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Legal Analysis of Procedure Violations in The Investigation Process Regarding The Validity of Court Decisions in Criminal Cases (Case Study of Case Number 35/Pid.Sus/2025/Pn Spt at The Sampit District Court)

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Abstract. *This research is motivated by the persistent occurrence of procedural violations in criminal investigations in Indonesia, which has implications for the validity of subsequent criminal justice processes. One case that warrants close examination is Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court, in which there are allegations of investigative procedural violations, including the examination of the suspect without the assistance of legal counsel and a house search conducted without the permission of the Chairman of the District Court, as well as the late submission of the search authorization request. The research questions in this study are: (1) What are the forms of procedural violations in the investigation process that occurred in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court?; and (2) How do the procedural violations in the investigation process affect the validity of the court decision in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court? This research uses normative legal research with statutory, historical, and case approaches. The data used is secondary data consisting of primary, secondary, and tertiary legal materials. Data collection is conducted through library research and analyzed qualitatively using Gustav Radbruch's theory of legal purpose, the theory of due process of law, and the theory of integrated criminal justice system as analytical tools. The results show that: First, the forms of procedural violations in the investigation in Case Number 35/Pid.Sus/2025/PN Spt include the examination of the Defendant at the investigation level without the assistance of legal counsel, which contravenes Article 56 of the Criminal Procedure Code (KUHAP), the conduct of a house search without the permission of the Chairman of the District Court as required in Article 33 KUHAP, and the late submission of the search authorization request which exceeds the "prompt" time period interpreted by Constitutional Court Decision Number 3/PUU-XI/2013 as no* *more than 7 (seven) days. Second, the procedural violations in the investigation process conceptually affect the validity of the court decision because they weaken the evidentiary force of the obtained evidence, violate the principle of due process of law, and cause inconsistencies in the integrated criminal justice system; however, in practice, the panel of judges in the case at hand chose to ignore the Legal Counsel's objection on the grounds that it had been considered in the interlocutory decision.*

Keywords: *Criminal Case; Due Process of Law; Investigation; Procedural Violation; Validity of Decision.*

1. Introduction

Law is essentially an instrument for realizing justice in social life. In his monumental work, Nicomachean Ethics, Aristotle laid the foundation for philosophical thinking on justice by distinguishing between distributive justice (iustitia distributiva) and corrective justice (iustitia commutativa).[1]Distributive justice concerns the proportional distribution of wealth, position, and honor among members of society, while corrective justice concerns efforts to correct errors or imbalances that occur in interactions between individuals. In the context of criminal procedural law, these two dimensions of justice are dialectically intertwined: on the one hand, criminal procedural law must ensure that the distribution of state authority is carried out proportionally and non-arbitrarily; on the other hand, criminal procedural law must provide fair corrections for errors that occur in the law enforcement process.

Philosophically, criminal procedural law is the embodiment of the eternal struggle between two fundamental interests, namely the state's interest in upholding legal order (ius puniendi) and the individual's interest in maintaining his freedom and human dignity (human dignity).[2]This struggle reflects the philosophical tension inherent in every criminal justice system, where the state has the power to restrict citizens' freedoms through criminal sanctions, but at the same time the state also has an obligation to protect its citizens' fundamental rights. Criminal procedural law exists as a philosophical bridge that balances these two interests through procedures designed to ensure that the state's coercive power is not used arbitrarily. This is what distinguishes a state based on the rule of law (rechtsstaat) from a state based on power

[1]Aristotle, Nicomachean Ethics, Book V, as quoted in Theo Huijbers, 1995, Philosophy of Law in the Course of History, Kanisius, Yogyakarta, pp. 31-32.

[2]Satjipto Rahardjo, 2014, Legal Science, Citra Aditya Bakti, Bandung, p. 19.

(machtsstaat), where in a state based on the rule of law, the state's power is subject to the law, not the other way around.

In the Indonesian context, the philosophy of criminal procedural law must be understood within the framework of Pancasila, the philosophical foundation of the state. Pancasila, particularly the second principle, "Just and Civilized Humanity" and the fifth principle, "Social Justice for All Indonesian People," provide the philosophical foundation for the development of criminal procedural law that upholds human dignity.[3]Notonagoro taught that Pancasila is the Staatsfundamentalnorm that is the source of all sources of law in Indonesia, so that every legal norm, including criminal procedural law norms, must be able to be drawn a common thread with the values of Pancasila. The philosophical implementation of just and civilized humanitarian values in criminal procedural law is manifested in the recognition and protection of the rights of suspects and defendants, ranging from the right to be considered innocent (presumption of innocence) to the right to receive adequate legal assistance. Meanwhile, the value of social justice mandates that every citizen be treated fairly and non-discriminatory in the criminal justice process, regardless of social status, economic status, ethnicity, religion, or social group.

The philosophy of modern criminal procedure law cannot be separated from Herbert L. Packer's thoughts regarding two models of the criminal justice system, namely the crime control model and the due process model.[4]The crime control model prioritizes the efficiency and effectiveness of crime prevention, assuming that crime eradication is the most important function of the criminal justice system. This model tends to accept presumptive actions regarding the guilt of suspects in order to expedite the law enforcement process. In contrast, the due process model prioritizes the protection of human rights and procedural justice. This model believes that it is better to acquit a thousand guilty people than to convict an innocent one, and therefore, every action in the criminal justice process must be subject to strict procedures to minimize the possibility of error and arbitrariness. The Criminal Procedure Code (KUHAP) in force in Indonesia philosophically adopts an approach closer to the due process model, although in practice, tensions often arise with the crime control approach due to the operational demands of law enforcement.

Furthermore, philosophically, procedures in criminal procedural law are not merely bureaucratic formalities, but contain substantive values that are inseparable from the concept of justice itself. Lon L. Fuller, in his work, The

[3]Notonagoro, 1980, Pancasila in a Popular Science, Pancuran Tujuh, Jakarta, pp. 28-29.

[4]Herbert L. Packer, 1968, The Limits of Criminal Sanction, Stanford University Press, Stanford, as quoted in Romli Atmasasmita, 2010, Contemporary Criminal Justice System, Kencana Prenada Media Group, Jakarta, pp. 19-21.

Morality of Law, states that there is an "internal morality of law" that requires that laws be formulated and implemented in accordance with eight principles, including consistency, clarity, and non-retroactivity. In the context of criminal procedural law, these principles are manifested in procedural procedures that must be adhered to by law enforcement officials. Thus, violations of procedures in the investigation process are not only administrative violations, but also violations of the internal morality of law that underlies the criminal justice system itself. Mardjono Reksodiputro emphasized that criminal procedural law is applied constitutional law, namely constitutional law that is applied concretely in the criminal justice process, so that any violation of criminal procedural law procedures is essentially a violation of the constitution.[5]

Based on the philosophical thinking above, constitutionally, the Republic of Indonesia is a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.[6]The legal consequences of the principle of the rule of law are that every action of the government and law enforcement officers must be based on applicable legal provisions, uphold human rights, and prioritize the supremacy of law in every process of state administration.

The concept of the rule of law adopted by Indonesia combines elements of rechtsstaat from the Continental European legal tradition with elements of the rule of law from the Anglo-Saxon legal tradition.[7]Both traditions emphasize the importance of legal certainty, human rights protection, an independent and impartial judiciary, and the limitation of government power through law. In the context of criminal law enforcement, the principle of the rule of law requires that every stage of the criminal justice process, from investigation, inquiry, prosecution, to trial, be carried out in accordance with legal procedures established by law.

The investigation is a crucial initial stage in the criminal justice process. This stage lays the foundation for the entire legal process that follows.[8]The quality of the investigation conducted by investigators will significantly determine the quality of the prosecution and ultimately influence the quality of the court's decision. If the investigation phase is carried out carelessly, inaccurately, or even in violation

[5]Mardjono Reksodiputro, 1994, Human Rights in the Criminal Justice System, Center for Justice Services and Legal Services, University of Indonesia, Jakarta, p. 84.

[6]Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

[7]Jimly Asshiddiqie, 2013, Constitutional Law and the Pillars of Democracy, Sinar Grafika, Jakarta, pp. 124-125.

[8]M. Yahya Harahap, 2016, Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution, Sinar Grafika, Jakarta, p. 109.

of applicable legal procedures, all subsequent phases will be contaminated by the legal flaws inherent in the investigation's results. This makes the investigation a strategic phase whose integrity must be maintained through investigators' adherence to applicable legal procedures.

The current Criminal Procedure Code (KUHAP), as regulated in Law Number 8 of 1981 in conjunction with Law Number 20 of 2025 concerning Criminal Procedure, has regulated in detail the procedures and methods of investigation that must be adhered to by investigators in carrying out their duties and authorities.[9]The Criminal Procedure Code (KUHAP) is an important milestone in the reform of criminal procedure law in Indonesia because it introduces principles of human rights protection that were not previously explicitly accommodated in Het Herziene Inlandsch Reglement (HIR), a legacy of Dutch colonialism.

The investigation procedures regulated in the Criminal Procedure Code cover various aspects that encompass the entire series of investigator actions, including the investigator's authority, notification of the commencement of the investigation to the public prosecutor through a Notice of Commencement of Investigation (SPDP), summoning and examining witnesses and suspects, body and closed place searches, confiscation of evidence, arrest, detention, and preparation of an Examination Report (BAP).[10]Each of these procedures has formal and material requirements that investigators must meet before carrying out the action. Violations of these procedures can be categorized as a violation of investigative procedures, potentially affecting the validity of subsequent legal proceedings.

Furthermore, the Criminal Procedure Code has provided guarantees for the protection of the suspect's rights in the investigation process, including the right to be immediately examined by investigators, the right to be immediately brought to court by the public prosecutor, the right to be clearly informed in a language that is understood about what he is suspected of, the right to provide information freely, the right to obtain legal assistance as regulated in Article 56 of the old Criminal Procedure Code in conjunction with Article 142 and Articles 154–155 of Law Number 20 of 2025 concerning the Criminal Procedure Code,[11]the right to be contacted by and to contact legal counsel, the right to be tried in a court hearing open to the public, the right to present witnesses and/or individuals with special expertise, and the right to know the purpose of the

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[9]Andi Hamzah, 2008, Indonesian Criminal Procedure Law, Sinar Grafika, Jakarta, pp. 118-119.

[10]Article 1 number 2 of Law Number 8 of 1981 concerning Criminal Procedure Law in conjunction with Article 1 number 2 of Law Number 20 of 2025 concerning the Criminal Procedure Code.

[11]Article 56 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law in conjunction with Article 142 and Article 154–155 of Law Number 20 of 2025 concerning the Criminal Procedure Code.

investigator's actions. These rights are concrete implementations of the principle of due process of law, which must be respected and protected by law enforcement officials at every stage of the criminal justice process.

Problems of procedural violations in the investigation process in criminal justice practices in Indonesia still frequently occur.[12]Various forms of violations of investigative procedures that are often found include: investigations conducted without an Investigation Order, delays or failure to send a Notice of Commencement of Investigation (SPDP) to the public prosecutor, violations of the rights of suspects during examinations, including examinations without the presence of legal counsel even though the criminal threat is categorized as requiring legal counsel, confiscation of evidence that does not comply with procedures, searches of premises that do not comply with the provisions of the Criminal Procedure Code, and the preparation of Investigation Reports that do not meet formal requirements. These procedural violations give rise to serious legal issues related to the validity of the evidence obtained and the validity of court decisions based on the results of investigations that contain procedural violations.

From the perspective of criminal procedural law, there is a doctrine known as the exclusionary rule or fruit of the poisonous tree doctrine which has developed in the common law legal system, especially in the United States.[13]This doctrine essentially states that evidence obtained illegally or in violation of applicable legal procedures cannot be used to prove the defendant's guilt in court. This doctrine aims to prevent law enforcement officials from engaging in unlawful acts in gathering evidence, while also protecting citizens' constitutional rights from potential abuses of state power.

2. Research Methods

The type of research used in this study is normative legal research, namely research conducted by studying and analyzing legal norms contained in laws and regulations, legal principles, legal doctrines, court decisions, and legal literature in the form of books or scientific articles/journals that are relevant to the problem being studied. In normative legal research, law is conceptualized as what is written in laws and regulations (law in books) or law that is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.

[12]Munsharif Abdul Chalim, 2019, "Legal Protection for Suspects in the Investigation Process Based on the Criminal Procedure Code", Law Development Journal, Vol. 1, No. 1, Sultan Agung Islamic University, Semarang, p. 67.

[13]Eddy OS Hiariej, 2012, Theory and Law of Proof, Erlangga, Jakarta, p. 18.

Normative legal research was chosen as the type of research in this study because the research character focuses on the analysis of legal norms, both those contained in laws and regulations and those contained in court decisions, legal doctrine, and other legal literature. This study will examine in depth the provisions of the Criminal Procedure Code and related laws and regulations that regulate investigative procedures, as well as analyze their application in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court.

3. Results and Discussion

3.1. Forms of Procedural Violations in the Investigation Process in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court

1. Case Position Case Number 35/Pid.Sus/2025/PN Spt

Before analyzing the forms of procedural violations in the investigation process, it is necessary to first state the position of the case in Case Number 35/Pid.Sus/2025/PN Spt which is the object of this research. This case is a special crime case in the field of narcotics with the defendant Zainal Abidin Bin M. Idris (Alm), a private employee domiciled on Jalan Trans Danau Sembuluh - Telaga Pulang, RT 006, RW 002, Sembuluh II Village, Danau Sembuluh District, Seruyan Regency, Central Kalimantan Province.

Based on the Public Prosecutor's indictment, the Defendant was charged alternatively with three charges, namely: the first charge of violating Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics; or the second charge of violating Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics; or the third charge of violating Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.[14]

The chronology of the case based on the Public Prosecutor's indictment can be described as follows: On Thursday, November 14, 2024 at around 07.30 WIB, members of the Seruyan Police Narcotics Investigation Unit (Satresnarkoba) received information from the public that in a house on Jalan Trans Danau Sembuluh - Telaga Pulang RT 006 RW 002 Sembuluh II Village, Danau Sembuluh District, Seruyan Regency, Central Kalimantan Province, transactions of suspected Class I narcotics in the form of crystal methamphetamine often occurred. Based on this information, several members of the Seruyan Police Resort, including witnesses Handra Yusuf Rangkapan Bin Apung (Alm), witness Rendy Akbar Bin M. Iberahim Aji (Alm), and witness Rizal Putra Adjie Pratama Bin Suprino, went to the house in question.

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[14]Public Prosecutor's Indictment Number PDM-12/SAMPI/Eku.1/02/2025.

At 14.00 WIB, members of the Seruyan Police Narcotics Unit arrived at the Defendant's house and immediately secured three people who were in the house, namely the Defendant Zainal Abidin Bin M. Idris (deceased), Sister Ritawati Binti Anang Batuni Sidik (the Defendant's wife), and Sister Baniati Binti Samsi (deceased). After that, members of the Narcotics Unit showed a task order and conducted a search of the house witnessed by Sister Sarifah Okta Nurjanah Binti Said Maskur (Secretary of Sembuluh II Village) and Brother Al-Amin Bin Abdurrahman (Sembuluh II Village Apparatus).

From the results of the search, a plastic clip containing powder suspected to be used methamphetamine was found in the front pocket of the Defendant's pants. The search then continued to the Defendant's room and the Defendant's child's room. During the search, witness Rizal Putra Adjie Pratama saw witness Baniati put something under the veil/hijab she was wearing and tried to leave the house in a hurry. Witness Rizal then stopped witness Baniati and asked witness Baniati to take out the object. After being opened, the object was a black plastic bag containing: (1) a green bottle of Deodorant with the words Rexona written on it which contained three packages suspected to be class I narcotics in the form of methamphetamine wrapped in white tissue; (2) a spoon for methamphetamine made from pieces of plastic spoons; (3) an empty plastic clip; and (4) two plastic clips.

The search was then continued in the Defendant's child's room, and found: (1) a brown sling bag hanging on the bedroom wall containing a black digital scale; and (2) a red bag containing cash amounting to Rp. 150,000.00 (one hundred and fifty thousand rupiah) which is suspected to be the proceeds of narcotics sales. Next, the Defendant, witness Baniati, witness Ritawati along with all the evidence were taken to the Seruyan Police for further examination.

Based on the Testing Report from the Food and Drug Monitoring Agency in Palangka Raya Number: LHU.098.K.05.16.24.0589 dated November 21, 2024 signed by the Head of the Testing Team Wihelminae, S.Farm., Apt., on the methamphetamine found, the identification results of the evidence were positive for containing methamphetamine which is listed in group I (one) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. The net weight of the methamphetamine found was 1.64 (one point six four) grams.[15]

After the investigation process, the Defendant was arrested on November 14, 2024 and detained successively by investigators, public prosecutors, and judges of the Sampit District Court until the trial process took place. During the trial, the Defendant's Legal Counsel, namely H. Rajali, SH, MH, M. Budhi Setiawan, SH, MH, Ranu Wijaya, SH, Dwian Abdi Dewantara, SH, MH, and Fry Anditya Rahayau Putri

[15]Test Report of the Food and Drug Monitoring Center in Palangka Raya Number: LHU.098.K.05.16.24.0589 dated November 21, 2024.

Rusadi, SH, MH from the STIH Habaring Hurung Sampit Legal Consultation and Aid Association, submitted exceptions and pleas alleging procedural violations in the investigation process.

In the end, the Panel of Judges at the Sampit District Court chaired by Yulanto Prafifito Utomo, SH, MH with members Sulaeman, SH, MH and Abdul Rasyid, SH issued a verdict on May 21, 2025, the verdict of which stated that the Defendant Zainal Abidin Bin M. Idris was legally and convincingly proven guilty of committing the crime of "unlawfully and unlawfully trading Class I Narcotics in non-plant form" as in the first alternative indictment of the Public Prosecutor, and sentenced him to 7 (seven) years in prison and a fine of Rp. 1,000,000,000.00 (one billion rupiah), with the provision that if the fine is not paid, it will be replaced with 2 (two) months in prison.[16]

2. Identification of Forms of Procedural Violations in the Investigation Process

Based on a review of the trial documents, the Defendant's legal counsel's exceptions, and the decision in Case Number 35/Pid.Sus/2025/PN Spt, several procedural violations alleged by the Defendant's legal counsel during the investigation can be identified. These violations can be described as follows:

a. Examination of Suspects Without Legal Counsel (Violation of Article 56 of the Criminal Procedure Code in conjunction with Articles 142 and 154–155 of Law 20/2025)

The first procedural violation argued by the Legal Counsel in Case Number 35/Pid.Sus/2025/PN Spt was the examination of the Defendant at the investigation stage without being accompanied by a legal counsel. This was expressly stated in the judge's decision considerations as part of the Legal Counsel's defense note which argued that when being questioned by the investigator, the Defendant was not accompanied by a legal counsel, resulting in a violation of Article 56 of the old Criminal Procedure Code in conjunction with Article 142 and Articles 154–155 of Law Number 20 of 2025 concerning the Criminal Procedure Code.

Article 56 paragraph (1) of the old Criminal Procedure Code (Law 8/1981) expressly states that in the case of a suspect or defendant suspected or accused of committing a crime that is punishable by death or a prison sentence of five years or more or for those who are unable to afford a prison sentence of five years or more who do not have their own legal counsel, the relevant official at all levels of examination in the judicial process is obliged to appoint a legal counsel for them. Furthermore, Article 56 paragraph (2) of the old Criminal Procedure

[16]Sampit District Court Decision Number 35/Pid.Sus/2025/PN Spt dated May 21, 2025, pp. 52-53 (decision).

Code states that every legal counsel appointed to act as referred to in paragraph (1) provides his assistance free of charge. The same substantial provisions are maintained and strengthened in the new Criminal Procedure Code through Article 142 of Law Number 20 of 2025 (which confirms the right of the suspect to be chosen, contacted, and accompanied by an advocate in every examination from the investigation stage) in conjunction with Articles 154–155 of Law Number 20 of 2025 (which regulate the obligation to provide free legal assistance for suspects who are unable to afford it).

In Case Number 35/Pid.Sus/2025/PN Spt, the Defendant was charged with violating Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the criminal penalty for which is life imprisonment or a minimum of 5 (five) years and a maximum of 20 (twenty) years imprisonment, plus a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).[17]Considering the threat of a criminal sentence of more than 5 (five) years, then legally, Article 56 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 142 and Articles 154–155 of Law Number 20 of 2025 must be applied, namely that investigators are required to appoint legal counsel for the Defendant at all levels of examination, including at the investigation stage.

Based on the arguments submitted by the Legal Counsel, the Defendant Zainal Abidin Bin M. Idris (deceased) was not accompanied by a legal counsel when questioned by the investigator at the investigation stage. This means that the investigator did not appoint a legal counsel for the Defendant as required by Article 56 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 142 and Article 154–155 of Law Number 20 of 2025. If the Defendant is unable to hire his own legal counsel, then the investigator's obligation to provide legal counsel free of charge becomes increasingly imperative. Violation of this provision constitutes a serious violation of investigative procedures because it concerns the fundamental right of the suspect to obtain legal assistance guaranteed by the Criminal Procedure Code, both in the old and new Criminal Procedure Code regimes.

In his work, M. Yahya Harahap explains that the right to legal counsel is a fundamental right inherent in every suspect, especially for crimes with severe criminal penalties. The provisions of Article 56 of the old Criminal Procedure Code in conjunction with Articles 142 and 154–155 of Law Number 20 of 2025 are an implementation of the principle of due process of law and guarantees of human rights protection in the criminal justice process. Violations of these

[17]Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

provisions are not only formal violations, but also violations that have a substantial impact on the suspect's rights.[18]

The legal implication of violating Article 56 of the old Criminal Procedure Code in conjunction with Articles 142 and 154–155 of Law Number 20 of 2025 is that the suspect's statement given without legal counsel may be questioned as to its evidentiary strength in court. Several Supreme Court jurisprudence cases have emphasized that a police report prepared without legal counsel, even though the criminal penalty is 5 (five) years or more, can be considered legally flawed and lacks full evidentiary strength.[19]This is in line with the principle that the suspect's statement must be given freely and without pressure from any party, as regulated in Article 117 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 142 of Law Number 20 of 2025 concerning the Criminal Procedure Code.

Furthermore, with the effective enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code since January 2, 2026 as an update to the Criminal Procedure Code, the guarantee of the suspect's right to be accompanied by legal counsel is further strengthened. Article 142 of Law Number 20 of 2025 emphasizes the suspect's right to be selected, contacted, and accompanied by an advocate in every examination from the investigation stage, while Articles 154–155 of Law Number 20 of 2025 strengthen the state's obligation to provide legal assistance to suspects facing serious criminal threats, as stated in the spirit of Article 56 of the old Criminal Procedure Code. This update is in line with the principles of fair trial and due process of law which are the main spirit of the birth of Law Number 20 of 2025. Thus, both within the framework of the old Criminal Procedure Code and the new Criminal Procedure Code as regulated in Law Number 20 of 2025, violation of the obligation to provide legal counsel for the Defendant at the investigation stage remains a procedural violation that has legal implications for the validity of investigative actions and the evidentiary power of the information obtained.

b. Search without the permission of the Head of the District Court (Violation of Article 33 of the Criminal Procedure Code in conjunction with Article 113 paragraph (1) of Law 20/2025)

The second procedural violation alleged by the legal counsel was the house search without permission from the Chief Justice of the District Court. This was also explicitly stated in the judge's decision considerations as part of the legal

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[18]M. Yahya Harahap, Op. Cit., p. 348-349.

[19]The Supreme Court's jurisprudence in several decisions, including Supreme Court Decision Number 1565 K/Pid/1991, has emphasized the significance of legal counsel assistance as a guarantee of due process.

counsel's defense, which argued that the search was conducted without permission from the chief justice.

Article 33 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 113 paragraph (1) of Law Number 20 of 2025 concerning the Criminal Procedure Code states that with a permit from the Head of the local District Court, investigators in conducting investigations can conduct necessary house searches. This provision is imperative, meaning that it must be fulfilled by investigators. Exceptions to this provision can only be made in very necessary and urgent circumstances as regulated in Article 34 of the old Criminal Procedure Code in conjunction with Article 113 paragraphs (4)–(6) of Law Number 20 of 2025, with the note that after the search is carried out, investigators are required to immediately report to the Head of the local District Court to obtain his approval.

In the chronology of the case, it can be seen that members of the Seruyan Police Narcotics Unit immediately conducted a search of the Defendant's house after arriving at the location. Based on the statements of witnesses, members of the Narcotics Unit only showed a duty order, not a search permit from the Head of the District Court. If it is true that the search was carried out without prior permission from the Head of the District Court, then this action can be categorized as a violation of Article 33 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 113 paragraph (1) of Law Number 20 of 2025.

There are indeed exceptions that allow searches to be conducted without the permission of the Chief Justice of the District Court, namely in circumstances of extreme necessity and urgency as regulated in Article 34 of the old Criminal Procedure Code in conjunction with Article 113 paragraphs (4)–(6) of Law Number 20 of 2025 concerning the Criminal Procedure Code. However, these circumstances must be objectively accountable. In this case, it is necessary to analyze whether there are indeed circumstances of extreme necessity and urgency that justify a search without the permission of the Chief Justice of the District Court. Considering that members of the Narcotics Unit had received information since 07.30 WIB and only arrived at the location at 14.00 WIB, then logically there is a sufficient time span for investigators to submit a request for a search permit to the Chief Justice of the District Court first.

If a search is conducted in circumstances that are extremely necessary and urgent so that it is not possible to obtain prior permission, then based on Article 34 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 113 paragraphs (4)–(6) of Law Number 20 of 2025 concerning the Criminal Procedure Code, investigators are required to immediately report to the Head of the local District Court to obtain his approval. The phrase “immediately” in this provision has been interpreted by the Constitutional Court through Decision

Number 3/PUU-XI/2013 as no later than 7 (seven) days since the action was taken, and this constitutional interpretation prospectively remains valid for the implementation of Article 113 of Law Number 20 of 2025. This is closely related to the third procedural violation argument which will be explained below.

The regulation regarding the requirement for permission from the Head of the District Court before conducting a house search as stipulated in Article 33 of the Criminal Procedure Code is also in line with the principle of judicial control maintained in Law Number 20 of 2025 concerning the Criminal Procedure Code. As an update to the old Criminal Procedure Code, Article 113 paragraph (1) of Law Number 20 of 2025 still places the act of searching a house as a coercive measure that must be subject to a control mechanism by judicial officials to guarantee the protection of citizens' privacy rights as guaranteed by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The philosophy underlying this regulation is that the house is a constitutionally protected private space, so that any invasive action against it must go through an approval mechanism from an independent judicial power. Thus, based on both the old Criminal Procedure Code and Law Number 20 of 2025, the act of searching a house carried out without the permission of the Head of the District Court as occurred in Case Number 35/Pid.Sus/2025/PN Spt is a procedural violation that can question the validity of the action and the evidentiary strength of the evidence obtained from it.

3.2. The Influence of Procedural Violations in the Investigation Process on the Validity of Court Decisions in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court

1. Legal Actions of Legal Counsel in Trial

Before analyzing the impact of procedural violations on the validity of court decisions, it is necessary to first outline the legal actions taken by the Defendant's Legal Counsel during the trial to respond to the violations of investigative procedures. The Defendant's Legal Counsel has taken two separate legal actions to challenge the violations of investigative procedures: through an exception filed at the beginning of the trial and through a plea filed after the examination of witnesses and evidence was completed.

a. Exceptions and Interim Decisions

At the beginning of the trial, the Defendant's Legal Counsel had submitted an exception which, among other things, argued that there had been a violation of investigative procedures. The exception was submitted based on the provisions of Article 156 paragraph (1) of the old Criminal Procedure Code, the provisions of which were substantially maintained in Law Number 20 of 2025 concerning the Criminal Procedure Code, which states that in the event that the defendant or legal counsel files an objection that the court is not authorized to try his case or the indictment cannot be accepted or the indictment must be cancelled, then after giving the public prosecutor the opportunity to state his opinion, the judge will consider the objection and then make a decision.[20]

Based on the exception submitted by the Legal Counsel, the Panel of Judges at the Sampit District Court issued an Interim Decision on February 25, 2025 with the following verdicts: (1) stating that the objection from the Legal Counsel of the Defendant Zainal Abidin Bin M. Idris (Deceased) was rejected in its entirety; (2) ordering the Public Prosecutor to continue the examination of case Number 35/Pid.Sus/2025/PN Spt on behalf of the Defendant mentioned above; and (3) suspending the court costs until the final decision.[21]

Based on the review of the legal considerations of the Panel of Judges in the Interim Decision, three main considerations can be outlined which form the basis for rejecting all of the Defendant's Legal Counsel's exceptions, namely considerations regarding the validity of the search and seizure actions, considerations regarding the assistance of legal counsel during the investigation stage, and considerations regarding some of the exception material which is deemed to have entered the realm of the main case. These considerations can be outlined sequentially as follows.

First, regarding the validity of the search and seizure actions, the Panel of Judges at the Sampit District Court is of the opinion that the police officers' actions were initially an investigative activity. However, because the Defendant was caught red-handed trying to remove evidence while the search of other witnesses was in progress, the seizure action was immediately carried out without first requiring permission from the Head of the District Court to prevent the loss or destruction of evidence. Furthermore, the Panel of Judges considered that the seizure action had in its development obtained approval from the Head of the local District Court as required in Article 38 paragraph (2) of the old KUHAP in conjunction with Article 120 of Law Number 20 of 2025 concerning the Criminal Procedure Code. In addition, the Panel of Judges emphasized that the validity or otherwise of the search and seizure actions is the object of a pretrial as regulated in Article 77 of the old KUHAP in conjunction with Article 158 of Law Number 20 of 2025, so according to the Panel of Judges, it is inappropriate for this issue to be raised in an exception to the indictment.

[20]Article 156 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law in conjunction with the exception provisions in Law Number 20 of 2025 concerning the Criminal Procedure Code.

[21]Interim Decision of the Sampit District Court in Case Number 35/Pid.Sus/2025/PN Spt dated February 25, 2025.

Second, regarding the assistance of legal counsel during the investigation stage, the Panel of Judges found evidence in the case file that the investigator had appointed legal counsel, in casu Mr. Burhansyah, SH, to accompany the Defendant during the investigation process through an official Letter of Appointment. With this appointment, the Panel of Judges considered that the investigator had fulfilled his legal obligation to guarantee the Defendant's right to assistance from legal counsel as regulated in Article 56 paragraph (1) of the old Criminal Procedure Code in conjunction with Article 142 and Article 154–155 of Law Number 20 of 2025 concerning the Criminal Procedure Code. However, if the appointed legal counsel was not present to accompany the Defendant during the examination, according to the Panel of Judges, this did not invalidate the validity of the investigation process that had been carried out.

Third, regarding some of the exception material that is considered to have entered the realm of the main case, the Panel of Judges considers that several points of objection submitted by the Legal Counsel have entered the realm of proof of the main case material, so that it does not need to be responded to further in the interim decision. Based on these three considerations, the Panel of Judges considers that the reasons submitted in the exception are not legally based, and therefore declares that it rejects all of the Legal Counsel's objections and orders the Public Prosecutor to continue the examination of the a quo case.

The Interim Decision rejecting the Legal Counsel's exception indicates that the Panel of Judges at the initial stage of the trial did not accept the arguments of violations of investigative procedures submitted by the Legal Counsel as sufficient grounds to cancel the indictment or stop the examination of the case. Although the Panel of Judges' considerations as described above basically provide an argumentative basis for rejecting the exception, these considerations still contain a number of legal issues that require further examination, especially regarding their consistency with the provisions of the Criminal Procedure Code, Constitutional Court Decision Number 3/PUU-XI/2013, and Supreme Court jurisprudence regarding the protection of the defendant's rights during the investigation stage.[22]

b. Plea and Response of the Panel of Judges

After the examination of witnesses and evidence was completed and the Public Prosecutor filed criminal charges, the Legal Counsel again argued violations of investigative procedures in his plea. The arguments put forward in the plea were basically the same as the arguments previously put forward in the exception, namely: (1) examination of the Defendant without being accompanied by legal counsel which violated Article 56 of the old Criminal Procedure Code in

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[22]The judge's considerations as stated in the Sampit District Court Decision Number 35/Pid.Sus/2025/PN Spt, pp. 47-48.

conjunction with Article 142 and Articles 154–155 of Law Number 20 of 2025; (2) search without permission from the Head of the District Court; and (3) delay in requesting approval for the search which exceeded 7 (seven) days based on Constitutional Court Decision Number 3/PUU-XI/2013.

Based on these arguments, the Panel of Judges in the final decision stated that the defense note was submitted in the exception and had been considered in the interim decision, so that according to the Panel of Judges, the defense note did not need to be considered again and had to be set aside. This consideration became a critical point in the analysis of the influence of violations of investigative procedures on the validity of the court's decision, because the Panel of Judges chose not to reconsider the arguments for violations of investigative procedures on the grounds that they had been considered in the interim decision.

2. Analysis of the Panel of Judges' Considerations in Disregarding the Proposition of Violation of Investigative Procedures

The consideration of the Panel of Judges at the Sampit District Court which set aside the argument of violation of investigative procedures on the grounds that this had been considered in the interim decision contains several legal issues that deserve further study. These issues do not only concern the attitude of the Panel of Judges who refused to reconsider the arguments in the plea, but also concern the substance of the considerations in the interim decision itself which were used as a reference, as has been described in the previous sub-section. The study will be directed at four main aspects, namely (1) the difference in the context of submitting an exception and a plea; (2) the aspect of the judge's obligation to provide complete considerations; (3) the aspect of the consistency of the considerations with the Criminal Procedure Code, Constitutional Court Decision Number 3/PUU-XI/2013, and jurisprudence; and (4) the implications of these considerations for the protection of the Defendant's rights in the integrated criminal justice system.

a. Differences in the Context of Exceptions and Pleas

From a procedural perspective, exceptions and pleas have different contexts and purposes. An exception is filed early in the trial and primarily contains formal objections, such as the court's competence, the nullity of the indictment, or the waiver of the right to sue. A plea, on the other hand, is filed after the examination of witnesses and evidence is complete and can contain more comprehensive arguments based on the facts revealed at trial.

While allegations of procedural violations can be raised in both the exception and the plea, there are important differences in the supporting evidence. In the exception phase, allegations of procedural violations are based on the case files submitted by the public prosecutor. In the plea phase, allegations of procedural violations can be based on the testimony of witnesses examined at trial, including testimony from investigators who may confirm the procedural violations.

Thus, the panel of judges should independently consider the allegation of procedural violations presented in the plea, particularly if it is supported by newly revealed legal facts during the examination of witnesses at trial. Dismissing the allegation on the grounds that the same matter has already been considered in the interim decision ignores the possibility of new evidence that could strengthen or weaken the allegation.

b. Aspects of the Judge's Obligation to Provide Complete Consideration

Article 197 paragraph (1) letter d of the old Criminal Procedure Code, the substance of which is maintained in the provisions on the contents of decisions in Law Number 20 of 2025 concerning the Criminal Procedure Code, states that a criminal decision letter must contain considerations that are compiled in a concise manner regarding the facts and circumstances along with the evidence obtained from the examination at trial which is the basis for determining the defendant's guilt.[23]This provision requires the judge to provide complete and comprehensive consideration of the facts and evidence obtained from the examination at trial.

Furthermore, the Supreme Court Circular and various jurisprudence emphasizes that judges are required to consider every argument presented by the parties, including those presented in the plea. Dismissing a plea argument on the grounds that it has already been considered in the interlocutory decision without providing substantive consideration can be questioned from the perspective of the judge's obligation to provide comprehensive consideration.

Specifically for the argument of violation of investigative procedures related to the examination of witnesses in court, the judge should conduct a separate analysis based on the statements of the witnesses who have been examined. For example, for the argument of violation of Article 33 of the old Criminal Procedure Code in conjunction with Article 113 paragraph (1) of Law Number 20 of 2025, the judge should analyze the statement of the investigator's witness regarding whether it is true that the search was carried out with the permission of the Head of the District Court, and if not, whether the circumstances at that time met the criteria of "very necessary and urgent" as regulated in Article 34 of the old Criminal Procedure Code in conjunction with Article 113 paragraph (4)–(6) of Law Number 20 of 2025.

[23]Article 197 paragraph (1) letter d of Law Number 8 of 1981 concerning Criminal Procedure Law in conjunction with provisions regarding the contents of court decisions in Law Number 20 of 2025 concerning the Criminal Procedure Code.

4. Conclusion

Forms of procedural violations in the investigation process in Case Number 35/Pid.Sus/2025/PN Spt at the Sampit District Court were identified into three main forms, namely the examination of the Defendant Zainal Abidin Bin M. Idris (Alm) at the investigation level without being accompanied by a legal advisor which violated Article 56 paragraph (1) of the old KUHAP in conjunction with Article 142 and Articles 154–155 of Law Number 20 of 2025 concerning the Criminal Procedure Code; the search of the Defendant's house without the permission of the Head of the District Court which violated Article 33 paragraph (1) of the old KUHAP in conjunction with Article 113 paragraph (1) of Law Number 20 of 2025; and the delay in requesting approval for a search to the Head of the District Court which exceeds the 7 (seven) day time limit as interpreted by the Constitutional Court in Decision Number 3/PUU-XI/2013, the constitutional interpretation of which remains a substantive parameter in the implementation of Article 113 paragraph (4)–(6) of Law Number 20 of 2025. Based on the analysis with Gustav Radbruch's Theory of Legal Objectives, these three forms of procedural violations simultaneously erode legal certainty, reduce the benefits of the law, and harm both procedural and substantive justice, so that these violations are not merely formal violations that can be set aside, but violations that have implications for the achievement of legal objectives as a whole and place the Defendant in a position that is vulnerable to abuse of power by investigators. The influence of procedural violations in the investigation process on the validity of court decisions in the a quo case can be seen from two dimensions, namely the conceptual-normative dimension and the dimension of judicial practice. Conceptually-normatively, based on the theory of due process of law and the Theory of the Integrated Criminal Justice System from Muladi, violations of investigative procedures affect the validity of court decisions because they weaken the evidentiary power of the evidence obtained, injure the principle of fair legal process, and cause systemic dysfunction that spreads from the police sub-system, the prosecutor's office, to the court. However, in judicial practice, this impact is not automatic because the Panel of Judges of the Sampit District Court chose to ignore the argument of violations of investigative procedures on the grounds that they had been considered in the interim decision, so that the gap between normative concepts and judicial practice can only be bridged through legal remedies of appeal, cassation, or judicial review as has been strengthened by the legal framework in Law Number 20 of 2025 concerning Criminal Procedure Law.

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