

LEGAL ANALYSIS OF THE DETERMINATION OF THE SUSPECT BY THE KPK AFTER IT WAS DECLARED LEGITIMATE IN A PRE-TRIAL DECISION IN INDONESIA

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Abstract

Pretrial is something institution For test validity a case process criminal before case the reached the stage inspection principal case in court , related with determination of suspect status follow criminal often there are pros and cons from various party , determination of suspect status is authority from investigator , as has been outlined in the Criminal Procedure Code. Move on from determination of suspect status by regulated investigators through the Criminal Procedure Code, then task The determination of suspect status is also up to the investigator Commission Eradication Corruption (KPK) which is firm has arranged in Corruption Eradication Commission Law , throughout No arranged in the Corruption Eradication Committee Law and Law Eradication Act Criminal Corruption , then return to existing rules in the Criminal Procedure Code. Article 1 point 14 of the Criminal Procedure Code formulates that " Suspect is someone who because his actions or the situation , based on proof At first , it's appropriate allegedly as perpetrator follow criminal ." While in Law Eradication Act Criminal Corruption and the Corruption Eradication Committee Law are not There is none article that explains about determination suspect . Furthermore when speak about How the authority of the Corruption Eradication Committee in matter determine suspect status follow criminal corruption so matter This No regardless from Pretrial as one of the possible efforts taken For straighten up law and protect rights suspect in level investigation and prosecution .

Keywords : Analysis Law , Suspect , Corruption Eradication Committee, Decision Pretrial

A. INTRODUCTION

Pretrial is a trial process before hearing problem principal the thing tried . Understanding case principal is case the material , meanwhile in pretrial trial process only testing the procedure process investigation and prosecution , no to material principal just . As for what is meant with material the main thing is is material case that , for example case corruption , then material the main thing is is corruption cases.1 On 28 April 2015, the Court Constitution in the verdict Number 21/PUU-XII/2014 has decide testing to Article 77 letter a of the Criminal Procedure Code , namely against " legitimate or or not arrest , detention , termination investigation or termination prosecution " .

Based on decision Court Constitution , that provision Article 77 letter a of the Criminal Procedure Code is considered has contradictory with The 1945 Constitution of the Republic of Indonesia conditional (conditionally unconstitutional) and not have strength law tie throughout No interpreted testing legitimate or not determination included suspects in object pretrial . In provisions of the Code Criminal Procedure Law There is governing provisions mechanism pretrial , p the intended so balance such power owned by the internal state do enforcement law material Where often violated rights internal citizens applicable procedures . Demands For get justice for suspect is part from wish the " rechtssidee " law of a " rechtsstaats " legal state . Pretrial is also a something institution For test validity a case process criminal before case the reached the stage inspection principal case in court.4 Arrangements Pretrial loaded in Article 1 number 10 Juncto .

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Article 77 of the Criminal Procedure Code , namely as following : Pretrial is authority District Court for check and disconnect according to regulated way in Constitution this is about :

- a. Legitimate or or not something arrest and or detention on request suspect or his family or the other party above suspect .
- b. Legitimate or or not termination investigation or termination prosecution on request for its uprightness law and justice
- c. Request change loss or rehabilitation by the suspect or his family or the other party above it's the power that matters No submitted to court

Related with determination of suspect status follow criminal often there are pros and cons from various party . Determination of suspect status is authority from investigator , as has been outlined in the Criminal Procedure Code. Investigation in the Criminal Procedure Code it is interpreted as: as a process for discover and reveal exists follow criminal on a incident certain . Investigation process the followed with a purposeful investigative process For look for as well as gather proof , so with proof the will make bright something case To use find the suspect . While in matter investigator find proof Quite a start , then someone suspected has do follow criminal can set as suspect .

Move on from determination of suspect status by regulated investigators through the Criminal Procedure Code, then task The determination of suspect status is also up to the investigator Commission Eradication Corruption (KPK) which is firm has arranged in Corruption Eradication Commission Law , throughout No arranged in the Corruption Eradication Committee Law and Law Eradication Act Criminal Corruption , then return to existing rules in the Criminal Procedure Code. Article 1 point 14 of the Criminal Procedure Code formulates that “ Suspect is someone who because his actions or the situation , based on proof At first , it's appropriate allegedly as perpetrator follow criminal .” While in Law Eradication Act Criminal Corruption and the Corruption Eradication Committee Law are not There is none article that explains about determination suspect .

Furthermore when speak about How the authority of the Corruption Eradication Commission in matter determine suspect status follow criminal corruption so matter This No regardless from Pretrial as one of the possible efforts taken For straighten up law and protect rights suspect in level investigation and prosecution.⁷ Since exists decision Court Constitution Number 21/PUU-XII/2014 which started from request for material review to Court Constitution proposed by Bachtiar Abdul Fatah , convict corruption case project biomediation PT Chevron Pacific Indonesia which provides power to a number of all lawyers originate from the Maqdir Ismail & Partners Office , in one his request about testing Article 77 letter a of the Criminal Procedure Code applies to Panel of Judges of the Court Constitution For give decision : Declare Article 77 letter a of the Criminal Procedure Code is contradictory with the 1945 Constitution conditional (conditionally unconstitutional) and not have strength law tie throughout No interpreted covers legitimate or or not determination suspect , search , confiscation , examination letter .

Post exists Decision Court Constitution Number 21/PUUXII/2014 then article 77 letter a KUHAP no own strength law tie Because contradictory with The 1945 Constitution of the Republic of Indonesia throughout No interpreted including determination suspects , searches and seizures . Change sound Article 77 letter a of the Criminal Procedure Code as if become norm new for criminal procedural law in Indonesia in particular in realm pretrial . So , everyone institution enforcer law like Police , Prosecutor's Office and Commission Eradication Corruption must accept norm new that and must ready towards possibility lawsuit pretrial of the suspects will be test legitimate suspect status they. One of case Pretrial is what happened attention especially by the public lately This is cases handled by the Commission Eradication Corruption determines former Deputy Minister of Law and Human Rights (Wamenkumham) Prof. Dr. Edward Omar Sharif Hiariej , as suspect case conjecture reception bribery and gratification with the amount of 7 billion , bribes the allegedly originate from Main Director of PT. Lampia image Independent Helmut

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Hermawan . Report conjecture bribery and gratification first reported by Indonesia Police Watch to the KPK in March 2023. Based on results inspection to report , commission eradication corruption (KPK) held case or exposure in October 2023, in title case that , KPK find two tool sufficient evidence .

Then made reference For Raise the report status acceptance conjecture graphitization Deputy Minister of Law and Human Rights That to investigation on Monday (6/11/2023). After going through quite a process long , finally the KPK team agreed raise the status of Prof. Dr. Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) as suspect . Prof. Dr. Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) appointed as suspect case conjecture bribery and gratification worth Rp . 7 billion from businessman named Helmut Hermawan who asked consultation law to himself . So the KPK ensnared Prof. Dr. Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) with Article 12 a or b, or article 11 of the Law Number 31 of 1999 Concerning Eradication Act Criminal Corruption jo. Law 20 of 2001 concerning Change On Law no. 31 of 1999 Concerning Eradication Act Criminal Corruption Jo. Article 55 Paragraph (1) 1st Criminal Code Jo. Article 64 Paragraph (1) of the Criminal Code. Determination suspects made by the Corruption Eradication Commission (KPK) against Prof. Dr. Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) then culminating in a request effort The pretrial conducted by Prof. Dr. Edward Omar Sharif Hiariej through Power The law , then The South Jakarta District Court granted it application that , so judge Estiano mention determination suspect Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) no fulfil two tool valid evidence or No in accordance with provision article 184 paragraph 1 of the Criminal Procedure Code.

B. FORMULATION OF THE PROBLEM

1. How Mechanism Pretrial In System Justice Indonesian criminal ?
2. How Effort Law Or Mechanism Law That Can Carried out by the authorities Enforcer Law Post-verdict Pretrial ?

C. RESEARCH METHODS

Type research used in study This is study normative empirical . Study law normative done with method research material literature and norms existing laws in regulation legislation and decisions court , which is primary data and is also called study bibliography . Study law sociological or empirical done with method researching in the field which is secondary data .

D. DISCUSSION

Mechanism Pretrial In System Justice Indonesian Criminal

Mechanism from formation pre Justice according to Guidelines The implementation of the Criminal Procedure Code is For interest protection on right basic man suspect nor defendant in a criminal proceeding . Mechanism pretrial arranged in Article 1 point 10 and Article 11 of the Criminal Procedure Code. Indonesian criminal procedural law recognizes something mechanism testing to legitimate or or not something arrest , detention , termination investigation , termination prosecution and request change loss , rehabilitation by the suspect or his family or other party or it's the power that matters No submitted to court . Application pretrial submitted and processed before case principal tried in court . Because of that , it's called pre or before and trial or the judge . Pretrial also happens effort from government For repair criminal procedural law legacy Dutch or Herziennner Inlands Regulation (HIR). Because inside criminal procedural law often happen effort forced by the authorities enforcer the law is carried out without honor right basic human , so be formed pretrial in frame supervise action investigator . In the article 1 number 10 KUHAP, pretrial is the judge's authority to check and disconnect , accordingly with regulated provisions in Constitution . Then , for parties who can submit pretrial , including :

- a. Request inspection about legitimate or or not something arrest or detention submitted by the suspect , family or his power to chairman District Court with mention the reason (Article 79 of the Criminal Procedure Code).
- b. Request For inspect legitimate or or not something termination investigation or prosecution can submitted by investigators or prosecutor general or party third party is interested to chairman District Court with mention the reason (Article 80 of the Criminal Procedure Code).
- c. Request change loss and or rehabilitation consequence No it's legal arrest or detention or consequence it's legal termination investigation or prosecution submitted by the suspect or party third party is interested to chairman District Court with mention the reason (Article 81 of the Criminal Procedure Code).

In Article 78 paragraph (2) KUHAP, pretrial headed by a single judge appointed by the chairman District Court and assisted by one person clerk . For inspection events pretrial explained in Article 82 paragraph (1) of the Criminal Procedure Code, namely :

- a. In time three day after accepted request , the appointed judge set day hearing .
- b. In check and disconnect about legitimate or or not arrest or detention , legal or or not termination investigation or prosecution , request change loss and or rehabilitation consequence No it's legal arrest or detention , consequences it's legal termination investigation or prosecution and there is confiscated objects that are not including tool evidence , the judge heard information good and suspect or applicant and authorized officials .
- c. Inspection the done with method fast and slow seven judge's day must be Already drop the verdict .
- d. In matter something case Already start examined by the District Court meanwhile inspection about request to pre Justice Not yet finished , then request the fall .
- e. Decision pretrial level investigation No close possibility For stage inspection pre Justice again on level examination by the prosecutor general , if For That submitted request new . Mechanism from formation pretrial according to Guidelines The implementation of the Criminal Procedure Code is For interest protection on right basic man suspect nor defendant in a criminal proceeding .

Pretrial process must get special attention and place , because without something strict supervision No impossible right basic man will oppressed by power . Pretrial is also working For reduce emergence abuse power by investigators in do arrest , detention , termination investigation , as well termination prosecution .

Effort Law Or Mechanism Law That Can Carried out by the authorities Enforcer Law Post-verdict Pretrial

In development law era contemporary , post decision Pretrial often give rise to various perception about effort the law can taken For get justice . That matter No regardless from the height application a suspect For go through mechanism pretrial . Existence decision Court Expanding Constitution object pretrial in Article 77 of the Criminal Procedure Code as in MK Decision Number 21/PUU-XX/2014 namely including determination suspects , search and seizure , also involved role increase the height participation a suspect For examine the assessed legal process has violate regulated provisions in procedural law . In short the determination process suspect suspected has violate right basic man . Part circles evaluate effort pretrial is business For stalling the trial process , however more from That actually in a way essential pretrial is part from system Justice the intended punishment as means horizontal control of action arbitrary investigator or prosecutor general .

Legitimate or not determination Determination suspects , search and seizure as object pretrial No arranged in a way limitative in the KUHAP concerning effort the law can taken post-

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verdict pretrial , p the reasonable Because legitimate or not determination suspects , search and seizure is expansion object pretrial decision decided by the MK. Not enough more a year intermittently After the Constitutional Court 's decision , the Supreme Court issued Regulation Supreme Court (PERMA) Number 4 of 2016 concerning Prohibition Review Return Decision Pretrial in it No include in a way firm about prohibition effort valid appeal law or not determination suspect post-verdict pretrial . In the enforcement panorama law one sucking case attention public lately This ie decision pretrial Edward Omar Sharif Hiariej (Deputy Minister of Law and Human Rights) in amar the verdict , expand object pretrial including one of them legitimate or not determination the suspect who was later by the MK in the decision is also decisive that legitimate or not determination suspect including one object pretrial .

Pretrial as means horizontal control of investigators and prosecutors generally suspected do action arbitrary or violate procedural law , intended For protect rights from a moderate suspect processed law . The size authority from the Judge demand exists professional, independent attitude as well as objective as something inevitability its existence as the sole judge testing about validity object pretrial. Therefore That should from pretrial judge's decision the especially those who test about validity determination suspect actually there is effort appellate law or determination end up in court high (term used in pretrial procedural law in the Criminal Procedure Code) that can taken by investigators in order to obtain maintain correctness of the legal process in a way procedural according to version investigator , who has done in set a minimum of two tool proof as precondition in MK decision Number 21/PUU-XII/2014 that proof beginning , proof sufficient start and sufficient evidence must interpreted as a minimum of two tool contained evidence in Article 184 of the Law Number 8 of 1981 concerning Criminal Procedure Law. That matter become It is important for a single judge to decide pretrial can avoid all form intervention , intimidation and so on influence a single judge pretrial in decide case pretrial so that with exists effort appellate law or determination end in the court high that tests the judge's previous decision can also be become means control for uprightness justice . That decision pretrial while determination suspect has is based on two tool evidence and through a justified process in procedural law then determination suspect stated legal , then on the contrary If determination suspect by investigators No based on (formal) acquisition procedures two tool regulated evidence in procedural law then determination suspect stated No legal , so tool evidence used at the time That stated No can Again used matter the confirmed in PERMA No.4 of 2016 in Article 2 paragraph (3)10 .

Existence institution testing pretrial specifically legitimate or not determination suspect from side the positive for investigator can become whip in increase his professionalism in determine someone's status become suspect because of his suspect status for part perception public has attached that stigma a suspect as perpetrator follow criminal , more carry on even in position positions certain , determination of suspect status can obstruct somebody For still hold or occupy position certain , will but on the other hand you can hinder investigator in legal proceedings furthermore Because For determine the person concerned as suspect again , share investigator must meet the minimum two tool proof new legal different with tool proof previously related with material case or in short investigator must start from zero point .

Accommodated determination suspect as object pretrial in one consideration MK panel of judges that determination suspect is one of form effort coercion carried out by initiated investigators found it two tool proof as minimum principle of proof in principle law criminal or known with principle unus testis nullus testis. Therefore that's the stage For test action investigator in determination the right suspect is neglected mechanism pretrial Referring to Article 83 paragraph (1) of the Criminal Procedure Code which states that to decision pretrial in matter as intended in Articles 79, 80 and 81 of the Criminal Procedure Code do not can an appeal is requested , then legitimate or not determination suspect it's not including in understanding Article 79, Article 80 or Article 81 of the Criminal Procedure Code.

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Likewise in Article 83 paragraph (2) of the Criminal Procedure Code has deleted by the MK in MK decision Number 65/PUU-IX/2011 that excluded from provision paragraph (1) is decision pretrial determination No it's legal termination investigation or prosecution for That can requested decision end to High Court in area relevant law . So determination neither is the suspect including exception as intended in Article 83 paragraph (2) KUHAP. That matter because that the determination of the suspect¹² is expansion object pretrial as stipulated in Article 77 of the Criminal Procedure Code which was decided by the Constitutional Court in decision Number 21/PUU-XX/2014 so law the event No stated inside Constitution Number 8 of 1981 concerning the Code of Laws Criminal Procedure Law .In other PERMA provisions are put forward that decision pretrial about No it's legal determination suspect No abort authority investigator For determine the person concerned as suspect Again after meet the minimum two tool proof new legal different with tool proof previously related with case material¹³ . Writer evaluate that such authority large amount owned by a single judge pretrial the prone to to abuse capable authority harm investigator in matter determination previous suspect has set two tool proof , so absence mechanism checks and balances or effort the law can taken by investigators For maintain truth formal acquisition tool proof according to version investigator cause investigator No can maintain tool existing evidence and for continue the legal process for the suspect wins pretrial (no it's legal determination suspect) investigator must publish sprindic new For find at least two tool new evidence different with tool proof previously related with material matter , so matter the can obstructing the legal process . Vice versa the same opportunity will also be given for rejected suspect application pretrial in decision pretrial can submit effort appellate law or determination end up in court tall area relevant law so that there is equality position for investigators and suspects or family suspect or his power For submit effort law .

Existence object pretrial in a way general adhere to principle Justice fast No can interpreted rule out truth substantive so that the process must fast will but principle Justice fast is One unity that is not inseparable from principle certainty law . So that provision effort law post-verdict pretrial specifically determination suspect while arranged later day , pretrial still can interpreted as a quick event in time that has been set in Constitution as form certainty law . Therefore That writer evaluate matter This very crucial for investigator to availability effort law For maintain two tool evidence obtained from results investigation for investigator is tool evidence obtained in a way valid . Temporary to object pretrial legitimate or not determination suspect is decision absolute No There is institution / institution or mechanism the law can correct decision the with reason that was checked only aspect formal . According to economical writer should legitimate or not determination can requested determination end up in court tall well by investigators nor suspect or his family or the authority is a maximum of 7 days Already must decided as something ideal provisions in welcome the birth of the Criminal Procedure Code in new face .

E. CLOSING

1. Existence institution testing pretrial specifically legitimate or not determination suspect from side the positive for investigator can become whip in increase his professionalism in determine someone's status become suspect because of his suspect status for part perception public has attached that stigma a suspect as perpetrator follow criminal , more carry on even in position positions certain , determination of suspect status can obstruct somebody For still hold or occupy position certain , will but on the other hand you can .
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- M.Rijal Bidkum Polda Sultra hasil wawancara tanggal 4 Agustus 2017 Dalam penelitian ini penulis fokuskan pada satu objek praperadilan yakni sah tidaknya penetapan tersangka agar kajian dalam penelitian ini tidak terlalu meluas Vide Pasal 2 ayat (3) PERMA Nomor 4 Tahun 2016
- Baca artikel detiknews, "Ini Pertimbangan Hakim Kabulkan Gugatan Praperadilan Eddy Hiariej" selengkapnya
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