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Legal Analysis of the Pre-Trial Decision on the Validity of Determination of Suspect (Case Study of Decision: 5/Pid.Pra/2025/Pn.Jkt.Sel)

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Abstract. *Pretrial is the right of the suspect to conduct horizontal supervision through the authority given to the Judge in the investigation and/or prosecution process from the arbitrariness of law enforcement. The objectives of the research in this study: 1). to review and analyze the pretrial decision on the validity of the determination of the suspect, 2). to review and analyze the obstacles to the pretrial decision on the validity of the determination of the suspect. This research uses an approachempirical legal, with analytical descriptive research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using Lawrence's legal system theory and legal certainty theory. The results of the study concluded that: 1) Legal analysis of the pretrial decision on the validity of the current suspect determination that in Article 184 of the Criminal Procedure Code as has been refined through the Constitutional Court Decision Number 21/PUU-XII/2014 explains in detail that in determining a suspect, there must be 2 valid pieces of evidence and have passed the investigation and inquiry stage; 2). The weakness in terms of the legal substance aspect is that there are no clear provisions in the Criminal Procedure Code or other procedural law provisions regarding the determination of a suspect.*

Keywords: *Analysis; Determination; Legal; Validity.*

1. Introduction

Indonesia is a country based on law which adheres to the principle of legality in its legal system. justice criminal. The principle of legality is explained in Article 1 paragraph (1) of the Criminal Code which states that "An act cannot be punished, except based on the strength of existing criminal law provisions." Before a comparison is made of the wording of the article, it is clear that the principle of

legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are already rules that regulate the act in advance.

Indonesia adheres to an integrated law enforcement system (Integrated Criminal Justice System) which is the legal spirit of the Criminal Procedure Code.[1]Law is defined as determining what must be done and/or what may be done and what is prohibited.[2] In a country there is a legal system that contains shared expectations about transactions, relationships, planned events and accidents in everyday life so that they can be faced.[3] The scope of state power is limited by law. The role of government is to ensure law enforcement in order to achieve justice.[4]

Pretrial is a legal development in Indonesia specifically related to the enforcement of human rights in the criminal justice system which applies the principle of the presumption of innocence so that every person who is brought forward as a defendant receives human rights protection.[5] Pre-trial is the suspect's right to carry out horizontal supervision through the authority given to the Judge in the investigation and/or prosecution process from the arbitrariness of law enforcement. Article 82 paragraph (1) letter d of Law Number 8 concerning Criminal Procedure Law, regulates that the requested Pre-trial can be declared dropped if the case has begun to be examined by the district court.

2. Research Methods

Research approach usedin this study is sociological legal research or commonly called sociological legal research. In this study, law is conceptualized as an empirical phenomenon that can be observed in real life. Sociological legal research, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in research, in addition to reviewing the

[1]Eddy Santoso, Sri Endah Wahyuningsih, Umar Ma'ruf, The Role of the Police in the Integrated Criminal Justice System in Combating Gambling Crimes, Jurnal Daulat Hukum
Vol. 1. No. 1 March 2018
ISSN: 2614-560X
[2]Abdul Manan, The Threat of the Death Penalty Against the Eradication of Corruption, UNISSULA Law Journal, Volume 36 No. 1, June 2020 P-ISSN: 1412-2723
[3]Moch. Adimas P, Lathifah Hanim, Anis Mashdurohatun, Effectiveness of Criminal Investigation in the Framework of Preventing Pretrial Lawsuits at the Criminal Investigation Unit of the Semarang Police, Khaira Ummah Law Journal Vol. 13. No. 1 March 2018
[4]Moch. Adimas P, Lathifah Hanim, Anis Mashdurohatun, Effectiveness of Criminal Investigation in the Framework of Preventing Pretrial Lawsuits at the Semarang Police Criminal Investigation Unit, Khaira Ummah Law Journal, Vol 17, No 2 June 2022.
[5]Syprianus Aristeus, Legal Research on the Comparison Between the Settlement of Pretrial Decisions and the Presence of Commissioner Judges in Criminal Courts (Jakarta: National Legal Development Agency, Department of Law and Human Rights of the Republic of Indonesia, 2007), p. 16

implementation of law in practice.[6] The type of research used in completing this dissertation is the descriptive analytical legal research method, namely research conducted by examining library materials (secondary data) or library legal research.[7], then described in the analysis and discussion.

3. Results and Discussion

3.1. Legal Analysis of the Pretrial Decision on the Validity of the Current Suspect Determination

Investigation comes from the word selidik which means careful, precise or examined, while investigation means an effort to obtain information through data collection or process. The background, motivation and urgency of the introduction of the function of conducting an investigation is to provide protection and guarantees to Human Rights itself which refers to the principle of legality.

In carrying out the functions of "Investigation" and "Investigation", the constitution gives "special rights" or "privilege rights" to the Police to: summon-examine-arrest-detain-search-confiscate suspects and goods deemed related to non-criminal acts. These rights and authorities must obey and submit to the principle of: the right of due process.[8]

In the principle: the right of due process explains that every suspect has the right to be investigated on the basis of "in accordance with the procedural law". That the concept of due process is associated with the basis of upholding the "supremacy of law", in handling criminal acts: no one is above the law, and the law must be applied to anyone based on the principle of "treatment" and in an "honest manner".

According to JCT Simorangkir, a suspect is "a person who is suspected of committing a crime and this is still at the preliminary examination stage to consider whether the suspect has sufficient grounds to be examined in court.[9]

In relation to this, if there is a police report and only one witness's statement, it cannot be a valid piece of evidence, because it must be accompanied by another valid piece of evidence, then legally a person can be named a suspect. Then after the determination of the suspect, it results in other coercive measures that can be applied to him. These coercive measures include confiscation, searches and so

[6]Ronny Hanitijo Soemitro, 1990, Legal Research Methodology and Jurimetrics, Ghalia Indonesia, Jakarta, p. 33.
[7]Ediwarman, 2010, Monograph, Legal Research Methodology, Medan: Postgraduate Program, Muhammadiyah University of North Sumatra, Medan, p. 24.
[8]M. Yahya Harahap, Discussion of Problems and Determination of Criminal Procedure Code Investigation and Prosecution, Sinar Grafika, 14th printing, 2012, p. 95
[9] JCT Simorangkir, et al., Legal Dictionary, New Aksara Publishing, Jakarta, 1983, p. 178

on. When the suspect feels that his rights have been violated by these coercive measures, the suspect has the right to file a legal remedy, namely a pretrial motion.

Based on Article 1 number 5 of Law Number 5 of 1986, a determination is a determination issued by a state administrative body or official based on applicable laws and regulations, which is concrete, individual and final in nature and has legal consequences for a person and a civil legal entity.

The elements are:

1) Written determination

2) Issued by a state administrative body or official

3) Contains constitutional legal acts

4) Based on applicable laws and regulations

5) Be concrete, individual and final

A person is named a suspect based only on preliminary evidence obtained from the results of an investigation conducted by the police. Based on this preliminary evidence, a person is then suspected of being the perpetrator of a crime. This provision gives rise to multiple interpretations, because determining something as preliminary evidence is very dependent on the quality and who provides the understanding, between the investigator and the suspect or his legal representative it is very possible to differ.

The Constitutional Court declared the phrases “preliminary evidence”, “sufficient preliminary evidence”, and “sufficient evidence” in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code as conditionally unconstitutional as long as they are interpreted as a minimum of two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code. Article 77 letter a of the Criminal Procedure Code was declared conditionally unconstitutional as long as they were interpreted as including the determination of suspects, searches, and confiscations. The Court reasoned that the Criminal Procedure Code did not provide an explanation regarding the limits on the number (of pieces of evidence) of the phrases “preliminary evidence”, “sufficient preliminary evidence”, and “sufficient evidence”. This is different from Article 44 paragraph (2) of Law No. 30 of 2002 concerning the Commission for the Eradication of Corruption Corruption Crimes clearly regulate the limits on the amount of evidence, namely a minimum of two pieces of evidence. "The phrases 'initial evidence', 'sufficient initial evidence', and 'sufficient evidence' in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code must be interpreted as at least two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code accompanied by the examination of

the suspect, except for criminal acts where the determination of the suspect can be done without his presence (in absentia).

Determining a suspect is part of the investigation process which is open to the possibility of arbitrary action by investigators, including the deprivation of a person's human rights.

In the implementation of pre-trial proceedings, the law gives authority to the District Court to examine and decide, in accordance with the provisions set out in Article 77 of the Criminal Procedure Code.

a. Whether or not an arrest, detention, termination of investigation or termination of prosecution is legal.

b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution stage.

In other words, pretrial has important objects in it, namely, first, examining and deciding whether or not the coercive measures including arrest and detention are valid. Second, examining whether or not the termination of the investigation or termination of the prosecution is valid because of four things, namely nebis in idem or because it turns out that what is suspected of the suspect is a crime that has been prosecuted and tried, and the decision has obtained permanent legal force, the case he is suspected of is an expired case, and abuse of authority. Third, authorized to examine claims for compensation. Fourth, examining requests for rehabilitation. Fifth, pretrial against confiscation actions.[10]

Meanwhile, in its implementation, pretrial is further regulated in Article 82-83 of the Criminal Procedure Code. In the examination process in court, pretrial is led by a single judge appointed by the Head of the District Court who is assisted by a clerk in examining or deciding on pretrial. The implementation of the pretrial arises from a request or submission submitted by the suspect, the suspect's family or the suspect's attorney to the District Court by stating the reasons that are the basis for the pretrial. That in this case the request requested is compensation for the trial process at the investigation or prosecution level.

Gustav Radbruch, justice and legal certainty are permanent parts of the law. In his opinion, justice and legal certainty must be considered, legal certainty must be maintained for the sake of security and order of a country. Based on the theory of legal certainty, the values to be achieved are the values of justice and happiness.[11]

[10]Yahya Harahap, discussion of problems and application of the Criminal Procedure Code, Jakarta: Sinar Grafika, 2010, pp. 4-6
[11]Achmad Ali, 2002, Unveiling the Veil of Law (A Philosophical and Sociological Study), Gunung Agung, Jakarta, p. 95.

Legal certainty comes from dogmatic juridical teachings based on positivistic thought in the legal world that tends to see law as something autonomous and independent, positivistic thought assumes that law is nothing more than a compiled regulation. The purpose of positivistic law is nothing more than to guarantee the realization of legal certainty. Legal certainty is created only on general laws, the general nature of legal rules proves that law is solely for certainty, not to realize justice or benefit.[12]

Gustav Radbruchput forward 4 (four) basic things thatrelatewith the meaning of legal certainty, namely:

First, that the law is positive, meaning that positive law is legislation. Second, that the law is based on facts, meaning that it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in interpretation, in addition to being easy to implement. Fourth, positive law must not be easily changed.

OpinionGustavRadbruch is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of law or more specifically of legislation. Based on his opinion, according to Gustav Radbruch, positive law regulates the interests ofHuman interests in society must always be obeyed even if positive law is less fair.

One of the real forms of human rights protection stated in Law Number 8 of 1981 concerning Criminal Procedure Law referred to as the Criminal Procedure Code (KUHAP) is the existence of a pretrial institution for every citizen who is arrested, detained, and charged without a valid reason based on the provisions of the Law. The pretrial institution is the authority of the District Court before examining the main case. This is emphasized in Article 1 number 10 of the Criminal Procedure Code, which states that pretrial is the authority of the District Court to examine and decide according to the method regulated in the Criminal Procedure Code. This is also emphasized in Article 77 of the Criminal Procedure Code concerning the object of pretrial, however with the issuance of the Constitutional Court Decision Number: 21/PUU–XII/2014, the object of pretrial has been expanded, one of which is the addition of norms related to provisions governing pretrial applications for the determination of suspect status as an object of pretrial. In accordance with the philosophy of pretrial in the Criminal Procedure Code as an institution that monitors the validity of investigation and prosecution procedures so that there are no violations of human rights. Pretrial only has the authority to test procedural truth, not to test material truth in this case the substance of evidence in order to fulfill the elements in material criminal law which is the absolute authority of the Judge examining the main case.1 Pretrial functions as a means of control over Investigators or Public

[12]Ibid. pp. 82 and 83.

Prosecutors if there is abuse of the authority given to them.2 Therefore, the purpose of establishing a pretrial is to uphold the law and provide protection for the basic rights of suspects in the examination process, investigation stage, and prosecution and aims to supervise the use of coercive measures by law enforcement officers, in this case the Police and the Prosecutor's Office.

Pretrial is one of the new institutions introduced by the Criminal Procedure Code in the midst of law enforcement. Pretrial in the Criminal Procedure Code is placed in Chapter X, Part One, as one part of the scope of the authority to try for the district court.[13]According to the Criminal Procedure Code (KUHAP) Article 1 number 10 states: 19 Pre-trial is the authority of the district court to examine and decide in the manner regulated in this law regarding:

1) Whether or not an arrest and/or detention is legal 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."

Based on the contents of Supreme Court Regulation Number 4 of 2016 in Article 2 paragraph (2) it is explained that "the pretrial examination of the application regarding the invalidity of the determination of a suspect only assesses the formal aspect, namely whether there are at least 2 (two) valid pieces of evidence and does not enter the case". From the contents of the article it can be said that the examination standard used by the pretrial judge in testing the validity of the initial evidence in the examination of the validity or otherwise of the determination of a suspect uses the quantity standard. The pretrial examination does not enter the case material and the pretrial hearing related to the invalidity of the determination of a suspect, confiscation and search led by a single judge because the examination is relatively short and the evidence only examines the formal aspect, namely whether the initial evidence has been fulfilled by considering that there are at least two pieces of evidence in the a quo case and may not enter the case material. In the Draft Criminal Procedure Code Article 175 paragraph (1) regulates regarding valid evidence, consisting of:

a. Evidence;

b. Letters;

c. Electronic evidence;

[13]M. Yahya Harahap, 2000, Discussion of Problems and Application of Criminal Procedure Code, Sinar Grafika, Jakarta, p.1

d. Expert testimony;

e. Witness statements;

f. Statement of the accused; and

g. Judge's observation.

Pretrial is something new in the world of Indonesian justice which was introduced by the Criminal Procedure Code in the midst of law enforcement life.[14]Pretrial is an examination of a case in a criminal law court conducted by a single judge. The examination is not on the main case, but only on the procedures carried out by law enforcement officers before the file is submitted to the court. Pretrial has been regulated in Law Number 8 of 1981 concerning Criminal Procedure Law or commonly referred to as the Criminal Procedure Code (KUHAP). The regulation on pretrial has been included in Article 1 number 10 and is emphasized in Chapter X Part One, namely: Articles 77 to 83 of the Criminal Procedure Code. According to Hamzah and Surachman[15], the birth of pretrial in the Criminal Procedure Code is an adaptation of the habeas corpus institution from the Anglo-Saxon criminal justice system. The authority given to the judge in this trial process is much more limited compared to the authority of the commissioner judge in countries with civil law traditions in Continental Europe (rechter-commissaris, judge d'instruction, juez de intrucion, juiz intrucao, and so on). The practice of pretrial as regulated in the Criminal Procedure Code, recently gave rise to problems when there was a decision stating that the determination of a suspect by the investigator was invalid.

Pretrial is only a new institution whose characteristics and existence are and are an integral part of the District Court, and as a court institution, it is only found at the District Court level as a task force that is not separate from the District Court, thus, Pretrial is not outside or beside or on a par with the District Court, but is only a division of the District Court, judicial administration, personnel, equipment and finances are united with the District Court and are under the leadership and supervision and guidance of the Head of the District Court, the implementation of its judicial function is part of the judicial function.

Based on Article 1 number 5 of Law Number 5 of 1986, a determination is a determination issued by a state administrative body or official based on applicable laws and regulations, which is concrete, individual, and final in nature

[14]Harahap, M. Yahya, 2012, Civil Procedure Law, Jakarta: Sinar Grafika. p. 1
[15]Hamzah, A., & Surachman, RM (2015). Pre-trial justice & discretionary justice in the Criminal Procedure Code of various countries. Jakarta: Sinar Grafika. p. 106

which has legal consequences for a person and a civil legal entity. Its elements are:[16]

1) Written determination

2) Issued by a state administrative body or official

3) Contains constitutional legal acts

4) Based on applicable laws and regulations

5) Be concrete, individual and final

A person is named a suspect based only on preliminary evidence obtained from the results of an investigation conducted by the police. Based on this preliminary evidence, a person is then suspected of being the perpetrator of a crime. This provision gives rise to multiple interpretations, because determining something as preliminary evidence is very dependent on the quality and who provides the understanding, between the investigator and the suspect or his legal representative it is very possible to differ.[17]The Constitutional Court declared the phrases “preliminary evidence”, “sufficient preliminary evidence”, and “sufficient evidence” in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code as conditionally unconstitutional as long as they are interpreted as a minimum of two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code. Article 77 letter a of the Criminal Procedure Code was declared conditionally unconstitutional as long as they were interpreted as including the determination of suspects, searches, and confiscations. The Court reasoned that the Criminal Procedure Code did not provide an explanation regarding the limitations on the amount (of evidence) of the phrases “preliminary evidence”, “sufficient preliminary evidence”, and “sufficient evidence”. This is different from Article 44 paragraph (2) of Law No. 30 of 2002 concerning the Corruption Eradication Commission which clearly regulates the limitations on the amount of evidence, namely a minimum of two pieces of evidence. "The phrases 'initial evidence', 'sufficient preliminary evidence', and 'sufficient evidence' in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code must be interpreted as at least two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code accompanied by the examination of the suspect, except for crimes where the determination of the suspect may be carried out without his presence (in absentia). Determination of the suspect is part of the investigation process which

[16]Sudarmi, 2015, Review of Pretrial Decisions Related to the Determination of a Person as a Suspect, Journal of Thesis, Bachelor of Law, Faculty of Law, Atmajaya University Yogyakarta, pp. 7-8

[17]Bahran, 2017, “Determination of Suspects According to Criminal Procedure Law in the Perspective of Human Rights”, Syariah: Journal of Legal Science and Thought, Vol 17, No 2, p. 224

is open to the possibility of arbitrary actions by investigators which include the deprivation of a person's human rights.[18]

Through the Constitutional Court Decision Number: 21/PUU-XII/2014 dated April 28, 2015, it is strengthened that the Pretrial institution can also examine and try the validity of the determination of a Suspect, as quoted in the Constitutional Court Decision Number: 21/PUU-XII/2014 as follows: To try, Declare: Grant the application in part: Article 77 letter a of Law Number 8 of 1981 concerning criminal procedure law (State Gazette of the Republic of Indonesia 1981, Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) is contrary to the 1945 Constitution of the Republic of Indonesia, as long as it is not interpreted to include Determination of Suspect, Search and confiscation. Article 77 letter a of Law Number 8 of 1981 concerning criminal procedure law (State Gazette of the Republic of Indonesia of 1981, Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) does not have binding legal force as long as it is not interpreted to include Determination of Suspects, Searches and Confiscations. The unlawful nature of the act is lost because of the reasons mentioned above. In criminal law, this is called justification of crime which is distinguished from reasons for eliminating mistakes. Thus it is clear that based on the Decision of the Constitutional Court Number: 21/PUUXII/2014 dated April 28, 2015 that the determination of a Suspect is part of the authority of the Pretrial, it can no longer be debated that all must implement decisions that have permanent legal force. The reasons for the applicant's pretrial motion are as follows: Coercive measures, such as the determination of a suspect, arrest, search, confiscation, detention, and prosecution carried out in violation of laws and regulations are basically an act of deprivation of Human Rights. According to Andi Hamzah, the Court is a place for Human Rights Violations, which in reality the Drafting of the Criminal Procedure Code is much encouraged and refers to International Law which has become International Customary Law.[19]Therefore, Pretrial becomes a control mechanism against a possible arbitrary action by the Investigator or Public Prosecutor in carrying out the action. This aims to enforce the Law and Protection of Human Rights as a Suspect/Defendant in the investigation and prosecution examination. In addition, Pretrial is intended as horizontal supervision of the rights of the suspect/defendant in the preliminary examination (vide Explanation of Article 80 of the Criminal Procedure Code). Based on that value, the investigation or public prosecutor in carrying out the actions of determining the suspect, arrest, search, confiscation, detention, and prosecution should prioritize the principles and principles of caution in determining someone as a Suspect.

3.2. Obstacles and Solutions to Pretrial Decisions on the Validity of Current Suspect Determinations

[18]Ibid. 227
[19]Andi Hamzah, Indonesian Criminal Procedure Law, Jakarta: Sinar Grafika (2008), p.10.

1) Weaknesses of Legal Substantive Aspects

Judges in examining and deciding cases are responsible for the determinations and decisions they make, which determinations and decisions must contain legal considerations that form the basis of their decisions and these legal considerations are based on appropriate and correct legal reasons and bases, as mandated in Article 53 of Law Number 48 of 2009 concerning Judicial Power, which reads:

(1) In examining and deciding a case, the judge is responsible for the decisions and verdicts he makes.

(2) The determination and decision as referred to in paragraph (1) must contain the Judge's legal considerations which are based on appropriate and correct legal reasons and basis.

In relation to this, the Chief Justice of the Republic of Indonesia and the Chief Justice of the Republic of Indonesia through the Joint Decree of the Chief Justice and the Chief Justice of the Judicial Commission Number 047/KMA/SKB/IV/2009 – 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for Judges' Conduct stipulated on April 8, 2009 regulates the implementation of the basic principles of the Code of Ethics and Guidelines for Judges' Conduct into 10 (ten) rules of conduct for Judges, especially the rules of conduct for Judges to "Behave Professionally" as stated in number 10.4, which reads:

Judges are required to avoid making mistakes in making decisions, or ignoring facts that could ensnare the accused or the parties or intentionally making considerations that benefit the accused or the parties in trying a case they are handling.[20]

The responsibility attached to the Judge when making a determination and decision containing legal considerations based on appropriate and correct legal reasons and bases as mandated in Article 53 of Law Number 48 of 2009 concerning Judicial Power in order to avoid errors in making decisions as mandated in the Joint Decree of the Chief Justice of the Supreme Court and the Chairperson of the Judicial Commission Number 047/KMA/SKB/IV/2009 – 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for Judges' Conduct, requires the Judge to consider various aspects related to the case being examined in order to reach a perfect consideration according to the law.

The evidence used in determining someone as a suspect as stipulated in Article 184 paragraph (1) of the Criminal Procedure Code is the basis for the Judge's

[20]See Joint Decree of the Chief Justice of the Supreme Court and the Chairman of the Judicial Commission Number 047/KMA/SKB/IV/2009 – 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Guidelines for the Conduct of Judges, p. 20.

choice to state whether or not the minimum amount of evidence obtained by investigators has been fulfilled before determining someone as a suspect in a criminal act, where the determination of someone as a suspect has of course begun with an initial action, namely an investigation.

A person's basic rights remain attached to him even though he has been named a suspect or defendant in a criminal process. A person's basic rights are protected by the state through the pretrial institution as stated by the Constitutional Court in the Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015:

That the essence of the existence of the pretrial institution is as a form of supervision and objection mechanism against the law enforcement process that is closely related to the guarantee of human rights protection, so that in its time the rules on pretrial were considered part of the masterpiece of the Criminal Procedure Code. However, in its journey it turned out that the pretrial institution could not function optimally because it was unable to answer the problems that existed in the pre-adjudication process. The supervisory function played by the pretrial institution was only post facto so that it did not reach the investigation and its testing was only formal which prioritized objective elements, while subjective elements could not be supervised by the court. This actually caused the pretrial to be trapped only in formal matters and limited to administrative matters so that it was far from the essence of the existence of the pretrial institution.[21]

In relation to the establishment of the Constitutional Court so that pre-trial proceedings are not trapped only in formal matters and limited to administrative matters so that they are far from the essence of the existence of pre-trial institutions, Bambang Poernomo in his book entitled "Orientation of Indonesian Criminal Procedure Law" also argues that:

One of the peaks of all protection or guarantee of human rights will lie in the realization of the implementation of pretrial, compensation, and rehabilitation as regulated in articles 30, 68, 77-83, 95-96, and 97 of the Criminal Procedure Code. The three legal efforts are the implementation of interests that are more arbitrary and administrative in nature, with a decision in the form of a determination.[22]

[21]See Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015, paragraph [3.16] number 1 letter h, p. 104.

[22] Bambang Poernomo, 1984, ORIENTATION OF INDONESIAN CRIMINAL PROCEDURE LAW, Yogyakarta, Amarta Book, p. 187.

Article 78 paragraph (1) of the Criminal Procedure Code which determines the authority of the Single Judge in the Examination of Pretrial Cases reads, "The authority of the district court as referred to in Article 77 is the pretrial", while Article 77 letter a of the Criminal Procedure Code which reads, "The district court has the authority to examine and decide, in accordance with the provisions stipulated in this law regarding: a. the validity or otherwise of arrest, detention, termination of investigation or termination of prosecution" has been expanded by Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015, including the determination of suspects, searches, and confiscations. The phrase "in accordance with the provisions stipulated in this law" in Article 77 letter a of the Criminal Procedure Code can be used by the Judge as an entry point in testing the validity of the determination of suspects so as not to be trapped only in formal matters and limited to administrative matters so as to be far from the essence of the existence of the pretrial institution as a form of supervision and objection mechanism against the law enforcement process which is closely related to guarantees of human rights protection.

One of the principles in Criminal Procedure Law is the principle of presumption of innocence or presumption of innocence as stated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states "every person who is suspected, arrested, detained, charged, or brought before a court must be considered innocent before a court decision states his guilt and has obtained permanent legal force". In relation to the principle of presumption of innocence or presumption of innocence as stated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, the court decision stating whether or not a person suspected of committing a crime has committed an act is based on the discovery of material truth which is the objective of criminal procedure law.

2) Weaknesses of Legal Structure Aspects

The court does not educate investigators and public prosecutors to use their authority in accordance with legal provisions because as long as written formalities for the actions of investigators and public prosecutors exist, the actions taken by investigators and public prosecutors are considered in accordance with the law, if the examination of the pretrial motion, especially the examination of the validity of the determination of a suspect, the pretrial judge makes an assessment from the material (qualitative) aspect regarding whether or not there is legal relevance between the alleged crime and a person who has been determined by the investigator as a suspect in the alleged crime case, it is clear that the determination of the suspect is legally flawed, while the issuance of Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015 is intended to remind law enforcers to uphold the principle of caution, among others, in determining someone as a suspect and so that the treatment of a person in the criminal process takes into account the suspect as a human being

who has the same dignity, honor, and position before the law as the legal considerations of the Constitutional Court paragraph [3.16] number 1 letters i and k as follows:

That when the Criminal Procedure Code was enacted in 1981, the determination of suspects had not yet become a crucial and problematic issue in the lives of Indonesian society. Coercive measures at that time were conventionally interpreted as limited to arrest, detention, investigation, and prosecution, but at present the form of coercive measures has undergone various developments or modifications, one of which is "determination of suspects by investigators" carried out by the state in the form of labeling or suspect status to someone without a clear time limit, so that someone is forced by the state to accept suspect status without the opportunity for him to make legal efforts to test the legality and purity of the purpose of determining the suspect. In fact, the law must adopt the goals of justice and benefit simultaneously so that if social life becomes more complex, the law needs to be more scientifically concretized by using better and more perfect language. In other words, the principle of caution must be firmly upheld by law enforcers in determining someone as a suspect;

It is true that if Article 1 number 2 of the Criminal Procedure Code is carried out ideally and correctly, then there is no need for a pretrial institution. However, the problem is what happens when it is not carried out ideally and correctly, where someone who has been named a suspect fights for his rights with legal efforts that there is something wrong in determining someone as a suspect. Whereas by the 1945 Constitution, everyone is guaranteed the right to receive recognition, guarantees, protection, and fair legal certainty and equal treatment before the law. Therefore, the determination of a suspect is part of the investigation process which is a deprivation of human rights, then the determination of a suspect by an investigator should be an object that can be requested for protection through legal efforts of the pretrial institution. This is solely to protect someone from arbitrary actions by investigators that are likely to occur when someone is determined as a suspect, whereas in the process it turns out that there was an error, then there is no other institution other than the pretrial institution that can examine and decide it. However, protection of the suspect's rights does not then mean that the suspect is innocent and does not disqualify the suspicion of a crime, so that a re-investigation can still be carried out in accordance with the applicable legal principles ideally and correctly. The inclusion of the validity of the determination of a suspect as an object of pretrial institutions is so that the treatment of a person in the criminal process takes into account the suspect as a human being who has the same dignity, status, and position before the law.[23]

[23]See Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015, paragraph [3.16] number 1 letters i and k, pp. 104, 105-106.

Based on the description above, the legal considerations in pre-trial decisions which are merely administrative evidentiary in the sense of merely comparing the completeness or absence of written formalities for investigative actions including the minutes as regulated in Article 75 paragraph (1) of the Criminal Procedure Code can no longer be maintained and are contrary to the current pre-trial practice, and can even be said to be injurious to the legal feelings of the community.

One of the legal bases used by the Supreme Court in issuing Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions is Law Number 48 of 2009 concerning Judicial Power, which states in Article 8 paragraph (1) that, "Any person who is suspected, arrested, detained, charged, or brought before a court must be considered innocent before a court decision declares his guilt and has obtained permanent legal force", which is the principle of the presumption of innocence which is a legal norm. This legal norm is a guideline for the implementers of judicial power, namely Judges (including Constitutional Judges) in upholding law and justice. Based on these provisions, any person who is named a suspect by an investigator must be considered innocent before a court decision declares his guilt and has obtained permanent legal force, as well as when the suspect fights for his rights through the pretrial institution. The implementation of the provisions of Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power at the pre-trial level is reflected in the examination of the application for the determination of a suspect carried out by the Sole Judge Examining Pre-trial Cases by conducting a test of the legality and purity of the purpose of the determination of the suspect, which in this thesis the author concretizes the test of the legality and purity of the purpose of the determination of the suspect into an assessment of the validity of the determination of a suspect from a formal aspect (quantity) related to a minimum of two valid pieces of evidence and an assessment of the validity of the determination of a suspect from a material aspect (qualitative) related to whether or not there is legal relevance between the alleged crime and a person who has been determined by the investigator as a suspect in the alleged crime case. The assessment of the validity of the determination of a suspect from the formal aspect (quantity) related to at least two valid pieces of evidence is a concretization of the legality test, while the assessment of the validity of the determination of a suspect from the material aspect (qualitative) related to whether or not there is legal relevance between the alleged crime and a person who has been determined by the investigator as a suspect in the alleged crime case is a concretization of the test of the purity of the purpose of determining the suspect.

Furthermore, Article 82 of the Criminal Procedure Code also stipulates that judges in examining pretrial cases are indeed given the authority to hear statements from both the suspect or applicant and the authorized official. Given

that the pretrial case examination process is a short procedure, then to prove the argument that whether or not someone needs to be named a suspect, the judge can of course only examine two formal pieces of evidence that are the basis for determining someone as a suspect. This is in line with what is contained in Article 2 of the Supreme Court Regulation Number 4 of 2016 (PERMA 4/2016) concerning the Prohibition of Review of Pretrial Decisions.

3) WeaknessAspectLegal Culture

Based on the legal considerations of the Constitutional Court in the a quo decision as mentioned above, it is known that there is indeed an urgency regarding the legality of testing the determination of a suspect so that it must be accommodated by a pretrial hearing considering that there is no other mechanism other than a pretrial hearing in the context of the pretrial process in Indonesia.

The spirit carried by the Constitutional Court decision Number 21/PUU-XII/2014 regarding the protection of human rights is actually appropriate, considering the essence of the existence of criminal procedural law, namely as a guarantor of human rights in the context of criminal justice. However, the big question is whether the test of the validity of the determination of a suspect must be tested in the context of a pretrial or not. This is a debate even among constitutional judges who examine and decide on the a quo case.

Based on the provisions in Chapter X Part One of Law Number 8 of 1981 concerning Criminal Procedure Law, it can be concluded that the initial idea of the formation of pretrial by the legislators was not to test the validity of the determination of a suspect. This can be understood because in essence pretrial is only a complaint mechanism against coercive measures carried out by investigators or public prosecutors at the pre-trial stage. However, in the context of pretrial, the coercive measures tested are limited to arrest and detention which were later expanded by the Constitutional Court by adding searches and seizures. The testing of these coercive measures is because coercive measures are an act of deprivation of a person's human rights. Because it concerns the deprivation of a person's human rights, its validity needs to be tested.

The solution to the weakness of the legal substance aspect is that the government should make clear provisions in the Criminal Procedure Code and other procedural law provisions regarding the determination of suspects, investigators do not need to look for other provisions in the Criminal Procedure Code as a legal basis for determining suspects. The solution to the weakness of the legal structure aspect is that law enforcement officers strengthen their understanding and implementation of legal procedures in accordance with Articles 183 and 184 of the Criminal Procedure Code, with an emphasis on regular supervision and training to prevent violations of suspects' rights and

ensure that the principle of due process of law is upheld. Judges need to continue to be encouraged to use a progressive legal approach that prioritizes substantive justice, so that they can create decisions that are not only procedurally valid but also socially just. The solution to the weakness of the legal culture aspect is to provide socialization to the community regarding the validity of the determination of suspects.

4. Conclusion

Legal analysis of the pretrial decision on the validity of the current suspect determination that in Article 184 of the Criminal Procedure Code as has been refined through the Constitutional Court Decision Number 21 / PUU-XII / 2014 explains in detail in terms of determining a suspect must have 2 valid pieces of evidence and have passed the investigation and inquiry stage. It can be concluded that there is a conflict of norms against the provisions regulated in the Criminal Procedure Code and the Chief of Police Regulation Number 6 of 2019 which can affect the process of determining a suspect. This creates an overlap of positive law in Indonesia, so that the objectives of the law are not realized, especially legal certainty.

5. References

Journals:

Abdul Manan, Ancaman Pidana Mati Terhadap Pemberantasan Tindak Pidana Korupsi, Jurnal Hukum UNISSULA, Volume 36 No. 1, Juni 2020 P-ISSN:1412-2723

Ardi Nuur Ihsani, 2017, *Urgensi Perluasan Objek Praperadilan Dalam Tindak Pidana Korupsi Ditinjau Dari Perspektif Perlindungan Hak Asasi Tersangka*, Jurnal Ilmu Hukum, 1,2 (2017).

Dodik Hartono, Maryanto, Djauhari, Peranan Dan Fungsi Praperadilan Dalam Penegakan Hukum Pidana Di Polda Jateng , Jurnal Daulat Hukum Vol. 1. No. 1 Maret 2018 ISSN: 2614-560X

Eddy Santoso, Sri Endah Wahyuningsih, Umar Ma'ruf, Peran Kepolisian Dalam Sistem Peradilan Pidana Terpadu Terhadap Penanggulangan Tindak Pidana Perjudian, Jurnal Daulat Hukum,Vol. 1. No. 1 Maret 2018 ISSN: 2614-560X

Iqbal Parikesit, Akibat Hukum Putusan Praperadilan yang Menyatakan Tidak Sahnya Penetapan Tersangka, Universitas Islam Sultan Agung Semarang, Semarang, 2022

Moch. Adimas P, Lathifah Hanim, Anis Mashdurohatun, Efektivitas Penyidikan Tindak Pidana Dalam Rangka Pencegahan Gugatan Praperadilan Pada

Satuan Reserse Kriminal Polrestabes Semarang, Jurnal Hukum Khaira Ummah Vol. 13. No. 1 Maret 2018

Muslichan Darojad, Analisis Pertimbangan Hakim Dalam Memberikan Putusan Praperadilan Tentang Sah Atau Tidaknya Penyelidikan dan Penyidikan yang dimohonkan oleh saksi, Universitas Islam Sultan Agung Semarang, Semarang, 2022

Sahuri Lasmadi, 2010, Tumpang Tindih Kewenangan Penyidikan Pada Tindak Pidana Korupsi Pada Perspektif Sistem Peradilan Pidana, Jurnal Ilmu Hukum, Volume 2, Nomor 3, Universitas Jenderal Soedirman Fakultas Hukum, Purwokerto, Juli, 2010.

Books:

Achmad Ali, 2002, *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis)*, Gunung Agung, Jakarta

Ardi Nuur Ihsani, 2017, *Urgensi Perluasan Objek Praperadilan Dalam Tindak Pidana Korupsi Ditinjau Dari Perspektif Perlindungan Hak Asasi Tersangka*, Jurnal Ilmu Hukum, 1,2 (2017)

Ediwarman, 2010, *Monograf, Metodologi Penelitian Hukum*, Medan: Program Pascasarjana Univ. Muhammadiyah Sumatera Utara, Medan.

J.C.T. Simorangkir, dkk, Kamus Hukum, Pen. Aksara Baru, Jakarta, 1983

Lon Fuller,1971, *The Morality of Law,New Haven,Conn:Yale University Press*,

M. Yahya Harahap, 2012 Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Bandung, Kasasi dan Peninjauan Kembali Edisi Kedua, Sinar Grafika, Jakarta. Hartono,. Penyidikan dan Penegakan Hukum Pidana (Melalui Pendekatan Hukum Progresif). Sinar Grafika, Jakarta, 2010

Manullang, E. Fernando M., 2007, *Menggapai Hukum Berkeadilan Tinjauan Hukum Kodrat dan Antinomi Nilai*, Buku Kompas.

Nurhasanah Ismail, 2008, *Perkembangan Hukum Pertanahan Pendekatan Ekonomi Politik*, Universitas Gajah Mada, Yogyakarta.

Ronny Hanitijo Soemitro, 1990, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta.

Samidjo, Pengantar Hukum Indonesia, (Bandung: Armico, 1985)

Sidharta, 2006, *Karakteristik Penalaran Hukum Dalam Konteks Keindonesiaan*, Alumni, Bandung

Sudikno Mertokusumo, 2007, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta

Syprianus Aristeus, Penelitian Hukum Tentang Perbandingan Antara Penyelesaian Putusan Praperadilan Dengan Kehadiran Hakim Komisaris Dalam Peradilan Pidana (Jakarta: Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM Republik Indonesia, 2007)

Regulation:

Criminal Code

Criminal Procedure Code

Pancasila.

The 1945 Constitution of the Republic of Indonesia.

Internet:

Samuel, 2018, *Metode Pengumpulan Data dalam Penelitian*, Artikel diakses melalui http://ciputrauceo.net/blog/2016/2/18/metode-pengumpulan-data-dalam-penelitian/