



Pre-trial prosecution of suspects with wanted list status under Indonesian National Law

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Abstract

Indonesia is a state of law, which means that the exercise of power must be under the laws used in Indonesia. In addition, all aspects of life must be regulated according to the applicable law to prevent conflicts between communities. The existence of pretrial guarantees the rights of suspects, but in its development many suspects who are included in the Wanted List (DPO) easily file pretrial. For this reason, the Supreme Court then issued Supreme Court Circular Letter (SEMA) No. 1/2018 on the Prohibition of Pretrial Filing for Suspects Who Have Absconded or Are on the Wanted List. This paper discusses the Pre-Trial Prosecution of Suspects with Wanted List Status Under Indonesian National Law. In analyzing this paper, the author uses normative research by examining national law in Indonesia, which results in the preliminary conclusion that the search process takes a long time and exceeds the time limit of the Police Search List, so the case may be closed. So, if you want to follow up immediately there must be an immediate arrest effort. In addition, if the evidence or testimony does not show that the person is guilty, then it can be proposed to revoke the status of the Wanted Person List and it is very important to be selective in finding evidence and validity of the case.

Keywords: Pre-trial prosecution, wanted list status, Indonesian National Law

Introduction

Law enforcement based on the Law is a guarantee of Human Rights so that there is no overlap between legal products and their application. Human Rights are always found in every constitution, this is stated in the 1945 Constitution in Article 28 D paragraph ^[1], this means that there is legal certainty regarding the guarantee of Human Rights. The consequence of the recognition of human rights is awareness of basic human rights and awareness of equality and equality. The development of law is a tangible manifestation of the implementation of responsive theory which describes law as a means of response to social provisions and community aspirations. Pretrial, especially regarding the determination of suspects, had begun before the issuance of the Constitutional Court Decision Number 21/PUU-XII/2014. In the Constitutional Court Decision (MK), it was decided that the provisions of Article 77 letter A of the Criminal Procedure Code (KUHAP) do not have binding legal force as long as they are not interpreted to include the determination of suspects, searches, and seizures. As for one of the legal considerations, the determination of a suspect is part of the investigation process which is a deprivation of human rights, so the determination of a suspect by an investigator should be an object that can be sought for protection through pretrial legal efforts ^[1].

The purpose of pretrial is under Article 1 point 10 of the Criminal Procedure Code (KUHAP) where pretrial is the authority of the District Court to examine and decide ^[2]:

- Whether or not an arrest or detention is valid at the request of the suspect or his/her family or other parties on behalf of the suspect.
- Whether or not the termination of investigation or termination of prosecution is valid for the sake of law and justice.
- Request for compensation or rehabilitation by the suspect or his/her family or other party by his/her attorney whose case is not submitted to the Court.

Then to improve pretrial, such as whether or not the determination of suspects as well as search and seizure is valid, the Constitutional Court issued Decision No. 21/PUU-XII/2014. With the Constitutional Court Decision No. 21/PUU-XII/2014, many suspects then filed a pretrial to re-examine the determination of their suspect status by the police. On this side, it can be seen how pretrial can be a space for suspects to provide explanations. And not only those who are ordinary suspects but also those who are suspects and are included in the Person Wanted List ^[3].

With the existence of pretrial that guarantees the rights of suspects, but in its development many suspects are on the wanted list (DPO) easily filed pretrial. For this reason, the Supreme Court then issued Supreme Court Circular Letter (SEMA) NO. 1 Year 2018 on the Prohibition of Pre-Trial Proceedings for Suspects Who Have Absconded or Are on the Wanted List (DPO). Thus, there is a contradiction between the Supreme Court Circular Letter (SEMA) and the Criminal Procedure Code (KUHAP) and human rights.

In the case at the South Jakarta District Court with Court Decision Number: 39/Pid.Prap/2018/PN Jkt.Sel, with a decision of NO (*Niet Ontvankelijke Verklaard*) where the case was requested by the Petitioner to be filed for pretrial. Initially, the Applicant was summoned as a witness by the Respondent based on Evidence of Report Number: TBL/4038/VII/2016/PMJ/Dit. Criminal Investigation, dated 24 August 2016 regarding alleged criminal acts but the Petitioner was named as a suspect without prior investigation. The investigation is a series carried out by police investigators to seek and collect evidence that can explain the criminal offense that has occurred and can find the person responsible for the criminal offense and has been regulated in Article 1 number 2 of the Criminal Procedure Code ^[4].

Thus the meaning of the investigation must first seek and collect evidence to make light of the criminal offence that occurred. The evidence is then determined as a suspect. However, in reality, the Applicant was first named as a

suspect before the Respondent sought evidence by summoning witnesses and confiscating the Applicant's Certificate of Title (SHM). As is known, the Applicant was initially a witness who had been examined in the Minutes of Examination (BAP) as a witness who knew the problem of the Complainant's report to the Respondent, then the Applicant received a letter from the Respondent on 11 November 2017, Letter Number: S.Pgl/13003/XI/2017/Ditreskrim, which essentially notified the Applicant of the determination of a suspect based on the results of the Case Title on 18 September 2017 with sufficient evidence in the form of 12 (twelve) witness statements, 3 (three) documents, in this case the Respondent without re-examination and or confrontation to the Applicant first but immediately determined the Applicant as a suspect by letter, the Respondent also never examined the Applicant as a potential suspect, so that the Applicant could not equally clarify what he was accused of. The Applicant was only examined for the first time by the Respondent as a witness. It should be noted that the Applicant in this case resides and is domiciled in the city of Bali, which of course for the Applicant is a violation of human rights, for the Applicant why not just delegate it to the Bali Regional Police (Polda). Thus, the existence of the aforementioned problems, the author formulates several questions and feels it is important to raise them in Thesis Research with the title "Pretrial Against Suspects with Wanted List Status". This paper will examine the laws and regulations of pretrial proceedings in the territory of Indonesia.

Discussion and Result

Basic concept of Pre-Trial and Legal Basis for Pre-Trial Judge

Pretrial is an institution established to supervise law enforcement officials from abuse of authority. Pretrial has been limited in the provisions of Article 77 of the Criminal Procedure Code (KUHAP), but legal developments in the last 5 (five) years have broken through these limits and even preceded the discussion of the Draft Criminal Procedure Code (KUHAP). In the word "Pretrial" there is the word "Pre" which means preceding. Meanwhile, in the Criminal Procedure Code itself, pretrial means preliminary before the court hearing. Thus, pretrial can be concluded as the process of examining cases before entering the examination of the main case that takes place in court. The main case in question is an allegation or indictment of a criminal offense. According to Andi Hamzah, pretrial is one of the manifestations of Habeas Corpus as a prototype, namely as a place to complain about violations of human rights in a criminal case examination process^[5].

According to Anwar, a Pretrial is an action conducted by the District Court to examine and decide on the validity of arrest, detention, termination of investigation, termination of prosecution, and decide on requests for compensation and rehabilitation whose criminal case is not continued in the District Court trial at the request of the suspect or defendant or the reporter or his family and/or legal counsel. Based on Article 1.10 of the Criminal Procedure Code, Pretrial is used to test and determine the truth and accuracy of coercive measures taken by investigators or public prosecutors in matters relating to arrest, termination of investigation and prosecution, as well as compensation and rehabilitation matters which are within the authority of the District Court to examine and decide under the procedures regulated in the Law^[6].

Pretrial is filed by suspects of criminal offenses in the District Court to test the application of the law in the process of investigation and investigation by the police handling the case. The birth of the pretrial institution was inspired by the principles stemming from the existence of the right of Habeas Corpus in the Anglo-Saxon judicial system, which provides a fundamental guarantee of human rights, especially the right to freedom. Habeas Corpus gives the right to a person through a Court Order to demand that the Officials who implement the formal criminal law do not violate the law or implement the formal criminal law is legitimate under applicable legal provisions, this is to ensure that the deprivation or restriction of freedom against a suspect or defendant has fulfilled the applicable legal provisions and guarantees of Human Rights. The existence of the pretrial institution as regulated in the Criminal Procedure Code is clearly and explicitly intended as a means of horizontal control or supervision to test the validity of the use of authority by law enforcement officials (Investigators and Public Prosecutors), as an effort to correct the use of authority if it is exercised arbitrarily with other purposes and objectives outside of those expressly determined in the Criminal Procedure Code^[7].

Pretrial is expressly regulated in Article 1 Item 10 of the Criminal Procedure Code which states that Pretrial is the authority of the District Court to examine and decide under the method regulated in this Law, regarding:

- Whether or not an arrest and/or detention is valid at the request of the suspect or his/her family or other parties on behalf of the suspect.
- Whether or not a cessation of investigation or cessation of prosecution is valid at the request of the upholding of law and justice.
- Request for compensation or rehabilitation by the suspect or his family or other parties by his power of attorney whose case is not submitted to the court.

Article 77 of the Criminal Procedure Code states that the District Court is authorized to examine and decide, under the provisions set out in this Law on^[8]:

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

In addition to being regulated in detail in the Criminal Procedure Code, the Constitutional Court in Decision No. 21/PUU-XII/2014 affirmed that pretrial authority also extends to the determination of suspects, searches, and seizures. The Constitutional Court Decision No. 102/PUU-XIII/2015 states that the pre-trial petition is dismissed after the case file is sent and the main hearing begins. The cancellation of pretrial examination occurs when the case has been examined by the District Court, and when the case is examined by the District Court, the pretrial examination has not been completed. Pretrial applications are filed by suspects as defendants, while the only officials who can become respondents in pretrial regarding the legality of detention are investigators and public prosecutors, as the operation of the pretrial institution is at the stage before the submission of case files by the Public Prosecutor's Office to the District Court. In this case, the Judge cannot be the Respondent regarding the validity of detention in the

Pretrial, because the detention carried out by the Judge is at the time of the main examination of the case, which means that the detention carried out by the Judge is already at the judicial stage on the agenda of the main examination of the case, so the Pretrial institution is no longer authorized. Pretrial, apart from being filed by the suspect, can also be filed by the following ^[9]:

- The suspect, his/her family, or his/her attorney (Legal Counsel) regarding the validity of the arrest, detention, seizure, and search.
- The suspect, his/her family, or his/her proxy (Legal Counsel) regarding unlawful arrest or detention, search, or seizure without a valid reason, due to a mistake regarding the person or the law applied, whose case is not submitted to the court session.
- Public Prosecutors and interested third parties regarding the validity or otherwise of the termination of an investigation.
- Investigators or interested third parties regarding the termination of prosecution.
- Suspects or interested third parties claiming compensation regarding the validity of the termination of investigation or the validity of the termination of prosecution.

The pretrial mechanism is generally regulated by the Criminal Procedure Code and can be further explained as follows ^[10]:

- A request for examination on the validity or otherwise of an arrest or detention is submitted by the suspect, his/her family, or proxy to the President of the District Court by stating the reasons:
- A request to examine the validity or otherwise of termination of investigation or prosecution may be submitted by the investigator or the Public Prosecutor or any interested third party, including victim witnesses or complainants, non-governmental organizations, or community organizations to the President of the District Court by stating the reasons.
- A request for compensation and/or rehabilitation due to the illegality of arrest or detention or the illegality of termination of investigation or prosecution shall be submitted by the suspect or interested third party to the President of the District Court by stating the reasons.
- Pretrial hearing shall be presided over by a single Judge appointed by the President of the District Court and assisted by a court clerk.
- Within 3 (Three) days after receipt of the request, the appointed Judge shall set a hearing day.
- In examining and deciding on the validity or invalidity of arrest or detention, validity or invalidity of termination of investigation or prosecution, request for compensation and/or rehabilitation due to invalidity of arrest or detention, validity or termination of investigation or prosecution and confiscated objects that are not included as evidentiary tools, the Judge shall hear testimony from both the suspect or defendant and the authorized official.
- The examination shall be conducted expeditiously and no later than 7 (Seven) days after the Judge has rendered his/her decision.
- If a case has begun to be examined by the District Court, while the examination regarding the request for Pretrial has not been completed, then the request shall

be waived, the phrase a case has begun shall be interpreted to mean that the Pretrial request shall be waived when the subject matter of the case has been submitted and the first hearing has commenced on the subject matter on behalf of the Pretrial Suspect or Defendant.

- Pretrial verdict at the investigation level does not preclude the possibility of holding another pretrial examination at the examination level by the Public Prosecutor if a new request is submitted.
- If the Court Decision determines that an arrest or detention is illegal, the investigator or public prosecutor at the respective level of examination shall immediately release the suspect.
- If the Court Decision determines that the termination of the investigation or prosecution is invalid, the investigation or prosecution of the Suspect shall be continued.
- If the Court Decision determines that an arrest or detention is invalid, the decision shall state the amount of compensation and rehabilitation provided, while if termination of investigation or prosecution is valid and the Suspect is not detained, the decision shall state the rehabilitation.
- If the Court Decision determines that the seized object is not an evidentiary tool, the decision shall state that the object shall be immediately returned to the suspect or from whom it was confiscated.

Pretrial cases are examined and decided by District Court judges at the latest within 7 (Seven) days, thus Pretrial is a short stage of judicial proceedings, therefore it requires accuracy and objectivity that upholds the essence of justice of the Judge in making a decision. Pretrial cases filed by suspects or defendants that have been decided by the District Court Judge who hears about the determination of the legality or illegality of arrest or detention, compensation, and rehabilitation decisions cannot be appealed. An appealable pretrial decision is a decision that determines the illegality of the termination of investigation or prosecution so that the court that decides the appeal acts as a court that examines and decides at the final level ^[11].

In its development, pretrial cases are no longer only filed by suspects, but there are often pretrial cases filed by suspects who are on the wanted list (DPO). Therefore, to limit and fill the legal vacuum, the Supreme Court issued a product in the form of Supreme Court Circular Letter Number 1 Year 2018 on the Prohibition of Pre-Trial Proceedings for Suspects Who Have Absconded or Are on a Wanted Person List (DPO) issued on 23 March 2018. Supreme Court Circular Letter Number 1 Year 2018 regulates three main contents, namely:

- Suspects who are absconding or on the wanted list cannot file a pretrial motion.
- If the Pretrial is still filed by the legal counsel or his/her family, the judge may issue an unacceptable decision (Niet Ontvankelijk Verklaard).
- Third, no legal appeal can be filed against the decision.

The Supreme Court Circular Letter was formed based on the provisions of Article 12 Paragraph 3 of Law Number 1 of 1950 concerning the Structure, Powers, and Courts of the Supreme Court of Indonesia which states that "The conduct of the actions (work) of these courts and the Judges in these

courts are carefully supervised by the Supreme Court. In the interests of the ministry, the Supreme Court has the right to give warnings, warnings, and instructions deemed necessary and useful to these courts and Judges, either by separate letter or by circular letter". This Circular Letter of the Supreme Court was issued against the backdrop of the increasing tendency of pretrial motions to be filed by suspects in the status of a wanted list, where currently there is no legislative regulation that regulates it. In addition, Supreme Court Circular Letter Number 1 Year 2018 also aims to provide legal certainty in the pretrial process for suspects with the status of the wanted list.

Human Rights Perspective in the Application of Pre-Trial Restrictions for Suspects with Wanted Person List Status

Human rights are God-given rights, so they are inherent, natural and universal. Human rights are not granted by other humans, the State, or the law, because these rights are related to human existence. Thus, differences in gender, race, religion or skin color will not affect differences in human rights. Based on Article 1 Point 1 of Law Number 39 of 1999 concerning Human Rights which states that "Human Rights are a set of rights inherent in the nature and existence of man as a creature of God Almighty and is His gift that must be respected, upheld and protected by the state, law, Government, and everyone for the sake of honor and protection of human dignity". According to Soetandyo Wignjosebroto, human rights are fundamental rights that are universally recognized as rights inherent in humans because of their nature as humans. Human rights are called universal because these rights are stated as part of the humanity of every human being, regardless of skin color, gender, age, cultural background, religion, or belief. While inherent because this right is owned by every human being because of their existence as human beings, not a gift from any power. Because they are inherent, human rights cannot be taken away. According to Muladi, Human Rights are rights that are inherent in human beings from the moment they are born, and without these rights, humans cannot grow and develop as complete human beings. Because the existence of human rights is so important, without human rights humans cannot develop their talents and fulfill their needs. (12)

Human rights are attached to everyone, including people suspected of committing a criminal offense (Suspects) who should get the protection of their rights as human beings. In general, the Criminal Procedure Code has explained that suspects and defendants are entitled to many things as follows:

- Receive an explanation of what is alleged against him to prepare a defense, the suspect is entitled to be informed clearly in a language that he understands about what is alleged or charged to him so that the suspect or defendant can prepare the necessary defense, for example for the suspect, determine whether or not to seek legal assistance for the defense.
- Provide information freely to the Investigator or Judge.
- Receive an interpreter.
- Receive legal assistance from one or more Legal Advisors and choose his/her own Legal Advisor.
- Claim for compensation and rehabilitation, namely compensation if arrested, or detained without reasons based on law or because of errors regarding the person

or the law applied, and rehabilitation if the court is acquitted or released from all legal charges whose decision has permanent legal force.

- No burden of proof

In addition to these general rights, specifically based on the processes in criminal procedure law, the Suspect or Defendant also has rights in every legal process both in the process of arrest, detention, and search, up to the court level. In the process of arrest, the suspect or defendant has the right to^[13]:

- Not be arrested arbitrarily, arrest orders cannot be carried out arbitrarily but are aimed at those who are strongly suspected of committing a criminal offense based on sufficient preliminary evidence.
- To be arrested by those who are legally authorized to make arrests, i.e. only police officers are authorized to make arrests, by showing a letter of assignment and providing an arrest warrant stating the identity of the suspect, the reason for the arrest, a brief description of the alleged crime, and the place where he/she will be examined.
- Ask the officer to show the duty letter and provide an arrest warrant, except if caught red-handed, then the arrest is carried out without a warrant, the person arrested has the right to examine the contents of the warrant, such as the correctness of the identity listed, the reason for the arrest, a brief description of the alleged crime, and the place to be examined.
- The family of the arrested person has the right to receive a copy of the arrest warrant immediately and not later than 7 (Seven) days after the arrest is made.
- The suspect or accused person must be immediately examined by the investigator and can then be submitted to the public prosecutor.
- The suspect or accused must be released after the maximum limit of arrest, which is one day.

During the detention process, the suspect or defendant has the right to^[14]:

- Receive a detention order or judge's decision that states the identity of the suspect or defendant, the reason for detention, a brief description of the case suspected or charged, and the place where he/she is detained.
- Be notified of his/her detention to his/her family or people who live in the same house with the Suspect or Defendant, or other people needed by the Suspect or Defendant to obtain legal assistance or guarantees for his/her suspension, the family of the detained person is entitled to receive a copy of the detention order or continued detention or the judge's determination.
- Contact and receive visits from family or other parties to obtain guarantees for the suspension of detention or efforts to obtain legal assistance.
- Contact legal counsel.
- Contact and receive visits from relatives in matters unrelated to the case, for work or family purposes, either directly or through the intermediary of his/her legal counsel.
- Contact and receive visits from clergy.
- Contact and receive visits from his/her doctor for health purposes, whether or not related to the case process.
- Sending and receiving letters from legal counsel and relatives.

- Request suspension of detention with or without bail in money or person, based on specified conditions, such as mandatory reporting, and not leaving the house or city.
- Request compensation for unlawful detention or extension of detention.

In the search process, the suspect or defendant is entitled to a search conducted under the law, including ^[15]:

- Carried out based on a license from the head of the District Court, except in cases of extreme necessity and urgency.
- In entering the house, the investigator must be witnessed by 2 (two) witnesses, if the suspect or defendant agrees, if the suspect or occupant refuses or is absent, it must be witnessed by the village head or neighborhood head with 2 (two) witnesses.
- The owner or occupant of the house shall obtain a copy of the minutes of the search within 2 (two) days after the investigator has entered or searched the house.

At the court level, the suspect or defendant is entitled to:

- Immediately filed and tried by the court.
- To prepare a defense, the Defendant is entitled to be informed clearly in a language that he understands about what he is charged with, the court provides an interpreter for Defendants of foreign nationality or who cannot master the Indonesian language.
- To be tried in a court session that is open to the public.
- Give testimony freely to the judge.
- Receive legal assistance from one or more legal counsels and choose his/her legal counsel.
- File an appeal against a judgment of first instance, except against acquittal, acquittal from all charges concerning the inaccurate application of the law, and judgment in a speedy trial.
- File a cassation.

The Criminal Procedure Code has detailed and regulated the rights of suspects that must be obtained. However, there is an exception to the protection of these rights for suspects who are on the wanted list (DPO) due to the issuance of Supreme Court Circular Letter Number 1 Year 2018 which is considered a step to close the legal loophole of pretrial submission by suspects on the wanted list (DPO) which is not free from pros and cons. The Supreme Court Circular Letter will limit and reduce human rights to get access to justice. Furthermore, in legal practice and the provisions of the Criminal Procedure Code, there is no obligation for a person who files a pretrial to be present at the trial. Based on Article 79 of the Criminal Procedure Code, the right to file a Pre-Trial does not only lie with the suspect but also with the suspect's family or attorney. The enactment of the Supreme Court Circular Letter indirectly contradicts Article 79 of the Criminal Procedure Code because the Criminal Procedure Code itself does not contain a sentence prohibiting the attorney of a suspect who has fled or is on the wanted list. When referring to the theory of Legislation, where lower regulations must not contradict higher regulations, the existence of Supreme Court Circular Letter Number 1 Year 2018 should be a threat to legal certainty. (16)

The implementation of fair law enforcement must reflect the protection of the rights of suspects and defendants, or in other words in achieving a fair legal process (Due Process Of Law). According to M. Yahya Harahap in his book

"Discussion of Problems and Application of KUHAP," argues that based on the ten principles in the KUHAP, it can be said that KUHAP adheres to the principle of due process of law where a fair legal process for suspects is the right of a suspect and defendant to be heard about how the crime occurred. In the examination against him, he has the right to be accompanied by legal counsel, to submit a defence. Meanwhile, the public prosecutor must prove his guilt before a free and impartial court. Criminal justice must also reflect the protection of the rights of suspects and defendants as a requirement for the implementation of a fair legal process, including suspects who are on the wanted list (DPO). Referring to the second principle of Pancasila, just and civilized humanity is a noble character reflected in human attitudes and actions that are under human nature, nature, and dignity. The human potential is owned by humans, without exception, they must be treated under human values, under their nature, as noble creatures of God. Just and civilized humanity in the implementation of human rights and obligations and commitment to law enforcement, a suspect as a human being must be treated under human values. In this case, the dignity of a suspect with all his human rights and obligations must be recognized and respected. In addition, a suspect as a human being must also be treated fairly in the field of law concerning the rules on the object of the pretrial lawsuit, it must also reflect the humanitarian values referred to in the second principle of Pancasila.

Conclusion

The rules on the object of pretrial claims in the Criminal Procedure Code are not under Pancasila and the 1945 Constitution of the Republic of Indonesia, then it is necessary to adjust them to create a rule that provides legal protection to everyone involved in the criminal process, especially in the preliminary examination before the main examination in court, as well as the creation of fair legal certainty. The adjustment of the rules on the object of the pretrial lawsuit in the Criminal Procedure Code with Pancasila is an effort to synchronize the laws vertically. With such rules, every action taken by law enforcement officers in the preliminary examination before the main trial, either as a coercive measure or as a potential coercive measure such as the determination of the status of the Wanted List on a suspect, which is not carried out based on the applicable law, can be tested for validity through the Pretrial Institution.

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