

THE IMPLEMENTATION OF THE SUSPECT'S RIGHTS IN THE LEGALITY OF PRETRIAL INVESTIGATION

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Abstract

The purpose of this study is examine the legality of the investigative process at pretrial hearings and their constraints. The normative legal research method supported by empirical legal research is used in this study. The results of the study found that the suspect's right to test the legality of the investigation process at the pretrial hearing has been implemented through legal procedures in accordance with the provisions of Article 77, Article 79, Article 82 and Article 95 of the Criminal Procedure Code. In its implementation, out of a total of 40 cases, 15 cases were rejected, 7 cases were granted, 7 cases were withdrawn, 4 cases could not be accepted, 6 cases were declared disqualified, 1 case was still in trial. As a result, it was found that there were procedural errors and violations of rights committed by investigators, so that during the examination the pretrial hearing was declared invalid. Obstacles for a legality test for the investigation process through a pretrial hearing include: the pretrial request was declared invalid, declared unacceptable, the difficulty for the suspect to find legal counsel who could win his case, the high cost of paying attorneys, the suspect's ignorance and ignorance of legal issues.

Keywords: Investigation; Legality; Pretrial;

A. INTRODUCTION

The existence and presence of pretrial not a separate judicial institution but only granting new powers and functions bestowed the Code of Criminal Procedure to the District Court.¹ According to Article 1 number 10 jo. Article 77 of Act No. 8 of 1981 Concerning Pretrial Criminal Procedure Code (abbreviated as KUHAP) is: The authority of the district court to examine and decide on: whether the arrest and/or detention is legal or not, the termination of the investigation and/or prosecution, the request compensation or rehabilitation for a person whose criminal case is

¹ Sri Wulandari, Kajian Tentang Praperadilan Dalam Hukum Pidana, *Serat Acitya*, Vol. 4, No. 3, 2015, page.1

terminated at the level of investigation or prosecution.² This pretrial authority then expanded its object based on the Decision of the Constitutional Court (MK) Number: 21/PUU-XII/2014 Regarding Reviewing Act No. 8 of 1981 Concerning Criminal Procedure Code (KUHAP), which also includes regarding "whether or not a determination is legal suspect, whether the search and/or confiscation is legal or not. This means that suspects or defendants are given constitutional guarantees of protection to test legality during the process of arrest and/or detention in the context of conducting investigations and/or detention measures in the context of prosecution.

In the criminal justice process, there are several stages that must be passed by justice seekers, both at the level of investigation, investigation, examination in court up to the stage of imposing a criminal decision and even legal remedies if used by the parties which of course requires a lot of time, effort, and costs for justice seekers.³ In Ely Kusumastuti's research, he stated that especially in the difficulty of distinguishing between evidence for pre trial and evidence for the main case With the acceptance of the determination of the suspect as an object of pretrial, the pretrial judge must examine the evidence as a minimum requirement (*minimum bewijs*) for the determination of the suspect in the pretrial hearing⁴ The implementation of criminal justice must be in accordance with a fair and proper legal process (*due process of law*), which is criminal law enforcement is carried out not only based on the formal application of the law or statutory regulations but also considers human rights.⁵

Sugeng Sutrisno stated in his research that the pretrial institution was born simultaneously with the enactment of the Criminal Procedure Code by adopting several principles in the habeas corpus act in the judicial system that applies to the justice system in Anglo Saxon countries. The Habeas corpus act is a statute carried out by King Charles in 1679. Where the statute was amended in parliament which allowed a person to maintain his position and provided fundamental guarantees for human rights, especially the right to independence. This habeas corpus act warrant is issued by the court to the party who is in custody (police or prosecutor) through a simple, direct and open procedure so that it can be used by anyone.⁶

Pretrial is actually carried out in order to improve/correct the inappropriate application of the judicial administration process or the

2 M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali (Edisi Kedua)*, Jakarta, Sinar Grafika, 2007, page.2

3 Andri Winjaya Laksana, Keadilan Restoratif Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana Anak, *Jurnal Pembaharuan Hukum*, Vol. IV, No. 1, January - April 2017, page.57-64

4 Ely Kusumastuti, Penetapan Tersangka Sebagai Obyek Praperadilan, *Yuridika*, Vol. 33, No.1, 2018, page.1-18

5 Erwin Ubwarin, Irel Sahetapy, Pretrial Dilemma and Main Case Examination, *Jurnal Belo*, Vol. 8, No. 1, Febuary 2022, page.123-135

6 Sugeng Sutrisno, Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia, *International Journal of Business and Social Science Research*, Vol. 2, Issue. 11, November 2021, page.1-9

possibility of an error⁷ irregularities or violations during the investigation and prosecution process. The suspect, or his family, or his legal adviser (law attorney) is given the right to request a pretrial regarding the arrest, detention and/or determination of the suspect against him if proven legal or illegal. During the investigation process, acts of coercion may occur arbitrariness, irregularities, and are not in accordance with the investigative procedures as stipulated in the Criminal Procedure Code. Pretrial aims to provide constitutional protection and guarantee of the rights of suspects/defendants. In addition, it is also to prevent or reduce all forms of irregularities or procedural errors committed by officials involved during the investigation and prosecution process.

Concretely, the procedure for submitting a pretrial request must be submitted to the clerk's office at the district court to be recorded/registered. The letter contains: the names of the applicant and the respondent, contains the subject matter of the application, the reasons for the application, the losses incurred, and the demands regarding the matters requested in the application.⁸ Pretrial examinations are carried out by a single judge appointed by the Head of the District Court, and assisted by a clerk (Article 78 paragraph (2) of the Criminal Procedure Code). The pretrial examination is limited by time, which is three days, after which the judge who is given the authority to lead the trial determines the time the trial will be held, and no later than seven days, the judge must have made a decision along with the reasons. The legal consequence that occurs is when the main case has been examined in the district court, while the pretrial has not been decided, the application for pretrial examination becomes void (Article 82 paragraph (1) letter d of the Criminal Procedure Code).⁹ In the event that the pretrial request is granted, then in the verdict it is ordered to stop the investigation.

Facts that occur in pretrial hearings are often the suspect deliberately not present at the pretrial hearing and is only represented by his attorney. Even though it is known that the suspect has fled (the People Wanted List (DPO)), the pretrial request is still filed and the pretrial hearing is still held without the suspect present. The status of a suspect who has been determined as a DPO does not stop the suspect or his attorney from submitting repeated pretrial requests for up to three decisions. This has given rise to differing opinions and impressions, in essence that the examination of the pretrial hearing only examines the procedural administration of the investigative process. Therefore, requests for pretrial examinations can be submitted repeatedly even though they have been declared rejected or lost through a judge's decision.

Furthermore, this research is focused on the application of the rights of suspects in conducting legality testing of the investigative process at pre-trial hearings and the obstacles faced in submitting pre-trial requests. The

7 Luhut M.P Pangaribuan, *Hukum Acara Pidana: Surat Resmi Advokat Di Pengadilan Praperadilan, Eksepsi, Pledoi, Duplik, Memori Banding, Kasasi dan Peninjauan Kembali*, Jakarta, Papas Sinar Sinanti, 2013, page.98

8 Zulkarnain, *Praktik Peradilan Pidana: Panduan Praktis Memahami Peradilan Pidana*, Malang, Setara Press, 2016, page.62

9 H.M.A. Kuffal, *KUHAP Dalam Praktik Hukum*, Malang, UMM Press, 2004, page.281-282

purpose of this research is to examine the legality of the investigative process at pretrial hearings and their constraints, so that law enforcement officials should try their best to avoid procedural errors or arbitrariness in arresting, detaining, or naming someone as a suspect, so that in the pretrial hearing it is not proven that they are declared illegal, and if forced to be declared as a suspect, they should immediately seek efforts to carry out a legality test on the determination of the suspect through a pretrial examination, so that if proven innocent he can obtain justice and the judge declares the pretrial request granted.

B. RESEARCH METHODS

The method in this research is normative legal research which originates from laws and pretrial cases, then is supported by empirical legal research which originates from observation and interviews. Interview activities aim to obtain information and answers from the person being studied.¹⁰ Qualitative data analysis techniques are carried out in stages, namely the data obtained is classified and described systematically using deductive techniques so that conclusions can be obtained that can be accounted for and according to the goals to be achieved.

C. RESULTS AND DISCUSSION

1. Rights of the Suspect in Testing the Legality of the Investigation Process at the Pretrial Session

The Criminal Procedure Code in general has regulated pretrial in Article 1 point 10 of the Criminal Procedure Code, Articles 77-83 of the Criminal Procedure Code. Then related to pretrial issues can be seen from Article 95-97 KUHAP (compensation and rehabilitation), Article 1 point 16, 17, 18 KUHAP, Article 32-37 KUHAP, Article 38-46 KUHAP (search and confiscation), Article 47- 49 KUHAP (examination of letters), Articles 125-127 KUHAP (search), Articles 128-132 KUHAP (seizure). In the description of Article 1 point 10 and Article 77 of the Criminal Procedure Code there is no mention of the accused party even though when the prosecution process was stopped, those involved were no longer suspects but defendants. At the prosecution level, the defendant is entitled to submit a pretrial.¹¹

Over time, in development, it appears that there are provisions in articles which are considered to contain multiple interpretations. So that through judicial review of the law (substantial review) at the Constitutional Court it has been found that there are articles whose substance cannot be maintained, so that conditions must be added and an object expansion is granted.

Since the pretrial object was granted an expansion by Constitutional Court Decision Number: 21/PUU-XII/2014, every citizen

10 Ade Saptono, *Pokok-pokok metodologi Penelitian Hukum Empiris Murni Sebuah Alternatif*, Jakarta, Penerbit Universitas Tri Sakti, 2009, page.85.

11 Tolib Effendi, *Dasar-dasar Hukum Acara Pidana Perkembangan dan Pembaharuannya di Indonesia*, Malang, Setara Press, 2014, page.155.

(suspect/defendant) has received fresh air in the form of guarantees of constitutional rights in the pre-adjudication stage. The object of pretrial expansion is related to whether the determination of the suspect is valid or not, whether the search is legal or not and/or the confiscation is legal or not. This means that everyone has the right to file a pretrial before the main case is examined at trial. Article 79 Criminal Procedure Code has given rights to suspects, their families, or their proxies to test the quality and legality of the investigation process regarding the legitimacy of arrests and/or detentions, determination of suspects, searches, confiscations, termination of investigations or prosecutions, and the right to submit requests for compensation loss and/or rehabilitation through a pretrial request, and state the reasons.¹²

Pretrial only examines administrative procedural matters related to the act of arrest and/or detention, or the question of whether the suspect's determination by investigators is valid or not. According to the Criminal Procedure Code, before naming someone as a suspect, investigators must refer to Article 1 point 14 of the Criminal Procedure Code ("preliminary evidence"), Article 17 of the Criminal Procedure Code ("sufficient initial evidence"), and Article 21 paragraph (1) of the Criminal Procedure Code ("sufficient evidence"). The polemic that has occurred so far is that when investigators designate someone as a suspect, a debate arises over the issue of initial evidence in the possession of the investigator, resulting in injustice for the suspect. Therefore it is considered very appropriate that the existence of the Constitutional Court Decision Number: 21/PUU-XII/2014 explicitly states "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" as long as it is interpreted that there are at least 2 tools valid evidence according to Article 184 of the Criminal Procedure Code, is the right solution.

Even so, it is very important to examine the quality and legality of the determination of suspects that rely on at least two valid pieces of evidence to the investigating apparatus. This form of supervision or correction to law enforcement officials aims to provide protection for the human rights of suspects/defendants while undergoing the criminal justice process. Each stage of adjudication must be carried out in a transparent manner according to the provisions of the Criminal Procedure Code. None of the stages of the procedure may be skipped or an error occurs during the investigation or prosecution process until the case is brought to trial.

The stages of investigation and prosecution are the most prone to arbitrariness resulting in violations of human rights and irregularities or procedural errors. It is very natural that at every stage before a case is submitted to the adjudication stage, the pre-adjudication stage is the starting point for testing the quality and legality of the investigative process including regarding the issuance of an Investigation Termination Warrant (SP3), or a Decision Letter for Termination of Prosecution

12 Jaholden, *Praperadilan dan Pembaharuan Hukum Pidana*, Banten, CV. AA Rizky, 2021, page.34

(SKPP). It cannot be justified if the termination of the investigation and/or the termination of the prosecution is carried out without notifying the competent parties. Thus the termination of the investigation and/or prosecution is only carried out in accordance with applicable law.

Since there are reports or complaints of criminal acts, the authorities will follow up to carry out investigations or escalate to the investigation stage. According to Article 109 of the Criminal Code that the investigation begins with an Investigation Warrant (SP2), then a Notice of Commencement of Investigation (SPDP) is sent to the prosecutor's office. In principle, the form of horizontal supervision is a functional control of law enforcement officials. This means that investigators can monitor the performance of the public prosecutor regarding whether the cases that have been delegated are further processed or not, and vice versa. If it turns out that two sufficient pieces of evidence are not found, or other matters, then it must be notified to the competent parties.

Amar pretrial decision contains a description and basis of reasons for requesting a pretrial examination. If the verdict of the pretrial judge turns out to be inconsistent with the reasons for requesting an examination, it means that it is not based on the applicable laws and regulations. Pretrial rulings are grouped into 3 (three) types, namely: Inadmissible decisions, for example: requests (demands) are not based on law, inappropriate, unclear (vague), have expired, and requests are made by parties who are not entitled; The decision is rejected, in the event that the application fails to prove the arguments for the claim, whether it is rejected in whole or only in part. If the decision is granted, for example: (a) Declaring an arrest or detention to be illegal, the investigator is obliged to release the suspect, pay compensation and restore the applicant's rights in terms of ability, position and dignity; (b) Declaring an termination of an investigation or prosecution to be illegal, the investigator is obliged to continue the investigation; (c) Declaring that a termination of investigation or termination of prosecution is legal, if the suspect is not detained, then his rehabilitation is included, restoring the applicant's rights in terms of ability, position and dignity; (d) Declare that the confiscation of goods/goods is illegal or that the objects confiscated do not include means of proof, order the confiscated objects to be immediately returned to those entitled to them.¹³

As the applicant has used his right to submit: (1) pretrial examination related to the act of arrest, and/or detention, (2) a request for compensation for the act of arrest and/or detention, illegal search and confiscation, or wrongful arrest according to the provisions of Article 77, 79, 82, and Article 95 of the Criminal Procedure Code. The party entitled to submit a pretrial examination related to the termination of the investigation is the public prosecutor or a third party. Meanwhile, related to the termination of prosecution, namely investigators, and/or third

13 Andi Muhammad Sofyan dan Abd. Asis, *Hukum Acara Pidana Suatu Pengantar*, Jakarta, Kencana, 2017, page.190.

parties (in this case witnesses, victims, reporters or complainants in the crime).

Efforts to seek justice at the pre-adjudication stage actually aim to test the legality of carrying out the investigation and/or prosecution process. In addition to preventing and simultaneously limiting irregularities or arbitrariness during the investigation and/or prosecution process. This was done because during the investigation process it was possible that there were allegations of procedural errors, deviations, or acts of arbitrariness that violated human rights. In fact, the seven cases analyzed showed strong evidence that during the investigation process carried out by police investigators, there were still procedural errors in carrying out confiscations without going through a court decision (case number 1), procedural errors in determining suspects (case numbers 2,3, 5.7), lack of sufficient initial two pieces of evidence (Case number 4), procedural errors in carrying out detention (Case number 6). Therefore, in the event that a pretrial decision proves that there was an illegal investigative process, the judge may decide the case, for example: declaring the determination of the suspect, the warrant for detention to be illegal and null and void, ordering the suspect to be released from the state detention house after the decision has been read, ordering to stop the investigation, and punish to restore the dignity of the applicant.

2. Obstacles in Submitting an Application for Legality Test of the Investigation Process through the Pretrial Session

Legal effort in the form of pretrial is an action or effort given by a District Court institution to carry out or examine as well as decide on the validity of arrests, detentions, termination of investigations, termination of prosecutions and to decide on requests for compensation and rehabilitation whose criminal cases cannot proceed to trial in court requested by the suspect or who has become a defendant or complainant or his family and the suspect's legal advisors can also submit a pretrial request research conducted by Lily Bauw et al states that pretrial directly or indirectly supervises the activities carried out by Polri investigators in the context of investigations and prosecutors' investigators at the prosecution level, considering that the actions of investigators are basically attached to the agency concerned.¹⁴

New ideas regarding the legal effort it is hoped that it will serve as a tool for suspects to exercise their rights over investigative actions that are felt to violate the suspect's human rights.¹⁵ The pretrial is expected to be able to realize the rule of law and the protection of the suspect's

14 Lily Bauw, Erni Dwita Silambi, Ibrahim Kama, Nurwita Ismail, Pre-Trial As Investigation Process Control System, *SASI*, Vol. 28, Issue. 4, December 2022, page.608-618

15 Ulang Mangun Sosiawan, Pre-judicial Construction through Judicial Reconstruction of the Jommissioner Judges in order to Protect Rights of Suspects/Defendants in Indonesia's Criminal Justice System, *Jurnal Penelitian Hukum DE JURE*, Vol. 18, No. 1, March 2018, page.73-92

human rights at the level of investigation and prosecution¹⁶. Pretrial functions as a means of controlling investigators so as not to abuse the authority given to them, the control is Vertical Control, namely control carried out from top to bottom and also Horizontal Control, namely side control between investigators and public prosecutors, reciprocal, suspects, families or third party.¹⁷

This pretrial institution controls the coercive measures carried out by investigators so that the investigator's actions do not violate a person's human rights, namely the act of coercion needed for an investigation so that it can bring someone before a court hearing because they have been suspected of committing a criminal act, they must clearly know what which are their rights and the extent of the authority of law enforcement officers who will carry out such coercive measures if the investigator's actions can reduce the human rights of a suspect.¹⁸

Based on the results of the research it was revealed that there were obstacles in carrying out the legality test of the investigative process through pretrial hearings. These obstacles include: The decision on the pretrial petition was declared null and void. According to the Decision of the Constitutional Court (MK) Number: 102/PUU-XIII/2015 which regulates the fall of a pretrial request if the main case has begun to be examined in the district court, while the pretrial case has not been decided. After the pretrial petition is declared invalid, the opportunity to seek justice and the right to test the legality of the investigative process is lost. The court petition decision was declared inadmissible. As previously explained, SEMA Number: 1 of 2018 has regulated that suspects with DPO status are prohibited from submitting pretrial requests. This raises pros and cons, because this prohibition means that it has closed the suspect's opportunity to get justice. Bearing in mind that the presence of the suspect is not required in the pretrial hearing, because it can be submitted by his family or attorney; It is difficult for suspects to find well-known legal advisers who can win their case, assist the pretrial process and at the same time seek true justice.

Not all legal advisers are able to optimally win cases at pretrial hearings. It all depends on the evidence and arguments put forward at the pretrial hearing. If you are able to prove it with strong arguments, then the chances of winning at the pretrial hearing are very large; Expensive fees to pay for legal advisors (lawyers). For suspects who can afford to pay for consultation fees and seek well-known legal advisers

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- 16 Handar Subhandi Bakhtiar, Abbas, and Rafika Nur, Limitation of Harbormaster Responsibility in Ship Accidents, *Academic Journal of Interdisciplinary Studies*, Vol. 10, No. 3, 2021, page.375–83
- 17 Iqbal Parikesit, Eko Sopyonyono, Sukinta, Tinjauan Tentang Objek Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia, *Diponegoro Law Journal*, Vol. 6, No. 1, 2017, page.1-60
- 18 Sunarto, Nanda Riko Hendy Toerino, Pretrial and Its Contribution To Protection Of The Rights Of Suspectives, *International Journal of Educational Research & Social Sciences*, Vol. 3, No. 2, April 2022, page.607-621

(lawyers) to accompany the cases they are experiencing, of course there is no problem. However, for suspects who do not have the financial ability, it creates a burden in itself. The search for a well-known lawyer (lawyer) is directly related to the issue of the costs that will be incurred in seeking justice. The irony is when you have spent a lot of money to seek justice through pretrial, but the verdict is rejected, unacceptable, or failed; Ignorance and ignorance of the legal problems experienced by the suspect caused efforts to seek justice through pretrial unable to be filed by the suspect. As a result, the suspect just resigned himself to fate and followed legal procedures without even having the slightest opportunity to seek justice at the stage before the case was tried in court. The suspect has no family, this means that no one can help seek justice through pretrial. Moreover, the suspect is already in detention, so it is very unlikely to get access to justice through a pretrial request.

D. CONCLUSION

The results of the study state that the suspect's right to test the legality of the investigation process at the pretrial hearing has been implemented through legal procedures in accordance with the provisions of Article 77, Article 79, Article 82 and Article 95 of the Criminal Procedure Code. In its implementation, out of a total of 40 cases, 15 cases were rejected, 7 cases were granted, 7 cases were withdrawn, 4 cases could not be accepted, 6 cases were declared disqualified, 1 case was still in trial.

As a result, it was found that there were procedural errors and violations of rights committed by investigators, so that during the examination the pretrial hearing was declared invalid. Even though the legality test in other cases was declared rejected, and the investigator won. Obstacles faced in submitting an application for a legality test for the investigation process through a pretrial hearing include: the pretrial request was declared invalid, declared unacceptable, the difficulty for the suspect to find legal counsel who could win his case, the high cost of paying attorneys, the suspect's ignorance and ignorance of legal issues, and the suspect has no family.

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