Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

Pretrial Failures in Ensuring the Merit of Cases: Critical Analysis and Innovative Reconstruction

Erwin Susilo[1], Mohd. Din[2], Suhaimi[3], Teuku Muttaqin Mansur[4], Dharma Setiawan Negara[5]

Abstract

Determining a suspect has serious implications for human rights because it has the potential to limit human freedom through arrest and detention. However, the pre-trial mechanism which should function to test whether the suspect's determination is valid or not is often ineffective because it is formal administrative in nature, moreover strengthened by Article 2 paragraph (2) PERMA No. 4 of 2016. This research uses doctrinal legal research methods to analyze legal theories and norms governing pretrial and evidence. The aim of this research is to explain the legal basis for pretrial judges' authority to examine formal aspects, analyze the implications of their weaknesses, and determine the conceptualization of assessing material aspects in pretrial to overcome these weaknesses. This research found that the formal administrative approach was caused by the use of civil procedural law in pretrial as regulated in Article 101 of the Criminal Procedure Code and reaffirmed in Article 2 paragraphs (2) and (4) PERMA No. 4 of 2016, so that pre-trials tend to only seek formal truth and are unable to prevent prosecution based on inadequate evidence. Therefore, it is proposed to expand the authority of pre-trial judges so that they can examine the substance of the evidence used in determining a suspect, including ensuring that the determination of a suspect is not based on hearsay evidence, ensure that the determination of the suspect is not based on witnesses who cannot be sworn in, ensure that there is evidence that is decisive in determining the suspect, and ensure that the testimony of witnesses or suspects is obtained without pressure or violence. This reform is expected to strengthen the implementation of Article 28D of the 1945 Constitution and increase protection of human rights by ensuring that the determination of suspects is based on valid and reliable evidence.

Keywords: *Pretrial, Determination of the Suspect, Human Rights.*

Introduction

Before prosecution is carried out in court, investigations, investigations and pre-prosecution actions are carried out. Determining the suspect is at the investigation stage, which is found from one of the investigative actions in Article 1 point 2 of Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), namely 'finding the suspect'. Pretrial is an institution to provide guaranteed legal protection for suspects. The pretrial object is contained in Article 77 of the Criminal Procedure Code, and whether or not the suspect's determination is valid became the object of pretrial examination after the Constitutional Court (MK) added it to Article 77 letter a of the Criminal Procedure Code based on Decision Number 21/PUU-XII/2014 dated 28 April 2015.

Determining a suspect must be carried out with great care and without breaking the law, because when someone has been named a suspect, his freedom can be taken away through arrest (Article 1 number 20 of the Criminal Procedure Code) and detention (Article 1 number 21 of the Criminal Procedure Code). The presence of this pretrial, according to Indriyanto Seno Adji, is a means of control over coercive measures at the preliminary examination stage. According to Muntaha, the purpose of criminal procedural law is essentially as an element of law enforcement in criminal justice and also functions as a guard that maintains order to uphold justice, provide legal certainty, and protect human rights (HAM), especially for someone who is designated as a suspect.

In a legal state, there must be limitations on state power over individuals. Human rights protection for suspects must be regulated in the constitution and law. Pretrial exists based on the idea of monitoring

[1] Faculty of Law, Syiah Kuala University, Email: erwin.syah.kuala@gmail.com
[2] Faculty of Law, Syiah Kuala University.
[3] Faculty of Law, Syiah Kuala University.
[4] Faculty of Law, Syiah Kuala University.
[5] Universitas Sunan Giri Surabaya

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

actions carried out by law enforcement officials to prevent abuse of authority. Pretrial functions as cross-supervision between law enforcement officials (horizontal control). Based on this explanation, the purpose of pre-trial, especially testing whether or not the investigator's determination of a suspect is valid, is as a form of legal protection for the suspect. This aims to prevent investigators from abusing their authority in naming someone as a suspect.

The pre-trial judge only has the authority to carry out formal administrative testing, because the pre-trial judge has the position of examining judge and does not have the authority to carry out investigations into whether or not evidence of alleged elements of a criminal act is valid or not.investigating judge)'. According to Fachrizal Afandi, this formal administrative authority means that the pre-trial judge only reviews whether or not the documents are complete and does not review and examine material aspects. The provision that testing for determining a suspect is only formal is also confirmed in Supreme Court Regulation Number 4 of 2016 concerning Prohibition of Reviewing Pretrial Decisions (PERMA No. 4 of 2016). Article 2 paragraph (2) PERMA No. 4 of 2016 emphasizes that testing whether a suspect's determination is valid or not by a pre-trial judge only assesses formal aspects in the form of 'whether there are at least 2 (two) valid pieces of evidence and does not enter into the case material'. From this provision, there are signs that pre-trial judges do not assess material aspects. Then, pretrial evidence only has a formal aspect, which is also reaffirmed in Article 2 paragraph (4) PERMA No. 4 of 2016.

According to Rocky Marbun, this formal pre-trial authority means that when two pieces of evidence have been met, the determination of a suspect is legally valid without the need to assess 'the essence of contradiction in the purpose of determining the suspect'. According to Maskur Hidayat, pretrial authority which is only a formality is contrary to the aim of establishing the Criminal Procedure Code to protect human rights, provide justice and protect human dignity. Pretrial justice should have the authority to examine material aspects, because these aspects determine whether a person can be subjected to coercive measures. When pre-trial is only formal administrative in nature, there is no guarantee that the suspect's determination is based on quality evidence, and pre-trial cannot be an institution to ensure the suitability of a case that will be prosecuted in court and then tried by an examining judge.

Different from pre-trial, the examining judge certainly has the authority to examine material aspects. This is motivated by the evidence system according to the Criminal Procedure Code which uses a negative evidence system (negative legal evidence system). According to this theory, the proof of an act must be based on a minimum of evidence determined by law, and negatively, this minimum evidence is not yet binding on the judge. Judges are only bound when they have confidence. The negative evidence system in the Criminal Procedure Code is confirmed in Article 183 of the Criminal Procedure Code which stipulates, 'a judge may not impose a crime on a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the defendant is guilty of committing it.'

There is a dilemma if the pre-trial judge is given the authority to examine material aspects of the suspect's determination, because this is in conflict with the authority of the examining judge. However, on the other hand, if the pre-trial judge is not given the authority to examine material aspects, then the pre-trial cannot guarantee the merits of a case or function as a screening institution before a case is prosecuted. Meanwhile, according to the National Legal Development Agency (BPHN), one of the functions of criminal procedural law is to search for and discover material truth. With such pretrial conditions, a criminal case that is transferred to court has no guarantee that the case is truly worthy of being tried by a judge. The legal system should provide legal certainty that every aspect of the case is appropriate, and this is also part of the protection of human rights and the orders of the Indonesian constitution as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD RI 1945). , which confirms that "everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law."

In relation to pre-trial discussions, especially those related to whether the suspect's determination is valid or not, a literature review has been carried out and several similar studies have been found, including: Erdianto Efendi found that it was important to examine potential suspects to ensure that investigations were carried out based on principles due process of law, principle accusatory, universal principles of human

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

rights, and in accordance with what is required by the Constitutional Court Decision. Shandy Herlian Firmansyah And Achmad Miftah Farid found that there was still abuse of authority by investigators in identifying suspects. Apart from that, many suspects do not know the legal measures that can be taken to determine the suspect. Tri Purnama And Solomon found that according to Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, judges have the authority to name someone as a suspect. However, in other cases, there are no similar provisions. Bahran found that there are no provisions governing the length of time a person holds suspect status, And Josep Panggabean found that in case no. 73/Pid.Pra/2018/Pn.Mdn, the suspect's determination was canceled because the suspect's determination was carried out before the investigation warrant.

Based on the results of the literature review, there are striking differences with this research, which are stated in the three problem formulations studied. First, is the pretrial judge's basis for testing only formal aspects? Second, what are the legal implications of the pretrial judge's formal authority? Third, what is the conceptualization of assessing material aspects in determining a suspect through pretrial institutions? The aim of this research is to explain the legal basis underlying the authority of pre-trial judges in examining formal aspects, analyze the implications of these weaknesses, and examine how the conceptualization of assessing material aspects can be applied in the pre-trial process to overcome legal gaps and increase the effectiveness of legal protection for suspects. Because there are legal gaps (legal gaps) and differences with previous research, it is important to carry out research entitled 'Pretrial Failures in Ensuring the Viability of Cases: Critical Analysis and Innovative Reconstruction'.

Research Methods

The method used in this research is doctrinal legal research, which aims to create consistency and certainty in the legal system. The basis for using this research method is because this research aims to form an ideal pretrial conceptualization so that it is consistent with the meaning of its formation, as well as making it an institution that has certainty in protecting the rights of suspects in criminal justice.

Results and Discussion

The pretrial judge's basis is only to test formal aspects

Hari Sasangka said, 'in practice, pretrial hearing procedures refer to trial procedures in civil cases.' Hari Sasangka's view is in line with the opinion of Zulkarnain and Rocky Marbun, who are of the opinion that the procedural law used in pre-trial is civil procedural law, so that the objects examined in pre-trial are administrative in nature. This is because pretrial submissions are in the form of petitions and there are no clear legal norms in the Criminal Procedure Code. The pretrial follows a civil examination procedure, as confirmed by Article 101 of the Criminal Procedure Code which states, 'the provisions of the rules of civil procedural law apply to claims for compensation as long as this law does not provide otherwise.' Even though Article 101 only mentions compensation, compensation is also part of the pretrial object regulated in Article 77 letter b of the Criminal Procedure Code. Compensation can be submitted together with claims for unlawful coercion as regulated in Article 82 paragraph (3) letter c of the Criminal Procedure Code.

When referring to civil procedural law, pre-trial evidence follows the evidentiary theories that apply in civil procedural law. Theoretically, there are four main theories: First, the theory of evidence based on positive law (positive legal evidence theory), which relies on evidence established by law. Second, theory of evidence based on the judge's beliefs (intimate conviction), where the decision whether something is proven or not depends on the judge's subjective beliefs. Third, theory of evidence based on the judge's belief in logical reasons (reasoned conviction), which allows judges to decide cases with conclusions based on rules and logical reasons. Fourth, the theory of evidence based on law negatively (negative legal), which assesses evidence based on the judge's confidence and the fulfillment of the minimum evidence set by law.

Proof in civil cases uses the positive theory of evidence based on law, where in this context the judge only pays attention to the evidence that has been determined by law. For example, an authentic deed is sufficient

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

evidence to prove an argument in a lawsuit (Article 165 HIR and Article 285 RBG). The positive application of the theory of evidence based on law is based on the search for truth in civil cases, which, according to Jimly Asshiddiqie, 'in civil cases it is said that the judge only needs to find the formal truth.' Norms in civil law prioritize the discovery of formal truth (formal truth) in relation to authentic evidence and information from the parties to the case. Even though the civil legislation (BW, HIR, and RBG) does not explicitly state the term 'formal truth', this can be concluded from several articles in the HIR and RBG which regulate evidence, including Articles 162-177 HIR/282- 314 RBG and Article 178 HIR/315 RBG regarding obligations and prohibitions for judges. Dewi Rahmaningsih Nugroh and Suteki argue, 'the civil judge's decision is based on formal truth, namely the truth based on formal evidence presented at trial, thereby placing documentary evidence as the main form of evidence.'

According to M. Yahya Harahap, formal truth in civil justice means that it does not require belief to declare something proven as long as there is sufficient evidence. Furthermore, M. Yahya Harahap said, 'the parties to the case can submit evidence based on lies and falsehoods, but theoretically such facts must be accepted by the judge to protect or defend the individual rights or civil rights of the party concerned.' If it is related to pretrial, Didik Endro Purwoleksono is of the opinion that when the pretrial examination process follows the civil examination mechanism, this has two consequences: (1) the truth sought is formal truth (not material truth), which refers to Article 164 HIR, evidence. The main thing in civil proceedings is documentary evidence, and (2) pre-trial is basically related to procedural matters, namely regarding the requirements for the application of coercive measures (search, confiscation, arrest and detention). Thus, it is possible that a coercive attempt was made before the warrant was issued and a new warrant was made after the coercive attempt was made. In order for the warrant to be valid, it is often backdated. According to Didik Endro Purwoleksono, 'materially, the warrant is invalid, but formally the letter is valid, so pretrial applications often fail.'

The confirmation that pretrial examinations only assess formal aspects is also contained in Article 2 paragraph (2) PERMA No. 4 of 2016 which stipulates, 'the pretrial examination of the application regarding the invalidity of the suspect's determination only assesses the formal aspect, namely whether there are at least 2 (two) valid pieces of evidence and does not enter into the material of the case,' and Article 2 paragraph (4) PERMA No. . 4 of 2016 which stipulates, 'the trial of pre-trial cases regarding the illegality of suspect identification, confiscation and searches is presided over by a single judge because the nature of the examination is relatively short and the evidence only examines formal aspects.' Thus, the pre-trial judge only examines formal aspects based on Article 101 of the Criminal Procedure Code which states that examinations follow civil procedures, and the civil procedural law itself only examines formal aspects. The formal aspect testing is then reaffirmed by Article 2 paragraphs (2) and (4) of Perma No. 4 of 2016.

Pretrial Failure in Testing the Merit of the Case

Through the above construction, the formal aspects assessed by the pre-trial judge are based on pre-trial evidence which refers to civil procedural law in finding the formal truth. In this case, the pre-trial judge assesses the evidence using the way a civil judge thinks. Evidence in civil cases consists of 'letters, witnesses, allegations, confessions and oaths' (Article 164 HIR and Article 284 RBG). Fulfilling the minimum civil evidence does not need to be based on 'two pieces of evidence' like criminal evidence. For example, in the assessment of authentic deeds, according to M. Yahya Harahap, authentic deeds meet the minimum proof without the need for the assistance of other evidence, so that authentic deeds have 'perfect and binding' evidentiary power'. Supreme Court Decision Number 858 K/Sip/1971 dated 27 October 1971 contains the legal rule that 'with an admission from the defendant in his answer at the court hearing, the plaintiff no longer needs to be burdened with the obligation to prove the arguments of his claim so that the claim can be granted by the judge. based on the evidence of the defendant's confession.' Based on this decision, the fulfillment of the minimum proof is only based on one piece of evidence, namely 'the defendant's confession.' This shows that in civil procedural law, a confession from one of the parties can be sufficient to fulfill the evidentiary requirements without the need for other additional evidence. On the other hand, in the context of criminal evidence, the defendant's statement alone is not sufficient to prove that the criminal act charged by the public prosecutor actually occurred. The defendant's statement needs to be supported by other valid evidence in accordance with the provisions of the law.

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

If it is related to the assessment of formal aspects by the pre-trial judge and refers to PERMA No. 4 of 2016, it can be concluded that the pre-trial judge must follow the applicable formal provisions and declare the suspect's determination valid if there is a letter relating to the suspect's determination and the minimum quantity of evidence stipulated has been met. This means that the pre-trial judge does not need to use personal beliefs to doubt material aspects of the existing evidence. In pretrial, the main focus is on administrative completeness and fulfillment of formal requirements, which include verification that the procedure for determining a suspect has been carried out in accordance with applicable legal provisions.

If the test for determining a suspect is only based on formal requirements, this means that violence and threats of violence before or when a witness or suspect gives information during an investigation do not constitute pretrial authority. Because this is not a pre-trial authority, it is possible for cases to be transferred to court based on low-quality evidence, especially witness or suspect statements obtained through threats of violence or violence. This condition can be clearly observed from the following table:

Table 1. Phenomenon of Violence or Threats of Violence in Preliminary Examinations

Qualification	Summary
The Risman-Rostin thing	Risman and Rostin, farmers in Gorontalo, were sentenced to 3 years in prison on charges of murdering their stepson, Alta Lakoro. However, this case resurfaced in 2007 when Alta appeared alive. They were forced to confess to the murder under police torture, which left Risman permanently disabled.
The results of LBH Jakarta's research revealed that there was violence in the handling of cases by the Police in the jurisdiction of Jakarta and its surroundings in 2007-2008.	LBH Jakarta conducted research on the handling of police cases from 2007 to early 2008 in the jurisdiction of Jakarta and its surroundings, finding that 100% of respondents aged 11-17 years experienced violence. Respondents aged 18-25 years (98.24%), 26-35 years (94.02%), 36-45 years (95.45%), and 46-58 years (85.71%) also experienced violence.
The results of LBH Jakarta's research revealed that there was violence in the handling of cases by the Police in 2013-2016.	Research by LBH Jakarta revealed a number of cases of violence by the police in the Jakarta area and its surroundings. In 2013, several cases were recorded, such as Novi Agus Sunariyanto who was beaten by the East Jakarta Police, "NRS" was tortured by the Pamulang Police, and M. Eki Sugiana was shot in the leg by the Cisoka Police. In 2014, Kuswanto was beaten and burned by the Kudus Police, while Ahmad Fauzi and Andi Suparman were tortured by the Central Jakarta Police. In 2015, Iwan Ridwan was beaten until he was bruised by the Jatinegara Police, and Ismail was tortured for three days by the South Jakarta Police. In 2016, Agus Hertanto was beaten by the Kebon Jeruk Police in a case of wrongful arrest, while Asep Sunandar was shot dead by the Cianjur Police (*extra judicial killing*). Children with the initials "S" and "L" experienced torture and violations of their rights during an examination by Polda Metro Jaya.

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

.

Source: Researcher's Elaboration from Various Sources

Table 1 shows the phenomenon of violence or threats of violence when someone is confronted by 'personnel officers', and sadly pretrial cannot prevent this violence so that the quality of the evidence in cases submitted to court is not guaranteed. In addition to the phenomena in Table 1, a real example of this problem can be found in the case of the "Chipulir Buskers," which consists of two cases, which illustrate how illegal evidence collection practices can affect the outcome of a trial.

First, in the case involving Defendant Andro Supriyanto and Defendant Nurdin Prianto, they were charged with committing the crime of murder together and beating which resulted in death. During the trial, a number of witnesses, such as Fikri Pribadi, Bagus Firdaus, Fatahillah, and Arga Putra, revealed that they had experienced violence or threats of violence before giving their statements. For example, Witness Fikri Pribadi reported that he was tortured by police officers before giving a statement. Defendant Andro Supriyanto also stated that he experienced torture at the POLDA, including beatings and electric shocks, to force him to confess. Despite the reported violence, the Panel of Judges in their initial decision still decided that the defendants were proven guilty and sentenced each to seven years in prison. However, this verdict was later overturned on appeal and cassation, with the panel of judges ultimately acquitting the defendants after finding that they were not proven guilty. The appeal and cassation decisions show that there was an error in the initial assessment, where evidence obtained through violence should not have been used to determine the defendant's guilt.

Second, in the case involving Fikri Pribadi, Bagus Firdaus, Fatahillah, and Arga Putra, the panel of judges initially decided that they were guilty of committing the crime of murder together and sentenced them to prison. Although this decision was upheld at the appeal and cassation levels, this case was later submitted for reconsideration. In the review, the panel of judges finally acquitted the defendants with one of the considerations which basically considered "the request for review was granted because the defendant's statement in the Investigation Report (BAP) had been withdrawn at trial, considering that they were under intimidation and torture without assistance. law. The defendants are still children and there are no credible witnesses to support the charges. "Apart from that, in a separate case, the defendant was declared not proven guilty and it was discovered that the real perpetrator was Iyan Pribadi alias IP along with Brengos and Jubai, with a different motive than those charged." These two cases show the importance of assessing the material aspects of evidence at the preliminary examination stage, however, pretrials which are formal administrative in nature are unable to prevent cases that are not suitable for trial.

Weaknesses in the pretrial system can have a significant impact on human rights protection. The inability to thoroughly assess material aspects and focus only on formal aspects can lead to the use of evidence obtained in ways that violate human rights, such as torture or intimidation. This not only threatens justice in every case, but also has the potential to violate fundamental human rights principles. To overcome this weakness, serious efforts are needed to formulate a more comprehensive conceptualization in the pretrial system. This approach must include procedural reviews and improvements to ensure that the entire pretrial process not only pays attention to formal compliance but also considers the substance and validity of the evidence as a whole. In this way, human rights protection can be enforced more effectively, as well as increasing the integrity and credibility of the criminal justice system as a whole.

Conceptualization of the Assessment of Material Aspects in Determining Suspects Through Pretrial Institutions

Article 1 point 11 of the Criminal Procedure Code stipulates that a judge in a criminal case can issue a "conviction decision, acquittal decision, or a decision to release all legal charges." A criminal decision is imposed if the defendant is legally and convincingly proven guilty of committing the crime charged, based on at least two pieces of evidence and the judge's belief (Article 183 of the Criminal Procedure Code). Meanwhile, the acquittal (acquittal) is defined as a decision where the charges are not proven because there is insufficient evidence or the evidence presented does not meet the requirements to prove the charges. Judgment free from all legal demands (dismissal from prosecution) is simply defined as a situation where

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

the act charged is proven, but there are justification or excuse reasons which cause the defendant not to be punished.

The conceptualization of testing material aspects by pre-trial judges is not intended to take over the authority of the main case judge in determining whether someone is proven guilty or not. Determining whether the charges are proven or not, as well as whether the defendant is guilty or not, is entirely the authority of the judge who examines the subject matter of the case. So that there is no tension or clash of authority between the pre-trial judge and the main case judge in assessing the material aspects of evidence, clarity is needed in the conceptualization of the testing of material aspects by the pre-trial judge. This aims to avoid bias and ensure that each stage of the legal process runs according to its respective authority.

Article 2 paragraph (2) PERMA No. 4 of 2016 determines that one of the bases for determining a suspect is the presence of a minimum of two pieces of evidence. However, if the evidence is only in the form of witnesses who provide information based on hearsay evidence or information from other people, then the determination of the suspect is invalid. In this context, pretrial authorities need to be given the authority to assess whether the evidence used as a basis for determining a suspect is valid hearsay evidence or not. Hearsay evidence is testimony or information obtained from other people, not from eyewitnesses who directly experienced the event.

Article 1 number 26 of the RKUHAP defines "a witness as a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he himself heard, saw for himself and experienced for himself." This article was then carried out judicial review to the Constitutional Court (MK), and based on Decision Number 65/PUU-VIII/2010 dated August 8 2011, hearsay evidence categorized as evidence. However, it should be remembered that according to the Constitutional Court Decision, hearsay evidence cannot be used as a basis for identifying suspects or proving charges. Hearsay evidence functions more as a means for suspects or defendants to present alibi witnesses or mitigating witnesses.

According to Suhaimi, in criminal justice, "...witness testimony also determines the future of the defendant, whether the defendant will be punished or acquitted." Witness testimony in criminal justice plays a crucial role because it can determine whether a defendant will be convicted or acquitted. Therefore, if someone is named a suspect only based on evidence hearsay evidence, which is information obtained from other people and not the result of direct observation, then the judicial process is not suitable to proceed to the prosecution stage. Hearsay evidence often do not meet the required minimum standards of proof. If hearsay evidence is released and the remaining evidence is sufficient to meet the evidentiary standards, then the case can still proceed to prosecution. However, if hearsay evidence is the only evidence and there is no other evidence that meets the standards, then the case must be dismissed. This is important to ensure that the rights of the accused are protected and justice is guaranteed, preventing unfounded judicial processes and ensuring that only cases that truly have appropriate evidence are passed to the next stage.

In cases such as the Cipulir Buskers, where the statements of witnesses or suspects are obtained under pressure, threats or violence during the investigation, the role of the pre-trial judge becomes very crucial. The pretrial judge must carefully assess whether the suspect's determination is based on information obtained in an illegal or illegal manner. This is important to ensure the integrity of the legal process and protect the rights of witnesses and suspects. According to the Criminal Procedure Code, there is clear protection for the rights of witnesses and suspects to provide information freely and without pressure. Article 52 of the Criminal Procedure Code stipulates that suspects have the right to provide information freely and the explanation of Article 52 of the Criminal Procedure Code further emphasizes that during examination, suspects must be protected from coercion or pressure.

Apart from that, Article 117 paragraph (1) of the Criminal Procedure Code states that statements from suspects and witnesses to investigators must be given without pressure from any party and in any form. In this context, the pretrial judge has the responsibility to ensure that the information used as a basis for determining a suspect or as evidence in the legal process is obtained legally and without pressure. If the information is obtained through methods that are not in accordance with the law, then it does not qualify

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

as valid evidence. On the other hand, if the information is obtained legally and without pressure, and meets the minimum evidentiary requirements, then the case is still worthy of proceeding to the prosecution process. Therefore, the role of pretrial judges in testing the validity and freedom of information is very important. Fair law enforcement requires that all evidence used in the legal process be obtained and treated in accordance with human rights principles and applicable legal standards.

The basis for witnesses or suspects to provide information freely is to ensure that a case finds the truth and is avoided miscarriage of justice (legally flawed justice). Miscarriage of justice occurs when a judge makes a wrong decision so that an innocent person is punished. Besides that, miscarriage of justice It can also occur if no action is taken or the action taken is inadequate when a violation occurs, as well as when criminal justice is carried out in a way that is contrary to established processes or procedures, or violates the basic principles of criminal justice. In a systemic approach, the criminal justice system works with structures that are interconnected and influence each other. Therefore, errors made by judges in deciding a case may be caused by errors that occurred at a previous stage, such as at the preliminary examination stage.

In disclosing a criminal act, other fields of knowledge are often needed. For example, in narcotics crimes, forensic medical science is needed to determine whether the confiscated evidence actually contains narcotics or not. Narcotics crimes are now transnational crimes and pose a serious threat to the Indonesian state. Even though narcotics crimes are a serious threat to the Indonesian state, disclosure of cases cannot be done haphazardly. To determine narcotics content, Article 90 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (UU No. 35 of 2009) determines, "...a small portion of confiscated narcotics and narcotics precursors are to be used as samples for testing in the laboratory. ..". This provision shows that forensic medicine is very important to determine the content of narcotics accurately.

In narcotics crime cases, which require special laboratory testing to determine whether evidence actually contains narcotic substances, it is important that any evidence used in the legal process meets standards of accuracy and thoroughness. If there is no decisive evidence, such as valid and reliable test results, then the role of the pretrial judge becomes very important. The pretrial judge has the authority to assess the validity of the suspect's determination, including ensuring that the evidence used in the process is valid and meets applicable legal requirements. If there are significant deficiencies in the testing or examination—for example, there are no clear test results or no reliable evidence to determine the content of narcotics—the pretrial judge has the authority to declare that the suspect's determination is invalid. This explanation regarding narcotics is an example. In essence, the absence of decisive evidence results in the determination of the suspect being invalid.

Article 185 paragraph (7) of the Criminal Procedure Code and Article 180 paragraph (9) of the RKUHAP determine that the testimony of witnesses who are not sworn in is not valid evidence. However, if the testimony of an unsworn witness matches the testimony of other witnesses, it can be considered as evidence. Therefore, if the determination of a suspect is based on the testimony of a witness who is not sworn in and the statement is released as evidence, so that the minimum proof is not met, then the case is not suitable to proceed to the prosecution stage. The minimum amount of evidence to identify a suspect should not rely on unsworn witnesses. Witnesses who are not sworn in should only be used as additional witnesses if the minimum amount of evidence has been met. Investigators must not rely on unsworn witnesses as the only evidence to identify a suspect. If at the main trial of the case the witness is not sworn in, the evidence will be insufficient and could result in the defendant having to be acquitted. The problem is not only the release of the accused, but it is also important to prevent this from happening at the stage of the preliminary examination. Do not let prosecutions be carried out based on evidence that does not have legal evidentiary power.

Pretrial arrangements that only focus on formal aspects without considering the validity of evidence can ignore violations of human rights, as happened in the Cipulir Buskers case. The conceptualization of a judge's authority to ensure that witness or suspect information is not obtained under pressure, threats or violence during an investigation is solely aimed at guaranteeing the constitutional rights of citizens. Article 28D of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) stipulates that "every person has the right to protection and freedom from torture or treatment that degrades human dignity." Apart

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

from that, this also aims to guarantee the implementation of Article 33 paragraph (1) of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (UU No. 39 of 1999) and Article 7 of Law of the Republic of Indonesia Number 12 of 2005 concerning Endorsement International Covenant on Civil and Political Rights (Law No. 12 of 2005), which essentially regulates the prohibition of inhumane treatment of humans.

Conceptualization of pretrial judges to test hearsay evidence as a basis for determining a suspect is important to prevent mistakes. Hearsay evidence is derivative information, which means there is a risk that the information may not be conveyed accurately from the original source. The conceptualization of testing unsworn witness statements and decisive evidence is an important aspect in maintaining justice and legal certainty. This process ensures that the determination of a suspect is based on correct and reliable evidence, in accordance with the principles of Article 28D paragraph (1) of the 1945 Constitution, which guarantees everyone's right to obtain fair legal certainty. By applying a careful and comprehensive approach to information and evidence, the justice system can maintain its integrity and effectively protect human rights.

Conclusion

Through the designation of a suspect, a person's human rights can be reduced because their freedom can be restricted through arrest (Article 1 number 20 of the Criminal Procedure Code) and detention (Article 1 number 21 of the Criminal Procedure Code). The institution for testing whether a suspect's determination is valid or not is pre-trial, however pre-trial does not function effectively because pre-trial only has a formal administrative nature which is then also strengthened by Article 2 paragraphs (2) and (4) PERMA 4 No. 4 of 2016. The pretrial basis is formal administrative in nature because the pretrial norms themselves stipulate, where Article 101 of the KUHAP determines the examination of compensation using civil procedures, compensation for damages is also part of the pretrial object regulated in Article 77 letter b of the KUHAP. Compensation can be submitted together with claims for unlawful coercion as regulated in Article 82 paragraph (3) letter c of the Criminal Procedure Code.

The consequence of following a civil procedure is that pre-trial evidence follows the positive theory of evidence based on law so that it only seeks formal truth, and as a result pre-trial institutions cannot be an instrument to prevent cases based on evidence that is not suitable for prosecution in court, and evidence A clear failure of this system occurred in the case of the "Cipulir Buskers," where witnesses and suspects during the preliminary examination received violence and threats of violence. To overcome this obstacle, pre-trial judges need to be given the authority to ensure that witness or suspect statements are not obtained under pressure, threats or violence during the investigation, which is the implementation of Article 28D paragraph (1) of the 1945 Republic of Indonesia Constitution, Article 33 paragraph (1) UU no. 39 of 1999 and Article 7 of Law no. 12 of 2005. Apart from that, pre-trial judges need to be given the authority to conduct trials hearsay evidence as a basis for determining a suspect in order to prevent mistakes, because hearsay evidence risk of being inaccurate. Testing of unsworn witness statements and decisive evidence aims to ensure that the evidence on which the case is prosecuted is truly of high quality. A careful approach to evidence ensures that the determination of suspects is based on reliable evidence, so that the justice system can maintain its integrity and effectively protect human rights.

Suggestions for future legal improvements are to expand the authority of pre-trial judges so that they are not only limited to formal administrative aspects, but also include substantial testing of the evidence used in determining suspects. This can be done by revising related laws and regulations, such as the Criminal Procedure Code and PERMA, to clarify and strengthen the role of pre-trial judges in assessing the validity of evidence, including hearsay evidence, as well as ensuring that witness or suspect information is not obtained through pressure, threats or violence during the investigation. This reform will support the implementation of Article 28D of the 1945 Constitution, as well as strengthen the protection of human rights, by ensuring that the determination of suspects is based on valid and reliable evidence. In addition, it is necessary to consider applying a higher standard of proof in pre-trial to ensure that the determination of the suspect is truly based on material truth, not just a legal formality.

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

References

Adjie, Indriyanto Seno. Pra Peradilan & KUHAP (catatan mendatang). Jakarta: Diadit Media, 2018.

Afandi, Fachrizal. "Perbandingan Praktik Praperadilan dan Pembentukan Hakim Pemeriksa Pendahuluan dalam Peradilan Pidana Indonesia." Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 28, no. 1 (2016). https://doi.org/10.22146/jmh.15868.

Amdani, Yusi. "Implikasi Penafsiran Undang-Undang oleh Hakim Praperadilan dalam Perkara Tindak Pidana Korupsi." Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 27, no. 3 (2016). https://doi.org/10.22146/jmh.15872.

Asshiddiqie, Jimly. "Penegakan Hukum," 2016. https://www.academia.edu/download/34124812/Penegakan_Hukum.pdf.

Bahran. "Penetapan Tersangka Menurut Hukum Acara Pidana dalam Perspektif Hak Asasi Manusia." Syariah Jurnal Hukum dan Pemikiran 17, no. 2 (2018). https://doi.org/10.18592/sy.v17i2.1972.

Bhaghamma, G. "A Comparative analysis of Doctrinal and Non-Doctrinal Legal Research." ILE Journal of Governance and Policy Review 1, no. 1 (2023): 88–94.

Borgers, MJ. "Case note: Hoge Raad (Ontneming na avas)." Nederlandse jurisprudentie, no. 52 (2014). https://research.vu.nl/files/930915/NJ.2014.52.pdf.

Dubelaar, MJ. "Waarheen met het strafrechtelijk bewijsstelsel." Den Haag: Boom juridisch, 2017.

Effendi, Erdianto. "Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka." Undang: Jurnal Hukum 3, no. 2 (2020). https://doi.org/10.22437/ujh.3.2.267-288.

Fakhriah, Efa Laela, dan Anita Afriana. Dimensi Hukum Pembuktian dalam Penyelesaian Sengketa Perdata. Bandung: Unpad Press, 2021.

Firmansyah, Shandy Herlian, dan Achmad Miftah Farid. "Politik Hukum Praperadilan sebagai Lembaga Perlindungan Hak Tersangka Ditinjau dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 mengenai Penetapan Tersangka." Jurnal Penegakan Hukum dan Keadilan 3, no. 2 (2022). https://doi.org/10.18196/jphk.v3i2.15195.

Harahap, Yahya. Hukum Acara Perdata: tentang gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan. Jakarta: Sinar Grafika, 2019.

Hidayat, Maskur. "Pembaruan Hukum Terhadap Lembaga Praperadilan Melalui Putusan Pengadilan." Yuridika 30, no. 3 (2015). https://doi.org/10.20473/ydk.v30i3.1953.

Iman, Rifqi Qowiyul. "The competence of Religious Court in Indonesia and Syahadah Istifadhah (Testimonium De Auditu) in Case of Itsbat Waqf." Ahkam: Jurnal Ilmu Syariah 18, no. 2 (2018). https://doi.org/10.15408/ajis.v18i2.9864.

Jonathan, Abraham, Edy Halomoan Gurning, Febi Yonesta, Gatot, Kiagus Ahmad Bellasati, Nurkholis Hidayat, Restaria F. Hutabarat, Theodora Subyantoro, Tunggul Sri Haryanti, dan Yoanita Eliseba. Mengungkap Kejahatan Dengan Kejahatan: Survey Penyiksaan di Tingkat Kepolisian Wilayah Jakarta Tahun 2008. Jakarta Pusat: Lembaga Bantuan Hukum, 2008.

Koch, Frederick WJ. "The Hearsay Rule's True Raison d'Etre: Its Implications for the New Principled Approach to Admitting Hearsay Evidence." Ottawa L. Rev. 37 (2005): 249–87.

Kurniawaty, Yuniar. "Konsep keadilan terhadap vonis peradilan sesat: tinjauan hukum." Jurnal Legislasi Indonesia 14, no. 4 (2017).

Marbun, Rocky. "Trikotomi Relasi dalam Penetapan Tersangka: Menguji Frasa 'Pemeriksaan Calon Tersangka' Melalui Praperadilan." Undang: Jurnal Hukum 4, no. 1 (2021). https://doi.org/10.22437/ujh.4.1.159-190.

Marpaung, Ramsen, dan Tristam Pascal Moeliono. "Perbandingan Hukum antara Prinsip Habeas Corpus dalam Sistem Hukum Pidana Inggris dengan Praperadilan dalam Sistem Peradilan Pidana Indonesia." Jurnal Wawasan Yuridika 5, no. 2 (2021). https://doi.org/10.25072/jwy.v5i2.494.

Muntaha. "Pengaturan Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia." Mimbar Hukum 29, no. 3 (2017).

Nasional, Badan Pembinaan Hukum. Hakim Komisaris dalam Sistem Peradilan di Indonesia. Jakarta: BPHN, 2011.

Nugroho, Dewi Rahmaningsih, dan Suteki Suteki. "Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi)." Jurnal Pembangunan Hukum Indonesia 2, no. 3 (2020). https://doi.org/10.14710/jphi.v2i3.291-304.

Panggabean, Josep. "Analisis Putusan Mahkamah Konstitusi Terkait Dengan Penetapan Tersangka Sebagai Objek Praperadilan (Studi Putusan Nomor 73/Pid.Pra/2018/Pn.Mdn)." Iuris Studia: Jurnal Kajian Hukum, 2020. https://doi.org/10.55357/is.v1i2.22.

Purnama, Tri, dan Sulaiman. "Penetapan Status Tersangka Oleh Hakim Melalui Proses Persidangan Dalam Perspektif Pembaruan Hukum Acara Pidana." Cendekia : Jurnal Hukum, Sosial dan Humaniora 1, no. 2 (2023).

Purwoleksono, Didik Endro. Hukum Acara Pidana. Surabaya: Airlangga University Press, 2015.

Raja Gukguk, Roni Gunawan, dan Nyoman Serikat Putra Jaya. "Tindak Pidana Narkotika Sebagai Transnasional Organized Crime." Jurnal Pembangunan Hukum Indonesia 1, no. 3 (2019). https://doi.org/10.14710/jphi.v1i3.337-351.

Rozemond, N. "Noot bij NJ 2018/298 OM-Cassatie Tegen Vrijspraak in Zedenzaak Onvoldoende Steunbewijs," 2018. https://research.vu.nl/files/152524651/NJ_2018298_OM_cassatie_tegen_vrijspraak_in_zedenzaak_onvoldoende_steunbewijs.pdf.

Sasangka, Hari. Penyidikan, Penahanan, Penuntutan, dan Praperadilan dalam Teori dan Praktek: Untuk Praktisi, Dosen, dan Mahasiswa. Bandung: Mandar Maju, 2007.

Savage, Stephen P., dan Becky Milne. "Miscarriages of justice." In Handbook of Criminal Investigation, 2007. https://doi.org/10.4324/9780203118177-35.

Suhaimi. "Perlindungan Saksi dalam Beberapa Tindak Pidana dan Pengadilan Hak Asasi Manusia." Jurnal Hukum Samudra Keadilan 15, no. 2 (2020). https://doi.org/10.33059/jhsk.v15i2.3042.

Journal of Ecohumanism
2024
Volume: 3, No: 8, pp. 8602 – 8612
ISSN: 2752-6798 (Print) | ISSN 2752-6801 (Online)
https://ecohumanism.co.uk/joe/ecohumanism
DOI: https://doi.org/10.62754/joe.v3i8.5477

Swantoro, Herri, Efa Laela Fakhriah, dan Isis Ikhwansyah. "Permohonan Upaya Hukum Peninjauan Kembali Kedua Kali Berbasis Keadilan Dan Kepastian Hukum." Mimbar Hukum, 2017.

Tiara, Ayu Eza, Arif Maulana, Muhammad Retza, dan Billiansya. Kepolisian Dalam Bayang-Bayang Penyiksaan (Catatan Kasus Penyiksaan Sepanjang Tahun 2013 s.d. 2016). Jakarta: Lembaga Bantuan Hukum, 2017.

Wiriadinata, Wahyu. "Korupsi dan Pembalikan Beban Pembuktian." Jurnal Konstitusi 9, no. 2 (2016). https://doi.org/10.31078/jk924.

Zulkarnain, dan Rocky Marbun. "Symbolic Domination in the Regulation of the Indonesia Supreme Court Number 4 of 2016 Concerning the Prohibition of Reviewing Pre-Trial Decisions." In Proceedings of the 2nd International Conference on Law Reform (INCLAR), 57–62. Atlantis Press, 2021.