International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 6, Issue 4
August, 2019
Pages: 218-224

Due to the Verdict of the Constitutional Court of the Republic of Indonesia Number 21 / PUU-XII / 2014 on the Extension of Pretrial Institutional Authority in Indonesia

Suharizal[1]; Firdaus Arifin[2]

[1] Lecturer in the Law Faculty of Andalas University, Indonesia

[2] Lecturer in the Law Faculty of Pasundan University, Indonesia

http://dx.doi.org/10.18415/ijmmu.v6i4.986

Abstract

After the Verdict of the Constitutional Court of the Republic of Indonesia Number 21 / PUU-XII / 2014 related to the review of Law No. 8 of 1981 concerning Criminal Procedure Laws against the 1945 Constitution, additional authority granted by the Act to the pretrial hearing through this verdict among others; examine the legitimate or not determination of the suspect, examine the legitimate or not of the search warrant, and examine the legitimate or not of the seizure orders.

Keywords: Due; Verdict; Constitutional Court; Extension of Pretrial Institutional Authorithy; Law

Introduction

Since the enactment of Law Number 8 of 1981 concerning Criminal Procedure (KUHAP)[1] as a substitute for the criminal procedure law Herziene Indische Reglement (HIR) which is a legal product of the past Dutch Colonial government, the criminal procedure system in Indonesia has begun to introduce oversight mechanisms to law enforcement officials in a criminal justice process. This oversight mechanism is manifested by the presence of a pretrial institution as a complaint channel for someone who is subjected to a forced effort by law enforcement officials[2].

Pretrial institutions are introduced by the Criminal Procedure Code in law enforcement and not as an independent judiciary. Nor is it a judicial-level agency that has the authority to give a final decision on a criminal case. Pretrial institution is only a new institution whose characteristics and existence are as follows[3]:

[1] State Gazette of the Republic of Indonesia Number 76, Supplement to the State Gazette Number 3209.
[2] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, Sinar Grafika, Jakarta 2002, p. 2.
[3] M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali) Jilid II*, Sinar Grafika, Jakarta, 2008, p. 1.

a. It is a unit inherent in every District Court, where this pretrial is only found at the District Court level as a task force that is not separate from and with the court concerned.

b. Therefore, pretrial is not outside or beside or equal to a district court.

c. The administrative, technical, equipment and financial administrative is subject to and united with the District Court, and is under the leadership and supervision and guidance of the head of the relevant District Court.

d. The management of the judicial function is part of the judicial function of the district court itself.

Criminal procedural law which is guided by the Criminal Procedure Code does indeed regulate the mechanism to test the legitimation of the actions of law enforcement institutions in carrying out their investigative and prosecution tasks through the Pre-Judicial Institution. Initially, the provisions regarding pretrial are regulated in Article 77 of the Criminal Procedure Code which is limited in that it is only authorized to examine and decide on: *(a) the legitimation of arrest, detention, cessation of investigation or cessation of prosecution; (b) compensation and or rehabilitation for someone whose criminal case has been terminated at the level of investigation or prosecution.*

In the Corruption Eradication Commission (KPK) records, for example, the total number of pretrial cases since 2004 was 57 cases. On the side of the KPK, the only "*losing*" cases were four. Furthermore, in the period 2004-2014, 32 cases were submitted to the pretrial and all of them were won by the KPK. In 2015, there were 25 KPK cases. While until June 2016, the KPK received 10 pretrial lawsuits and "*won*" eight cases. KPK "lost" in four pretrial lawsuits. **First**, the alleged corruption case related to suspicious transactions to the National Police Headquarters who ensnared Deputy National Police Chief Inspector General Budi Gunawan. **Second**, the alleged corruption case related to the receipt of all Taxpayer's objections to the Zero Tax Assessment Letter (SKPN) of the 1999 BCA Income Tax Agency at the KPK which dragged the former Chairman of the Supreme Audit Agency (BPK) Hadi Poernomo. **Third**, the criminal act of corruption in the Panaikang II Water Treatment Plant (IPA) Rehabilitation, Operation and Transfer (ROT) project 2007-2013 with former Makassar Mayor Ilham Arief Sirajuddin. **Fourth**, the case of alleged corruption in the out-of-school education fund (PLS) of the East Nusa Tenggara Education Office for the 2007 budget year which ensnared the Regent of Sabu Raijua Marthen Dira Tome[4].

In the case of Budi Gunawan's pretrial petition there was a legal breakthrough regarding the expansion of the authority of the pretrial. In its verdict No. 04 / Pid.Prap / 2015 / PN.Jkt.Sel, the Judge who tried and examined the petition case granted the lawsuit filed by Budi Gunawan. Budi Gunawan was named a suspect by the KPK in the case of alleged corruption in the form of receiving gifts or promises while serving as the Head of the Career Development Bureau (Karobinkar) Deputy Human Resources of the National Police for the period 2003-2006 and other positions in the Police[5].

If we examine the submission of a pretrial case regarding the illegality of determining the status of the suspect and the request to stop the investigation of the applicant namely Komjen Budi Gunawan, it

[4]http://www.republika.co.id/berita/nasional/hukum/16/06/15/o8synp335-dari-57-gugatan-praperadilan-kpk-kalah-4-perkara. diakses tanggal 20 Agustus 2016.

[5]Judge in Verdict Number 04 / Pid.Prap / 2015 / PN. Jkt.Sel stated Stating Investigation Order Number: Sprin.Dik-03/01/01/2015 dated 12 January 2015 which determined the Petitioner as a Suspect by the Respondent in relation to the criminal event as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Article 55 paragraph (1) of the Criminal Code is illegal and has no legal basis, and therefore the determination of aquo has no binding power.

is not a case that can be submitted in a pretrial hearing as stated in Article 1 Number 10 Jo Article 77 of the Criminal Procedure Code. But the fact is that in this case Komnas Budi Gunawan's pretrial petition was still examined in the trial and partially granted. In the last few years the submission of a pretrial petition similar to Komjen Budi Gunawan's pretrial case which can be said to be a verdict made outside the judge's authority in a pretrial hearing as stated in Article 1 Number 10 Jo Article 77 of the Criminal Procedure Code has also occurred among others in the case verdict below[6];

1. Verdict Number 04 / Pid.Prap / 2010 / PN.Jkt.Sel. with the applicant Toto Chandra, manager of Permata Hijau Group in the case of a fictitious invoice in 2009 with a single judge led by Judge Muhammad Razzad whose verdict stated that the investigation of the applicant must be stopped.

2. Verdict Number 38 / Pid.Prap / 2012 / PN.Jkt-Cell with the petitioner Bachtiar Abdul Fatah, manager of PT Chevron Pacific Indonesia (PT. CPI) in a bioremediation corruption case with a single judge led by Judge Suko Harsono whose verdict was made states that the determination of the status of the suspect in the applicant is invalid.

The pretrial ruling Budi Gunawan, Toto Chandra and Bachtiar Abdul Fatah which extended the pretrial judge's authority became a debate both from academics and legal practitioners, especially the judges until the Constitutional Court Verdict Number 21 / PUU-XII / 2014, April 28, 2015. The Constitutional Court in the Verdict granted the material 77 Article 77 letter a of the Criminal Procedure Code. In essence, the Constitutional Court in the Verdict of the Constitutional Court Number 21 / PUU-XII / 2014 established a new norm by expanding the authority of the Pre-Justice Institution, including in examining the legitimation of the determination of suspects by investigators in the investigation process.

So that after the Verdict of the Constitutional Court Number 21 / PUU-XII / 2014 April 28, 2015 normatively expanded pretrial authority, which includes the determination of suspects. One of the verdict of the Constitutional Court is that one of them states that Article 77 letter a KUHAP is contradictory to the 1945 Constitution as long as it is not interpreted, including the determination of suspects, searches, and confiscations. Therefore, the Constitutional Court's Verdict forms the norm that extends pretrial authority, which includes examining the legitimation of a suspect, search and seizure.

Amendments to the provisions of Article 77 of the Criminal Procedure Code based on the Constitutional Court Verdict Number 21 / PUU-XII / 2014, dated April 28, 2015 by expanding the authority of pretrial institutions including the determination of these suspects which serve as the legal basis for testing the legitimation of the determination of suspects by law enforcement institutions. After the Constitutional Court Verdict, many cases of corruption have been determined by the KPK, then the suspect submitted a pretrial petition. This is far different from before the Constitutional Court Verdict Number 21 / PUU-XII / 2014 dated 28 April 2015, which was very rare for a District Court (PN) to hear a pretrial petition[7].

In the Constitutional Court Verdict Number 21 / PUU-XII / 2014 it can be read that the Court stated the phrases "preliminary evidence", "*adequate preliminary evidence*", and "*sufficient evidence*" contained in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure

[6]Academic Manuscript Draft of the Supreme Court Regulation concerning Pretrial Procedure Law, publisher *Institute for Criminal Justice Reform*, 2014, p. 89.

[7] In a study conducted by the ICJR in 2010, there were facts about the lack of use of pretrial institutions, for example in the South Jakarta District Court, for a period of five years, from 2005 to 2010, from the elongation of criminal cases handled, there were only 211 pretrial petition. Furthermore, from the 80 Pretrial decisions analyzed by ICJR in its research, when viewed from the main types of criminal acts, it appears that criminal acts of corruption dominate the use of pretrial efforts.
(Academic Manuscript Draft of the Supreme Court Regulation concerning Pretrial Procedure Law, publisher *Institute for Criminal Justice Reform*, 2014, p. 18.)

Code must be interpreted as "*a minimum of two pieces of evidence*" contained in Article 184 of the Criminal Procedure Code. The provisions in the Criminal Procedure Code do not provide an explanation of the limits on the number of the phrases "*preliminary evidence*", "*sufficient preliminary evidence*", and "*sufficient evidence*". The only article that determines the minimum limit of evidence is in Article 183 of the Criminal Procedure Code which states, "*Judges must not convict a person unless with at least two pieces of evidence ... etc.*"[8].

Therefore, the use of "*at least two pieces of evidence*" is considered by the Court to be a fundamental embodiment of the due process of law to protect human rights in the criminal justice process. As a form of law in criminal justice proceedings in Indonesia, there are still several phrases in the Criminal Code that require clarification in order to meet the *lex certa principle* and the *lex stricta principle* in order to protect someone from the acts of arbitrators and investigators. Accordingly, an investigator in determining *'preliminary evidence'*, *'sufficient preliminary evidence'*, and *'sufficient evidence'* as referred to in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure may be avoided. arbitrary[9]. The Constitutional Court made this verdict in light of Article 1 paragraph 3 of the Constitution of 1945 stating that Indonesia is a country of law, so the principle of due process of law must be upheld by all law enforcement agencies in order to respect one's rights[10].

Problem Formulation

Based on the background of the issue, the following research issues can be summarized:

1. What is the legal formulation of the extension of the post- verdict jurisdiction of the constitutional court number 21 / PUU-XII / 2014 on April 28, 2015?

2. Will the extension of the post-judicial tribunal's jurisdiction post- verdict number 21 / PUU-XII / 2014 on April 28, 2015 reflect a sense of justice for future justice seekers?

Discussion

One of the authorities of the Constitutional Court is to adjudicate at the first and last level whose decisions are final to examine the law against the Basic Law (Article 24C paragraph (1) of the 1945 Constitution). In the perspective of constitutional law, testing the constitutionality of laws against the Constitution is a reflection of the principles of constitutionalism and the rule of law as confirmed in article 1 paragraph (2) and (3) of the 1945 Constitution.

Based on the Verdict of the Constitutional Court Number 21 / PUU-XII / 2014 above, there has been an expansion of pretrial objects as regulated in Act Number 8 of 1981 concerning Criminal Procedure. After this verdict, the determination of suspects, searches and seizures has become the object of pretrial hearing.

[8] Verdict of the Constitutional Court Number 21 / PUU-XII / 2014 April 28, 2015.
[9] *Ibid.*
[10] http://www.cnnindonesia.com/nasional/20150428163639-12-49799/mk-putuskan-penetapan-tersangka-masuk-objek-praperadilan/. Accessed August 16, 2016.

1. Case Object

   The object of the case submitted by the Petitioner to the Constitutional Court was the review of Law Number 8 of 1981 concerning Criminal Procedure Law to the Basic Law (judicial review).

2. Legal Subject
   Conditions for the categorization of parties as Petitioners in the submission of cases to the Constitutional Court in the examination of the Law on the 1945 Constitution of the Republic of Indonesia are those whose rights and / or constitutional authorities have been impaired by the coming into effect of the Law.

The applicant must have a legal standing as an absolute requirement for litigation in the Constitutional Court. Based on the Constitutional Court Law, only Indonesian Citizens (WNI) have legal standing or have the right to submit applications for disputes or quarell or cases before the Constitutional Court[11]. Legal standing is an adaptation of the term *personae standi in judicio* which means the right to file a lawsuit or petition before the court[12].

With the petition being granted in part, a fundamental change has occurred regarding the Pretrial that is regulated in Law Number 8 of 1981 concerning Criminal Procedure Law, in which case the Constitutional Court is of the view that the Act is contradictory to the State Constitution Republic of Indonesia in 1945. After this verdict, the pretrial object has been expanded. Determination of the status of the suspect is also an object of the pretrial institution.

The powers granted by the Law to the Pretrial include:

1. Examine and Determine the Legitimate Efforts (Arrest and Detention)
2. Checking the Legitimation of Discontinuation of Investigation or Termination of Prosecution
3. Checking Compensation Claims for Damages, because:

   a. Unauthorized arrest or detention
   b. Or because a search or seizure is contrary to the provisions of the law and the law
   c. Because of mistakes regarding the actual person who must be arrested, detained or examined.

4. Check Rehabilitation Requests
5. Pretrial Against Foreclosure Acts.

After the Constitutional Court Verdict Number 21 / PUU-XII / 2014 related to the review of Law No. 8 of 1981 concerning Criminal Procedure Law to the 1945 Constitution, additional authority granted by the Act to the Pre-Judicial Court through the Constitutional Court's verdict, among others;

1. Checking the legitimate or not of the determination of the suspect
2. Checking legitimate or not of the search warrant, and
3. Checking legitimate or not of the seizure orders.

Through this very fundamental change, the Pretrial is expected to be able to oversee the process of law enforcement that is closely related to guaranteeing the protection of human rights.

[11] Harjono, *Konstitusi Sebagai Rumah Bangsa Pemikiran Hukum Dr. Harjono, S.H., M.C.L. Wakil Ketua MK*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), p. 176.
[12] *Ibid.*

Conclusions

Based on the discussion that has been described in the previous chapters, in this chapter several conclusions from the research will be outlined. The conclusions of the discussion above are:

1. Before the Constitutional Court Verdict number 21 / PUU-XII / 2014, the definition of pretrial can be defined as the authority of the district court to examine and decide on:

   a. Whether an arrest and / or detention is legitimate at the request of the suspect or his family or other party at the power of the suspect.
   b. The legitimation of the investigation or the cessation of prosecution at the request is legitimate or not for the sake of upholding the law and justice.
   c. Requests for compensation or rehabilitation by the suspect or his family or other parties for their attorneys whose cases have not been submitted to the court.

2. The results of the investigation process are determinants of determining the status of a suspect against a person suspected of committing a criminal act of corruption that harms the country's finances of at least one billion rupiah, of which the determination is carried out by the Corruption Eradication Commission (KPK). The Corruption Eradication Commission (KPK) in this case must be very observant and very careful in determining someone as a Corruption Suspect. Because based on Article 40 of Law Number 30 Year 2002 Regarding the Corruption Eradication Commission, the Corruption Eradication Commission (KPK) is not authorized to issue Warrants to Stop the Prosecution of Corruption, which we know as SP-3. This is different from the process of prosecuting corruption criminal acts carried out by the Prosecutor's Office in which the Prosecutor's Office can issue a Letter of Termination for Prosecuting a Corruption Case (SP-3).

3. That based on Law Number 8 Year 1981 Concerning the Criminal Procedure Code, the legitimation of determining whether the status of a suspect is good by the Investigator of the Republic of Indonesia state police officers and certain civil servants are given special authority by the law, as the example of the Corruption Eradication Commission (KPK) investigator is not a pretrial object nor is the court's authority to prosecute. The contents of the pretrial ruling of the South Jakarta District Court which granted the pretrial petition from the petitioner in part was considered not based on law. This was confirmed because based on the provisions of article 77 of the Criminal Procedure Code, when the verdict was handed down by a single Judge, the legitimation of the status of the suspect was not an object of pretrial. Judge Sarpin's reason in interpreting the provisions in the Criminal Procedure Code does not have a legal logic, because the pretrial object under Article 77 of the Criminal Procedure Code is limited and not multiple interpretations. Because this is closely related to the competence to adjudicate, according to the authors the *a quo* pretrial ruling is legally flawed.

4. After the Constitutional Court Verdict Number 21 / PUU-XII / 2014 related to the review of Law Number 8 of 1981 concerning Criminal Procedure Law to the 1945 Constitution, the additional authority granted by the Act to the Pre-Trial through the Constitutional Court's Verdict includes;
   a. Checking the legitimate or not of the determination of the suspect
   b. Checking legitimate or not of the search warrant, and
   c. Checking legitimate or not of the seizure orders.

References

Harjono, Konstitusi Sebagai Rumah Bangsa Pemikiran Hukum Dr. Harjono, S.H., M.C.L. Wakil Ketua MK, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008).

Oemar Seni Adji, KUHAP Sekarang, Penerbit Erlangga, Jakarta, 1985.

Loebby Loqman, Pra-Peradilan Di Indonesia, Ghalia Indonesia, Jakarta, 1987.

M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP, Sinar Grafika, Jakarta 2002.

M. Yahya Harahap, Pembahasan Permasalahan Dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali) Jilid II, Sinar Grafika, Jakarta, 2008.

Naskah Akademik Rancangan Peraturan Mahkamah Agung tentang Hukum Acara Praperadilan, penerbit Institute for Criminal Justice Reform, 2014.

Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 tanggal 28 April 2015.

Copyrights