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LIMITING THE LEGALITY OF DETERMINING SUSPECTS IN INDONESIA PRE-TRIAL SYSTEM

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Abstract

This article aims to examine what the pre-trial judges consider in determining whether a suspect's determination is legal. The basis of the reason "not based on the provisions and legal procedures in force" is a pre-trial petition. Including examining whether the Notification Letter for the Commencement of Investigation has not been submitted to the Reported Party and the Reporting Party, it can be used as a basis for the judge's consideration to judge the legality of the determination of the suspect. This article uses a legal research method through a statutory, conceptual, and case approach. This article finds that after the issuance of the Constitutional Court Decision Number 21 / PUU-XII / 2014 and the Supreme Court Regulation Number 4 of 2016, the fulfillment of preliminary evidence, namely that two valid tools of evidence constitute the absolute standard of determining the suspect. Besides, in terms of proof, pre-trial only assesses the validity of formal aspects, which incidentally do not touch the case's subject matter. An application for the cancellation of a suspect's status, for whatever reason, cannot be granted if the initial evidence is not fulfilled, namely the two tools of evidence listed in Article 184 paragraph (1) of the Law of Criminal Procedure (K.U.H.A.P). Ultimately, this study recommends the need for affirmation in terms of determining suspects through changing the parameters for deciding suspects in Article 1 point 11 of the Draft of the Law of Criminal Procedure from what was originally only based on "...sufficient preliminary evidence" to "...the fulfillment of two tools of evidence contained in Article 175 paragraph (1) of the Law of Criminal Procedure" to achieve legal certainty and fulfill the suspect's human rights.

Keywords: *criminal law; criminal procedure law; pre-trial; investigation; determination of suspects*

Abstrak

Artikel ini bertujuan untuk mengkaji apa yang menjadi dasar pertimbangan hakim praperadilan dalam menentukan sah atau tidaknya penetapan tersangka, kemudian dasar alasan "tidak didasari oleh ketentuan dan prosedur hukum yang berlaku" sebagai permohonan praperadilan, dan apakah tidak diserahkannya Surat Pemberitahuan Dimulainya Penyidikan kepada Terlapor dan Pelapor dapat dijadikan dasar pertimbangan hakim menilai sah tidaknya penetapan tersangka. Artikel ini menggunakan metode penelitian hukum melalui pendekatan peraturan perundang-undangan, konseptual, dan kasus. Artikel ini menemukan bahwa setelah lahirnya Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 dan Peraturan Mahkamah Agung Nomor 4 Tahun 2016 tentang Larangan Peninjauan Kembali Putusan Praperadilan, terpenuhinya bukti permulaan yaitu dua alat bukti yang sah merupakan standar absolut dari penetapan tersangka. Selain itu, dalam hal pembuktian, praperadilan hanya menilai keabsahan aspek formil yang notabene tidak menyentuh pokok perkara. Permohonan pembatalan status tersangka, dengan alasan apapun, tidak dapat dikabulkan sepanjang tidak terpenuhinya bukti permulaan yaitu dua alat bukti yang tercantum dalam Pasal 184 ayat (1) Kitab Undang-Undang Hukum Acara Pidana (KUHAP). Puncaknya, penelitian ini merekomendasikan perlunya penegasan dalam hal penetapan tersangka melalui perubahan parameter penetapan tersangka pada Pasal 1 angka 11 Rancangan KUHAP dari yang semula hanya berdasar "...bukti permulaan yang cukup" menjadi "...terpenuhinya dua alat bukti yang termuat dalam Pasal 175 ayat (1) KUHAP" guna mencapai kepastian hukum dan pemenuhan hak asasi tersangka.

Kata kunci: *hukum pidana; hukum acara pidana; praperadilan; penyidikan; penetapan tersangka*

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I. INTRODUCTION

Since the Decision of the Constitutional Court (M.K.) Number 21/PUU-XII/2014 added that whether the determination of the suspect is legitimate as the scope of the pre-trial, the criminal justice regime in Indonesia has had several problems. Among them are related to the benchmarks that a person can be named a suspect in the investigation process. More broadly than that, the determination of a suspect also raises several problems among criminal practitioners. In practice, the validity of a suspect's determination is often related to the issue of "inconsistencies with applicable legal provisions and procedures."[1] This issue was then used as an excuse by justice seekers to be petitioned for pre-trial. The inconsistency of the legal procedure also spreads to the subject's problems receiving the Investigation Commencement Order (SPDP). After the Constitutional Court Decision, Number 130/PUU-XIII/2015 obliged investigators to submit SPDP to the reported and victim/whistle-blower. There was a perception that if the SPDP was not submitted to the reported party and the victim/whistle-blower, then this was deemed an "inconsistency with legal provisions and procedures applies. " It can be offered as an object of pre-trial, especially as a reason to cancel the determination of the suspect.

The Constitutional Court Decision Number 130/PUU-XIII/2014 is an answer to the existence of a legal vacuum that causes uncertainty because pre-trial institutions aim to protect suspect's and defendants' rights.[2] To prevent abuse of power by investigators, the suspect needs a control mechanism to ensure the legality of his determination as a suspect.[3] Therefore, notification of the commencement of the investigation to the suspect is an obligation. Then, bottom-up supervision is carried out by the suspect, and his attorney is chosen by adopting the concept of "*habeas corpus*,"[4] which is carried out under a pre-trial institution.[5] Because previously, pre-trial has not provided maximum protection for suspect's rights because the Law of Criminal Procedure limits pre-trial authority only to examine the administrative aspects of the arrest and detention of suspects.[6]

The basis for a pre-trial petition must be clear and objective because it only assesses the formal aspects and has not entered the case's substance.[7] In determining the validity of sufficient preliminary evidence by the investigator to be submitted to the prosecutor's office, there is a possibility of error or error. Therefore, close

[1] Maesa Plangiten, "Fungsi dan Wewenang Lembaga Praperadilan Dalam Sistem Peradilan di Indonesia," *Lex Crimen 2,* No. 6 (2013): 1.

[2] Salman Luthan, Andi Samsan Nganro, and Ifdhal Kasim, "The Effectiveness of Pretrial: Theoritical Studies and the Dynamics of Pre-trial against Detention in Indonesia," in Pretrial Hearing In Indonesia: Theory, History, and Practice in Indonesia (Jakarta: Institute for Criminal Justice Reform, 2014), 4.

[3] Luthan, Nganro, and Kasim, 41.

[4] *Habeas Corpus is a pretrial legal institution to balance law enforcers' authority, especially concerning actions that affect human rights protection, including forced efforts as explicitly stated in the criminal procedure law.* See: Ririn Setiawati, "Analisis Teoritik Pencerminan Konsep Habeas Corpus Act Dalam Regulasi Ketentuan-Ketentuan KUHAP sebagai Implementasi dari Prinsip Negara Hukum (State Law) Yang Bersifat Universal Dan Kaitannya dengan Upaya Mewujudkan Penegakan Hukum yang Berkeadilan dan Bermartabat (Due Process Of Law)" (PhD Thesis., Universitas Sebelas Maret, 2010), v.

[5] Luthan, Nganro, and Kasim, "The Effectiveness of Pretrial: Theoritical Studies and the Dynamics of Pretrial against Detention in Indonesia," 5.

[6] Supriyadi Widodo Eddyono and Muhammad Yasin, Potret Penahanan Pra-Persidangan di Indonesia: Studi tentang Kebijakan Penahanan Pra-Persidangan dalam Teori dan Praktek (Jakarta: Institute for Criminal Justice Reform, 2012), 249.

[7] Luthan, Nganro, and Kasim, "The Effectiveness of Pretrial: Theoritical Studies and the Dynamics of Pretrial against Detention in Indonesia," ii.

supervision is needed to guard it.[8] Then the mistake or mistake can be used as the object of a pre-trial petition. A pre-trial petition's object must be precise because an abstract object can make a pre-trial petition unclear, causing the pre-trial not to be granted.[9]

The discourse on the subject raises several questions which this article will answer. First, what is the basis for the consideration of pre-trial judges in determining whether or not a suspect's determination is legal? Second, is the reason "not based on applicable legal provisions and procedures" is a reason that can be used as the basis for deciding the suspect's determination in a pre-trial request? Third, whether the SPDP was not submitted to the reported party and the victim/whistle-blower could be used as a reason for the illegality of the suspect's determination?

Many studies have analyzed pre-trial problems in Indonesia, such as an analysis of the expansion of suspect's determination as new pre-trial objects,[10] pre-trial in general,[11] as well as analyzes of pre-trial decisions.[12] However, no research outlines substantively and in detail how adding a suspect's designation as a pre-trial authority can significantly impact the practice of criminal procedural law in Indonesia. In addition, there has been no research that discusses and analyzes how the benchmark for determining a suspect can become a severe problem if it is not limited or even interpreted broadly and freely.

This article uses legal research methods through the statutory, conceptual, and case approach to answering this question. This article is organized into several sections. After the introduction, the second part of this article will discuss the benchmarks a person can legitimately designate as a suspect. The third part will examine whether the reasons "not based on the provisions and legal procedures in force" can be the reason for the pre-trial judge to cancel the status of the determination of the suspect. The fourth part will discuss the issues related to the non-submission of the SPDP to the reported party and the victim/whistle-blower, which is the reason for the illegality of the suspect's determination. In the end, there are several sentences of conclusion and recommendations.

II. THE LIMITATION ON DETERMINATION OF SUSPECTS

Ad Recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominimbus rerum dependet.[13] To understand a legal concept, a classic legal postulate with a depth of meaning must begin with a definition.[14] On this basis, to understand the scope of pre-trial, it is necessary to understand the purpose of the pre-trial itself. Based on Article 1, point 10 of the Law of Criminal Procedure defines pre-trial as the district court's authority in examining and deciding whether or not an arrest

[8] Luthan, Nganro, and Kasim, 73.

[9] Luthan, Nganro, and Kasim, "The Effectiveness of Pretrial," 48.

[10] Ely Kusumastuti, "Penetapan Tersangka Sebagai Obyek Praperadilan," *Yuridika 33,* No. 1 (2018): 1–18.

[11] I Made Wisnu Wijaya Kusuma and Ni Made Sukaryati Karma, "Upaya Hukum Praperadilan Dalam Sistem Peradilan Pidana di Indonesia," *Jurnal Interpretasi Hukum 1,* No. 2 (2020): 73–77.

[12] Darwin, Dahlan, and Suhaimi, "Analisis Yuridis Putusan Praperadilan Dalam Perspektif Sistem Peradilan Pidana," *Jurnal Mercatoria 12,* No. 1 (2019): 68–79.

[13] Eddy O.S. Hiariej, *Prinsip Hukum Pidana: Edisi Revisi (Yogyakarta: Cahaya Atma Pustaka, 2016), 2.*

[14] Peter Jeremiah Setiawan, Xavier Nugraha, and Moch Marsa Taufiqurrohman, "Penggunaan Daluwarsa Sebagai Dasar Gugatan Praperadilan Di Indonesia: Antara Formil atau Materiil," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, No. 2 (2020): 2.

or detention is legal at the suspect's request or his family or another party on the suspect's power. The Law of Criminal Procedure also authorizes district courts to examine and decide whether stopping an investigation or prosecution is legal. That includes requests for compensation or rehabilitation by the suspect.

The establishment of the pre-trial mechanism is an attempt by the Indonesian government to improve the criminal procedural law inherited from the Netherlands, namely *Herzienne Inlands Reglement* (H.I.R.). Because law enforcement officials often make forced attempts without respecting human rights in the criminal procedural law, a pre-trial is formed to monitor the investigator's actions.[15] The pre-trial essence is to grant the same rights and obligations to the persons who examine and who are examined and place the suspect. Not as an object being discussed. The pre-trial also tries to guarantee the accusatory principle in the criminal procedure law, which sees a suspect being questioned not as an object but as a guarantee subject. Thus, it can be understood that there are legal protections and holistic human rights interests for the suspect.[16]

The state has broad powers in law enforcement efforts, including investigating, investigating, prosecuting, and punishing. The democratic society wants this authority to be exercised with respect for everyone's freedom and dignity—one of which is determining the suspect.[17] According to Article 1 paragraph 14 of the Law of Criminal Procedure (K.U.H.A.P.), a suspect is a person who, due to his actions or circumstances, based on preliminary evidence, is reasonably suspected of being the perpetrator of a criminal act. Therefore, for the sake of justice and legal certainty, citizens who have been named as suspects must be given space to fight back in the form of pre-trial filings.[18] Law enforcers work in the name of the public interest, have such broad powers, and go deep into reducing and eliminating citizen's fundamental rights. As a result, a suspect could lose part of his human rights as a citizen. Therefore, the state must have valid and rational arguments in determining the suspect.[19]

The law gives investigators or public prosecutors authority to carry out acts of force such as arrest, detention, confiscation, and others.[20] On this basis, the coercive attempts by an investigating official or public prosecutor against a suspect must be understood as a treatment justified by the law in the interest of investigating a criminal act.[21] Besides, this forced act is justified by statutes and regulations that can take away freedom and freedom and limit the suspect's human rights.[22] On this basis, in the case of testing for forced acts deemed contrary to the law, it is necessary to establish an

[15] Abdul Halim Barkatullah, *Praperadilan: Sarana Perlindungan Tersangka Dalam Sistem Peradilan Pidana Indonesia (Sesudah Diedit Editor)* (Bandung: Nusa Media, 2020), 76.

[16] Muhamad Solichin, "Politik Hukum Praperadilan dalam Penegakan Hukum" (PhD Thesis, Universitas Muhammadiyah Surakarta, 2018), 16.

[17] Andrew Ashworth, "Four Threats to the Presumption of Innocence," *The International Journal of Evidence & Proof 10,* No. 4 (2006): 280–84.

[18] Tristam P. Moeliono, "Asas Legalitas dalam Hukum Acara Pidana: Kritikan Terhadap Putusan MK Tentang Praperadilan," *Jurnal Hukum Ius Quia Iustum 22,* No. 4 (2015): 605.

[19] Lonneke Stevens, "Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit Its Increasing Use," *European Journal of Crime, Criminal Law and Criminal Justice 17,* No. 2 (2009): 168.

[20] Darwin, Dahlan, and Suhaimi, "Analisis Yuridis Putusan," 14.

[21] Asep Suherman, "Penangkapan Sebagai Bentuk Upaya Paksa Penegakan Hukum Dalam Sistem Peradilan Pidana Di Indonesia," *Supremasi Hukum: Jurnal Penelitian Hukum* 29, No. 1 (2020): 11.

[22] Komang Dara Trimarlina, I. Nyoman Sujana, and Ida Ayu Putu Widiati, "Implementasi Perlindungan Hak Asasi Manusia Terhadap Pemeriksaan dalam Proses Penyidikan," *Jurnal Analogi Hukum* 1, No. 3 (2019): 4.

institution that is authorized to determine whether or not a forced action carried out by an investigator or public prosecutor is legal. In this case, the authority is delegated to the pre-trial. Article 77 K.U.H.A.P. formulates the scope of authority of district courts more clearly to examine and decide pre-trial, which includes scrutinizing whether or not an arrest, detention, termination of investigation or prosecution is terminated, and compensation or rehabilitation person whose criminal case has been terminated.

The assessment of the legality of the arrest, detention, termination of the investigation, or prosecution termination can be judged by pre-trial if, in the arrest or detention process, the investigator violates Article 21 of the Law of Criminal Procedure and Article 24 of the Law of Criminal Procedure concerning suspect's detention beyond the specified time limit. In addition, the investigator and public prosecutor have the authority to stop the investigation or prosecution if the investigation or prosecution results are not sufficient evidence to be forwarded to the court or if what is suspected of being against the suspect is not a criminal act.[23]

Pre-trial in Indonesia is an imitation of the *Rechter Commisaris* (commissioner judge) in the Netherlands. The *Rechter Commisaris* in the Netherlands conducts a preliminary examination because, in addition to determining the legality of an arrest, detention, confiscation, it also conducts an initial case analysis. Thus, for example, the public prosecutor in the Netherlands can ask the judge's opinion on a case, whether, for example, the case deserves to be ruled out by a transaction (e.g., the case is not forwarded to court with compensation) or not.[24]

According to Oemar Seno Adji, the *Rechter Commisaris* emerged as a manifestation of the activeness of judges who in Central Europe had an important position with authority to handle coercion, detention, confiscation, body searches, houses, and examination of documents. In addition, the *Rechter Commisaris* supervises the execution of the prosecutor's duties. The prosecutor does the same thing with implementing the police duties, so pre-trial in Indonesia oversees the two agencies.[25]

The *Judge d'Instruction* (the pre-trial institution in France) in France has broad powers in the preliminary examination. First, it examined the defendant, witnesses, and other evidence. Then, the *Judge d'Instruction* can make reports, search houses and certain places, make arrests, confiscate, and close certain areas. After the preliminary examination is completed, it determines whether a case is a sufficient reason to be transferred to the court or not. If there are enough reasons, it will send the case a letter of delivery called an *ordonnance de Renvoi*. Otherwise, if there are not enough reasons, it will release the suspect with an *ordonnance de non-lieu*.[26]

In filing a pre-trial request regarding the legitimacy of action by law enforcement officials, one must have strong reasons.[27] Article 79 of the Law of Criminal Procedure has regulated the parties entitled to submit applications to the pre-trial. Those entitled to apply for pre-trial include suspects, their families, or their attorneys to the District Court's Chairman. In addition, article 79 of the Law of Criminal Procedure states that what can be submitted to pre-trial is only the matter of arrest and detention, while other efforts such as searches and confiscation are not directly stated.

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[23] M. Irfan Islami Rambe, "Upaya Hukum Terhadap Praperadilan," *Jurnal Pionir* 2, No. 3 (2017): 13.

[24] Andi Hamzah, *Hukum Acara Pidana Indonesia*, Third Edition (Jakarta: Sinar Grafika, 2019), 187.

[25] Oemar Seno Adji, *Hukum Pidana* (Jakarta: Erlangga, 1985), 88.

[26] Hamzah, *Hukum Acara Pidana Indonesia*, 188.

[27] Wahyu Iswantoro, "Penemuan Hukum Oleh Hakim dan Implikasi Terhadap Perkembangan Praperadilan," *Jurnal Hukum dan Bisnis (Selisik)* 4, No. 1 (2018): 17.

The Law of Criminal Procedure (K.U.H.A.P.) was designed with the intent and purpose of protecting citizens from arbitrary actions by law enforcement officials, particularly the determination of suspects. In determining a suspect, the Law of Criminal Procedure has provided parameters in assessing a person's suitability to become a suspect. That is found in the provisions of Article 1 point 14 of the Law of Criminal Procedure, namely that a person will be made a suspect if there is preliminary evidence that suspects a criminal act he has committed. However, these parameters still do not clearly define the definition of "preliminary evidence." The determination of a person should be clearly and thoroughly formulated in the Law of Criminal Procedure. The formulation of parameters for determining a suspect is unclear due to the lack of an adequate definition of "preliminary evidence" in the Law of Criminal Procedure. That creates legal uncertainty and unfair treatment in its implementation.

Through Decision Number 21/PUU-XII/2014, the Constitutional Court indirectly changed the pre-trial formulation scope in the Law of Criminal Procedure during its development. That also impacted the Indonesian criminal procedural law system.[28] The Constitutional Court Decision Number 21/PUU-XII/2014 has expanded the scope of the pre-trial. Which initially only examined the lawfulness of arrest, detention, investigation or prosecution termination, claims for compensation, and rehabilitation, adding a new scope, namely related to the determination of a suspect.

The issuance of the Constitutional Court Decision Number 21/PUU-XII/2014 answers this uncertainty. The Constitutional Court has expanded the domain of pre-trial objects, one of which is whether or not a suspect's determination is legal. There is a change in the terminology of Article 1, paragraph 14. Which previously read, "A suspect is a person who, because of his actions or circumstances, based on preliminary evidence is reasonably suspected of being the perpetrator of a criminal act." It changed to "Suspect is a person who because of his actions or circumstances, based on at least two tools of evidence contained in Article 184 of Law Number 8 of 1981 concerning the Law of Criminal Procedure (K.U.H.A.P.), it is reasonable to suspect that the perpetrator of a criminal act." Through this decision, the Constitutional Court defined the fulfillment of preliminary evidence if at least two tools of evidence contained in Article 184 of the Law of Criminal Procedure had been fulfilled.

The Constitutional Court believed that although it was limited in a limited way in Article 1 point 10 in conjunction with Article 77 letter [a] of the Law of Criminal Procedure, the investigator's determination is part of the investigation process arbitrary actions by the investigator.[29] On this basis, it can be seen that there is a need for affirmation regarding the determination of a suspect who incidentally is part of the investigation process that can be requested for protection through pre-trial. Ultimately, this led the court to delete Article 83, paragraph (2) of the Law of Criminal Procedure.

The Constitutional Court also believes that Article 77 letter [a] of the Law of Criminal Procedure contradicts Article 1 paragraph (3), Article 28D paragraph (1), and Article 28I paragraph (5) of the 1945 Constitution of the Republic of Indonesia. The court based the decision on several considerations.[30] First, Indonesia is a rule of law that prioritizes the principle of due process of law as an embodiment of

[28] Darwin, Dahlan, and Suhaimi, "Analisis Yuridis Putusan," 73.

[29] Jully Constantia Sambow, "Bukti Permulaan Menurut Kitab Undang-Undang Hukum Acara Pidana dalam Pengaruhnya Terhadap Perkapolri Nomor 14 Tahun 2012 Tentang Manajemen Penyidikan Tindak Pidana," *Lex Crimen 7,* No. 7 (2018): 12.

[30] Constitutional Court of the Republic of Indonesia. "Decision Number 21/PUU-XII/2014."

recognition of human rights (HAM). Therefore, the Law of Criminal Procedure as formal law in Indonesia's criminal justice process has formulated several rights of suspects/defendants as protection against possible human rights violations. Second, law enforcement must be following the provisions of criminal law enforcement based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), especially the opening of the 4th paragraph. Third, the Law of Criminal Procedure positions suspects/defendants as human subjects who have the same dignity and equality before the law.

The fourth consideration is regarding the freedom of a person from an investigator's actions in the International Covenant on Civil and Political Rights, which has been ratified in Law Number 12 of 2005 concerning civil and political rights. Fifth, the Law of Criminal Procedure does not have a check and balance system to determine suspects by investigators. That is because the Law of Criminal Procedure does not recognize a mechanism for testing the validity of obtaining evidence. After all, Indonesian criminal procedural law has not fully implemented the principle of due process of law. Sixth the essence of a pre-trial institution's existence is a form of supervision and a mechanism for objections to law enforcement processes related to guaranteeing human rights protection. However, the pre-trial role is only posting facto so that it does not reach the investigation, and the examination is merely formal, which puts forward the objective element. At the same time, the court cannot supervise the subjective element.

While the seventh consideration, the court believes that since the Law of Criminal Procedure came into effect in 1981, a suspect's determination has not become a crucial and problematic issue in the Indonesian people's lives. Eighth, the protection of the suspect's / defendant's human rights needs to be considered in investigations and prosecutions. Furthermore, anyone can ask pre-trial for protection from the actions of investigators who do not uphold the principle of prudence and are suspected of violating human rights. That is important because the suspect determination is part of the investigation process in which there is the possibility of arbitrary action by the investigator. As in it is included in the deprivation of someone's human rights. Ninth, pre-trial institutions are presented to realize the protection of human rights protected by the 1945 Constitution. The Constitutional Court believes that the objective is to include the validity of determining the suspect as an object of the pre-trial order. In the criminal process, a person's treatment pays attention to the suspect as a human having equal dignity, dignity, and equality before the law.

Then a question arises, namely when a person can be named a suspect. Because the Law of Criminal Procedure does not regulate when a person can be called a suspect, this article concludes that the suspect's determination must still be based on the fulfillment of preliminary evidence, namely two tools of evidence as confirmed by the Constitutional Court's decision.

That can be seen in several decisions. One of them is the Muara Enim District Court Decision Number 3/Pid.Pra/2016/PNMre. Hendri Saputra Bin Ahad Hasibuan, in this case, is asking for pre-trial. This case started when Iskandar bin Mu'in reported the Petitioner in a matter of alleged forgery and used Jo's fake letter—providing false information on the authentic deed as referred to in Article 263 paragraph (1) and Article 266 paragraph (1) of the Criminal Code in a land sale case located in Segayam Talang Taling village, Gelumbang District, Muara Enim Regency. The Petitioner, who was previously designated as a witness, was later named a suspect based on the

investigation results. The determination of the suspect was based on the fulfillment of two tools of evidence as preliminary evidence.

The Petitioner then asked the pre-trial to declare the Advanced Investigation Order Number: S.P.Dik/318/a/II/Reskrim, dated February 1, 2016, reported the Petitioner a suspect to have a disability. In their petition, the Petitioner argued that there were civil cases that had not yet been completed. The Petitioner based his plea on the Supreme Court Circular Letter Number 4 of 1980 concerning Article 16 of Law Number 14 of 1970 and "*Prejudicieel Geschil*," Supreme Court Decision Number 413K/Kr/1980, Supreme Court Decision Number 413K/Kr/1980, Supreme Court Decision Number 129K/Kr/1979, and Supreme Court Decision Number 628K/Pid/1984. These decisions state that criminal investigations must be postponed until a court decision is made in a civil case.

The judge decided to reject the petition in its entirety because the applicant was not a party in the Civil Case case. That makes the letter worth putting aside. The judge also decided that the suspect's determination had fulfilled the provisions in Article 1, number 14 of the Law of Criminal Procedure. The judge believed that the two tools of evidence in the provisions of Article 184 paragraph (1) of the Law of Criminal Procedure had been fulfilled so that the suspect's determination against the applicant is valid.

The judge's decision to reject the petition has also followed the Constitutional Court Decision Number 21/PUU-XII/2014. Moreover, the judge's decision is following the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pre-Trial Decisions. That is because the Civil Petition argued by the Petitioner has touched the material realm, so it deserves to be put aside. Article 2 paragraph (2) of PERMA Number 4 of 2016 states, "The pre-trial examination of the request regarding the invalidity of the determination of the suspect only assesses the formal aspects, namely whether there is at least 2 (two) valid evidence and does not enter the material".

III. THE REASONS "NOT BASED ON APPLICABLE LEGAL PROVISIONS AND PROCEDURES" AS THE BASIS FOR PRE-TRIAL APPLICATIONS

K.U.H.A.P. contains several legal principles. The principle of legality, the principle of balance, the principle of presumption of innocence, the principle of restriction of detention, the principle of compensation and rehabilitation, the merger of criminal and compensation claims, the principle of unification, the principle of functional differentiation, the principle of mutual coordination, the principle of simple, fast, and low-cost justice, and the principle of open justice to the public is the most fundamental.[31] The principle of *nullum iudicium sine lege* (legality principle), summarized in Article 3 of the Law of Criminal Procedure, states that criminal law enforcement is carried out in a manner regulated by statutory regulations.[32] The legality principle's existence and importance in the administration of criminal procedural law are based on efforts

[31] Hardianto Djanggih and Yusuf Saefudin, "Pertimbangan Hakim Pada Putusan Praperadilan: Studi Putusan Nomor: 09/PID.PRA/2016/PN.Lwk Tentang Penghentian Penyidikan Tindak Pidana Politik Uang," *Jurnal Penelitian Hukum De Jure 17,* No. 3 (September 19, 2017): 414, https://doi.org/10.30641/dejure.2017.V17.413-425.

[32] Gerardus Josephus Maria Corstens and Matthias Johannes Borgers, *Het Nederlands Strafprocesrecht,* Vol. 5 (Kluwer, 2002), 13.

to prevent arbitrary actions by the authorities, especially law enforcement officials. [33]

Decisive reasons must support a pre-trial petition because it determines whether law enforcement officials' actions are legal or not.[34] Therefore, if there is a pre-trial petition filed because "it is not based on the applicable legal provisions and procedures," then that reason is still abstract and too broad so that these reasons cannot be used as the basis for an appropriate application.

If the meaning of "not based on the provisions and legal procedures in force" is that at least two tools of evidence are not fulfilled in the determination of a suspect, then that matter can be used as the basis for a pre-trial petition. The suspect's judgment has been normatively annulled through the Constitutional Court Decision Number 21/PUU-XII/2014. This decision reaffirms that whether a suspect's determination is legal or not is determined by the complete minimum of 2 tools of evidence from the types of evidence as confirmed in Article 184 paragraph (1) of the Law of Criminal Procedure.

Before the Constitutional Court Ruling was born, former Commissioner General Budi Gunawan had filed a pre-trial request for his determination as a suspect in a criminal act of corruption. In the pre-trial decision of the South Jakarta District Court Number 04 / Pid. Prap / 2015 / PN.Jkt.Sel, the judge, granted the applicant's request to cancel the applicant's determination as a suspect. However, there was a consideration from the judge who stated: "Considering, that from the formulation of the meaning of Article 1 the number 10 jo. Article 77 jo. Article 82 paragraph (1) and paragraph (2) can be clearly identified that the validity of the Petitioner's determination is not included as a pre-trial object, because it is not regulated". Furthermore, to continue with the consideration of the decision on page 223 which reads, "Considering, that this is the case with all the provisions of the special criminal legislation that is valid as positive law in Indonesia nor is there any rule that regulates whether the examination of the validity of the Petitioner's Determination is the object pre-trial." The judge should stop legal considerations up to that point and reject the pre-trial petition submitted by the Petitioner and not interpret anything more than what is stipulated in Article 77 of the Law of Criminal Procedure.[35] An interpretation of the law is prohibited when a provision in the law is unambiguous, especially for a judge.

Meanwhile, in this case, KPK. investigators had fulfilled two elements of evidence, but this was countered by the judge, stating that the KPK. was not authorized to handle the case. That case refers to the Certificate Number Sket/2/1/2015 of 2015 concerning the Position of Head of Career Development Bureau Chief of Staff Deputy of Human Resources of the Police of the Republic of Indonesia, which states that the status of the Petitioner is not a law enforcer. It would be naive to assume that a member of the Indonesian National Police (P.O.L.R.I.) can be anything but a law enforcer.[36] So this article finds that this pre-trial decision was wrong because it was not based on the main parameters in determining the suspect, namely the fulfillment of two tools of evidence as stipulated in Article 184 paragraph (1) of the Law of Criminal Procedure.

In other corruption cases, the basis for discrepancies in the determination of

[33] M. Irfan Islami Rambe, "Upaya Hukum Terhadap Praperadilan," *JURNAL PIONIR 2,* No. 3 (2017): 1.

[34] Dimas Tiga Saputra, "Ganti Kerugian dan Rehabilitasi dalam Perkara Pidana" (Skripsi, Universitas Muhammadiyah Magelang, 2017), 15.

[35] Komariah Emong Sapardjaja, "Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor 04/ Pid. Prad/2015/PN. Jkt. Sel Tertanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis," *Padjadjaran Jurnal Ilmu Hukum* 2, No. 1 (2015): 16.

[36] Sapardjaja, "Kajian dan Catatan," 22.

suspects following the applicable legal procedures is common. One of them is the corruption case in the procurement of Electronic Identity Cards by Setya Novanto, the former chairman of the D.P.R. for the 2014-2019 period. In the Decision of the South Jakarta District Court Number 97 / Pid.Prap / 2017 / PN.Jkt. The judge granted Setya Novanto's pre-trial request. The judge questioned the use of evidence to develop the Irman and Sugiharto cases and the time interval for issuing Investigation Orders (hereinafter referred to as Sprindik). Judges should realize that there is a common thread between one case and another and stick to fulfilling two elements of evidence. If the logic of one evidence for one person is maintained, there will be no investigation of corruption cases based on the development of other cases.

In the decision of the Ternate District Court Number 2/Pid.Pra/2019/PNTte. Jasika Amelia Tamboto requested protection from the pre-trial because she had been named a suspect by the Respondent based on the Police Report Number: L.P./16/II/2019/Malut/ResTernate. He is suspected of committing embezzlement in office or common embezzlement. Additionally, he is suspected of having met the element of error in the provisions of Article 374 with Article 372 as subsidiary in conjunction with Article 64 paragraph (1) of the Criminal Code. The Petitioner argued that the suspect's determination against himself had to be declared invalid. That is because the suspect's determination against himself is not based and is not following applicable legal procedures and provisions.

In that case, the judge ultimately rejected the Petitioners' petition. The judge believed that the Petitioner was unable to prove the arguments of his plea. On the other hand, the Respondent has been able to prove his arguments against it. Furthermore, the suspect's determination against the applicant in the Crime of Embezzlement in Position follows the Law of Criminal Procedure rules. Resolution of the suspect has also fulfilled the provisions of Article 1 point 14 of the Law of Criminal Procedure, namely the existence of preliminary evidence - two valid tools of evidence as contained in the Constitutional Court Decision Number 21/PUU-XII/2014.

A similar case is seen in the Decision of the South Jakarta District Court Number 15 / Pid.Prap/2017/P.N.Jkt.Sel. Petitioner Drs. H. Taufiqurahman asked the pre-trial to cancel the status of the suspect's determination by the defendant, namely the Corruption Eradication Commission (KPK.). Previously, the Petitioner was deemed to have violated Article 12 letter [i] and Article 12B of Law No. 20/2001 on Corruption Eradication. In determining the suspect, the Respondent considered that he had fulfilled the preliminary evidence provisions as stipulated by the Constitutional Court Decision. However, the Petitioner considers that there has been duplication of examinations at the preliminary investigation and investigation levels — namely, between the Attorney General's Office and the KPK. Therefore, his status as a suspect must be canceled.

The presumption of duplication is because the Joint Agreement Number binds the KPK. and the Attorney General's Office: KEP-049/A/JA/03/2012 and Number B/23/III/2012 and Number Spj-39/01/03/2012, a mutual agreement between P.O.L.R.I., KPK. and Attorney General's Office, hereinafter referred to as the MoU. Article 8 of the MoU states that if the KPK., P.O.L.R.I., or the Attorney General's Office investigates the same case, then the institution with authority to conduct the investigation first is the Attorney General's Office. Then, the Petitioner also questioned the Investigation Order Number Sprin.Dik-87/01/11/2016. The Petitioner considers that the Respondent does not have at least two valid tools of evidence relating to the article suspected

of determining the suspect. All legal processes carried out by KPK. investigators are invalid because they are not based on applicable legal provisions and procedures.

The judge decided to grant the Petitioner's Suspect status cancellation and ordered the Respondent to submit all the files and cases to the Attorney General's Office. One of the judges' considerations is Article 8 paragraph (1) of the MoU, which determines that the agency that should follow up on investigations is the agency that previously issued the Investigation Order, namely the Attorney General's Office of the Republic of Indonesia.

This article assumes that there was an error in the judge's decision above. That is because the MoU is not in the hierarchy of statutory regulations. Moreover, Article 8 paragraph (1) of the MoU contradicts the KPK. Law articles, so that article does not apply. Besides, there is a provision in the MoU that is prohibited by statutory provisions. Therefore, an agreement that is contrary to the requirements of the statutory regulations must be declared invalid. Moreover, the Respondent had fulfilled the conditions for determining a suspect as stipulated in the Constitutional Court Decision—namely, the fulfillment of two valid tools of evidence.

Then, the Petitioner's argument regarding the Investigation Warrant makes the Petitioner a suspect who does not meet the elements of at least two tools of evidence listed in Article 44 of the KPK. Law. In that article, the acquisition of evidence is carried out at the investigation stage, not at the investigation stage. Where should be distinguished regarding "preliminary evidence" and "evidence." If the investigator has obtained preliminary evidence and then upgraded to the investigation stage, the KPK. investigator can immediately determine the suspect. That is because previously, the investigator has obtained insufficient evidence at the investigation stage.

That means that a suspect's determination depends not on the stage but the fulfillment of preliminary evidence. That is, the completion of at least two tools of evidence must be interpreted. In addition to the Constitutional Court Decision, this decision has also been reaffirmed by Article 2 paragraph (2) PERMA Number 4 of 2016. Therefore, in this regulation, the suspect's determination only assesses the formal aspects - whether there are at least two valid tools of evidence and do not touch the material case.

IV. SPDP NOT DELIVERED TO THE REPORTED PARTY AND VICTIMS/ WHISTLE-BLOWERS: DETERMINATION OF AN ILLEGAL SUSPECT?

The Notification Letter for the Commencement of Investigation (SPDP) is regulated in Article 109 paragraph (1) of the Law of Criminal Procedure.[37] In this provision, functional coordination between investigators and public prosecutors begins when the SPDP is issued.[38] The Constitutional Court issued Decision Number 130/PUU-XIII/2015 concerning the Notification Letter for the Commencement of Investigation (SPDP). The decision stated that Article 109 paragraph (1) of the Law of Criminal Procedure was conditionally contradicting the 1945 Constitution of the Republic of Indonesia. The Constitutional Court also considers that this provision

[37] Which reads: "*If an investigator has started investigating an event which is a criminal act, the investigator will notify the public prosecutor.*"

[38] Christy Paskahlis Sumelang, "Kedudukan SPDP dalam Prapenuntutan Berdasarkan KUHAP (Kajian Putusan MK Nomor 130/PUU-XIII/2015 Tentang Surat Pemberitahuan Dimulainya Penyidikan (SPDP)," *Lex Crimen 7,* No. 3 (2018): 176.

does not have binding legal force as long as the phrase "the investigator notifies the public prosecutor" does not mean "The investigator is obliged to notify and submit an order for the commencement of an investigation to the public prosecutor, reported party and victim/whistle-blower at the latest seven days after the issuance of the investigation warrant."

According to J.B.J.M. ten Berge, several aspects must be considered and considered in law enforcement.[39] First, a rule should leave as little room for differences in interpretation as possible. Second, the provisions governing exceptions must be minimally regulated. Third, the authorities must contain objective limits as much as possible. Fourth, regulations must be enforceable by those affected by these regulations and those who carry out law enforcement duties. The Constitutional Court has tried to make this happen through Decision Number 130/PUU-XIII/2015. It is hoped that the decision can accommodate parties interested in defending their human rights as citizens—especially the reported party and the victim/whistle-blower.

The SPDP is a form of orderly administration in the settlement of criminal cases as a form of supervision by the Public Prosecutor of Investigators. However, did the investigator not submit the SPDP to make the investigation null and void? Not offering the SPDP is a mistake in implementing the K.U.H.A.P. norms and is not a mistake in norming the K.U.H.A.P. Thus, it does not automatically invalidate the investigation because SPDP is a complement to the administrative order.[40] Besides, there are still other oversight mechanisms, namely pre-prosecution, the Public Prosecutor's authority.

In the Kalianda District Court Decision Number 04/Pid.Pra/2017/P.N.Kla. Elviana Binti Dja Alhak asked the pre-trial to cancel the suspect's determination. Previously, the Petitioner had been declared a suspect by the Respondent based on letter Number: Sp.Pgl/49/V/2017/Reskrim concerning the Crime of Defamation or Insult in Public, as referred to in article 310 paragraph (1) of the Criminal Code. The basis for pre-trial filing is that the applicant has never received an SPDP The Petitioner as suspect/reported party felt that the determination of his status as a suspect was illegal.

The judge rejected the Petitioners' petition entirely. The judge believed that not submitting the SPDP to the Petitioner could not cancel the suspect's status. That is because the purpose of submitting SPDP to the Public Prosecutor can be interpreted as an effort of coordination and supervision. On the other hand, the submission of the SPDP to the Suspect/Reported Party according to the Constitutional Court Decision Number 130/PUU-XIII/2015 is a momentum to prepare information or evidence in the development of investigations. In this case, the determination of the suspect has also fulfilled the provisions of Article 1 point 14 of the Law of Criminal Procedure, namely the existence of preliminary evidence—namely two valid tools of evidence as contained in the Constitutional Court Decision Number 21/PUU-XII/2014.

A similar case is also seen in the Gorontalo District Court Decision Number 4 / Pid. Prap / 2017 / PN.Gto. After Aprianto was named a suspect by the Respondent based on Police Report Number L.P./153/IV/2016/SIAGA-SPKT, he then asked the pre-trial to cancel the status of the suspect's determination. Previously, the applicant was suspected of committing the criminal act of fraud as referred to in Article 378 of the

[39] Marius Andreescu and Claudia Andreescu, "The Rule Of Law And Principle Of The Supremacy of Law," *Fiat Iustitia* 1, No. 1 (2019): 19.

[40] Kezia ZE Sanger, "Asas Hukum Penerbitan Surat Pemberitahuan Dimulainya Penyidikan (SPDP) dalam Proses Penyidikan," *Lex Crimen 8,* No. 11 (2020): 179.

Criminal Code Jo. Article 55 Paragraph (1) number 1 of the Criminal Code. The basis for filing the Petitioner petitioned that the SPDP was not submitted to the Respondent and the Public Prosecutor. The Respondent considered that his determination as a suspect had violated the provisions of the Constitutional Court Decision M.K. Decision Number 130/PUU-XIII/2015 so that the Petitioner felt that his determination as a suspect was invalid.

The judge rejected the Petitioners' petition entirely. The judge believed the issuance of the SPDP did not necessarily include the determination of a suspect against a person. That is because the essence of an investigation is the assignment of an appointed investigator to collect several shreds of evidence on the alleged occurrence of a criminal act. In other words, investigators attempt to gather evidence to find the suspect. Meanwhile, the suspect's determination is usually stipulated in another legal product, namely through a letter of decision as a suspect. Then the judge believed that the suspect's judgment was based on the fulfillment of preliminary evidence, namely two tools of evidence. The judge also believed that the Respondent had sufficient evidence to determine the Petitioner as a suspect.

From some of the decisions above, this research finds that not submitting SPDP to the suspect does not automatically cancel the determination of the suspect's status. There is no single imperative provision stating that if the SPDP is not submitted to the suspect, the suspect's determination would be invalid or canceled. That is because the submission to the suspect is an obligation of notification. Meanwhile, the recommendation to the public prosecutor is for filing and examining case files.

Not submitting the SPDP to the public prosecutor does not automatically cancel the suspect's determination. According to M. Yahya Harahap, if facts and circumstances based on reliable information explain a person as a perpetrator of a criminal act based on valid evidence, this indicates that the evidence that the investigator has found is under the circumstances to decide that person as a suspect.[41] The determination of a suspect is invalid if such determination is not based on the fulfillment of at least two valid tools of evidence as confirmed in the Constitutional Court Decision Number 21/PUU-XII/2014 and PERMA Number 4 of 2016 concerning Prohibition of Reviewing Pre-Trial Decisions.

V. CONCLUSION

This article finds several legal issues related to problems regarding the expansion of pre-trial in determining suspects. These legal issues need to be examined concretely as a first step towards realizing certainty, benefit, and justice in the criminal justice system in Indonesia.

First, the primary consideration of whether the determination of a suspect is legal or not depends on the fulfillment of preliminary evidence — namely, two tools of evidence as stated in Article 184 paragraph (1) of the Law of Criminal Procedure in line with the Constitutional Court Decision No. 21/PUU-XII/2014. Besides, this has been confirmed by PERMA No. 4 of 2016 concerning the Prohibition of Reviewing Pre-trial Decisions. This regulation states that the validity or invalidity of the determination of a suspect only assesses the formal aspects, namely whether there are at least two valid tools of evidence. Therefore, the fulfillment of at least two tools of evidence is an

[41] M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2003), 131.

absolute standard in determining a suspect.

Second, the reason "not based on the provisions and legal procedures in force" as the basis for the request to cancel the status of a suspect in pre-trial cannot be used as a basis for granting pre-trial applications. These reasons are still abstract and too broad, causing possible uncertainty and injustice in its implementation. If the meaning of "not based on applicable legal provisions and procedures" is that there are no at least two tools of evidence used as a basis by an investigator, then that is what should immediately be used as a reason for a pre-trial petition.

Third, in a case that the SPDP is not submitted to the suspect, the victim, or whistle-blower, the status of the suspect cannot be canceled as long as the requirement for sufficient preliminary evidence is still fulfilled, namely two valid tools of evidence as provided in Article 184, paragraph (1) of the Law of Criminal Procedure. Because so far, there has been no imperative provision that if SPDP is not handed over to the suspect, the victim/whistle-blower can cancel the suspect's status. Apart from that, submission to the suspect, victim/whistle-blower is a notification, while submission to the public prosecutor is to examine case files and coordinate the police and public prosecutors.

Therefore, to ensure legal certainty and fulfillment of the suspect's human rights as well as to realize the ideal pre-trial goal, it is necessary to confirm the determination of the suspect through the revision of the Draft of the Law of Criminal Procedure, precisely in Article 1 point 11 of the Draft of the Law of Criminal Procedure which originally stated that "a suspect is someone who because of preliminary evidence that sufficiently strongly suspected of committing a crime" is changed to "a suspect is a person who because of his actions or circumstances, based on at least two tools of evidence contained in Article 175 paragraph (1) of the Law of Criminal Procedure, should be suspected of being the perpetrator of a crime".

BIBLIOGRAPHY

Legal Documents

The Constitution of the Republic of Indonesia.

Indonesia, Kitab Undang-Undang Hukum Pidana (*Wetboek van Strafrecht voor Nederlandsch Indie* - *Criminal Code*). Translated by R. Soesilo. Bogor: Politeia, Year 1996.

Indonesia, Undang-Undang tentang Hukum Acara Pidana (*Law regarding Criminal Procedure Law*). UU No. 8 Tahun 1981, LN No. 76 Tahun 1981 (Law Number 8 Year 1981, SG No. 76 Year 1981).

Indonesia, Undang-Undang tentang Pengesahan International Covenant on Civil and Political Rights (*Law regarding Ratification of International Covenant on Civil and Political Rights*). UU No. 12 Tahun 2005, LN No. 119 Tahun 2005. (Law Number 12 of the Year 2005, S.G. No. 119 of the Year 2005).

Constitutional Court of the Republic of Indonesia. "Decision Number 21/PUU-XII/2014."

Constitutional Court of the Republic of Indonesia. "Decision Number 130/PUU-XIII/2015."

Supreme Court Regulation No. 4 of 2016 on Prohibition of Reviewing Pre-Trial Decisions.

District Court of Muara Enim, "Decision Number 3/Pid.Pra/2016/PNMre."

District Court of Gorontalo, "Decision Number 4/Pid.Prap/2017/P.N.Gto."

District Court of Kalianda, "Decision Number 04/Pid.Pra/2017/P.N.Kla."

District Court of South Jakarta, "Decision Number 04/Pid.Prap/2015/P.N.Jkt.Sel."

District Court of South Jakarta, "Decision Number 15/Pid.Prap/2017/P.N.Jkt.Sel."

District Court of South Jakarta, "Decision Number 97/Pid.Prap/2017/P.N.Jkt.Sel."

District Court Decision of Ternate, "Decision Number 2/Pid.Pra/2019/PNTte."

Books

Adji, Oemar Seno. *Hukum Pidana*. Jakarta: Erlangga, 1985.

Barkatullah, Abdul Halim. *Praperadilan: Sarana Perlindungan Tersangka dalam Sistem Peradilan Pidana Indonesia*. Bandung: Nusa Media, 2020.

Hamzah, Andi. *Hukum Acara Pidana Indonesia*. Third Edition. Jakarta: Sinar Grafika, 2019.

Hiariej, Eddy O.S. *Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka, 2016.

Harahap, M. Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan dan Penuntutan*. Jakarta: Sinar Grafika, 2003.

Eddyono, Supriyadi Widodo, and Muhammad Yasin. *Potret Penahanan Pra-Persidangan di Indonesia: Studi tentang Kebijakan Penahanan Pra-Persidangan dalam Teori dan Praktek*. Jakarta: Institute for Criminal Justice Reform, 2012.

Muladi dan Dwidja Priyanto. *Pertanggung Jawaban Pidana Korporasi*. Bandung: Kencana, 2010.

Articles

Andreescu, Marius, and Claudia Andreescu. "The Rule of Law And Principle of The Supremacy Of Law." *Fiat Iustitia* 1, No. 1 (2019): 7–23.

Ashworth, Andrew. "Four Threats to the Presumption of Innocence." *The International Journal of Evidence & Proof 10,* No. 4 (2006): 241–79.

Corstens, Gerardus Josephus Maria, and Matthias Johannes Borgers. "Het Nederlands Strafprocesrecht." *WoltersKluwer* 5, No. 9 (2002): 3-12.

Darwin, Dahlan, and Suhaimi. "Analisis Yuridis Putusan Praperadilan dalam Perspektif Sistem Peradilan Pidana." *Jurnal Mercatoria* 12, No. 1 (2019): 68–79.

Djanggih, Hardianto, and Yusuf Saefudin. "Pertimbangan Hakim pada Putusan Praperadilan: Studi Putusan Nomor: 09/PID.PRA/2016/PN.Lwk Tentang Penghentian Penyidikan Tindak Pidana Politik Uang." *Jurnal Penelitian Hukum De Jure* 17, No. 3 (2017): 413–25. https://doi.org/10.30641/dejure.2017.V17.413-425.

Iswantoro, Wahyu. "Penemuan Hukum oleh Hakim dan Implikasi Terhadap Perkembangan Praperadilan." *Jurnal Hukum dan Bisnis* (Selisik) 4, No. 1 (2018): 43–53.

Kusuma, I. Made Wisnu Wijaya, and Ni Made Sukaryati Karma. "Upaya Hukum Praperadilan dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Interpretasi Hukum* 1, No. 2 (2020): 73–77.

Kusumastuti, Ely. "Penetapan Tersangka sebagai Obyek Praperadilan." *Yuridika* 33, No. 1 (2018): 1–18.

Mandasari, Zayanti. "Kedudukan Memorandum of Understanding dan Surat Keputusan Bersama Ditinjau dari Teori Perundang-Undangan." *Jurnal Hukum IUS QUIA IUSTUM* 20, No. 2 (2013): 278–99.

Moeliono, Tristam P. "Asas Legalitas Dalam Hukum Acara Pidana: Kritikan Terhadap Putusan MK Tentang Praperadilan." *Jurnal Hukum Ius Quia Iustum* 22, No. 4 (2015): 594–616.

Plangiten, Maesa. "Fungsi dan Wewenang Lembaga Praperadilan dalam Sistem Peradilan di Indonesia." *Lex Crimen* 2, No. 6 (2013): 29-38.

Rambe, M. Irfan Islami. "Upaya Hukum Terhadap Praperadilan." *Jurnal Pionir* 2, No. 3 (2017): 1-6.

Sambow, Jully Constantia. "Bukti Permulaan Menurut Kitab Undang-Undang Hukum Acara Pidana Dalam Pengaruhnya Terhadap Perkapolri Nomor 14 Tahun 2012 Tentang Manajemen Penyidikan Tindak Pidana." *Lex Crimen* 7, No. 7 (2018): 5-12.

Sanger, Kezia ZE. "Asas Hukum Penerbitan Surat Pemberitahuan Dimulainya Penyidikan (SPDP) Dalam Proses Penyidikan." *Lex Crimen* 8, No. 11 (2020): 79-87.

Setiawan, Peter Jeremiah, Xavier Nugraha, and Moch Marsa Taufiqurrohman. "Penggunaan Daluwarsa Sebagai Dasar Gugatan Praperadilan Di Indonesia: Antara Formil Atau Materiil." *Volksgeist* 3, No. 2 (2020): 145–61.

Stevens, Lonneke. "Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit Its Increasing Use." *European Journal of Crime, Criminal Law and Criminal Justice* 17, No. 2 (2009): 165–80.

Suherman, Asep. "Penangkapan sebagai Bentuk Upaya Paksa Penegakan Hukum dalam Sistem Peradilan Pidana di Indonesia." *Supremasi Hukum: Jurnal Penelitian Hukum* 29, No. 1 (2020): 176-84.

Sumelang, Christy Paskahlis. "Kedudukan SPDP Dalam Prapenuntutan Berdasarkan KUHAP (Kajian Putusan MK Nomor 130/PUU-XIII/2015 Tentang Surat Pemberitahuan Dimulainya Penyidikan (SPDP)." *Lex Crimen* 7, No. 3 (2018): 176-84.

Trimarlina, Komang Dara, I. Nyoman Sujana, dan Ida Ayu Putu Widiati. "Implementasi Perlindungan Hak Asasi Manusia Terhadap Pemeriksaan dalam Proses

Penyidikan." *Jurnal Analogi Hukum* 1, No. 3 (2019): 411–16.

Thesis

Setiawati, Ririn. "Analisis Teoritik Pencerminan Konsep Habeas Corpus Act Dalam Regulasi Ketentuan-Ketentuan KUHAP sebagai Implementasi dari Prinsip Negara Hukum (State Law) Yang Bersifat Universal Dan Kaitannya dengan Upaya Mewujudkan Penegakan Hukum yang Berkeadilan dan Bermartabat (Due Process of Law)." Universitas Sebelas Maret, 2010.

Solichin, Muhamad. "Politik Hukum Praperadilan Dalam Penegakan Hukum." PhD Thesis, Universitas Muhammadiyah Surakarta, 2018.

Saputra, Dimas Tiga. "Ganti Kerugian Dan Rehabilitasi Dalam Perkara Pidana." Undergraduate Thesis, Universitas Muhammadiyah Magelang, 2017.