

PalArch's Journal of Archaeology  
of Egypt / Egyptology

THE PRETRIAL OBJECTS OF POSTJUDGMENT CONSTITUTIONAL  
COURT NUMBER 21/PUU-XII/2014

*Afif Faishal<sup>1</sup>, Didik Endro Purwoleksono<sup>2</sup>*

<sup>1</sup>Department of Criminal Law, Faculty of Law, Universitas Airlangga

\*Corresponding author: <sup>2</sup>didik.endro@fh.unair.ac.id

**Afif Faishal, Didik Endro Purwoleksono. The Pretrial Objects Of Postjudgment Constitutional Court Number 21/Puu-Xii/2014-- Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 2063-2070. ISSN 1567-214x**

**Keywords: Coercive Act, Pretrial, Constitutional Court, Determination Of The Suspect**

## ABSTRACT

**Introduction:** Pretrial resolution efforts can be decided primarily by judges, who make the settlement stage is mandatory in the final case, as in mandatory mediation procedures. The coercive act is a form of authority possessed by the investigator or the general prosecutor to reduce the suspects' human rights, obviously based on the authorization by the Law, which refers to the Indonesian Criminal Procedure Code.

**Objective:** This study aims to examine the pretrial object renewal of post-judgment and analyze the consideration of the Constitutional Court Judge Number 21/PUU-XII/2014.

**Method:** This study employed normative qualitative, by utilizing 3 (three) methods of approach, i.e., The Statute Approach, Conceptual Approach, Case Approach in the preparation of this thesis were related to the Constitutional Court Decision Number 21/PUU-XII/2014.

**Results:** The study results revealed that the right to reduce the suspects' human rights, Indonesian criminal law procedures created a platform to control the coercive act by establishing pretrial institutions. However, in its implementation, this pretrial institution merely functions administratively, without reducing the evidence like the realm of the subject matter. There is a request for a Judicial Review of the Indonesian Criminal Procedure Code with the 1945 Constitution of the Republic of Indonesia concerning the pretrial objects.

**Conclusion:** In the decision Number 21/PUU-XII/2014, the validity of the search, confiscation, arrest, detention, cessation of investigation, termination of prosecution, and determination of suspects, as well as the compensation or rehabilitation for someone whose criminal case is terminated at the level of investigation or prosecution.

## INTRODUCTION

In the event that an individual commits a crime, then that person shall be faced with State law, i.e., criminal law, the scope of criminal law, consisting of substantive criminal law (material) and criminal procedure law (formal). Criminal procedure law functions to exercise the substantive criminal law (material), so it is called as formal criminal law or criminal procedure law (Hamza, 2001).

According to Moeljatno, criminal procedure law is a part of the entire applicable law in a country. Furthermore, criminal procedure law provides the basics and rules that determine in what manner and procedure the threat of criminal act punishment can be carried out if there is a suspicion that an individual has committed the offence (Purwoleksono, 2014).

Criminal Procedure Law in Indonesia also adheres to the principles in the process before the trial is conducted until the final decision, which is implicitly contained in the norms as stated in the Indonesian Criminal Procedure Code, including fast, simple and low-cost trials, presumption of innocence, legality and opportunity, the openness of a judicial process, the suspect/defendant is entitled to legal assistance (Hamza, 2001), judges' direct and oral examination, the principle of detention restriction (Simanjuntak, 2009), the unification principle, the principle of right to remain silent, and the principle of equal before the law (Mulyadi, 2014).

One of the Indonesian Criminal Procedure Code representations in guaranteeing the suspects' rights is by providing a form of pretrial legal remedies. According to R. Soeparmono, the purposes of pretrial institutions are for the sake of law enforcement, legal certainty, and the suspects' right protection (Soeparmono, 2003). Besides, M. Yahya Harahap stated that the pretrial purpose is to perform the horizontal supervision of coercive act imposed on the suspect while he is under investigation or prosecution. Thus, the acts did not indeed contradict the provisions of law and the laws (Harahap, 2000).

Meanwhile, according to another study, the pretrial is defined as the court process before the subject matter of the case is heard. The subject matter is the case material, while in pretrial, the court process only examines the process of investigation and prosecution, not merely concerning the subject matter. Hence, the subject matter is the case material, for example, in the corruption case, so the subject matter is the corruption case (Hartono, 2010). Basically, according to three aforementioned legal experts, pretrial serve the supervision interests of the suspects' right protection.

The efforts of pretrial settlement can be selected primarily by law or by a judge, which makes the settlement stage is mandatory in the final case, as referred in

mandatory mediation procedures (Lambert, 2019). The object under pre-trial authority based on the Indonesian Criminal Procedure Code is not beyond the formal examination pertaining to the validity of the arrest, detention, cessation of investigation and prosecution, as well as request for compensation or rehabilitation submitted by the suspect, suspect's family, legal counsel of the suspect, investigator, public prosecutor or third party.

The decision of the Constitutional Court Number 21\_PUU\_XII\_2014 submitted by Bachtiar Abdul Fatah on February 17, 2014, hereinafter referred to as the applicant, the applicant believed that his constitutional rights based on Article 1 paragraph (3), Article 28D paragraph (1), and Article 28I paragraph (5) of the 1945 Constitution of the Republic of Indonesia contradicts Article 1 number 2, Article 1 number 14, Article 17, Article 21 paragraph (1), Article 77 letter a and Article 156 paragraph (2) of the Indonesian Criminal Procedure Code, and in the injunction by the Constitutional Court Judge that provides the legal certainty of the preliminary evidence interpretation in the event that a person is determined to be a criminal. In addition, the injunction by the Constitutional Court Judge provides additional norms in Article 77 letter a of the Indonesian Criminal Procedure Code concerning the object of pretrial institution authority.

One of the Indonesian Criminal Procedure Code representations in guaranteeing the suspects' rights is by providing a form of pretrial legal remedies. The pretrial purpose is stated, "the purpose of establishing a pre-trial institution is to uphold the law, legal certainty, and suspects' rights protection" (Soeparmono, 2003). Additionally, "the purpose of the pretrial is to perform the horizontal supervision of the coercive act imposed on the suspect while he is under investigation or prosecution. Thus, the action does not indeed contradict the provisions of law and the laws (Harahap, 2000). This study aims to examine the pretrial object renewal of post-judgment and analyze the consideration of the Constitutional Court Judge Number 21/PUU-XII/2014.

## **LITERATURE REVIEW**

### ***Pre-trial Authority According to the Indonesian Criminal Procedure Code***

The purpose of holding a pretrial institution in the law enforcement sector of this country is to strengthen the supervision of criminal case preliminary investigations, particularly the examinations at the level of investigation and prosecution in accordance with Article 77 of the Indonesian Criminal Procedure Code (Simanjuntak, 2009). However, the problem that frequently occurs in the investigation level is not only pertaining to the administrative matters but also concerning the suspects' human rights, in which the suspect recurrently experiences the physical or psychological torture/pressure. If it is reconnected with the main objective of a pretrial institution providing the suspects' right protection, the control efforts are required. According to Didik Endro Purwoleksono, the pretrial functions as a vertical and horizontal control. Pre-trial functions include vertical control,

extern vertical control, internal vertical control. Horizontal control includes arrest, detention, confiscation, letter examination, summons (Purwoleksono, 2014).

In case that the authority possessed by the investigator who exercises his authority in the form of a coercive act, the acts are required to be limited. Thus, the investigator and the public prosecutor are not arbitrary in seeking the truth of a particular case. The Indonesian Criminal Procedure Code regulates signs that restrict law enforcement officials not to act arbitrarily in the implementation of the "Coercive act," in the form of the deprivation of liberty from someone, including arrest, detention, search, confiscation, letter checking, and summons (Harahap, 2000).

To exercise the law enforcement, the investigators and public prosecutors authorized by the laws conduct the coercive act. A coercive act is a reduction and limitation of the human rights and the suspects' independence, and the coercive act shall be conducted responsibly according to the provisions of applicable law and the laws (due to process of law) (Harahap, 2000). In carrying out the mandate of the "right and special authority," investigators or public prosecutors must obey and subject to the principle of the right of due process. It implies that each suspect has the right to be investigated and inquired on the basis of "in accordance with procedural law," while the undue process is not allowed (Harahap, 2000).

The Pretrial Single Judge of South Jakarta District Court, in the Decision Number 04/Pid.Prap/2015/PN.Jak-Sel stipulated the BG pre-trial petition related to the suspect's determination by the Corruption Eradication Commission was invalid. This case becomes ambiguous when the object that has not been regulated in the Indonesian Criminal Procedure Code becomes a verdict by a pre-trial judge, whereby Pre-trial pursuant to Article 77 letter of the Indonesian Criminal Procedure Code stated that the legality of arrest, detention, cessation of investigation or prosecution; compensation, and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

That issue became a problem at that time, and along with the decision, the possibility of a person who had been designated as a suspect would make a pretrial petition to the authorized District Court due to the decision was higher. However, not long after the Constitutional Court ruled on the petition for judicial review, which was submitted by Bachtiar Abdul Fatah on February 17, 2014, hereinafter referred to as the petitioner, the petitioner believed that his constitutional rights based on Article 1 paragraph (3), Article 28D paragraph (1) and Article 28I paragraph (5) The 1945 Constitution of the Republic of Indonesia contradict Article 1 number 2, Article 1 number 14, Article 17, Article 21 paragraph (1), Article 77 letter a, and Article 156 paragraph (2) of the Indonesian Criminal Procedure Code. In the injunction of the Constitutional Court, Number 21/PUU-XII/2014 granted part of the petition filed by the petitioner by adding the norms of Article 77 letter a of the Indonesian Criminal Procedure Code is that Article 77 letter a of the Indonesian Criminal Procedure Code was considered contradicting the 1945 Constitution of the Republic of Indonesia and did not have binding legal force if

there were additional norms on the determination of suspects, confiscations, and searches that are the object of the pretrial as well.

### **METHOD**

This study employed normative qualitative, by utilizing three methods of approach, i.e., The Statute Approach, Conceptual Approach, Case Approach in the preparation of this thesis to the Constitutional Court Decision Number 21/PUU-XII/2014. This conceptual approach became essential because the understanding of the doctrine developing in the field of law can be a benchmark to structure the legal arguments when resolving legal issues at hand.

The case approach was carried out by examining the cases related to the issues at hand, which had become the court decisions with permanent legal force. This ratio decidendi indicated that the field of law is a field that is prescriptive, not descriptive (Marzuki, 2007). The implementation of the case approach in the research preparation related to the Decision of the Constitutional Court Number 21/PUU-XII/2014 that in such decision, there was a dissenting opinion in the ratio decidendi which was examined, tried, and terminated by seven Constitutional Judges.

### ***Legal Materials***

The primary law materials (1) consisted of the laws and regulations, official records, and judges' decisions. (2) Secondary legal materials utilized to assist in preparing this legal research were derived from legal books, both online and non-online legal journals, the articles and opinions of the experts, both in electronic and print media related to this legal research (Marzuki, 2007).

### ***Legal Material Analysis***

Employing the interpretative analysis aims to search the explanation of a legal event based on perspective.

### **RESULTS**

#### ***Pretrial Object According To The Constitutional Court Decision Number 21/Puu-Xii/2014.***

#### ***The "Determination of the Suspect" scope as a pretrial object.***

The scope regarding the validity of the suspect determination as an object within the pretrial, according to the authors' understanding, merely checked the aspects related to the formal objects. Thus, the examination was performed in the administrative part only. However, the term "determination of the suspect" indicated that the suspect determination phase required to be supported by sufficient preliminary evidence. Hence, the investigator was required to have at least two appropriate evidence to assign a person as a suspect.

When the determination of the suspect became a new object in a pretrial, then there were two problems, i.e., the unclear validity examination whether the determination of the suspect was valid or not, and the obscurity of the object examined in the validity examination of the determination of the suspect. The issues mentioned above were based on what had been decided by a pretrial institution, such as the case of Hadi Poernomo (Petitioner) against the Investigators of the Corruption Eradication Commission (Respondent) in the Decision with Register Number 36/Pid.Prap/2015/PN.JKT.Sel. In the pretrial verdict, the determination of the suspect was ambiguous.

Such matter is attached to the Supreme Court Regulation No.4 of 2016 concerning the prohibition of reviewing pretrial decisions in Article 2 paragraph 1, stating that the pretrial object was the validity of arrest, detention, cessation of investigation or prosecution, determination of suspects, confiscation, and search; compensation and/or rehabilitation for someone whose criminal case has been terminated at the level of investigation or prosecution. However, in terms of the suspect determination's object, as the authority of the pretrial institution, is still being debated in the legal world, concerning the mandate of the Constitutional Court Decision Number 21/PUUXII/2014.

## DISCUSSION

### ***Ratio Decidendi Of The Constitutional Court Decision Number 21/Puu-Xii/2014. The annotation of the Constitutional Court Decision, Number 21/PUU-XII/2014.***

The Constitutional Court is one of the judicial institutions, whose position is to exercise an independent judicial power to hold courts to uphold law and justice. The decision also states that Article 77 letter a of the Indonesian Criminal Procedure Code does not have binding legal force and contradict to the 1945 Constitution of the Republic of Indonesia if the decision is interpreted as the search and confiscation. In general, the norms of the article regulated in Article 77 letter a of the Indonesian Criminal Procedure Code do not clearly state the object of search and confiscation. On the other hand, in accordance with Article 95 paragraph (1) along with the explanation of Article 95 paragraph (1), it is stated that "losses due to other actions" are losses incurred by the unlawful entry, unlawful search and confiscation, and detention that is longer than the sentence imposed.

Accordingly, the Constitutional Court No.21/PUU-XII/2014 concerning searches or confiscations has no legal consequences on criminal procedure law in Indonesia and in the context of law enforcement, and at the request of law enforcement officials after the decision of the Constitutional Court, Number 20/PUU-XIV/2016 does not have the evidentiary power as evidence (Manshur, 2018).

### ***The legal analysis of the Constitutional Court Decision, Number 21/PUU-XII/2014.***

Based on the Constitutional Court Decision Number 21/PUU-XII/2014, there were five petitions submitted by the petitioner. Furthermore, the legal considerations by

the constitutional judge on the petitioner's request in the Constitutional Court's decision number 21/PUU-XII/2014 implied that there were opinion differences by three from seven constitutional judges who examined, heard, and decided the case. For instance, there were opinion differences as to whether the determination of the suspect is a coercive act or not. However, although the objective requirements had been met, and the law enforcement officials had no apprehension, the investigators or public prosecutors or judges might not detain suspects or defendants (Purwoleksono, 2014). The determination of the suspect should be part of the investigation stages and relate to at least two legal pieces of evidence. If the investigator had found the evidence legally, then the suspect's status could automatically be assigned to someone that was suspected of committing a crime. Thus, it could be inferred that the determination of the suspect was not a classification of coercive act.

### CONCLUSION

Overall, it can be concluded that in the object of pre-trial institutional authority in Indonesia, based on the Constitutional Court Decision Number 21/PUU-XII/2014, the validity of search, confiscation, arrest, detention, cessation of investigation, cessation of prosecution, determination of suspects, and compensation or rehabilitation for someone with criminal case are terminated at the level of investigation or prosecution. The additional pretrial objects from the Constitutional Court Decision Number 21/PUU-XII/2014 is the suspect determination.

### REFERENCES

- Chotib, Djazuli, Tri Suharno, Suardi Abubakar dan Muchlis Catio,. (2007). *Kewarganegaraan 1 Menuju Masyarakat Madani*,. Jakarta: PT. Ghalia Indonesia.
- Hamza, A. (2001). *Hukum Acara Pidana*. Jakarta: Sinar Grafika.
- Harahap, M. Y. (2000). *Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Peninjauan Kembali*. Jakarta: Sinar Grafika.
- Hartono. (2010). *Penyidikan dan Penegakan Hukum Pidana (Melalui Pendekatan Hukum Progresif)*. Jakarta: Sinar Grafika.
- Lambert, P. T. (2019). *Pretrial Settlement and Coercion: An Experiment* International Review of Law and Economics.
- Manshur, R. A. (2018). *Analysis of Electronic Evidence as an Evidence Tools in Criminal Case Post Decision of Constitutional Court Number: 20/PUU-XVI/2016*. International Journal of Multicultural and Multireligious Understanding.
- Marzuki, P. M. (2007). *Penelitian Hukum*. Jakarta: Kencana Pemuda Group.
- Mulyadi, L. (2014). *Seraut Wajah Putusan Hakim dalam Hukum Acara Pidana Indonesia (Perspektif, Teoritis, Praktik, Teknik Membuat, dan Permasalahannya)*. PT. Citra Aditya Bakti.
- Purwoleksono, D. E. (2014). *Hukum Pidana*. Surabaya: Airlangga University Press.
- simanjuntak, N. (2009). *Acara Pidana Indonesia dalam Sirkus Hukum*. Bogor: Ghalia Indonesia.

- Simanjuntak, N. (2009). *Acara Pidana Indonesia dalam Sirkus Hukum*. Bogor: Ghalia Indonesia.
- Soeparmono, R. (2003). *Praperadilan Dan Penggabungan Perkara Ganti Kerugian*. Bandung,: Mandar Maju.
- Viljoe, J. C. (2019). *Impact of Risk assessment Instrument on Rates of Pretrial Detention, Postconviction Placements, and Release: A Systematic Review and Meta-Analysis*. Law and Human Behavior.