminal

event exists.[20]After the process is completed, a series of actions are carried out to find and collect evidence to clarify a crime that has occurred. For that, actions must be taken again to request information from related parties and collect evidence so that the previously suspected criminal incident has become clear and clear, and therefore it can be determined who the suspect is. While the pretrial hearing at the Ponorogo District Court which tested the implementation of the investigation procedure reviewed from the administrative law side, the issue of legality or validity is closely related to 3 elements, namely authority, procedure and substance.

A series of procedures is a legal method or procedure that must be taken to achieve the process of determining a suspect. The existence of these procedures is intended so that the actions of investigators/investigators are not arbitrary considering that a person has basic rights that must be protected. This is in accordance with the Decision of the Constitutional Court Number 21/PUU-XII/2014, so the determination of a person as a suspect by the Investigator must have sufficient initial evidence, namely the fulfillment of at least 2 (two) valid pieces of evidence as regulated in Article 184 of the Criminal Procedure Code.

In line with the opinion of Eddy OS Hiariej in his book entitled "Theory and Law of Evidence", to determine someone as a suspect, the Respondent must do so based on "initial evidence".[21]The evidence referred to in this case is as stated in Article 184 of the Criminal Procedure Code, namely: witness statements, expert statements, letters, statements from the defendant or clues. Initial evidence in Article 1 point 14 of the Criminal Procedure Code is not only limited to evidence as referred to in Article 184 of the Criminal Procedure Code, but can also include evidence which in the context of universal evidentiary law is known as physical evidence.

Based on Article 15 of the Regulation of the Republic of Indonesia National Police Number 14 of 2012 concerning the Management of Criminal Investigations, investigation activities are carried out in stages including:

(a) Investigation
(b) SPDP Delivery
(c) Forced action
(d) Inspection
(e) Case title
(f) Settlement of case files
(g) Submission of case files to the public prosecutor

[20]"The Criminal Law Enforcement on the Criminal Act of Employment".*Journal of Legal SovereigntyVol 4, No 1 (2022)*. url:https://jurnal.unissula.ac.id/index.php/ldj/article/view/20620accessed May 01, 2024
[21]Eddy OS Hiariej. (2016). Principles of Criminal Law (Revised Edition). Yogyakarta: Cahaya Atma Pustaka, p.57

(h) *Handover of suspects and evidence.*

During the trial process at the Ponorogo District Court, the evidence submitted by the respondent was in the form of Information Report Number LI/08/IV/2018/Satreskrim dated April 23, 2018 concerning Alleged Corruption in the Construction of Road Rabat in Ds. Jenangan, Jenangan District, Ponorogo Regency with the source of the 2017 APBD, with the existence of the Report, a Task Order Letter was made Number: Sp.Gas/25/IV/Res.3.5/2018/Satreskrim dated April 30, 2018, by the Head of Criminal Investigation Unit AKP. RD to IPDA AS, Bripka H, Brigadir IN and Bripda AA for the purpose of collecting information and documents on public complaints related to alleged corruption.

Then in November 2018, a Report on the results of the implementation of the Pulbaket and Pul dokumen tasks on Alleged Corruption in the Construction of Road Improvement on the Jenangan-Kesugihan Road Section, Source of the 2017 Regional Budget, was made, with the suggestion to carry out a case title in order to raise the status of case handling from the pulbaket stage to the Investigation stage. Then on November 29, 2018, a case title was carried out led by AKP M as the Head of the case title and IPDA AS as the Head of the Tipidkor Unit of the Ponorogo Police as well as the Presenter, then from the presentation a Report on the Case Title on Alleged Corruption in the Construction of Road Improvement on the Jenangan-Kesugihan Road Section, Source of the 2017 Regional Budget was made.

The opinion of the Ponorogo District Pretrial Judge that by not attaching the SPDP by the investigator at the time of notification of the Determination of Suspect does not invalidate the determination of the suspect. because in the Constitutional Court Decision Number 130 / PUU-XIII / 2015 it is stated that the investigator is obliged to notify and submit a letter of order to commence the investigation to the public prosecutor, the reported party, and the victim / reporter within a maximum of 7 (seven) days after the issuance of the investigation order. The word mandatory is when the SPDP after the issuance of the investigation order within 7 (seven) days. Based on the explanation of the Pretrial Judge, it was concluded that the petition submitted by the Applicant was legally groundless, thus the petition must be declared rejected in its entirety.

Based on the above, the problem of the decision, it can be concluded that testing the validity or otherwise of the determination of a suspect is very crucial. Given that there is no other justice-seeking mechanism other than pretrial that can decide the validity or otherwise of the determination of a suspect. reviewed from the aspect of justice and legal certainty aims as a form of "balance" between the interests of individuals (suspects or defendants) against the authority of investigators and Public Prosecutors in using coercive measures in the criminal justice system.

4. Conclusion

The legal construction of the validity or otherwise of the investigation process in the pre-trial for the determination of a suspect in a corruption case from the perspective of legal certainty at the Ponorogo District Court which stated that the pre-trial judge concluded that the petition submitted by the Applicant was legally unfounded, thus the petition must be declared rejected in its entirety. Testing the validity or otherwise of the determination of a suspect is very crucial, considering that there is no other justice-seeking mechanism other than pre-trial that can decide the validity or otherwise of the determination of a suspect. Meanwhile, the aspect of legal certainty aims to be a form of "balance" between the interests of the suspect and the authority of the investigator and the Public Prosecutor in using coercive measures in the criminal justice system. The search for justice for suspects who feel disadvantaged in the investigation and inquiry process as an effort to resolve criminal cases has been provided by the government through the pre-trial institution. The results of the investigation process are the determinants of the determination of suspect status against people suspected of committing corruption that harms state finances.

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