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Expansion of Pretrial Objects through *Rechtsvinding* in Corruption Case (Case Study: Verdict Number 04/Pid.Prap/2015/Pn.Jkt.Sel.)

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ABSTRACT: After being in force for more than four decades, Law Number 8 of 1981 on Criminal Procedure (Criminal Procedure Code) has shown its limitations, one of which concerns the limitations of pretrial objects. Through South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt. Sel., which is in fact a pretrial verdict on a corruption case, the pretrial judge has made a "finding law (*rechtsvinding*)" to expand the pretrial objects. Therefore, this study aims to determine the *ratio decidendi* of the *a quo* verdict regarding the expansion of the pretrial objects. This research falls under the category of normative legal research, prioritizing the use of secondary data, including primary and secondary legal materials. Based on the data used, the documentation study/library study technique with tools in the form of written materials as described was used and qualitatively analyzed. This study shows that regardless of the debate, the pretrial judge in the *a quo* verdict has made a *rechtsvinding* through a method of interpretation of the legislative history (*historia legis*) that is extensive in nature. In this context, there has been an expansion of the pretrial objects to include the validity of the suspect determination. Even in relation to the corruption case, the pretrial objects have been further expanded to include not only the validity of the investigation but also the validity of all subsequent decisions.

Keywords: Pretrial Object; Finding Law; Corruption Case

I. INTRODUCTION

When it was first enacted and came into force on December 31, 1981, Law Number 8 of 1981 on Criminal Procedure (Criminal Procedure Code) was hailed as a "magnum opus" of the Indonesian people (Wisnubroto & Widiartana, 2021, p. 4). This was because it contained new fundamental elements when compared to the colonialist criminal procedure code (*Het Herziene Inlands Reglement* [HIR]), one of which was regarding pretrial institutions (Pangaribuan et al., 2018, p. 99). However, during its more than four decades of application, the Criminal Procedure Code has shown its limitations, including limitations regarding the pretrial objects as regulated in Article 1 number 10 *jo*. Article 77 of the Criminal Procedure Code.

Through Constitutional Court Verdict Number 21/PUU-XII/2014 dated April 28, 2015, which is considered a landmark verdict (see Mahkamah Konstitusi, 2017, pp. viii–ix and 81–119), the limitations on the pretrial objects referred to have actually been expanded (see *Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014*, 2015, pp. 109–110). Nevertheless, there is still debate among legal experts (see Moeliono & Wulandari, 2015, p. 595). In fact, explicitly, the debate occurred in the *a quo* verdict, *in casu* there was a concurring opinion from a constitutional judge and dissenting opinions from three constitutional judges (see *Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014*, 2015, pp. 111–125). According to Zainal Arifin

Mochtar, the existence of these dissenting opinions casts a shadow over the *a quo* verdict with what is referred to as "ambiguity in the interpretation of the law" (Mochtar, 2021, p. 70).

In contrast to the Constitutional Court's verdict, which was in fact a judicial review of the constitutionality of one of the norms regarding pretrial objects, another debate that was even more intense and drew much public attention occurred two months before the judicial review verdict was imposed, namely in the South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt.Sel. dated February 16, 2015. This is because through the *a quo* verdict, which is in fact a pretrial verdict on a corruption case, the pretrial judge has made a "finding law (*rechtsvinding*)" to expand the objects of pretrial (see Shidarta, 2020, p. 210).

II. RESEARCH METHOD

This research, viewed from the standpoint of the data source, falls under the category of normative legal research, which prioritizes the use of secondary data (see Sumardjono, 2021, pp. 21–23): primary legal material in the form of Law Number 8 of 1981 on Criminal Procedure (Criminal Procedure Code), Law Number 48 of 2009 on Judicial Authority, and South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt.Sel.; and secondary legal material in the form of references that discuss criminal procedure and "finding law (*rechtsvinding*)." Based on the data used, the documentation study/library study technique, which utilizes written materials as tools (Sumardjono, 2021, p. 36), was employed. Since this research falls under the category of normative legal research, the researcher used a specific technique, namely content analysis, to conduct a qualitative analysis of the referred-to written materials (Sumardjono, 2021, p. 37).

III. RESULTS AND DISCUSSION

Based on Article 1 number 10 *jo*. Article 77 of the Law Number 8 of 1981 on Criminal Procedure (Criminal Procedure Code), the pretrial objects have actually been determined in a limited manner. These are inseparable from the *a quo* provisions, which stipulate that:

Article 1 number 10

Pretrial is the authority of the district court to examine and decide, in accordance with the procedures stipulated in this law, on:

a. the validity or invalidity of an arrest and/or detention at the request of the suspect, their family, or other parties acting on behalf of the suspect;
b. the validity or invalidity of the termination of an investigation or the termination of a prosecution at the request for the sake of upholding law and justice;
c. a request for compensation or rehabilitation by the suspect, his family, or other parties on his behalf whose case has not been brought to court.

Article 77

The district court has the authority to examine and decide, in accordance with the provisions stipulated in this law, on:

a. the validity or invalidity of an arrest, detention, termination of investigation, or termination of prosecution;
b. compensation and/or rehabilitation for a person whose criminal case has been terminated at the investigation or prosecution stage.

(Pasal 1 angka 10 dan Pasal 77 Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana, 1981).

It is a matter of debate whether the *a quo* provisions clearly regulate the pretrial objects or not. The answer to this question is left to the judge who examines and decides the case in question. According to Sudikno Mertokusumo, in cases where legislation is unclear, the method of interpretation is available (Mertokusumo, 2014, p. 73). In line with this, if the pretrial judge considers that the *a quo* provisions are unclear, then the pretrial judge must also conduct a "finding law (*rechtsvinding*)" through the method of interpretation.

Still, according to Sudikno Mertokusumo, it is not the results of *rechtsvinding* that are central, even though the goal is to produce court verdicts, but rather the methods used (Mertokusumo, 2014, p. 49). In line with Sudikno Mertokusumo, Hermann Mannheim also stated that the implementation of criminal justice is determined by several factors, one of which is the method of interpretation that will be used by those entrusted with administering it. Here, the method of interpretation used is very important so that criminal justice is carried out properly (Mannheim, 2007, p. 203).

In the South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt.Sel., with Budi Gunawan as the petitioner and the Corruption Eradication Commission cq. Corruption Eradication Commission Leadership as the respondent, Sarpin Rizaldi, as the pretrial judge who examined and decided the *a quo* case, expanded the pretrial objects through *rechtsvinding*. To avoid bias, the verdict in the subject matter of the case needs to be explained as follows:

1. Granting the Pretrial Petitioner's Request in part;
2. Declares Investigation Warrant Number: Sprin.Dik-03/01/01/2015 dated January 12, 2015, which named the Petitioner as a suspect by the Respondent in relation to the criminal acts referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12B of the Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption *jo*. Law Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption *jo*. Article 55 paragraph (1) 1st of the Criminal Code is invalid and has no legal basis, and therefore the *a quo* Determination has no binding force;
3. Declares that the Investigation conducted by the Respondent in relation to the criminal acts as referred to in the Determination of Suspect against the Petitioner as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12B of the Law Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption *jo*. Article 55 paragraph (1) 1st of the Criminal Code is invalid and has no legal basis, and therefore the *a quo* Investigation has no binding force;
4. Declares that the Suspect Determination against the Petitioner by the Respondent is invalid;
5. Declares that all subsequent decisions made by the Respondent relating to the Suspect Determination against the Petitioner by the Respondent are invalid;
6. Imposing court costs on the state in the amount of zero;
7. Rejecting the Pretrial Petitioner's Request other than and beyond.

(*Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, 2015, pp. 242–243).

Before discussing further, it should be noted that there is a positive legal basis for judges in conducting *rechtsvinding*, as regulated in Article 5 paragraph (1) and Article 10 paragraph (1) of Law Number 48 of 2009 on Judicial Authority. The provisions of Article 5 paragraph (1) stated that "Judges ... must explore, follow, and understand the legal values and sense of justice within society," while Article 10 paragraph (1) states that "The Court is prohibited from rejecting to examine, adjudicate, and decide a case that has been submitted on the grounds that the law is ... unclear but is obliged to examine and adjudicate it" (Pasal 5 ayat (1) dan Pasal 10 ayat (1) Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman, 2009).

In addition, it should also be noted that when conducting *rechtsvinding*, judges certainly have their own considerations. If a court verdict is viewed as a legal rule, then what is binding are the considerations that directly relate to the subject matter of the case, namely the legal rules that form the basis of the verdict (*ratio decidendi*). Meanwhile, considerations indirectly relate to the subject matter of the case (*obiter dictum*) are not binding (Mertokusumo, 2014, p. 70). Thus, the discussion will focus on the *ratio decidendi* regarding the expansion of the pretrial objects through *rechtsvinding*.

Regarding the legal basis and methods used in conducting *rechtsvinding*, Sarpin Rizaldi, in the *ratio decidendi* of the South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt.Sel., stated that:

> Considering that the Law on Judicial Power prohibits Judges from rejecting a case on the grounds that the law is ... unclear but obliges them to examine and adjudicate it, as stipulated in Article 10 paragraph

(1) of Law Number 48 of 2009, which reads in full, "The Court is prohibited from rejecting to examine, adjudicate, and decide a case that has been submitted on the grounds that the law is ... unclear but is obliged to examine and adjudicate it";
Considering that the prohibition on rejecting to examine, adjudicate, and decide a case is accompanied by the obligation for Judges to explore, follow, and understand the legal values and sense of justice within society, as stipulated in Article 5 paragraph (1) of Law Number 48 of 2009, which reads in full, "Judges ... must explore, follow, and understand the legal values and sense of justice within society";
Considering that the prohibition on Judges rejecting to examine, adjudicate, and decide a case ..., certainly gives judges the authority to clarify laws ... that were previously unclear;
...
Considering that the authority of Judges to clarify previously unclear laws is exercised by using and applying methods of interpretation.
(*Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, 2015, p. 223 and 224).

The method of interpretation used is the legislative history (*historia legis*) based on the intention of the legislators at the time of its formulation (see Hiariej, 2018, p. 104; Mertokusumo, 2014, pp. 78–79), as defined by the term *contemporanea expositio*, which means "An interpretation of a law or legal instrument based on evidence of the intent of the ... drafters at the time of the law's or instrument's adoption" (Fellmeth & Horwitz, 2021, p. 65; see Mochtar & Hiariej, 2021, p. 426). In the *ratio decidendi* of the *a quo* verdict, it is stated that:

Considering the formulation of the definition of pretrial in Article 1 number 10 of the Criminal Procedure Code and the legal norms regulating pretrial authority as stated in Article 77 of the Criminal Procedure Code, it can be concluded that the Pretrial Institutions are a means or place to examine forceful measures carried out by law enforcement officials at the investigation and prosecution stages, whether the forceful measures taken by investigators at the investigation stage and by public prosecutors at the prosecution stage have been carried out in accordance with the provisions and procedures stipulated in the law or not.
(*Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, 2015, p. 224).

Based on those considerations, Sarpin Rizaldi then expanded the pretrial objects by stating in the *ratio decidendi* of the *a quo* verdict that:

Considering that all actions of the Investigator in the investigation process and all actions of the Public Prosecutor in the prosecution process that are not regulated in Article 77 *jo*. Article 82 paragraph (1) *jo*. Article 95 paragraphs (1) and (2) of the Criminal Procedure Code are determined to be the object of pretrial, and the legal institution authorized to examine the validity of all actions of the Investigator in the investigation process and all actions of the Public Prosecutor in the prosecution process is the Pretrial Institutions;
Considering that it is directly related to the Petitioner's request, because "*the Suspect Determination*" is part of a series of actions taken by Investigators in the investigation process, the legal institution authorized to examine and assess the validity of "*the Suspect Determination*" is the Pretrial Institutions;
...
Considering ... that all actions taken by Investigators in the investigation process and all actions taken by Public Prosecutors in the prosecution process constitute forceful measures, as they have placed and used the label "*Pro Justitia*" on each action;
Considering that, based on the above considerations, ... with this verdict the District Court determines that "*the validity or invalidity of the Suspect Determination*" is the object of pretrial.
(*Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, 2015, pp. 225–226, 228, and 228–229).

In addition to the expansion of the pretrial objects, there are actually other expansions of the pretrial objects relating to the corruption case faced by Budi Gunawan. In the *ratio decidendi of* the *a quo* verdict, it is stated as follows:

> Considering ... that it turns out that the Petitioner is not a legal subject of Criminal Acts of Corruption under the authority of the Corruption Eradication Commission (Respondent) to conduct inquiries, investigations, and prosecutions of Criminal Acts of Corruption as referred to in Article 11 of the Law on Corruption Eradication Commission, the investigation process conducted by the Investigators of the Corruption Eradication Commission related to the criminal acts as referred to in the Suspect Determination against the Petitioner as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12B of the Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption *jo*. Law Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of Criminal Acts of Corruption *jo*. Article 55 paragraph (1) 1st of the Criminal Code, are invalid and have no legal basis, and therefore the *a quo* Determination has no binding force;
>
> Considering that the investigation process conducted by the Respondent was invalid, and Investigation Warrant Number: Sprin.Dik-03/01/01/2015 dated January 12, 2015, which named the Petitioner as a suspect, was the result of an investigation conducted by Investigators from the Corruption Eradication Commission (Respondent), Investigation Warrant Number: Sprin.Dik-03/01/01/2015 dated January 12, 2015, which named the Petitioner as a suspect, must also be declared invalid and without legal basis, and therefore the *a quo* Determination has no binding force;
>
> Considering that, therefore, all subsequent decisions issued by the Respondent relating to the results of the investigation and the determination of the Petitioner as a suspect are invalid;
>
> ...
>
> Considering that the investigation process conducted by the Investigators of the Corruption Eradication Commission based on Investigation Warrant Number: Sprin.Dik-03/01/01/2015 dated January 12, 2015, has been declared invalid, the determination of the Petitioner as a suspect by the Respondent must also be declared invalid.
>
> (*Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, 2015, pp. 239–240 and 240).

Thus, as is generally the case, the interpretation of the legislative history (*historia legis*) is expansive (Mertokusumo, 2014, p. 82) or, in other words, falls under extensive interpretation (*extensieve interpretatie*). According to Franken in Sudikno Mertokusumo, "It is not the interpretation itself that is restrictive or extensive, but the distinction between the terms 'restrictive' and 'extensive' is the result of a certain formulation of a regulation that is justified with the help of interpretation. This distinction is what can limit or broaden the scope of application of legislation" (Mertokusumo, 2014, p. 81). It is important to note that the question of whether the use of extensive interpretation is permissible in the context of criminal procedure has not yet reached a *communis opinio doctorum*, or consensus among legal experts (Lamintang & Lamintang, 2013, p. 12).

IV. CONCLUSION

Regardless of the debate, the pretrial judge in the South Jakarta District Court Verdict Number 04/Pid.Prap/2015/PN.Jkt.Sel. has made a "finding law (*rechtsvinding*)" through the method of interpretation of the legislative history (*historia legis*) that is expansive in nature. In this context, there has been an expansion of the pretrial objects from what originally included the validity of the arrest, detention, termination of investigation, or termination of prosecution, as well as compensation and/or rehabilitation for a person whose criminal case was terminated at the investigation or prosecution stage, to also include the validity of the suspect determination. Even in relation to the corruption case, the pretrial objects have been further expanded to include not only the validity of the investigation but also the validity of all subsequent decisions.

REFERENCES

[1] Fellmeth, A. X., & Horwitz, M. (2021). *Guide to Latin in International Law* (2nd ed.). Oxford University Press.
[2] Hiariej, E. O. S. (2018). *The Principles of Criminal Law in Indonesia* (D. K. Putri & W. Halim, trans.). Cahaya Atma Pustaka.
[3] Lamintang, P. A. F., & Lamintang, T. (2013). *Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana dan Yurisprudensi*. Sinar Grafika.
[4] Mahkamah Konstitusi. (2017). *Putusan Landmark Mahkamah Konstitusi 2014-2016*. Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi.
[5] Mannheim, H. (2007). *Criminal Justice and Social Reconstruction*. Routledge.
[6] Mertokusumo, S. (2014). *Penemuan Hukum: Sebuah Pengantar* (Rev. ed.). Cahaya Atma Pustaka.
[7] Mochtar, Z. A. (2021). *Kekuasaan Kehakiman (Mahkamah Konstitusi dan Diskursus Judicial Activism vs Judicial Restraint)*. Rajawali Pers.
[8] Mochtar, Z. A., & Hiariej, E. O. S. (2021). *Dasar-dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*. Red & White Publishing.
[9] Moeliono, T. P., & Wulandari, W. (2015). Asas Legalitas dalam Hukum Acara Pidana: Kritikan terhadap Putusan MK tentang Praperadilan. *Jurnal Hukum IUS QUIA IUSTUM*, *22*(4).
[10] Pangaribuan, A., Mufti, A., & Zikry, I. (2018). *An Introduction to the Indonesian Criminal Justice System*. Publisher Faculty of Law University of Indonesia.
[11] Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014, (2015).
[12] Putusan Pengadilan Negeri Jakarta Selatan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel., (2015).
[13] Shidarta. (2020). In Search of Scholten's Legacy, The Meaning of the Method of Rechtsvinding for the Current Indonesian Legal Discourse. *DPSP Annual*, *1*.
[14] Sumardjono, M. S. W. (2021). *Bahan Kuliah Metodologi Penelitian Ilmu Hukum* (Rev. ed.). Universitas Gadjah Mada.
[15] Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, (2009).
[16] Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, (1981).
[17] Wisnubroto, A., & Widiartana, G. (2021). *Menuju Hukum Acara Pidana Baru*. Citra Aditya Bakti.