International Journal of Social Science and Human Research

ISSN (print): 2644-0679, ISSN (online): 2644-0695

Volume 07 Issue 10 October 2024

DOI: 10.47191/ijsshr/v7-i10-27, Impact factor- 7.876

Page No: 7575-7582

Changes in Pretrial Authority through the Decision of the Constitutional Court

Nanda Irna Devi Chaniago[1], Joko Setiyono[2]

[1,2]Universitas Diponegoro Semarang

ABSTRACT: Pretrial authority underwent changes in authority through the Constitutional Court Decision. This research aims to examine and analyze several judicial reviews of pretrial objects, consisting of Constitutional Court Decision Number 21/PUU-XII/2014, Constitutional Court Decision Number 109/PUU-XIII/2015, Constitutional Court Decision Number 102/PUU-XIII/ 2015 & Constitutional Court Decision Number 130/PUU-XIII/2015, which as a whole, the a quo decision changes pre-trial authority. The formulation of the problem in this research is 1). What is the role of the Constitutional Court in making legal breakthroughs regarding pretrial? 2). What are the dynamics and issues behind the Constitutional Court's decision in changing pre-trial authority? The research method used in this research uses doctrinal legal research methodology. This research concludes that: 1). The role of the Constitutional Court in making legal breakthroughs regarding pre-trial can be seen in, first: the Constitutional Court determines that the determination of suspects is included in the object of pre-trial. Second: The Constitutional Court limits the scope of pre-trial material law to the position of KPK investigators which cannot be equated with POLRI investigators, that KPK investigators stand alone with Law no. 30 of 2003 as amended in Law no. 19 of 2019 concerning the Corruption Eradication Commission. Third: ending the multiple interpretations of judges, discontinuing pre-trial applications when the case has been examined or entered the main case. Fourth: the submission of a notification letter for the start of an investigation is extended not only to the public prosecutor, but also to the suspect and the reporter/victim. 2). The dynamics and issues behind the Constitutional Court's decision in changing pre-trial authority, namely related to pre-trial authority in determining suspects, the dismissal of pre-trial petitions, the submission of SPDP, the entire Constitutional Court's decision has not been followed up in the form of a revision of the law

KEYWORDS: Amendment; Authority; Pretrial; Through; Decision; Constitusional Court.

I. INTRODUCTION

Apart from being a negative legislature, the Constitutional Court states that a legal norm does not have binding legal force and is contrary to the constitution. The Constitutional Court also acts as a positive legislature in the sense of formulating new legal norms for reviewing laws. This is when the Constitutional Court made various legal breakthroughs.

The basis for the Constitutional Court's use of a positive legislative approach is based on the desire to ensure the fulfillment of citizens' constitutional rights, which must be truly accommodated, apart from that the Constitutional Court is encouraged to understand the laws that exist in society. Carrying out legal deepening of the legal values that develop in society, this is what is then known as deepening the legal substance.[1]

Through positive legislature, the Constitutional Court will see its role in interpreting legal norms, to ensure that legal problems can be answered properly and correctly. Legal interpretation does not have to only be about negative legislative issues, because declaring a legal norm is contrary to the constitution is not difficult. It is different if formulating a new legal norm that is in accordance with the constitution, of course the Constitutional Court will be faced with the fact of how to formulate a new legal norm that is in accordance with the constitution but also answers the problems being faced. This is where the precision and intelligence of constitutional judges is needed, who are used to speaking on national issues and will then initiate legal issues that are technical in implementing legal norms.

Legal breakthroughs carried out by the Constitutional Court are often considered a form of abuse of authority. The formulation of new legal norms is commonly understood in constitutional conventions where it is agreed that the legislature is the authority

[1] Fitria Esfandiari, Jazim Hamidi & Moh. Fadli, *Positive Legislature* Mahkamah Konstitusi di Indonesia, *Dissertasi*, Universitas Brawijaya, 2014: 10.

that forms laws.[2] However, in the course of the legislative process that forms laws, it is not uncommon for them to fail to respond to the will of the public, and often the laws that are issued do not receive the public's approval.

The issue of legal norms that do not receive a positive response from the public requires the Constitutional Court to make legal breakthroughs that answer and address the problem. Especially in law enforcement issues which are very vulnerable to violating a person's human rights, the Constitutional Court should make legal breakthroughs in the aspect of law enforcement.[3] For example, regarding criminal law norms, the Constitutional Court often cancels or reformulates criminal law norms.

The Constitutional Court through its decision created new legal norms on material and formal crimes. Even though the constitutional judge paradigm is a constitutional paradigm, as long as criminal law norms violate the constitutional rights of citizens or at least have the potential to violate constitutional rights, the Constitutional Court will easily cancel these legal norms.

Based on the role of the Constitutional Court, it can be seen that the Constitutional Court is also involved in developing national criminal law. This means that the Constitutional Court truly upholds the constitution in all applicable laws. This also confirms that including positive criminal law norms, the Constitutional Court ensures that the criminal law norms in force in Indonesia do not really conflict with the constitution.

A legal breakthrough for the Constitutional Court in the development of criminal law is essential, because often criminal law thinkers are trapped in a positivistic paradigm. The existence of the Constitutional Court ensures that the criminal justice system runs well and does not violate the constitutional rights of citizens. This description emphasizes that the legal findings made by the Constitutional Court, in each of its decisions, are a reflection of establishing checks and balances between legislative power and judicial power. The balance of power pattern that was developed was carried out with the intention that the Constitutional Court would always be a light in the path of positive criminal law, when it reached a dead end and was not in line with the ideals of the constitution itself.[4]

The Constitutional Court provides a positive influence so that the construction of criminal law enforcement is not carried out above legal norms that have the potential to violate citizens' human rights. A fair legal process upholds the principles of legal benefit and legal justice. A paradigm that explains that criminal law norms must always coincide with the principles of morality.

Realizing the importance of improving the quality of criminal law, the Constitutional Court ensures that the criminal justice system must run well without harming certain parties. This is the background to which the Constitutional Court often formulates criminal law norms in several laws, in its various decisions.

One of the roles of the Constitutional Court in developing criminal law is through improvements to pre-trial authority. The best efforts to enforce material criminal law always demand and rely on formal criminal law regulations being able to act as guardians in framing the spirit and objectives of material criminal law itself. One of the guardian frames in law enforcement in Indonesia which aims to protect justice in the community criminal justice system is the pre-trial facilities available in the Criminal Procedure Code (KUHAP).[5]

Pretrial carries out the function of supervision or control over investigative and prosecution actions, namely supervision carried out by the court through judges who examine and make pretrial decisions on investigators (POLRI) and on the prosecutor's office as the prosecutor in criminal cases, both on the behavior of members of the public and on the behavior of enforcers. laws that play a role in the ongoing process of the criminal justice system.[6]

Article 1 point 10 of the Criminal Procedure Code (KUHAP), which confirms that the District Court has the authority to examine and decide: First, whether or not an arrest or detention is legal. Second, whether or not the termination of the investigation/termination of prosecution is valid. Third, Request for Compensation/Rehabilitation by the suspect or his family/other party or attorney whose case was not submitted to the District Court.

The object of pre-trial authority is often questioned because it is considered too restrictive and cannot explore the facts of the legal issues that occurred. So there have been several judicial reviews of pretrial objects, consisting of Constitutional Court Decision Number 21/PUU-XII/2014, Constitutional Court Decision Number 109/PUU-XIII/2015, Constitutional Court Decision Number 102/PUU-XIII/2015 & Court Decision Constitution Number 130/PUU-XIII/2015, which in its entirety the a quo decision changes pretrial authority.

---

[2] Adena Fitri Puspita Sari dan Purwono Sungkono Raharjo, "Mahkamah Konstitusi Sebagai Negative Legislator dan Positif Legislastor," *Souvereignty: Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1, no. 1, (2022): 682.

[3] Efa Rodiah Nur, "Eksistensi Praperadilan Bagi Penegakan Hukum Dalam Mencapai Keadilan Substansif di Indonesia," *Jurnal Asas*, Vol. 9, no. 2, (Juli 2017): 28-29.

[4] Widati Wulandari dkk., "Putusan Mahkamah Konstitusi: Dampaknya terhadap Perubahan Undang-Undang dan Penegakan Hukum Pidana," *Jurnal Konstitusi*, Vol. 18, no. 3, (September 2021): 483.

[5] Muntaha, "Pengaturan Praperadilan dalam Sistem Peradilan Pidana di Indonesia," *Jurnal Mimbar Hukum*, Vol. 29, no. 3, (Oktober 2017): 463.

[6] Juhaidy Rizaldy Roringko, "Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014," *Jurnal Lex Administratum*, Vol. 8, no. 2, (Juni 2019): 32.

Changes in Pretrial Authority through the Decision of the Constitutional Court

The change in pre-trial authority through the Constitutional Court Decision referred to in this research concerns four things, namely as follows: First, pre-trial authority in determining suspects. Second, limiting the scope of pre-trial material law. Third, the failure of the pretrial application. Fourth, submission of a letter notifying the start of the investigation. It is suspected that this problem cannot be separated from the arbitrary actions of law enforcement officers (abuse of power). Due to this, pre-trial institutions in Indonesia are increasingly existing, people think that pre-trial can be considered as a solution, because in fact pre-trial is an institution that monitors the performance of law enforcers in carrying out their duties.[7]

The problem then is that Constitutional Court decisions are often not implemented in the sector of positive criminal law norms. In fact, changes in formal law in Indonesia are quite significant if you look at the number of Constitutional Court decisions regarding the Criminal Procedure Code. The law that regulates formal criminal law in Indonesia is basically contained in Law Number 8 of 1981 concerning Criminal Procedure Law or often known as the Criminal Procedure Code (KUHAP). Most of the Constitutional Court decisions are not followed by the Supreme Court.[8]

Pretrial is an institution that was born from the idea of carrying out supervisory actions against law enforcement officers (Police, Prosecutors and Judges) so that in carrying out their authority they do not abuse their authority, because internal supervision within the legal apparatus agency itself is not enough, but cross-supervision is also needed between fellow law enforcement officers.[9]

Based on the background description above, the author will examine two issues, namely as follows: 1). What is the role of the Constitutional Court in making legal breakthroughs regarding pretrial? 2). What are the dynamics and issues behind the Constitutional Court's decision in changing pre-trial authority?

II. MATERIAL AND METHODS

The issues raised in this research are discussed and analyzed using doctrinal legal research methodology. The doctrinal legal research methodology explains legal problems based on previous legal doctrines or opinions that are relevant to the legal issues being discussed.[10]

III. RESULTS DISCUSSIONS

A. The Role of the Constitutional Court in Making Legal Breakthroughs Regarding Pre-Trials

Pre-trial authority in Indonesia is limited and not as extensive as Pre-Trial Hearing in America or the Rechter Commissioner in the Netherlands, which can test coercive efforts made by law enforcement officials, as well as test whether the public prosecutor has sufficient evidence so that the case can be transferred to court. Likewise, the Rechter Commissioner who has broader authority, apart from determining the legality of arrest, detention and confiscation, also carries out preliminary examinations of a case.[11]

Pre-trial examinations are carried out in a quick manner, starting with the appointment of a judge, setting a trial date, and summoning the parties. Pretrial hearing examinations are carried out expeditiously within 7 days at the latest. Therefore, the form of a pre-trial decision is quite simple without reducing the content of clear considerations based on law and statute. Based on Article 82 paragraph 1 letter c of the Criminal Procedure Code, the pre-trial hearing process using a speedy trial must be applied consistently with the form and decision making in a short trial and a speedy trial. This means that the decision is combined into one with the minutes. In Article 83 paragraph 3 letter a and Article 96 paragraph 1 the form of pre-trial decision is in the form of "determination".[12]

Following the Constitutional Court Decision Number 21/PUU-XII/2014, it was decided that the provisions of Article 77 letter A of the Criminal Procedure Code do not have binding legal force as long as they are not interpreted to include the determination of suspects, searches and confiscations. As for one of the legal considerations, the determination of a suspect is part of the investigation process which is a violation of human rights, so the determination of a suspect by investigators should be an object

---

[7] Ryan Fani, "Urgensi Lembaga Praperadilan di Negara Indonesia Sebagai Lembaga Tetap yang Wajib Melakukan Pemeriksaan Pendahuluan Sebelum Perkara dilimpahkan Ke Pengadilan," *Wacana Pramarta Jurnal Ilmu Hukum*, Vol. 20, no. 4, (2021): 15.

[8] Muhammad Fatahillah Akbar, "Pengaruh Putusan Mahkamah Konstitusi di Bidang Pengujian UndangUndang terhadap Sistem Peradilan Pidana Indonesia dengan Perubahan KUHAP," *Jurnal Konstitusi*, Vol. 16, no. 3, (September 2019): 468.

[9] Dodik Hartono, "Peranan dan Fungsi Praperadilan dalam Penegakan Hukum Pidana di Polda Jateng," *JDH: Jurnal Daulta Hukum*, Vol. 1, no. 1, (Maret 2018): 54.

[10] Ery Agus Priyono, Bahan Kuliah Metodologi Penelitian, Program Studi Magister Kenotariatan Universitas Diponegoro, Semarang, 2003/2004.

[11] Muhammad Yusuf Siregar dan Zainal Abidin Pakpahan, "Kewenangan Mengajukan Pra Peradilan Atas Penetapan Tersangka Di Tinjau Dari Segi Hukum," *Jurnal Ilmiah Advokasi*, Vol. 6, no. 2, (September 2018): 39.

[12] Alfitra, "Disparitas Putusan Praperadilan Dalam Penetapan Tersangka Korupsi Oleh KPK," *Jurnal Cita Hukum*, Vol. 4, no. 1, (2016): 84-85.

that can be sought for protection through legal efforts in pre-trial institutions. This is solely to protect someone from arbitrary actions by investigators which is likely to occur when someone is named a suspect, even though in the process it turns out there was an error so there are no institutions other than pre-trial institutions that can examine and decide on it.

Following up on Constitutional Court Decision Number 21/PUU-XII/2014, the Supreme Court issued Supreme Court Regulation Number 4 of 2016 (Perma No.4/2016) regarding the prohibition on judicial review of pretrial decisions. This shows that the scope of pretrial is increasingly expanding. This development cannot be denied, if the expansion of the scope of pretrial is closely related to the protection of suspects' human rights and legal certainty itself.[13]

Based on statutory regulations and other regulations, both the Constitutional Court Decision and the Supreme Court Regulations governing the Pretrial do not explain clearly and relate to the determination of the suspect in question and are not included in the determination of new suspects, so that the ambiguity of legal norms regarding the authority of the Pretrial results in problems law.[14]

The Constitutional Court through Decision Number 109/PUU-XIII/2015 interpreted the meaning of the KPK's independent investigator as the reason for filing a pretrial petition to invalidate the suspect's determination. The Constitutional Court considers that when there are differences between Law 30/2002 and the Criminal Procedure Code regarding the position of investigators, then in carrying out its duties the Corruption Eradication Commission remains bound by Law 30/2002 and can override the Criminal Procedure Code as long as it is specifically regulated in Law 30/2002, in line with the principle lex specialis derogat legi generalis. Furthermore, the Court is of the opinion that KPK investigators as regulated in Article 45 paragraph (1) of Law 30/2002 do not have to only come from the Police institution as regulated in Article 6 paragraph (1) of the Criminal Procedure Code and according to the Court, the KPK has the authority to appoint its own investigators.

The Constitutional Court limits the definition of investigators in the Criminal Procedure Code to only the Police, while KPK investigators are investigators who are independent of the Corruption Eradication Committee Law. This relates to the issue of limitations on the scope of application of material law in pre-trial proceedings, the Constitutional Court through Decision No. 109/PUU-XIII/2015 which was filed by Otto Cornelis Kaligis then interpreted independent investigators within the Corruption Eradication Commission as the reason for filing a pretrial lawsuit. The Constitutional Court explained that based on the principle of "lex specialis derogate legi generali" that when there are differences in the regulations between Law Number 30 of 2002 concerning the Corruption Eradication Commission (UU KPK) and the KUHAP regarding the legal position of investigators, then based on this principle the authority of the Corruption Eradication Committee in carrying out its duties can override the provisions of the Criminal Procedure Code and adhere firmly to the Corruption Eradication Committee Law. Currently it has become Law no. 19 of 2019 concerning the Corruption Eradication Commission.[15]

Even though Decision Number 109/PUU-XIII/2015 has now lost legal force, due to the revision of Law No. 30 of 2003 which was replaced by Law no. 19 of 2019, has changed the position of the independent KPK institution to an institution that is part of the executive. This means that the specialty of independent investigators as the basis for Decision Number 109/PUU-XIII/2015 has no legal meaning.

Pretrial institutions which are formed based on law are very ineffective, if only for the reason that the main case has begun to be examined, the pretrial application must be declared invalid. This provision will create an opening for investigators and public prosecutors to "abort" the pretrial by rushing to hand over the main case files. to Court. Hastily transferring the main case to the District Court can result in the transfer of the case being immature, imperfect, and of poor quality, as a result the main case file (especially the indictment) prepared and submitted by the Public Prosecutor to the District Court is a case file that is just finished.[16]

Through the Constitutional Court Decision Number 102/PUU-XIII/2015, the meaning of "the case has begun to be examined" in a pretrial case is when the main case is heard. This Constitutional Court decision will resolve differences in the interpretations of judges when dismissing pre-trial applications, because previously there were several pre-trial decisions that dismissed applications after the files were sent. As in Decision Number 02/Pid.Pra/2015/PN.Tdn. The reason is that the phrase "has begun to be examined" is not regulated grammatically (according to grammar) by the Criminal Procedure Code so that the qualification "has begun to be examined". Is interpreted systematically in accordance with the provisions of Chapter In Article 152 of the Criminal Procedure Code which regulates "In the event that a district court receives a letter of delegation. Of a case and is of the

[13] Fitria Ananda, "Perluasan Objek Praperadilan dalam Penetapan Tersangka berdasarkan Asas Keadilan Bagi Pelapor," *Badamai Law Journal*, Vol. 9, no. 1, (2024): 109.

[14] Abraham Gunawan Wicaksana, "Rekonstruksi Ruang Lingkup Kewenangan Praperadilan Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Magister Hukum Perspektif*, Vol. 10, no. 2, (Oktober 2019): 3.

[15] Dinar Kripsiaji dan Nur Basuki Minarno, "Perluasan Kewenangan Dan Penegakan Hukum Praperadilan Di Indonesia Dan Belanda," *Al-Mazaahib: Jurnal Perbandingan Hukum*, Vol. 10, no. 1, (Juni 2022): 46-47.

[16] Abadi B. Dharmo, "Relevan Pemeriksaan Praperadilan Menjadi Gugur Apabila Perkara Pokok Sudah Mulai Diperiksa," *Jurnal Legalitas*, Vol. 2, no. 1, (Juni 2012): 33.

opinion that the case falls within its authority, the head of the court appoints a judge who will hear the case and the appointed judge determines the day of the trial." The process of appointing a judge and determining the trial date. Is carried out by the judge through a process of examining the case files first.

Based on the explanation above, the Constitutional Court's decision Number 102/PUU-XIII/2015 confirms the multi-interpretation of Article 82 paragraph 1 letter d of the Criminal Procedure Code regarding the time limit for provisions starting to be examined in the district court, meaning that the pretrial request. Is terminated when the subject matter of the case has been delegated and the first trial has begun regarding the main case on behalf of the defendant/pretrial applicant. Previously it had an unclear meaning and multiple interpretations, such as the First Tafsir referring to the meaning since the case file was transferred from the public prosecutor to the Negen Court. The Second Tafsir referring to the time it was examined at the initial trial of the case in question, while the Third Tafsir referred to after the reading of the indictment.[17]

The Investigation Commencement Notification Letter (SPDP) is one of the stages in the investigation process which has an important influence on the final process/result of an investigation. This SPDP is made and sent after an investigation order is issued which at least contains:[18] First, the basis for the investigation is a police report and an investigation warrant. Second, time to start the investigation. Third, type of case, articles alleged and a brief description of the criminal act being investigated. Fourth, identity of the suspect (if the suspect's identity is already known). Fifth, identity of the official who signed the SPDP.

The series of preliminary examination processes (investigation, investigation and prosecution) is a horizontal supervision process between the Public Prosecutor and the Investigator. Article 109 Paragraph (1) of the Criminal Procedure Code states: in the event that an investigator has started to investigate an incident which constitutes a criminal act, the investigator will notify the Public Prosecutor of this matter. In practice, the notification is in the form of a Notice of Commencement of Investigation or what is usually called SPDP. This mechanism is an actualization of the Dominus Litis principle and a coordination effort between the Public Prosecutor and Investigators. Apart from that, it is also a means of control over a case to guarantee the values of due process of law and prevent violations/arbitrariness committed by investigators against suspects.[19]

Based on Decision Number 130/PUU-XIII/2015, the Constitutional Court stated that the submission of an Investigation Commencement Order (SPDP) is not only mandatory for the public prosecutor but also for the reported party and the victim/reporter within a period of no later than 7 (seven) days which is deemed sufficient for the investigator to prepare/finish it. The Constitutional Court's reasons are based on the consideration that for a reported party who has received SPDP. The person concerned can prepare defense materials and can also appoint a legal advisor who will accompany him, while for the victim/reporter it can be used as a momentum to prepare information or evidence needed in the development investigation into the report.

B. Dynamics and Problems Behind the Constitutional Court's Decision in Changing Pre-trial Authority

The existence of the Constitutional Court of the Republic of Indonesia (MKRI) in the Indonesian constitutional system is as one of the actors of independent judicial power, upholding law and justice, and to safeguard the constitution so that it is implemented responsibly in accordance with the will of the people and democratic ideals. The existence of the MKRI is at the same time to maintain the implementation of a stable state government and is a correction to the experience of past constitutional life where multiple interpretations of the constitution often occur.[20]

The decision of the Constitutional Court is a binding and final decision. Therefore, such decisions must be based on philosophical values and have the value of binding legal certainty, which is based on the values of justice. So that the Constitutional Court's decisions always uphold the values of justice and lead to fairness and legal certainty. Justice is the main substance that ideally determines the decisions of the Constitutional Court. This substantive justice contains the spirit of realizing juridical interests related to humanity, not merely formal interests.[21]

The consequence of this final decision is that all parties must comply with the changes in the legal situation created by the Constitutional Court decision and implement them. However, the facts show that these final and binding decisions are often not

[17] Sal Sabila Aprilia, Elizabeth Siregar, dan Tri Imam Munandar, "Perlindungan Hukum Terhadap Hak Tersangka Melalui Upaya Praperadilan," *Pampas: Journal of Criminal Law*, Vol. 4, no. 1, (2023): 24.

[18] Kusfitono, Umar Ma'ruf, dan Sri Kusriyah, "Implementasi Putusan Mahkamah Konstitusi Nomor 130/PUU-XIII/2015 Terhadap Proses Penyidikan Tindak Pidana Pencurian Dengan Pemberatan Di Sat Reskrim Polres Kendal," *Jurnal Hukum Khaira UMMAH*, Vol. 15, no. 1, (Maret 2020): 39-40.

[19] Trias Saputr dan Jatarda Mauli Hutagalung, "Pentingnya Surat Pemberitahuan Dimulainya Penyidikan (Spdp) Bagi Para Pihak Demi Terciptanya Due Proces Of Law," *IBLAM Law Review*, Vol. 2, no. 2, (2022): 3.

[20] Elya Wulan Septiani, Maida Kartika, dan Riki Aldiansyah, "Membangun Kesadaran Berkonstitusi Sebagai Upaya Menegakkan Hukum Konstitusi, Siyasah Jurnal Hukum Tata Negara," *Siyasah Jurnal Hukum Tata Negara*, Vol.1, no. 1, (2021): 68.

[21] Akbar Raga Nata dan Muhammad Rifki Ramadhani Baskoro, "Analisis Dampak Putusan Hakim Mahkamah Konstitusi Terhadap Putusan MK Nomor 90/PUU-XXI/2023," *Jurnal Sanskara Hukum dan HAM*, Vol. 2, no. 2, (Desember 2023): 108.

responded to positively by the law-forming organs, so it is very likely that the Constitutional Court's decisions will not be implemented.[22]

The implementation of the Constitutional Court's decision is very dependent on other branches of state power, namely the executive and legislative, whether they have the willingness and awareness to implement the decision. From these three things, it is clear that at the field level, the Constitutional Court's decisions are very vulnerable and have the potential to experience implementation problems.[23]

In practice, problems arise when final Constitutional Court decisions are not followed by the parties involved, causing uncertainty regarding the position of the Constitutional Court's decision. This problem needs to be addressed with the awareness and obedience of the parties involved in implementing the final Constitutional Court decision in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia. If not immediately addressed, this could result in a loss of public trust in the Constitutional Court due to a lack of effectiveness in implementation of the Constitutional Court decision which shows disregard for the final nature of the decision. The following is the decision of the Constitutional Court for Review of Laws related to Employment whose decision was granted.[24]

A Constitutional Court decision that is not followed up to become a law will greatly affect the quality of compliance by other institutions. In the context of research conducted by the author, this can be seen in research conducted by Steven Suprantio who stated that.[25] In practice, the Constitutional Court's decisions cause problems, because in the statutory regulations there are no provisions that regulate the binding force of the Constitutional Court's decisions for each person, and there are no provisions that require the Supreme Court and its subordinate judicial bodies to comply with the decisions of the Constitutional Court.

The Constitutional Court has actually made a legal breakthrough in order to maintain the creation of legal benefits and legal certainty for implementing changes in authority over pre-trials, with the following decision:

1. The Constitutional Court through Decision Number 21/PUU-XII/2014 ordered to:
    - The phrases "preliminary evidence", "sufficient initial evidence", and sufficient evidence" as specified in Article 1 number 14, Article 17 and Article 21 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law are contrary to the Constitution 1945 as long as it is not interpreted as "preliminary evidence", "sufficient initial evidence". This is a minimum of two pieces of evidence contained in Article 1845 of Law Number 8 of 1981 concerning Criminal Procedure Law.
    - The phrases "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" as specified in Article 1 number 14, Article 17 and Article 21 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law do not have binding legal force. As long as it is not interpreted that "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" are at least two pieces of evidence contained in Article 184 of Law Number 8 of 1981 concerning Criminal Procedure Law.
    - Article 77 letter a of Law Number 8 of 1981 concerning Criminal Procedure Law is contrary to the 1945 Constitution as long as it is not interpreted to include determining suspects, searches and confiscations.
    - Article 77 letter a of Law Number 8 of 1981 concerning Criminal Procedure Law does not have binding legal force as long as it is not interpreted to include the determination of suspects, searches and confiscations.
2. The Constitutional Court through Decision Number 102/PUU-XIII/2015 ordered to:
    - Declare that Article 82 paragraph (1) letter d of Law Number 8 of 1981 concerning Criminal Procedure Law is contrary to the 1945 Constitution and does not have binding legal force as long as the phrase "a case has begun to be examined". Is not interpreted as "the pretrial request is dismissed when the subject matter of the case has been has been delegated and the first trial of the main case on behalf of the defendant/pretrial applicant has begun."
3. The Constitutional Court through Decision Number 130/PUU-XIII/2015 ordered to:
    - Declare Article 109 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law is in conflict with the 1945 Constitution conditionally and has no binding legal force. As long as the phrase "the investigator notifies the public prosecutor" is not interpreted as "the investigator is obliged to notify

[22] Eka N.A.M Sihombing dan Cynthia Hadita, "Bentuk Ideal Tindak Lanjut Atas Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang," *Jurnal APHTN-HAN*, Vol. 1, no. 1, (Januari 2022): 36.

[23] Arini Asriyani dan Asti Dwiyanti, "Implikasi Putusan Mahkamah Konstitusi Terhadap Sistem Peradilan Indonesia," *Julia: Jurnal Litigasi Amsir*, Vol. 10, no. 4, (Agustus 2023): 358.

[24] Muhammad Zikril Pratama, "Analisis Yuridis Tentang Tindak Lanjut Putusan Mahkamah Konstitusi Berdasarkan Peraturan Perundang-Undangan," *UNJA Journal of Legal Studies*, Vol. 1, no. 2, (Juni 2023): 65.

[25] Steven Suptantio, "Daya Ikat Putusan Mahkamah Konstitusi Tentang 'Testimonium De Auditu' Dalam Peradilan Pidana," *Jurnal Yudisial*, Vol. 7, no. 1, (April 2014): 37.

and submit a letter of order to commence an investigation to the public prosecutor, the reported party and the victim/reporter within a maximum of 7 (seven) days after the issuance of the investigation order".

Constitutional Court Decision Number 21/PUU-XII/2014 regarding pretrial authority in determining suspects, Constitutional Court Decision Number 102/PUU-XIII/2015 regarding the cessation of pretrial applications and Constitutional Court Decision Number 130/PUU-XIII/2015 regarding the submission of SPDP, all of these Constitutional Court Decisions have not been followed up in the form of a revision of the Law.

The phenomenon of the non-implementation of the Constitutional Court Decision related to Praperadilan is a common occurrence, the Constitutional Court is often seen as acting as a political instrument utilized by the House of Representatives (DPR) and the President to make changes to laws quickly and effectively. This process seems to ignore the role of society in decision-making which should be an integral part of democracy. The function of the Constitutional Court which is ideally as a guardian of the constitution and protector of the constitutional rights of citizens is being questioned and raises concerns that important decisions can be made without adequate public consultation and lead to more authoritarian and less transparent practices in government.

CONCLUSIONS

The role of the Constitutional Court in making legal breakthroughs on Pretrial can be seen in, first: The Constitutional Court determined that the determination of a suspect is included in the object of Pretrial. Second: The Constitutional Court limited the scope of the Pretrial material law to the position of KPK investigators who cannot be equated with POLRI investigators, that KPK investigators stand alone with Law No. 30 of 2003 as amended by Law No. 19 of 2019 concerning the Corruption Eradication Commission. Third: ending the multiple interpretations of judges, the cessation of the Pretrial application when the case has been examined or entered the main case. Fourth: the submission of the Notification Letter of the commencement of the investigation is expanded not only to the public prosecutor, but also to the suspect and the reporter/victim.

The dynamics and issues behind the Constitutional Court Decision in changing the authority of Pretrial, namely Constitutional Court Decision Number 21/PUU-XII/2014 regarding the authority of pretrial in determining suspects, Constitutional Court Decision Number 102/PUU-XIII/2015 regarding the cessation of pretrial applications and Constitutional Court Decision Number 130/PUU-XIII/2015 regarding the submission of SPDP. Regarding all of the Constitutional Court Decisions, they have not been followed up in the form of a revision of the Law.

ACKNOWLEDGMENT

As the author, I would like to thank all parties who have contributed to my research. In particular, I would like to thank Michael Shell and other contributors who have developed the IJSSHR journal.

REFERENCES

1) Akbar, Muhammad Fatahillah. “Pengaruh Putusan Mahkamah Konstitusi di Bidang Pengujian UndangUndang terhadap Sistem Peradilan Pidana Indonesia dengan Perubahan KUHAP.” *Jurnal Konstitusi*, Vol. 16, no. 3, (September 2019).
2) Alfitra. “Disparitas Putusan Praperadilan Dalam Penetapan Tersangka Korupsi Oleh KPK.” *Jurnal Cita Hukum*, Vol. 4, no. 1, (2016).
3) Ananda, Fitria. “Perluasan Objek Praperadilan dalam Penetapan Tersangka berdasarkan Asas Keadilan Bagi Pelapor.” *Badamai Law Journal*, Vol. 9, no. 1, (2024).
4) Aprilia, Sal Sabila, Elizabeth Siregar, dan Tri Imam Munandar. “Perlindungan Hukum Terhadap Hak Tersangka Melalui Upaya Praperadilan.” *Pampas: Journal of Criminal Law*, Vol. 4, no. 1, (2023).
5) Asriyani, Arini, dan Asti Dwiyanti. “Implikasi Putusan Mahkamah Konstitusi Terhadap Sistem Peradilan Indonesia.” *Julia: Jurnal Litigasi Amsir*, Vol. 10, no. 4, (Agustus 2023).
6) Dharmo, Abadi B. “Relevan Pemeriksaan Praperadilan Menjadi Gugur Apabila Perkara Pokok Sudah Mulai Diperiksa.” *Jurnal Legalitas*, Vol. 2, no. 1, (Juni 2012).
7) Ery Agus Priyono, Bahan Kuliah Metodologi Penelitian, Program Studi Magister Kenotariatan Universitas Diponegoro, Semarang, 2003/2004.
8) Fani, Ryan. “Urgensi Lembaga Praperadilan di Negara Indonesia Sebagai Lembaga Tetap yang Wajib Melakukan Pemeriksaan Pendahuluan Sebelum Perkara dilimpahkan Ke Pengadilan.” *Wacana Pramarta Jurnal Ilmu Hukum*, Vol. 20, no. 4, (2021).
9) Fitria Esfandiari, Jazim Hamidi & Moh. Fadli, *Positive Legislature* Mahkamah Konstitusi di Indonesia, *Dissertasi*, Universitas Brawijaya, (2014).
10) Hartono, Dodik. “Peranan dan Fungsi Praperadilan dalam Penegakan Hukum Pidana di Polda Jateng.” *JDH: Jurnal Daulta Hukum*, Vol. 1, no. 1, (Maret 2018).

11) Kansil, Christine S.T., dan Putri Meilika Nadilatasya. "Dampak Putusan Mahkamah Konstitusi Terhadap Dinamika Politik dan Kepercayaan Publik di Indonesia: Analisis Implikasi Hukum dan Etika." *Unes Law Review*, Vol. 6, no. 4 (Juni 2024).
12) Kripsiaji, Dinar, dan Nur Basuki Minarno. "Perluasan Kewenangan Dan Penegakan Hukum Praperadilan Di Indonesia Dan Belanda." *Al-Mazaahib: Jurnal Perbandingan Hukum*, Vol. 10, no. 1, (Juni 2022).
13) Kusfitono, Umar Ma'ruf, dan Sri Kusriyah. "Implementasi Putusan Mahkamah Konstitusi Nomor 130/PUU-XIII/2015 Terhadap Proses Penyidikan Tindak Pidana Pencurian Dengan Pemberatan Di Sat Reskrim Polres Kendal." *Jurnal Hukum Khaira UMMAH*, Vol. 15, no. 1, (Maret 2020).
14) Muntaha. "Pengaturan Praperadilan dalam Sistem Peradilan Pidana di Indonesia." *Jurnal Mimbar Hukum*, Vol. 29, no. 3, (Oktober 2017).
15) Nata, Akbar Raga, dan Muhammad Rifki Ramadhani Baskoro. "Analisis Dampak Putusan Hakim Mahkamah Konstitusi Terhadap Putusan MK Nomor 90/PUU-XXI/2023." *Jurnal Sanskara Hukum dan HAM*, Vol. 2, no. 2, (Desember 2023).
16) Nur, Efa Rodiah. "Eksistensi Praperadilan Bagi Penegakan Hukum Dalam Mencapai Keadilan Substansif di Indonesia." *Jurnal Asas*, Vol. 9, no. 2, (Juli 2017).
17) Pratama, Muhammad Zikril. "Analisis Yuridis Tentang Tindak Lanjut Putusan Mahkamah Konstitusi Berdasarkan Peraturan Perundang-Undangan." *UNJA Journal of Legal Studies*, Vol. 1, no. 2, (Juni 2023).
18) Roringko, Juhaidy Rizaldy. "Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014." *Jurnal Lex Administratum*, Vol. 8, no. 2, (Juni 2019).
19) Saputr, Trias, dan Jatarda Mauli Hutagalung. "Pentingnya Surat Pemberitahuan Dimulainya Penyidikan (Spdp) Bagi Para Pihak Demi Terciptanya Due Proces Of Law." *IBLAM Law Review*, Vol. 2, no. 2, (2022).
20) Sari, Adena Fitri Puspita, dan Purwono Sungkono Raharjo. "Mahkamah Konstitusi Sebagai Negative Legislator dan Positif Legislastor." *Souvereignty: Jurnal Demokrasi dan Ketahanan Nasional*, Vol. 1, no. 1, (2022).
21) Septiani, Elya Wulan, Maida Kartika, dan Riki Aldiansyah. "Membangun Kesadaran Berkonstitusi Sebagai Upaya Menegakkan Hukum Konstitusi, Siyasah Jurnal Hukum Tata Negara." *Siyasah Jurnal Hukum Tata Negara*, Vol. 1, no. 1, (2021).
22) Sihombing, Eka N.A.M, dan Cynthia Hadita. "Bentuk Ideal Tindak Lanjut Atas Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang." *Jurnal APHTN-HAN*, Vol. 1, no. 1, (Januari 2022).
23) Siregar, Muhammad Yusuf, dan Zainal Abidin Pakpahan. "Kewenangan Mengajukan Pra Peradilan Atas Penetapan Tersangka Di Tinjau Dari Segi Hukum." *Jurnal Ilmiah Advokasi*, Vol. 6, no. 2, (September 2018).
24) Suptantio, Steven. "Daya Ikat Putusan Mahkamah Konstitusi Tentang 'Testimonium De Auditu' Dalam Peradilan Pidana." *Jurnal Yudisial*, Vol. 7, no. 1, (April 2014).
25) Wicaksana, Abraham Gunawan. "Rekonstruksi Ruang Lingkup Kewenangan Praperadilan Dalam Sistem Peradilan Pidana Indonesia." *Jurnal Magister Hukum Perspektif*, 10, no. 2, (Oktober 2019).
26) Wulandari, S. "Kajian Tentang Praperadilan dalam Hukum Pidana." *Jurnal Ilmiah UNTAG Semarang*, Vol. 4, no. 3, (2015).
27) Wulandari, Widati, Nella Sumika Putri, Wanodyo Sulistyani, dan Erika Magdalena Chandra. "Putusan Mahkamah Konstitusi: Dampaknya terhadap Perubahan Undang-Undang dan Penegakan Hukum Pidana." *Jurnal Konstitusi*, Vol. 18, no. 3, (September 2021).