International Journal of Law and Society
Vol. 1, No. 2, April 2024
e-ISSN : 3046-9562, p-ISSN : 3046-9619, Page 123-133

The Role and Function Of Pretrial In Criminal Law Enforcement

Dinda Ayu Ramadhani [1], Rahul Ardian Fikri [2], H. Abdul Razak Nasution [3]
[1,2,3] Universitas Pembangunan Panca Budi

Jl. Gatot Subroto Km.4.5 Sei Sikambing 20122 Medan City, North Sumatra
Korespondensi penulis: dindaaramadhani30@gmail.com

Abstract. *Corruption is a problem that needs to be taken seriously and is a legal issue in every country in the world, including Indonesia. The disease of corruption is increasingly rampant. The seriousness of the government in overcoming criminal acts of corruption is the establishment of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes. The formulation of the problem discussed in writing this thesis is Regarding the Application of the Criminal Act of Assistance in corruption. The research method used in writing this thesis is a research method carried out with a Normative Juridical Approach, namely Legal Principles and referring to Legal Norms contained in the library research method (library research), namely conducting research using data from various reading sources such as Laws - Invitations, books, magazines and the internet which are considered relevant to the problems that the author will discuss in this thesis. The assistance of corruption crimes committed by Widjokongko Puspoyo who helped Widjanarko Puspoyo receive gifts from Bulog partners caused Widjokongko Puspoyo to be punished for violating Article 11 Law No. 20 of 2001 concerning changes to Law no. 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 15 of Law no. 31 of 1999 concerning the Eradication of Corruption in conjunction with Article 56 1 of the Criminal Code. Assistance in Corruption Crimes is regulated in Article 15 of Law No. 31 of 1999, in this article it states that the act of assisting corruption will be punished the same as the perpetrators of corruption in accordance with the provisions in Law No. 31 of 1999 as has been amended by Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. In Article 15 Criminal Responsibility for Assistance Crimes in corruption cases is seen from the extent to which the act of assisting the Corruption Crime was carried out. In determining the amount of punishment for the assistant to the criminal act of corruption, it can be seen from the articles violated by the assistant to the criminal act of corruption*

Keywords: *Corruption Crime, Continuous*

INTRODUCTION

Pretrial is an institution that was born from the idea of conducting supervisory actions against law enforcement officers (Police, Prosecutors and Judges) so that in carrying out their authority they do not abuse their authority, because it is not enough to have internal supervision within the legal apparatus itself, but also requires cross-supervision between fellow law enforcement officers. In relation to the Investigator's activities, the implementation of which can be in the form of, for example, arrest and even detention, the criminal procedure law through its compelling provisions removes the universally recognized principle of the right to freedom of a person. Criminal procedure law gives certain officials the right to detain suspects or defendants in order to implement material criminal law in order to achieve order in society.

Pretrial indirectly supervises activities carried out by police investigators in the context of investigations and prosecutor's investigators at the prosecution level, considering that the actions of investigators are basically attached to the agency concerned. Through this pretrial institution, it is possible to have supervision between the police and the prosecutor's office in terms of termination of investigation and prosecution. The authority of the pretrial institution itself, among others, is to examine and decide upon:

Received March 31,2024; Revised April 06,2024; Published April 30, 2024
*Dinda Ayu Ramadhani, dindaaramadhani30@gmail.com

1. Whether or not the determination of a suspect for arrest, detention, arrest, termination of investigation, or, termination of prosecution is valid
2. Compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

The existence of the presumption of innocence is in accordance with the principles contained in the establishment of Law Number 8 of 1981 concerning Criminal Procedure (hereinafter referred to as KUHAP), which is imbued with the principle of protection of human dignity. In principle, this is also in accordance with the purpose of KUHAP, which is to be able to provide protection for human rights in balance with the public interest. In fact, Judge Sarpin's decision is not the first decision to grant a pretrial motion on the validity of the determination of a suspect. There was at least 1 (one) decision before Judge Sarpin's decision that granted the request, namely Judge Suko Harsono's decision in a pretrial case with the applicant Bachtiar Abdul Fatah at the South Jakarta District Court.

On April 28, 2015, the Constitutional Court in its decision No. 21/PUU-XII/2014 ruled, among other things, that Article 77 letter a of KUHAP is contrary to the 1945 Constitution of the Republic of Indonesia to the extent that it does not include the determination of suspects, seizures, and searches. This means that with the Constitutional Court's decision, testing the validity of the determination must be included in the pretrial object. Finally, some time ago, there was a pretrial application on the validity of the determination of a suspect filed by Hadi Poernomo to the South Jakarta District Court. The judge who heard the case, Haswandi, in his ruling, stated that the validity of the determination of a suspect is an object that can be examined at the pretrial stage.

The Constitutional Court's decision states that the determination of a suspect is one of the objects that can be examined for validity in pretrial proceedings. However, it should be noted that there was a Constitutional Court decision number 003/PUU-IV/2006 dated July 26, 2006, which essentially stated that the use of the doctrine of material lawlessness contained in the explanation of Article 2 Paragraph (1) of Law 31/1999 jo. Law 20/2001 on the Eradication of Corruption is contrary to the 1945 Constitution and should not be done. In fact, in the cassation decision of corruption case number 2064 K/ Pid/ 2006 dated January 8, 2007 on behalf of the defendant H. Fahrani Suhaimi, the Supreme Court Judge who tried the case continued to use the doctrine of material unlawfulness. The facts prove that judges under the auspices of the Supreme Court do not necessarily implement the Constitutional Court's decision. This also causes the potential for judges under the auspices of the Supreme Court not to implement the Constitutional Court's decision regarding the determination of

suspects, which is one of the objects of pretrial.

In the pretrial case of Budi Gunawan. In that case, Judge Sarpin basically did not examine the preliminary evidence used by the KPK in naming Budi Gunawan as a suspect, but examined whether the KPK was authorized to conduct legal proceedings against Budi Gunawan and in the end Judge Sarpin ruled that the KPK was not authorized to legally process Budi Gunawan because Budi Gunawan did not meet the qualifications of parties that could be prosecuted by the KPK based on Article 11 of Law 30/2002 on the KPK, namely law enforcement officials or state administrators, received attention that disturbed the community, and involved a State loss of at least Rp. 1,000,000,000,- (one billion rupiah), so that the entire legal process carried out by the KPK was considered invalid, including the naming of a suspect by the KPK against Budi Gunawan. State losses of at least Rp. 1,000,000,000,- (one billion rupiah), so the entire legal process conducted by the KPK is considered invalid, including the KPK's naming of Budi Gunawan as a suspect.

The second case is that of Setya Novanto. On July 17, 2017, the KPK announced the naming of Setya Novanto as a suspect in the e-KTP procurement corruption case. He is suspected of arranging for the Rp.5.9 trillion E-KTP project budget to be approved by members of the House of Representatives. In addition, Novanto is alleged to have conditioned the winning bidder in the e-KTP project. Together with businessman Andi Agustinus, aka Andi Narogong, Novanto is suspected of causing state losses of IDR 2.3 trillion. However, over time, on September 29, 2017, the suspect status was canceled by pretrial judge of the South Jakarta District Court Cepi Iskandar.

RESEARCH METHODS

The approach used is a sociological juridical approach. In this research, law is conceptualized as an empirical symptom that can be observed in real life. The type of research used in completing this thesis is a descriptive research method that describes what is obtained from the research field, which is done by examining library materials (secondary data) or *library research*. In research that uses a juridical sociological approach, the approach with this method aims to obtain empirical legal knowledge based on what is obtained in the research field. So to obtain data that supports data collection activities in this study is to conduct a literature study. Namely by reading, recording, reviewing, and studying written sources.

In this study the authors took samples using *purposive sampling* techniques . Regarding this, that *purposive sampling* is done by taking subjects not based on strata, *random* or regional but based on specific purposes. Likewise, according to Sugiyono, *purposive*

sampling is "a sampling technique with certain considerations". This means that each subject taken from the population is selected deliberately based on certain goals and considerations. The data analysis method used is descriptive qualitative, which is a description of data analysis that focuses on information obtained from respondents to achieve clarity of the problems to be discussed.

RESULTS AND DISCUSSION

The function and role of pretrial in law enforcement in Indonesia based on current laws and regulations such as pretrial which is part of the district court that performs a supervisory function, especially in terms of forced efforts against suspects by investigators or public prosecutors. The supervision in question is supervision of how a law enforcement officer exercises the authority available to him in accordance with the provisions of existing laws and regulations, so that law enforcement officers are not arbitrary in carrying out their duties. As for the suspect or his family as a result of deviant actions taken by legal officers in carrying out their duties, they are entitled to compensation and rehabilitation. Pretrial Function in the Process of Detention and Arrest Supervision in the Draft Criminal Procedure Code.

(a) The main purpose of the pretrial process is to uphold and protect the law and the human rights of suspects at the investigation and prosecution stage. Therefore, an institution called pretrial, as set out in Articles 77 to 83 of the Criminal Procedure Code, has been created for the purpose of monitoring the protection of the rights of suspects in preliminary investigations. The control is carried out by means of vertical control, namely top-down control; and

(b) horizontal control, i.e. sideways control, between investigators, reciprocal public prosecutors and suspects, their families or other parties.

Article 1 point 10 of the Criminal Procedure Code is emphasized in Article 77 of the Criminal Procedure Code which states that the District Court is authorized to examine and decide, in accordance with the provisions stipulated in the law.:

"*Discontinuation of prosecution is not the setting aside of a case in the public interest, which is the authority of the Attorney General*".

Article 80 of the Criminal Procedure Code states:

"*A request to examine whether or not a termination of investigation or prosecution is valid can be submitted by the investigator or public prosecutor or an interested third party to the President of the District Court by stating the reasons*".

Such considerations are a means of horizontal supervision to uphold the law, justice

and truth. The public prosecutor needs to avoid pre-trial proceedings under Article 80 of the Criminal Procedure Code. Mutual cooperation in guiding the investigators to perform their duties properly, smoothly and perfectly for this temporary period of time, is an effort to prevent the public prosecutor from falling into pretrial examination. The regulation of detention in Indonesian law refers to Article 20 of KUHAP up to Article 31 of KUHAP. Detention in KUHAP is the placement of a suspect or defendant in a certain place by the investigator or public prosecutor or judge with his/her determination.

Based on the above provisions, all law enforcement agencies have the authority to detain. Detention under KUHAP can be divided into:

(1) Detention for the purpose of investigation. In this case, the investigator or assistant investigator is authorized to detain on the order of the investigator. The size of the investigation is determined by the reality of the objective needs of the investigation itself. Detention depends on the needs of the investigator to complete the function of a complete and perfect investigation so that the investigation actually achieves the results of the examination which will be forwarded to the public prosecutor, as a basis for examination in court. If the investigation is sufficient, then detention is no longer necessary unless there are other reasons to continue detaining the suspect.
(2) Detention carried out by the public prosecutor, for the purpose of prosecution.
(3) Detention carried out by the judiciary. This detention is intended for the purpose of examination in court. Judges are authorized to make detention by a decision based on whether or not detention is necessary in accordance with the interests of the examination in court..

The foundation of detention includes the legal basis, circumstances, and conditions that provide the possibility for law enforcement to carry out detention. All of these elements support each other so that if one of these elements is missing, detention does not fulfill the principle of legality. According to Yahya Harahap, even though it is not qualified as an illegal action, the lack of elements is still considered not fulfilling the principle of legality. For example, if only the legal basis (objective element) is fulfilled, but it is not supported by the element of necessity (subjective element), or it is not strengthened by the conditions stipulated by the law, then such detention is less relevant and does not meet the urgency.

a. The Juridicalelement

This first element is referred to as the legal basis, because the law itself has determined the articles of criminal offenses where detention can be applied. Not all criminal offenses are subject to detention of the suspect or defendant. The law has determined in

general and in detail the crimes that can be subject to detention based on juridical elements. Article 21 paragraph (4) of KUHAP states that detention is only imposed on suspects or defendants who commit or attempt to commit a criminal offense, or provide assistance in a criminal offense that is punishable by imprisonment of five years or more.

b. Elements of the State of Concern

All of the circumstances of concern here are those surrounding the suspect or accused. The official assessing the circumstances of concern is based on the official's subjective assessment. However, there are several indicators that can be used to see the subjective element, namely:[14]

1). The potential for escape can be seen from the level of mobility of the suspect, the profession and occupation of the suspect, family support for escape, as well as if the original domicile of the suspect is not found, or does not have a residential address and others.

2). Destroying or eliminating evidence: can be seen from the percentage of evidence obtained by investigators. It can also be seen if the evidence is still minimal while there is potential to eliminate evidence. Or see the conditions of access and ability and support for the suspect to eliminate evidence, including if it has the potential to threaten key witnesses.

Repeat offenses can be seen from: the suspect's criminal history, the condition of the victim, and the type of criminal act: for example, rape, murder, narcotics, and terrorism require priority detention.

c. Elements meet the requirements of Article 21 paragraph (1) of the Criminal Procedure Code

In addition to the elements of detention above, detention must fulfill the conditions in accordance with Article 21 paragraph (1) of KUHAP, including:

1. The suspect or defendant is strongly suspected of being the perpetrator of the criminal offense in question
2. The strong suspicion is based on sufficient evidence.

It should be noted that the requirements for detention are different from the requirements for arrest, where evidence is the difference between the two. In arrest, the evidence requirement is based on sufficient preliminary evidence. Meanwhile, detention is based on sufficient evidence. Thus, the evidence requirement in detention is of higher quality than in arrest.KUHAP does not explain what constitutes sufficient evidence. However, if we look at Article 62 paragraph (1) and Article 75 HIR, we find an explanation that detention

must be based on the condition: if there is a trial held under Article 80 of the Criminal Procedure Code. Mutual cooperation in guiding the investigators to perform their duties properly, smoothly and perfectly for this temporary period of time, is an effort to prevent the prosecution from falling into pretrial investigation.

The regulation of detention in Indonesian law refers to Article 20 of KUHAP up to Article 31 of KUHAP. Detention in KUHAP is the placement of a suspect or defendant in a certain place by the investigator or public prosecutor or judge with his determination.Based on the above provisions, all law enforcement agencies have the authority to detain. Detention under KUHAP can be divided into:

a. Detention for the purpose of investigation. In this case, the investigator or assistant investigator is authorized to detain on the order of the investigator. The size of the investigation is determined by the reality of the objective needs of the investigation itself. Detention depends on the needs of the investigator to complete the investigation function completely and perfectly so that the investigation actually reaches the results of the examination which will be forwarded to the public prosecutor, as a basis for examination in court. If the investigation is sufficient, then detention is no longer necessary unless there are other reasons to continue detaining the suspect.
b. Detention carried out by the public prosecutor, for the purpose of prosecution.
c. Detention carried out by the judiciary. This detention is intended for the purpose of examination in court. Judges are authorized to impose detention by a decision based on whether or not detention is necessary in accordance with the interests of the examination in court.

Repeat offenses can be seen from: the suspect's criminal history, the condition of the victim, and the type of criminal act: for example, rape, murder, narcotics, and terrorism require priority detention. Obstacles in the Implementation of the Function and Role of Pretrial in Law Enforcement. In the practice of pretrial examination so far, it turns out that judges pay more attention to whether or not the formal requirements of arrest and detention are met, or whether or not there is a detention order and do not examine and assess the material requirements at all. In fact, the material requirements are the ones that determine whether a person can be subjected to coercive measures.

According to a study by the National Law Development Agency (BPHN), every implementation of coercive measures always involves the deprivation of human rights, even though the essence of law enforcement is to protect human rights. Therefore, coercive measures should not be excessive and should be carried out proportionally in accordance with

the original purpose of coercion. Meanwhile, pretrial examination, which is intended as a control over coercive measures, is only conducted after the coercive measures are completed and before the commencement of examination on the subject matter. Thus, according to BPHN, pretrial is a "repressive" rather than preventive control. The pretrial examination does not care whether the detaining investigator or prosecutor has fulfilled all material requirements. Whether or not there is sufficient preliminary evidence has never been questioned by pretrial judges in practice, as they generally consider it not to be their duty and authority, but rather has entered the matter of case examination which is the authority of District Court judges.

Similarly, in detention, judges do not look at whether the suspect or defendant is strongly suspected of committing a criminal offense based on sufficient evidence, or whether there are concrete and tangible reasons, which raise concerns that the person concerned will escape, eliminate evidence or repeat his actions. Pre-trial judges generally accept that concerns are a matter of subjective judgment on the part of the investigator or prosecutor. In other words, judges leave it to the investigators and prosecutors. Solution of Obstacles in the implementation of the functions and role of pretrial in law enforcement related to police investigation is a process to prove that a suspect/defendant really committed a criminal offense, so this process is a series of activities to collect and deepen legal evidence, as a tool to prove in court. A defendant must have actually committed a criminal offense, and therefore deserve criminal sanctions. The court will test whether the public prosecutor's indictment and the evidence submitted can be used as valid evidence to convict someone.

It is necessary to control each law enforcement officer in their respective institutions vertically, although this supervision is not strong enough because it depends on the seriousness and internal will of the institution itself. Therefore, horizontal supervision is needed, which is carried out in parallel or supervision at the same level. KHN concluded that KUHAP needs to be revised, especially regarding the mechanism of mutual supervision between law enforcers and institutions in the judicial subsystem. This means between investigation, prosecution, defense, judge examination and the level of legal remedies. In addition, KHN concluded that the pretrial provisions in KUHAP are only limited to examining (examinator judge) whether or not the arrest, detention, termination of investigation or termination of prosecution is valid but does not include examining the deviant actions of the investigator so it is expected that the position of examinator judge should become an investigating judge. Therefore, according to KHN, the pretrial institution as an instrument of supervision needs to expand the scope of its authority over abuse of authority by law enforcement officials, so as not to harm the rights of justice seekers.

Sufficient preliminary evidence (probable cause) and the existence of necessity and reasonableness to detain are not included in the juridical scope of pretrial. Conceptually, pretrial is intended to protect the power of the investigator. This is because basically, pretrial jurisdiction is only limited to the issue of testing the validity (post factum) of arrest and detention in error. The lack of due process in the pre-adjudication stage results in the ineffectiveness of the adjudication stage, as the case is not properly prepared for evidence. As a result, judges labor in ignorance of what actually happened at the pre-trial stage. Not surprisingly, there are many rejections of the minutes of examination by defendants or witnesses at the adjudication stage (trial).

In the adjudication stage, the judge should concentrate fully on determining the outcome of the evidence at trial and in this stage, the judge can assess what happened in the pre-adjudication stage and what should be done in the post-adjudication stage. The effectiveness of the adjudication stage is greatly influenced by what happens in the pre-trial stage. Because there is no forum authorized to examine and evaluate, until now there are still many abuses of power and arbitrariness in the arrest and detention of a suspect / defendant by the investigator / public prosecutor. In fact, in the habeas corpus system, this is precisely the milestone in the test of whether the detention is valid or not.

A person or whether a person should be detained. Therefore, it is not appropriate for judges, through pretrial, to only examine formal evidence and ignore the facts that occurred (material). The role of judges in this way undermines the purpose of the criminal justice process, which is to seek material truth. It is very difficult to expect material truth if in the pre-trial stage because the judge only examines formal evidence as practiced in pretrial.24 Thus, an active role is needed for judges to use their authority during the examination of the main case to consider investigations or prosecutions that are not in accordance with the provisions of procedural law or that are against the law rather than just waiting for requests from applicants who feel their rights have been violated or harmed by legal actions taken by investigators or prosecutors and requests for compensation.

CONCLUSIONS AND SUGGESTIONS

The main purpose and objective to be upheld and protected, in the pretrial process is the upholding of the law and the protection of the human rights of suspects at the level of investigation and prosecution. Article 1 point 10 of KUHAP is emphasized in Article 77 of KUHAP which states that the District Court is authorized to examine and decide, in accordance with the provisions

stipulated in the law. The court's authority to adjudicate in pretrial proceedings is explained in Article 95 of KUHAP.

Obstacles in the implementation of the function and role of pretrial in law enforcement include judges paying more attention to whether or not the formal requirements of arrest and detention are met, or whether or not there is a detention order and not at all examining and assessing the material requirements, every implementation of coercive measures there is always a deprivation of human rights, examination to carry out detention, there are still abuses in the stage of investigation by the police and prosecution by prosecutors, in addition to the breadth of investigative authority in determining sufficient preliminary evidence, supervision of such authority is also weak.

Solutions to the obstacles in the implementation of the function and role of pretrial in law enforcement include the need to control every law enforcement officer in their respective institutions vertically, although this supervision is not strong enough because it depends on the seriousness and willingness of the internal institutions themselves. The KUHAP needs to be revised, especially regarding the mechanism of mutual supervision between law enforcers and institutions in the judicial subsystem. An active role is needed for judges to use their authority during the examination of the main case to consider investigations or prosecutions that are not in accordance with the provisions of procedural law or that are against the law in order to avoid abuse of human rights.

In the adjudication stage, judges should concentrate on determining the outcome of the evidence at trial and at this stage, judges can assess what happened in the preadjudication stage and what should be done in the post-adjudication stage.

REFERENCES

Text Book

Pengantar metodelogi penelitian hukum: kajian penelitian normatif, Empiris, Penulisan Proposal, Laporan skripsi dan tesis,Muhammad Syahrum, S.T., M.2022

Amiruddin dan Zainal Asikin,2008. *Pengantar Metode penelitian Hukum*, Raja GrafindoPersada,Jakarta.

E. Utrecht, 1959, *Pengantar dalam Hukum Indonesia,* Cetakan keenam, PT.Penerbit Balai Buku Ichtiar,Jakarta.

Ediwarman, 2010. *Monograf, Metodologi Penelitian Hukum*, Medan: Program Pascasarjana Universitas Muhammadiyah Sumatera Utara, Medan.

Ilmu Perundang-Undangan Fakhry Amin, Riana Susmayanti, Fuqoha, Femmy Silaswaty Faried, Suwandoko, Muhammad Aziz Zaelani, Asri Agustiwi, Herlina, Deni Yusup Permana, Dika Yudanto, Mohamad Hidayat Muhtar, Adwi Mulyana Hadi, Ibnu Sam Widodo, Moh. Rizaldi

Manullang, E.Fernando M., 2007, *Menggapai Hukum Berkeadilan,* Penerbit Kompas, Jakarta.

Maria Farida Indrati Soeprapto, 1998, *Ilmu Perundang-undang (Dasar-dasar danPembentukannya),* Kanisius, Yogyakarta.

Moch. Faisal Salam,2001. *Hukum Acara Pidana Dalam Teori dan Praktek*, Mandar

Maju. Bandung. Ratna Nurul Alfiah,1986. *Praperadilan dan Ruang Lingkupnya*, Akademika Pressindo, Jakarta.

Sudargo Gautama, 1973, *Pengertian tentang Negara Hukum,* Liberty, Yogyakarta. Wolfgang Friedmann, 1967, *Legal Theory, Stevens & Sons*, London.

Legislation – Invitation

Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana.

Internet

http://www.hukumonline.comhttp://nasional.kompas.com/read/2017/09/30/08450451/kronologi-novanto-tersangka-hingga- status-tersangkanya-dibatalkan.

www.hukumonline.com berita Mengenal Mekanisme Praperadila Hukumonline

Feb 6, 2023 · Berita Terbaru Mengenal Mekanisme , Terbaru 6 Februari 2023 Mengenal Mekanisme Praperadilan Mekanisme dari pembentukan pra peradilan menurut Pedoman