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Legal Remedies for Judicial Review for Investigators of Pretrial Decisions Regarding the Invalidity of the Order to Terminate the Investigation in the Perspective of Law Enforcement with Certainty

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Abstract

Arrangements regarding legal remedies that can be submitted by investigators against the judge's decision regarding investigative actions in the form of terminating the investigation with the issuance of an Investigation Termination Order (SP3) in pretrial cases. Law No. 8/1981 on the Criminal Procedure Code was not expressly enforced. This article aims to identify legal remedies against pretrial decisions regarding the invalidity of the Termination of Investigation Order (SP3) in the future. This paper is normative legal research, namely the process of finding legal rules, legal principles, and legal doctrines to address legal issues at hand. The result of this study is the arrangements regarding extraordinary legal remedies in the form of a judicial review of criminal decisions that have permanent legal force and are not acquitted or released from all previous legal claims before the entry into force of the Criminal Procedure Code that have been regulated can also be submitted by interested parties. Necessary to reconstruct the regulation of legal remedies against pretrial decisions, especially extraordinary legal remedies in the form of reconsideration, especially by investigators as parties who are very interested in the action.

Keywords: *Legal Remedies; Pretrial Decisions; Invalidity of The Order to Terminate the Investigation; Criminal Procedure Code*

Introduction

The criminal procedural law system can be divided into two groups, namely the criminal procedural law system known as the inquisitor system or the inquisitor system and the accusatory system or accusatory system. According to L.J. van Apeldorn, what is meant by the inquisitor principle in the Criminal Procedure Code is the principle that in a criminal procedure the judge is active in taking action to sue so that he is the person in charge of indicting, while the accusatory principle is the opposite, namely the public prosecutor and the defendant are located opposite each other. as equal rights parties who carry out legal battles *(rechts strijd)* in front of impartial judges (Apeldorn, L.J.V., 2001).\

During the validity period of HIR in Indonesia, there was an opinion that HIR adhered to an inquisitor system that considered suspects as objects. The inquisitor system itself is a form of the criminal case settlement process that originally developed in mainland Europe from the 13th century to the early-mid-19th century, while the process of resolving criminal cases based on the inquisitor system at that time began with the initiative of investigators of their own volition to investigate crimes, The method of investigation and examination is carried out in secret (Atmasasmita, R., 2010).

The application of this inquisitor system strongly implies the impression that the way to act on this system is very simple and fast enough. However, it does not prioritize the protection and guarantee of Human Rights for the suspect/accused. This condition occurs because of the erroneous assumption that "torture institutions are very important and must always exist in the inquisitor system" (Damaska, M., 1973).

The Criminal Procedure Law system based on HIR was deemed very burdensome and did not prioritize human rights (the rights of the accused/suspect), thus in the 1981 period, the Indonesian government switched to enacting the Criminal Procedure Code by relying on Law no. 8 of 1981 concerning the Criminal Procedure Code by revoking the HIR (Staatsblad of 1941 Number 44) linked to Law Number 1 Drt. of 1951 (State Gazette of 1951 Number 9, Supplement to the State Gazette Number 81) along with all implementing regulations.

The replacement of the rules of the Criminal Procedure Code from HIR to the Criminal Procedure Code (KUHAP) because it is felt that the provisions in the Criminal Procedure Code prioritize a sense of humanity (Human Rights), and are based on a fair legal process (Due Process of Law) where rights the rights of suspects/defendants/convicts are protected and considered part of the rights of citizens (civil rights) because they are part of human rights (Rukmini, M., 2003).

Recognition of Human Rights (HAM) in the Criminal Procedure Code is explicitly recognized in the general explanation, especially in point 3 of the Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code which contains the principles governing the protection of Human Rights according to their dignity and worth.

The idea of human rights is born from the existence of human awareness of human rights that come from their realization of self-esteem, dignity, and human dignity. Human rights have been inherent since humans were born in this world, thus human rights are not something new anymore (Muhadar, et.al., 2009).

The concept of pretrial institutions adopted in the Criminal Procedure Code comes from the Habeas Corpus Act, which exists in the criminal justice system in Anglo Saxon countries which is a statute that was born in 1679 during the reign of King Charles II, which was inspired by the 1215 Magna Carta Charter (Nasution, A.B., 2002).

The structure and composition of pretrial institutions in Indonesia do not stand alone, but only in the form of granting the authority and duties regulated in the Criminal Procedure Code for each District Court under Indonesian law. The latest duties and authorities at the District Court are to examine and decide:

1. Whether or not the arrest and or detention is legal;

2. Whether or not the termination of the investigation or the termination of the prosecution is legal; Requests for compensation or rehabilitation by the suspect or his family or other parties on their behalf whose cases have not been brought to court (Harahap, M.Y., 2002).

Pretrial is an institution that was born from the idea of carrying out supervisory actions against law enforcement officers (police and prosecutors) so that in carrying out their authority they do not abuse their

authority. It is not enough for supervision to be carried out only internally within the legal apparatus itself, but cross supervision is also required between fellow law enforcement officers.

Associated with the activities of Investigators whose implementation can take the form of, for example, arrests and even detentions, the criminal procedure law through provisions that are compelling to get rid of the universally recognized principle, namely the right to freedom of a person. Criminal procedural law gives certain officials the right to detain suspects or defendants in the context of implementing material criminal law to achieve order in society (Alfiah, R.N., 1986).

Arrangements regarding legal remedies that can be submitted by investigators against the judge's decision regarding investigative actions in the form of terminating the investigation with the issuance of an Investigation Termination Order (SP3) in pretrial cases. Law No. 8/1981 on the Criminal Procedure Code was not expressly enforced, which was later restricted in the decisions of the Constitutional Court No. 65/PUU-IX/2011 and Article 45A of Law No. 5 of 2004 which was amended by Law No. 3 of 2009 concerning the Supreme Court and Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decisions which limits legal remedies against pretrial decisions. This article aims to identify legal remedies against pretrial decisions regarding the invalidity of the Termination of Investigation Order (SP3) in the future.

Research Methods

This paper is normative legal research, namely the process of finding legal rules, legal principles, and legal doctrines to address legal issues at hand (Marzuki, P.M., 2001). Based on the background of the problem and the formulation of the problem and to achieve the objectives of this study, this research is juridical-normative research which is library research, namely research on primary data, which is in the form of legal materials (Soemitro, R.H., 1998).

This type of research is normative in that it examines the form of reconstruction of criminal acts in the field of Indonesian financial investment in the future based on the weaknesses that exist in the current regulation. The research approach uses a statutory approach and a conceptual approach (Ibrahim, J., 2011). After the legal material is grouped, then the legal material is analyzed by prescription analysis.

Research Result and Discussion

The difference between the investigative and investigative steps is provided for by the Criminal Procedure Code. In the provisions of Article 1 number 5 of the Criminal Procedure Code, it is emphasized that: "investigation is a series of investigators' actions to seek and find an event that is suspected of being a criminal act to determine whether or not an investigation can be carried out according to the method regulated in this law".

Meanwhile, the investigator referred to in the Criminal Procedure Code in the article above is a state police official of the Republic of Indonesia who is authorized to conduct an investigation. Furthermore, the provisions of Article 1 point 2 of the Criminal Procedure Code defines: "investigation as a series of actions by investigators in terms of and according to the method regulated in this law to seek and collect evidence which with that evidence makes clear the criminal acts that occurred and to find the suspect".

The legal basis for the authority to issue an Investigation Termination Order (SP3) is Article 109 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which has determined the formal reasons for the issuance of SP3, namely:

1. Not obtained sufficient evidence,
2. The alleged incident is not a criminal act, or
3. Termination of the investigation for the sake of the law.

This provision is further elaborated in the National Police Chief Regulation (Perkap) No. 6 of 2019 concerning Criminal Investigations and Regulation of the Head of Criminal Investigation Unit (Perkaba) of the National Police. Regulation of the Head of the Criminal Investigation Agency of the Republic of Indonesia Police Number 2 of 2014 concerning Standard Operating Procedures for Organizing Criminal Investigations (hereinafter referred to as Perkaba 2/2014). The provisions of Article 30 of Perkap Number: 6 of 2019 stipulate that:

1. An investigation is terminated through a Case Title.
2. An investigation may be terminated to fulfill legal certainty, a sense of justice, and legal benefits.
3. Termination of the investigation is carried out by the provisions of the legislation.

There is no big difference between the Criminal Procedure Code and Perkap Number: 6/2019, except in terms of explaining what is meant by stopping an investigation for the sake of law and determining the obligation to investigators to carry out case titles and sending notifications to interested parties.

Pretrial is the authority of the district court to examine and decide whether it is legal or not; arrest, detention, termination of the investigation, termination of prosecution, compensation, and rehabilitation as well as legality; the determination of suspects, searches, and seizures are stated in a limited manner in Article 77 of the Criminal Procedure Code and also the Decision of the Constitutional Court in the Constitutional Court Decision Number 21/PUU-XX/2014.

The pretrial shall be presided over by a single judge who is appointed by the head of the district court no later than 3 (three) days after the application is submitted and assisted by a clerk. A pretrial application can be made before the main case is heard in a district court and the examination is carried out quickly and no later than seven (7) days the judge must have rendered his decision.

In the development of practice, post pretrial decisions often lead to various perceptions of legal remedies that can be taken to obtain justice. This is inseparable from the high application of a suspect to take the pretrial mechanism. The existence of the Constitutional Court's decision which expands the object of Pretrial in Article 77 of the Criminal Procedure Code as stated in the Constitutional Court's Decision Number 21/PUU-XX/2014 which includes the determination of suspects, searches and confiscations, also plays a role in increasing the high participation of a suspect to examine legal processes that are considered to have violated provisions stipulated in the procedural law.

In short, the process of determining the suspect is suspected to have violated human rights. Some people consider that pretrial efforts are an attempt to delay the trial process, but more than that, pretrial is essentially part of the criminal justice system which is intended as a means of horizontal control over arbitrary actions by investigators or public prosecutors.

In the perspective of criminal procedural law applicable in Indonesia (positive law) there are known ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies consisting of appeals and cassation are regulated in Chapter XVII of the Criminal Procedure Code, while extraordinary legal remedies, namely cassation for the sake of law and judicial review are regulated in Chapter XVIII of the Criminal Procedure Code.

The provisions of Article 83 paragraph (2) of the KUHAP by the Constitutional Court have been interpreted as contradicting the 1945 Constitution of the Unitary State of the Republic of Indonesia and

declared not to have binding legal force as stated in the Constitutional Court's decision Number 65/PUUIX/2011 so that the Pretrial decision can no longer be filed appeal lawsuit.

Furthermore, regarding legal remedies against pretrial decisions by Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court which has been in effect since January 15, 2004, which was later amended by Law Number 3 of 2009, in Article 45 A. Paragraph (2) point "a" has limited legal remedies for cassation in certain cases, one of which is the judge's decision in pretrial cases.

Article 45 A. paragraph (2) points "a" of the law on the Supreme Court stipulates that the Supreme Court at the cassation level hears cases that meet the requirements for cassation, except:

1. Cases for which submissions are limited by this law.

2. The excluded cases as referred to in paragraph (1) consist of:
   a. decisions on pretrial;
   b. criminal case which is punishable by imprisonment for a maximum of 1 (one) year and/or is threatened with a fine;
   c. state administrative cases in which the object of the lawsuit is in the form of a regional official's business decision whose scope of the decision is valid in the region concerned;

Since the enactment of the Supreme Court law, restrictions have been placed on cassation legal efforts against certain cases, one of which is in pretrial cases, so that cassation legal efforts against pretrial decisions are no longer possible. The provisions of Article 45A of Law Number 5 of 2004 concerning the Supreme Court regarding the technical implementation in the Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 7 of 2005 concerning Explanation of the application of the provisions of Article 45A of Law Number 5 of 20 04 determines that the pretrial case file for which the petition for cassation is filed does not need to be sent to the Supreme Court and for this reason a letter of determination from the head of the first instance court is issued which determines that the petition for cassation against the judge's decision in the pretrial case is declared unacceptable because it is not acceptable. meet the formal requirements.

Although based on the provisions of Article 45A of Law Number 5 of 2004 which has been amended by Law Number 3 of 2009 concerning the Supreme Court, it is determined that an appeal against a pretrial decision is not allowed, a judicial review (PK) is an external legal remedy. Usually, this is an alternative solution in practice which is often carried out by parties who object to pretrial decisions, because there is a substantial difference between cassation as an ordinary legal remedy and judicial review (PK) as an extraordinary legal remedy.

However, the judicial review (PK) is an extraordinary legal remedy that has been allowed for pretrial decisions, and has even been followed by several decisions of the Supreme Court of the Republic of Indonesia as judex juris and is allowed by the Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number: 4 of 2014 with the condition that if there is legal smuggling, it has also been annulled by the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number: 4 of 2016.

In addition to containing the prohibition of extraordinary legal remedies in the form of Judicial Review (PK) on Pretrial decisions, PERMA Number 4 of 2016 also contains the object of cases that can currently be filed in Pretrial, especially after the decision of the Constitutional Court Number 21/PUU-XII/2014, which expands the object of the Pretrial to include the legality of confiscation, searches, and determination of suspects.

The substance of PERMA Number 4 of 2016 which contains the object of any case that can currently be submitted for Pretrial, especially after the decision of the Constitutional Court Number 21/PUU-XII/2014, which expands the object of Pretrial is a continuation of the phenomenon of law enforcement on cases involving At that time, it attracted public attention, namely the Pretrial decision of Police General Budi Gunawan (BG) in his decision, which expanded the object of the Pretrial including whether or not the determination of a suspect was valid, which was later determined by the Constitutional Court in its decision that the validity of the determination of a suspect was one of the objects of Pretrial. and the BG case has not been continued to this day, many people consider this case tainted by political interference.

Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decisions, states: "This regulation regulates the prohibition of submitting a review of pretrial decisions". From the investigator's point of view, regarding the pretrial decision which states that the investigative action in the form of determining the suspect is declared invalid and the investigative action in the form of stopping the investigation.

The arrangement of legal remedies against pretrial decisions in the Criminal Procedure Code is only based on the provisions of article 83 of the Criminal Procedure Code and even then only on appeals, and the legal remedies for cassation against pretrial decisions are regulated by article 45 paragraph 1 letter a of Law Number 3 of 2009 as an amendment to Law No. 5 of 2004 concerning the Supreme Court and the regulation of extraordinary legal remedies for judicial review are regulated in PERMA Number 4 of 2016, but in these regulations, all legal remedies against pretrial decisions are completely closed.

While the regulation in PERMA Number 4 of 2016 is in the event of a judge's oversight or a manifest error of a pretrial decision, the Supreme Court of the Republic of Indonesia as the highest supervisor of the judiciary in Indonesia can only carry out supervision, reprimand, instructions, and warnings deemed necessary to the Pretrial Judge.

Meanwhile, the pretrial decision which contains the judge's oversight or real error will forever be legally flawed. This makes there is no legal certainty over the pretrial decision, especially regarding the act of stopping an investigation that is declared invalid, which has implications for the legal uncertainty of the suspect whose investigation has been stopped so that the protection of human rights that should be obtained is hampered.

Whereas previously before the enactment of the Criminal Procedure Code in several regulations and laws, arrangements were made regarding the possibility of extraordinary legal remedies in the form of judicial review by interested parties, such as the investigator as a very interested party submitting a judicial review of a criminal decision. which has permanent legal force and is not an acquittal or free from all lawsuits such as the Pretrial decision regarding the invalidity of the termination of the investigation (SP3).

Conclusion and Suggestion

The arrangement of legal remedies against pretrial decisions in the Criminal Procedure Code is only based on the provisions of article 83 of the Criminal Procedure Code and even then only on appeals, and the legal remedies for cassation against pretrial decisions are regulated by article 45 paragraph 1 letter a of Law Number 3 of 2009 as an amendment to Law No. 5 of 2004 concerning the Supreme Court and the regulation of extraordinary legal remedies for judicial review are regulated in PERMA Number 4 of 2016. But in these regulations, all legal remedies against pretrial decisions are completely closed. Meanwhile, the pretrial decision which contains the judge's oversight or real error will forever be legally flawed. This makes there is no legal certainty over the pretrial decision, especially regarding the act of stopping an investigation that is declared invalid.

Arrangements regarding extraordinary legal remedies in the form of a judicial review of criminal decisions that have permanent legal force and are not acquitted or released from all previous legal claims before the entry into force of the Criminal Procedure Code that have been regulated can also be submitted by interested parties, but instead in The Criminal Procedure Code has become unregulated so that until now the arrangements are unclear in several settings such as SEMA or PERMA.

Necessary to reconstruct the regulation of legal remedies against pretrial decisions, especially extraordinary legal remedies in the form of reconsideration, especially by investigators as parties who are very interested in the action. The termination of the investigation which was declared invalid by the pretrial decision even though the decision was a real mistake or error so that the legal goal of legal certainty could be achieved in law enforcement.

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