Determination of New Suspect in Pretrial Hearing (Case Study of the Judgment in South Jakarta District Court Number: 24/Pid.Pra/2018/PN. JKT.SEL)

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***Abstract*:-This research was normative legal research used case approach that focused on the judge's consideration to reach the decision. The purpose of this study is basically to find out the judge's consideration in granting the petition for the determination of a new suspect in a pretrial hearing. Normative provisions regarding the authority of the pretrial institution were basically regulated in a limited manner, but the Aquo judge had other considerations, namely the act of participating from other parties who had been referred to in the principal verdict of the case that has been in Kracht, where the indictment and verdict have outlined the role of parties considered to be participating in aquo acts. So that the judges considered it fair that the parties participated in the corruption act must also be responsible for their actions so that in the pretrial hearing then granted the request to assign a new suspect.**

Key Words: **Pretrial Healing, Consideration of new suspect, Consideration of Judge.**

I. INTRODUCTION

The 1945 Constitution requires that *Rechstaat* element, as well as the Rule of Law, be part of the principles of the Indonesian state. Even explicitly the explanatory formulation of the 1945 Constitution states that the Indonesian state is based on law (*Rechstaat*), not based on mere power (*Machstaat*). The formulation of the explanation reflects that the 1945 Constitution requires restrictions on state power by law.[1] Therefore, the consequence of the state of Indonesia as a rule of law is that the rights of citizens should be protected by law and all citizens have the same position before the law (Equality before the law). In a legal state, law enforcement is carried out with a legal process and legal procedures in force. In the enforcement of criminal law, it is carried out by criminal procedure law (formal criminal), as a procedure to enforce and implement the material criminal law. This is stated in the General Explanation of Law No. 8 of 1981 which reads *"... In order to be achieved and enhanced the guidance of the attitudes of law enforcement officials in accordance with their respective functions and authorities in the direction of the establishment of the law of justice and protection nobility of human dignity, order and legal certainty for the sake of the establishment of the Republic of Indonesia as a law state ".*

Operationalization of the criminal justice system in order to achieve the objectives of criminal law enforcement, because at the investigation phase there can be known suspects of an crime or criminal act as well as determining the alleged perpetrator of the crime or crime before being prosecuted and tried in court and sanctioned criminal act in accordance with his actions. Similarly, the justice system is closely related to other systems in the national legal system.[2]

Criminal law enforcement system is identical to the criminal law enforcement system consisting of Materiel/Substantive Criminal Law subsystem, Formal Criminal Law subsystems, and Criminal Law Enforcement subsystem. The justice system has two big objectives, those are to protect the community and uphold the law. In addition to these two objectives, the criminal justice system has several important functions, including[3]:

1. Preventing crime;
2. Acting on criminal offenses by providing an understanding of criminal offenders where prevention is ineffective;
3. Reviewing the legality of measures of prevention and prosecution;
4. Court judgment to determine guilty or innocent people who are detained;
5. Appropriate disposition of someone found guilty;
6. Correction institutions by state instruments approved by the community.

Today pretrial gets an important place in criminal law, even almost everyone who is suspected of committing a crime is later determined to be a suspect; the first legal effort taken

[1] Hamdan Zoelva, *Negara Hukum Dalam Perpektif Pancasila*, https://www.hamdanzoelva.wordpress.com/2009/05/30/negara-hukum dalamperpektifpancasila/amp/#share=https://hamdanzoelva.wordpress.com/, retrieved on September 16, 2018.

[2] Sudikno Mertokusumo, *Kapita Selekta Ilmu Hukum*, Penerbit Liberty, Yogyakarta, 2011, Pg 19-20.

[3] Tobib Effendi, *Sistem Peradilan Pidana: Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*, Pustaka Yustisia, Yogyakarta, 2013, Pg 13-14.

is pretrial. The demand for pretrial use is getting stronger in the community indicated to be accused of a criminal act. Because in various criminal cases so far that have occurred shows that pretrial shows the existence of protection, not only concerning justice but also towards the protection of human rights.

The criminal justice system that has been applied as illustrated in the Criminal Code Procedure (KUHAP), (Law Number 8 of 1981) shows an illustration that criminal procedural law as stipulated in Law No. 8 of 1981 is deemed unable to guard the enforcement of the material criminal law, especially in handling corruption. One example is the decision of the South Jakarta District Court in November 2012 which granted a pretrial request for a suspect in a bioremediation case, Bachtiar Abdul Fatah. Judge Suko Karsono stated that the determination of the suspect was illegal, but refused to grant the request to terminate the investigation. And then a similar controversial decision was a pretrial judgment which was decided by Judge Sarpin Rizaldi who stated the invalidity of the determination of the suspect by the Corruption Eradication Commission to the Police Commissioner General. Budi Gunawan. Some parties considered this pretrial ruling to be a real mistake and exceeded its authority because the authority to fill in the procedural legal vacuum or make arrangements regarding the settlement of a matter that has not been regulated in procedural law including interpreting the procedural law was in the Supreme Court.[4] The expansion of the pretrial object controversy was finally legitimized by the Constitutional Court through the Constitutional Court Decision number 21 / PUU-XII / 2014 which expanded the pretrial authority in article 77 of the Criminal Code Procedure by adding authority to examine and decide whether or not the determination of suspects, searches and seizures. This decision also clarifies the sufficient initial evidence, in article 1 number 14, article 17 and article 21 paragraph (1) KUHAP by interpreting at least 2 (two) evidence according to article 184 of the Criminal Code Procedure.

Judges are required to enforce law and justice not to win cases that are oriented to economic values, pragmatic so that they can distort morale, ethical values, the text of the Law, deflect on truth values, the logic of rationality that rests on legal reasoning on the principle of formal legality. The judge is free in deciding all decisions without any interference or interference from other parties. A free judge is not impartial in carrying out the task of deciding a case in the judiciary (the exercise of the judicial function). Freedom of the judge is an important authority attached to individual judges where the judge functions as the application of the text of the Act into a concrete event, not merely sustaining, but also providing appropriate interpretations of the law in order to rectify concrete legal events so that the Judge can freely provide legal judgment and interpretation.[5]

One of the judges' freedoms in deciding pretrial cases is the decision of the South Jakarta District Court which decided to grant a pretrial lawsuit related to the alleged corruption case of Bank Century submitted by the Indonesian Anti-Corruption Society (MAKI) against the Corruption Eradication Commission. Decision Number: 24/Pid.Pra/2018/PN.JKT.SEL, which was read by single judge Effendi Muchtar, where one of the controversial parties was determined by the suspect in a Century Bank corruption case. With the decision of the South Jakarta District Court has been expanding the pre-trial object which is very fundamental, therefore the freedom of judges in deciding pretrial cases has an important role in minimizing deviations and misuse of authority in the implementation of the law enforcement process. Based on the description above, the author is interested in putting it into a paper with the title "DETERMINATION OF NEW SUSPECT IN PRETRIAL HEARING INSTITUTIONS (CASE STUDY OF THE SOUTH JAKARTA DISTRICT COURT JUDGMENT NUMBER: 24/ Pid.Pra/2018/PN.JKT.SEL)". This study is a normative legal research using a case approach that focuses on the judge's consideration to reach the decision. The purpose of this study is basically to find out the judge's consideration in granting the petition for the determination of a new suspect in a pretrial institution with the subject matter of discussion concerning the judge's judgment in making a decision to establish a new suspect in the Century Bank case.

II. RESEARCH PROBLEMS

This paper will discuss the problems (1) How do Indonesia's positive legal views relate to pretrial hearing? (2) What is the judge's consideration in the Decision of the South Jakarta District Court Number: 24/Pid.Pra/2018/PN.JKT.SEL in setting new suspects in a Century Bank corruption case?

III. RESEARCH AIMS

The purpose of this study is basically to find out the judge's consideration in granting the petition for the determination of a new suspect in a pretrial institution.

IV. RESEARCH METHOD

This research is a type of doctrinal research using the third legal concept, namely law that is what is decided by Judge *in concreto* and systematized as Judge Made law. This study uses a normative juridical approach, namely by examining problems with legislation as well as the literature

[4] Junaedi, "*Pesan Pembaharuan Hakim Sarpin*",*http/www.hukumonline.com/*baca*/berita/lt54f6621/pesan-pembaharuan-hakim-sarpin-broleh-junaedi-sh-msi-llm,* Retrieved on September 18, 2018.

[5] Ery Setyanegara, *Kebebasan Hakim Memutus Perkara Dalam Konteks Pancasila (Ditinjau Dari Keadilan Substantif)*, Jurnal Hukum dan Pembangunan Fakultas Hukum Universitas Indonesia, *www.jhp.ui.ac.id>home>article>download* Retrieved on September 18, 2018.

related to the problems under study. In this legal research, the author uses a case approach. In using the case approach, what researchers need to understand is the *ratio decidendi*, which are the legal reasons used by the judge to reach the verdict.[6] Therefore, the study in this study is only limited to consideration of judges making fines in applying Article 3 of Law No. 20 of 2001 to perpetrators of corruption.

In this study, the authors used primary materials, among others: Law No. 31 of 1999 Jo Law No. 20 of 2001 concerning Eradication of Corruption Crime, Law No.8 of 1981 concerning KUHAP, Corruption Court Decision in Kupang District Court Number: 48/Pid.Sus.Tpk/2014/Pn.Kpg besides that secondary legal material is obtained from books, journals, and relevant legal research results.

In this study, data collection was carried out through library studies using catalog search which is a list that provides information about collections owned by the literature. Meanwhile, data analysis is done by deciphering and linking legal material obtained in the study including legislation, court decisions, and other legal materials then presented systematically to answer the problems that have been formulated.

V. DISCUSSION

Pretrial hearing institutions in the Criminal justice system in Indonesia

Indonesia is a state of law, strives to maintain and protect Human Rights and to become human Rights as a spirit in the products of national law. According to Article 27 of the 1945 Constitution, it states that "All citizens are at the same time in law and the government must uphold the law and the government without exception". The purpose of the formation of pretrial institutions is to uphold the law and protect human rights at the level of investigation and prosecution; pretrial institutions are formed basically to avoid arbitrariness of law enforcers in carrying out their duties.

Basically, as a country that retains colonial law, the Indonesian state adheres to the inquisitorial criminal justice system. However, since the enactment of Law No. 8 of 1981 concerning the Criminal Procedure Code, Indonesia's criminal justice system has several concepts and adversarial principles in its regulation. One of the adversarial systems used in KUHAP is the concept of pretrial which is a conception of Habeas Corpus Act (1679) born in England. Normatively, pretrial objects are limitedly limited to article 1 point 10 and article 77 KUHAP. The same thing is also found in the provisions of article 9 paragraph (4) of the ICCPR which states that the court can decide the delay regarding the validity of his detention and order the release if the detention is not valid.

That the obstacles in pretrial which resulted in the lack of realization of human rights, especially related to the implementation of *habeas corpus* in pretrial institutions, made this institution deemed less effective in carrying out acts of supervision of the judicial apparatus. That regarding the rights of *Habeas Corpus*, the idea of a pretrial institution was born from inspiration originating from the rights of *Habeas Corpus* in the Anglo Saxon justice system, which provided a fundamental guarantee of human rights, especially the right to independence. *Habeas Corpus* Act entitles a person to go through a court order demanding (challenging) an official who detains him (the police or prosecutor) prove that the detention is not illegal (illegal) or is strictly legal in accordance with the legal provisions apply. This is to ensure that the deprivation or limitation of independence against a suspect or defendant truly fulfills the applicable legal provisions and guarantees of human rights. This habeas corpus warrant is issued by the court on the party that is currently holding (police or prosecutor) through a simple direct and open procedure so that it can be used by anyone.[7]

Judging from the idea of *Habeas corpus* associated with the Criminal Code Procedure (*KUHAP*), achieving or guaranteeing the protection of human rights is highly dependent on how to realize the ideals of the Criminal Procedure Code in conducting pretrial, demands compensation and rehabilitation as stipulated in articles 77 to 83, 95 to 97, pretrial petition for claims of compensation for loss and rehabilitation is the implementation of the interests of the protection of individual rights that are more administrative and arbitrator.[8]

The basis of the establishment of pretrial institutions can be seen in the guidance on the implementation of the Criminal Procedure Code which says: Given that for the sake of case investigation it is necessary to reduce the rights of suspects, but nevertheless always based on provisions regulated under the law, then for the sake of supervision of protection the suspect/defendant's basic rights are held by an institution called pretrial. Based on the contents of the KUHAP implementation guidelines, it is clear, the establishment of a pretrial institution is as a supervisory institution on the performance of investigating and public prosecutors in the implementation, arrest, and detention, termination of investigations and termination of prosecution. Pretrial is part of the District Court, and the emergence of this pretrial institution is where the *Rechter Commissaris* in the Netherlands is nothing but the development of the age that requires judges to have an active role in criminal justice and also to provide protection for the basic rights of

[6] Peter Mahmud Marzuki, 2006, *Penelitian Hukum*, Kencana Prenada Media Grup, Jakarta, Pg. 158-159.

[7] Wanda Rara Fareza, *Analisis Putusan Hakim Praperadilan Dalam Perkara Tindak Pidana Korupsi* (Studi Putusan Praperadilan Nomor 14/Pid.Pra/2016/PN.Tjk)", http://digilib.unila.ac.id/26851/3/, retrieved on September 21, 2018.

[8] Iwan Anggoro Warsito, *Pemeriksaan Pendahuluan dan Praperadilan Pasca Putusan MK No. 21/PUU-XII/2014*, Pohon Cahaya, Yogjakarta, 2015, Pg.11-12.

suspects/defendants. The pre-trial fate was determined by the judge who examined.[9]

Determining someone's status as a suspect is one part of the investigation phase. A suspect is a person who, because of his actions or circumstances, based on preliminary evidence should be suspected of being a criminal offender.[10] Meanwhile, in article 46 paragraphs (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission formulates that in the event that a person is determined as a suspect by the Corruption Eradication Commission, from the date of stipulation the special procedure applies in order to examine suspects regulated in other law regulations, it does not apply under this Law.[11]

Pretrial Provisions in Law Number 8 of 1981 concerning Criminal Code Procedure (KUHAP) in Indonesian Criminal Justice System are regulated in Law Number 8 of 1981 concerning Criminal Code Procedure or more specifically in Article 1 number 10, Article 77, Article 78, Article 79, Article 80, Article 81, Article 82, Article 95 paragraph (2) and paragraph (5), Article 97 paragraph (3), and Article 124. Provisions regarding pretrial in the KUHAP are stipulated in the General Provisions of Article 1 number 10 of the Criminal Code Procedure which states that[12]:

a. The validity of an arrest and/or detention at the request of the suspect or his family or other parties with the power of the suspect;
b. The validity of the investigation or the termination of prosecution for the sake of law and justice;
c. The request for compensation or rehabilitation by the suspect or his family or other parties for his power whose case was not brought before the court.

In addition to the provisions in the Criminal Code Procedure in 2015, the Constitutional Court expanded the object of pretrial through the decision of the Constitutional Court Number: 21/PUU-XII/2014, namely the validity of the determination of suspects, searches and seizures. In addition, the Constitutional Court Decision also clarifies sufficient preliminary evidence, sufficient evidence as in article 1 number 14, article 17, and article 21 paragraph (1) KUHAP with a minimum of 2 (two) evidence as stipulated in the provisions of article 184 of the Criminal Code Procedure. The basis of consideration of the Constitutional Court is due to the existence of checks and balances on the actions of determining suspects by investigators due to the absence of a testing mechanism for the validity of the acquisition of evidence.[13]

In the 2012 RKUHAP concept, the position of the pretrial institution was replaced by the existence of the Preliminary Examining Judge (HPP). The Preliminary Examining Judge is located between the investigator and the public prosecutor on one side and the judge on the other. The authority of the Preliminary Examining Judge is broader and more complete than the pretrial institution. The HPP has the duty to assess the course of the investigation and prosecution and other authorities specified in the Criminal Code Procedure. That is as follows:

(1) The validity of the arrest, detention, seizure, search or tapping.
(2) The Cancellation or suspension of detention.
(3) The information made by a suspect or defendant by violating the right not to burden himself.
(4) The evidence or the statements obtained illegally can be used as evidence.
(5) The compensation or the rehabilitation for someone who was illegally arrested or detained or compensation for any property illegally confiscated.
(6) The suspect or defendant has the right to or is required to be accompanied by a lawyer.
(7) That the investigation or prosecution has been carried out for illegal purposes.
(8) The termination of investigation or the termination of prosecution that is not based on the principle of opportunity.
(9) The suitability of a case is prosecuted in court.
(10) The violation of the rights of any other suspect that occurred during the investigation phase.

Judging from the extent of the authority and use possessed by the HPP, conceptually it can be stated that the guarantee of legal protection against the human rights of suspects/defendants is stronger and more complete than the provisions in the pretrial in the KUHAP that currently apply.

Consideration of Judges in the Judgment of the South Jakarta District Court Number: 24/Pid.Pra/2018/PN. JKT.SEL.

According to Mackenzie, there are several theories or approaches that can be used by judges in making decisions on cases, those are[14]:

1) Balance theory

Balance means the balance between the conditions determined by the law and the interests of the parties involved or related to the case, which is among others the existence of a balance relating to the

[9] O. C. Kaligis et. Al, *Praktek Praperadilan Dari Waktu ke Waktu*, Jakarta, Otto Cornelis Kaligis dan Associates, 2000, Pg xxii.

[10] Explanation of Article 1 number 14 of Law No. 8 of 1981 concerning the Criminal Code Procedure.

[11] Explanation of Article 46 paragraph (1) of Law Number 30 of 2002 concerning the Corruption Eradication Commission

[12] R. Soenarto Soerodibroto, *KUHP & KUHAP, Dilengkapi Yurisprudensi Mahkamah Agung dan Hoge Raad*, PT. Rajawali Press, 2003, Jakarta, Pg. 360.

[13] The judgment of the Constitutional Court Number: 21/PUU-XII/2014 concerning Material Testing of Law No. 8 of 1981 concerning the Criminal Code Procedure for the 1945 Constitution.

[14] Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2014, Pg. 105-110.

interests of the community, the interests of the defendant and the interests of the victim, or interests the plaintiff and the defendant.

2) Art and intuition approach theory

The decision by the judge is the discretion or authority of the judge. As discretion, in making a decision, the judge will adjust to the circumstances and reasonable punishment for any criminal or civil offender. The art approach is used by the judge in making a decision, more determined by instinct or intuition than the knowledge of the judge.

3) Scientific approach theory

The starting point of this theory is the idea that the process of imposing a sentence must be carried out systematically and prudently, especially in relation to previous decisions in order to guarantee consistency from the judge's decision.

4) Experiential approach theory

The experience of a judge is something that can help him deal with the cases he faces on a daily basis because, with his experience, a judge can know how the effects of decisions made in a criminal case are related to the perpetrator, the victim or society.

5) *Ratio Decidendi* theory.

The theory is based on a basic philosophical foundation, which considers all aspects related to the subject of the disputed matter and then looks for legislation that is relevant to the subject of the disputed case as the legal basis for the decision.

In the criminal imposition according to Mackenzie, one of them is known as the theory of *Ratio Decidendi*. This theory is based on a basic philosophical foundation, which considers all aspects related to the subject of the disputed matter, then seeks legislation that is relevant to the subject of the disputed case as the legal basis for the decision, and judges' consideration must be based on clear motivation to enforce the law and provide justice for the parties to the dispute. The legislation is the basis for a judge to determine the verdict that was dropped even though the judge is not just a mouthpiece of law *(la bouche de la oi*), but still, legislation is a guideline for a judge in determining a verdict. Furthermore, in a decision, legal judgments must be put forward, so that a judge so that a judge arrives at his verdict as in the decision (*Strachmaat)*, wherein the considerations can be read clearly the motivation of the purpose of the decision taken is to enforce the law (legal certainty) and provide justice for the parties in the case.[15]

In the aquo case, through the hand of a pretrial single judge Effendi Muchtar, the pretrial judgment of the South Jakarta District Court number: 24/Pid.Pra/2018/PN. Jkt.Sel. makes a judgment as follows:

1) Granting the Petitioner's pretrial request in part.
2) Ordering the Respondent to carry out further legal proceedings in accordance with the provisions of the law and legislation in force for alleged Century Bank corruption in the form of conducting an Investigation and establishing a suspect against Boediono, Muliaman D Hadad, Raden Pardede et al. (As stated in the indictment the name of the Defendant BUDI MULYA) or delegated it to the Police and or the Prosecutor's Office to be continued with Investigation, Investigation and Prosecution in the trial process at the Central Jakarta Corruption Court.
3) Rejecting the Petitioner's Petition for other than and the rest.
4) Charging court fees to the Respondent, amounting to NIL;

Whereas in the aquo decision, the Judge considered the following[16]:

"Considering, that based on evidence P-4, the Decision of the Central Jakarta Corruption Court Number 21/Pid.Sus/TPK/2014/PN.Jkt.Pst. on July 16, 2014, in the name of the defendant BUDI MULYA, seen in the indictment (page 211) "That the defendant BUDI MULYA ... ... etc ... ... together with BOEDIONO as the Governor of Bank Indonesia, MIRANDA SWARAY GOELTOM, as Deputy BI Senior Governor, SITI CHALIMAH FADJRIAH, Deputy Governor in the field of 6 Commercial and Sharia Bank Supervision, S. BUDI ROCHADI (currently deceased) as Deputy Governor of 7 payment systems, money circulation, rural banks and credit, MULIAMAN DARMANSYAH HADAD, Deputy Governor Field 5 Banking policy/stabilization of the financial system and as the Board of Commissioners of the Deposit Insurance Agency (LPS), HARTADI AGUS SARWONO, as Deputy Governor of 3 Monetary Policy and ARDHAYADI MITROATMODJO, Deputy Governor of 8 Logistics, Finance, Asset Settlement, Secretariat and KBI and RADEN PARDEDE, as the secretary of the Financial System Stability Committee (KSSK) ……etc……" has done or participates in carrying out some actions that have a relationship in such a way that it must be seen as an act that continues, against the law, that is, contrary to the Law of the Republic of Indonesia No. 23 of 1999 concerning Bank Indonesia, jo. Law no. 3 of 2004, concerning amendments to the law ……etc…… ";

Considering, that based on the expert's statement submitted by the Petitioner namely HERI FIRMANSYAH, SH, MHUM. The MPA explained that

[15] Ahmad Rifai, *Ibid*, Pg. 110-111.

[16] Consideration of the judge in the pretrial decision of the South Jakarta District Court Number 24/Pid.Pra/2018/PN. Pg 66.

> *if the indictment referred to in Article 55 carries the consequence that the people mentioned in the indictment must also be prosecuted and submitted as suspects and must be sentenced to criminal charges, but the duration of their conviction may differ depending on their role in the crime. Such as whether he is a person who conducts (pleger), participates in doing (medepleger), asks to do (doenpleger) or is persuaded to do (uitlokker) or helps to commit a criminal act (medeplichtige). According to the expert, it is an injustice and violation of human rights, especially the accused and his family who have been convicted, if only one person is prosecuted and sentenced to criminal, while the other is not and this is also a violation of the basic principles of recognized criminal law universally in the continental criminal law system and the Public Prosecutor must be responsible and consequently why he put the names of these people into his indictment and could not be merely a formality in compiling the charges whose articles were participating.*

Then in consideration of the final part, Aquo Judge considered the following[17]:

> *Considering, that based on the considerations above, throughout the petitum number 3, namely ordering the Respondent to carry out further legal proceedings in accordance with the provisions of the law and legislation in force for alleged Century Bank corruption in the form of conducting investigation and assigning suspects to Boediono, Muliaman D Hadad, Raden Pardede et al., or delegated it to the Police and/or the Prosecutor's Office to proceed with the Prosecution and Prosecution in the Central Jakarta Corruption Court, because of legal grounds, justice and legal certainty and for the protection of human rights, it must granted;*

The pretrial judge's authority according to the positive law has been determined in a limited manner but in the case of aquo, the judge has his own consideration. From the view of Indonesian positive law, according to the provisions of Law Number 8 of 1981 concerning Criminal Code Procedure or more specifically in Article 1 number 10, Article 77, Article 78, Article 79, Article 80, Article 82, Article 83, Article 95 paragraph (2) and paragraph (5), Article 97 paragraph (3), and Article 124 and the decision of the Constitutional Court No. : 21/PUU-XII/2014 on April 28, 2015, and also the Supreme Court Regulation (PERMA) No.4 of 2016 concerning Prohibition of Judicial Review of Judicial Decisions. In the Supreme Court Regulation No. 4 of 2016 specifically Article 2 paragraph (1) formulates that the object of pretrial is: the legality or failure of arrest, detention, termination of investigation or termination of prosecution; Determination of the suspect; confiscation and search; compensation and/or rehabilitation for someone whose criminal case is stopped at the level of investigation or prosecution. Thus, referring to the laws and regulations above, the pretrial decision that sets a new suspect is not the object of the examination of pretrial judges.

For some legists, the *aquo* case should have the judge rejected the lawsuit of the pretrial applicant because it was not included in the pretrial domain or object. Determination of new suspects in pretrial as a part of an investigation is certainly the authority of the investigator. Meanwhile, in the *Aquo* judge's verdict clearly, through his judgment, he ordered: "conduct an investigation and determine the suspect" which was clearly not the object of pretrial so that the pretrial judge consequently had exceeded the object of his authority. The pretrial judge normatively only has the authority to test the implementation of forced efforts as determined in the Criminal Code Procedure and the decision of the Constitutional Court No. 21/PUU-XII/2014 on April 28, 2015, does not require investigators to make forced efforts by assigning a witness to the decision to be a suspect. Testing of forced efforts must be formally interpreted administratively not in the understanding of testing the substance of the validity of how to obtain a piece of evidence that is the authority of a court judge who has entered the case material.

If a law is unclear or incomplete governing a concrete event, the judge is required to always find the law. With freedom or the power of an independent judiciary as stipulated in Article 24 of the 1945 Constitution of the Republic of Indonesia which was later elaborated in Article 1 of Law Number 48 of 2009 concerning Judicial Power which formulated as follows:

> "Judicial Power is the power of an independent state to hold a judiciary to uphold law and justice based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the Law State of the Republic of Indonesia".

Meanwhile, connected with the provisions of Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power formulating that:

> "Courts are prohibited from refusing to examine, try and decide on a case that is filed under the pretext that the law is absent or unclear, but is obliged to examine and try it".

The provisions of this article, indicate to the judge that if legislation occurs is unclear or does not yet regulate it, the judge must act on his own initiative to settle the case. In this case, the judge must play a role in determining what constitutes the law, even though legislation cannot help him. This action is called legal discovery.[18] In order to find the law, the contents of the provisions of article 10 paragraph (1)

[17] Judge's consideration in the pretrial judgment of the South Jakarta District Court number 24/Pid.Pra/2018/PN. Pg. 76.

[18] Ahmad Rifai. *Ibid.*, Pg. 26.

should be related to the provisions of article 5 paragraph (1) of Law No. 48 of 2009, which formulates that:

> "Judges and Constitutional Justices must explore, follow and understand the legal values and sense of justice that lives in society."

Furthermore, in the explanation of the article explains that:

> "This provision is intended to make the decisions of judges and constitutional judges in accordance with the law and sense of justice of the people".

The discovery of law according to Sudikno Merokusumo is a series of activities in the judicial process that are inseparable, intact, and have relations with each other. The momentum of the initiation of legal discovery is after the concrete event has been proven or resolved because at that moment concrete events that are declared proven or determined as events that actually occur must be sought or discovered by law.[19]

From the above provisions implied juridically and philosophically, Indonesian judges have the obligation or right to make legal discoveries and the creation of laws, so that the decisions taken can be in accordance with the law and sense of justice of the community. Furthermore, if further interpreted, then the provisions of article 5 paragraph (1) can be interpreted that because judges are formulators and diggers of legal values that live in society, the judge must plunge into the midst of the community and be able to explore legal feelings and a sense of justice that lives in society. Thus, the judge will be able to give a verdict that is in accordance with the law and a sense of community justice.

Associated with *aquo* cases, the authors argued that the normative provisions regarding the authority of pretrial institutions are basically regulated in a limited manner but *aquo* judges have other considerations, namely acts of participation from other parties who have been referred to in the main verdict of cases that have been *in Kracht*, that is BUDI MULYA, wherein the indictment and also the verdict has outlined the role of the parties considered to be participating in *aquo* acts. So that the judges consider it fair that the parties participating in the corruption act must also be accountable for their actions so that in their verdicts they will then grant the request to assign new suspects.

The purpose and function of pretrial is basically a means of law enforcement, a means of protecting human rights and horizontal supervision of law enforcers, especially investigators and public prosecutors in exercising their authority. From the *aquo* decision, it can be pointed out that the freedom of judges in deciding pre-trial cases, especially in the determination of new suspects, can be done and not only based on the existence of at least two valid evidence obtained during the investigation process. Pretrial in Indonesia is one subsystem that runs horizontal supervision work on the work of investigators and prosecutors in the integrated criminal justice system. However, apart from the *aquo* verdict, it can be concluded that the pretrial position in the Indonesian criminal justice system has experienced rapid progress and is considered to need immediate reform, which is currently drafted in the KUHAP draft in the form of the Preliminary Examining Judge (HPP).

Closing

The pretrial judge's authority according to positive law has been determined limited, in the view of Indonesian positive law, according to the provisions in Law Number 8 of 1981 concerning Criminal Code Procedure or more specifically in Article 1 number 10, Article 77, Article 78, Article 79, Article 80, Article 81, Article 82, Article 83 paragraph (2) and paragraph (5), Article 97 paragraph (3), and Article 124 and the decision of the Constitutional Court No.: 21/PUU-XII/ 2014 in April 28, 2015 formulated that the object of pretrial is: the legality or failure of arrest, detention, termination of investigation or termination of prosecution; determination of the suspect; confiscation and search; compensation and/or rehabilitation for someone whose criminal case is stopped at the level of investigation or prosecution, so that the legislation that becomes a reference by the judge in deciding pretrial cases is basically regulated but in the *aquo* case the judge has considerations regarding the principle of justice and legal equality to determine new suspects are actually the domain or authority of the investigator through a series of investigative actions.

Because pretrial institutions are only authorized to test the implementation of forced efforts by investigators and not to require investigators to make forced efforts to determine suspects, when viewed from normative provisions, the determination of new suspects has basically been beyond the authority of pretrial judges. Pretrial in Indonesia is one subsystem that runs horizontal supervision work on the work of investigators and prosecutors in the integrated criminal justice system. However, apart from the *aquo* verdict, it can be concluded that the pretrial position in the Indonesian criminal justice system has experienced rapid progress and is considered to need immediate reform.

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