

Submission of Criminal Cases to The District Court After Pretrial Decision (Case Study of Case Number 1545/PID.SUS/2023/PN TNG Dated October 02, 2023)

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ABSTRACT: Pretrial is a mechanism for monitoring the actions of law enforcement officials, including the determination of suspects, detention, termination of investigation, and termination of prosecution. A pretrial decision that invalidates an investigation or a suspect determination has direct implications for the subsequent legal process. After a case is decided in pretrial, the Public Prosecutor is faced with the dilemma of whether to continue the submission of the case to the District Court, even though the pretrial decision declares the investigation or determination of a suspect invalid. This study aims to analyze the impact of pretrial decisions on the authority of the Public Prosecutor in referring criminal cases to the District Court, as well as to identify unclear regulations in Indonesian criminal procedure law. The method used in this research is normative legal research with a statute approach, case approach, and conceptual approach. Based on the analysis, it was found that although pretrial serves to protect the rights of suspects, pretrial decisions that invalidate investigations or suspect determinations can cause legal uncertainty for the Public Prosecutor. Article 140 of KUHAP does not provide clear guidelines on the actions to be taken by the Public Prosecutor following a pretrial decision that invalidates an investigation. This can slow down the case submission process and potentially harm the parties involved, including victims. This research also found that the lack of legal clarity regarding the submission of criminal cases after a Pretrial Decision causes gaps in the application of criminal procedure law in Indonesia. For this reason, this study recommends changes in the KUHAP regulations to provide legal certainty regarding the authority of the Public Prosecutor in transferring cases to the District Court after a pretrial decision. This recommendation is expected to improve Indonesia's criminal justice system to be more fair and transparent, and reduce legal uncertainty in the law enforcement process.

KEYWORDS: delegation of criminal cases, pretrial, public prosecutor's authority, legal certainty, criminal procedure law.

I. INTRODUCTION

The enactment of Law No. 8 of 1981 on the Criminal Procedure Code (KUHP) has brought about actual and fundamental changes, both conceptually and in terms of implementation, to the procedures for resolving criminal cases in Indonesia.¹ These changes in the judicial system have also led to changes in the way of thinking, and consequently to changes in the attitudes and behavior of law enforcement officials as a whole.²

In order to ensure that the provisions of the Criminal Procedure Code are properly implemented, the Criminal Procedure Code establishes an institution known as the Pre-trial Court. The establishment of the Pre-trial Court is generally in accordance with the purpose and objectives of the Criminal Procedure Code. This is because it is considered that HIR³ It is outdated and no longer in line with the progress and development of an increasingly advanced and modern society.⁴

This pretrial institution was inspired by the Habeas Corpus right in the Anglo-Saxon judicial system, which provides fundamental guarantees for human rights, particularly the right to liberty. The Habeas Corpus Act grants a person the right to challenge law enforcement officials who detain them through a court order. This is to ensure that the deprivation or restriction of

¹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan)*, Edisi Kedua, Jakarta, Sinar Grafika, 2000, hlm. 4

² Andi Hamzah, *Hukum Acara Pidana Indonesia*, Edisi Kedua, Cetakan Kedelapan, Sinar Grafika, Jakarta, 2014, hlm. 63

³ HIR (*Het Herziene Indlandsch Reglement*) adalah produk hukum dari pemerintahan bangsa Belanda yang menjadi dasar bagi pelaksanaan hukum acara pidana dalam lingkungan peradilan. Lihat R. Soeparmono, *Praperadilan dan Penggabungan Perkara Gugatan Ganti Kerugian Dalam KUHAP*, Bandung, Mandar Maju, 2015, hlm.2

⁴ R. Soeparmono, *Praperadilan dan Penggabungan Perkara Gugatan Ganti Kerugian dalam KUHAP*, Bandung, Mandar Maju, 2015, hlm.15

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liberty of a suspect or defendant is in accordance with applicable legal provisions and human rights guarantees.⁵ The principle contained in pretrial proceedings is intended and aimed at conducting horizontal oversight to prevent coercive legal actions that are contrary to the law.⁶

Pretrial proceedings are not a separate judicial institution, nor are they a judicial body with the authority to issue final decisions on criminal cases. Pretrial proceedings are a new institution whose characteristics and existence are inherent to the District Court, and as a judicial institution, they are only found at the District Court level. In other words, pretrial decisions cannot be appealed.⁷

Pretrial is the authority of the district court to examine and decide on:

1. Whether an arrest and/or detention at the request of the suspect or his/her family or other parties acting on behalf of the suspect is valid or not;
2. The validity of the termination of an investigation or the termination of prosecution at the request of the suspect or his family or another party acting on his behalf for the sake of upholding the law and justice;
3. A request for compensation or rehabilitation by the suspect or his family or another party acting on his behalf whose case has not been brought before the court.⁸

When broken down, the scope of pre-trial proceedings under the Criminal Procedure Code (KUHP) includes the legality of an arrest, the legality of detention, the legality of the termination of an investigation, the legality of the termination of prosecution, compensation and rehabilitation for an individual whose case was terminated at the investigation stage, and also compensation and rehabilitation for an individual whose criminal case was terminated at the prosecution stage.⁹

In relation to detention as an object of pretrial institutions, it is necessary to understand which officials are authorized to carry out detention. Article 20 of the Criminal Procedure Code states:

1. For the purposes of investigation, investigators or assistant investigators acting on the orders of investigators as referred to in Article 11 shall have the authority to detain;
2. For the purposes of prosecution, public prosecutors shall have the authority to detain or extend detention;
3. For the purposes of examination by a judge in court, with his or her decision, the judge shall have the authority to detain.

From the aforementioned article, it can be summarized that the officials authorized to carry out detention are investigators, public prosecutors, and judges. However, the officials who can be respondents in a pretrial hearing regarding the legality of detention are only investigators and public prosecutors, as mentioned earlier that the domain of the pretrial institution is in the pre-adjudication stage.

Even in Article 82(1)(d) of the Criminal Procedure Code, it is stated that if a case has already been examined by the district court, while the examination of the request for a pretrial hearing has not been completed, then the request is deemed to have lapsed. Furthermore, it is explained that the aforementioned provision does not have binding legal force to the extent that the phrase “a case has already begun to be heard” is not interpreted to mean that the request for preliminary review lapses when the main case has been transferred and the first hearing on the main case has begun in the name of the defendant/applicant for preliminary review.

Thus, officials who can be respondents in a pretrial hearing regarding the legality of detention are investigators and public prosecutors. In this regard, one of the principles recognized in the prosecution stage is *dominus litis*, which means ‘prosecutor’ or master of the case, so that in criminal proceedings, it is the prosecutor who has the authority to decide whether a case can be brought to court or not. According to Surachman,¹⁰ In some countries, such as Japan, the Netherlands, and France, prosecutorial authority is the monopoly of prosecutors. In Indonesia, this principle forms the basis of the public prosecutor's authority to prosecute.¹¹ The *Dominus Litis* principle has been universally recognized and is reflected in Article 2 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Attorney General's Office is a government institution that exercises state authority in the field of prosecution and other powers based on law, which is carried out independently. However, there is an issue regarding the transfer of criminal cases to the District Court after a preliminary ruling,

⁵ Lobby Loekman, *Pra-peradilan di Indonesia*, Jakarta, Ghalia Indonesia, 1982, hlm.54

⁶ R. Soeparmono, *Loc.Cit*

⁷ M Yahya Harahap, *Op.Cit.* hlm.1

⁸ *Ibid*, hlm. 12

⁹ *Ibid*, hlm. 21

¹⁰ RM. Surachman, *Mozaik Hukum I: 30 Bahasa Terpilih*, Sumber Ilmu Jaya, Jakarta, 1996, hlm. 83.

¹¹ Kejaribone, *Problematika Penerapan Prinsip Dominus Litis dalam Perspektif Kejaksaan*, dikutip dari website:<https://www.kejari-bone.go.id/artikel/detail/3/problematika-penerapan-prinsip-dominus-litis-dalam-perspektifkejaksaan.html>

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which is one of the critical issues in the criminal justice system in Indonesia.¹² In theory, the transfer of cases is governed by the basic principles of criminal procedure law, which aim to uphold justice and legal certainty for all parties. Based on the theory of the rule of law (*rechtsstaat*) and the principle of due process of law, the transfer of criminal cases must be carried out fairly and transparently, with due regard for the rights of suspects or defendants.¹³

Within the framework of ideal legal theory, there is the principle of presumption of innocence, which protects the rights of every individual until a final and binding court decision is reached.¹⁴ In addition, pretrial hearings as part of the judicial control system provide a mechanism for suspects to challenge the legality of their arrest, detention, seizure of property, and termination of investigation.¹⁵ Pre-trial hearings serve as a form of protection against the arbitrary exercise of power by law enforcement officials and ensure accountability in the law enforcement process.

However, after the pretrial decision, the transfer of cases to the District Court became a legal issue that often sparked debate regarding its mechanism and legality. Questions arose regarding the position of the pretrial decision in the criminal justice process and the application of legal norms related to the transfer of criminal cases.

In practice, the transfer of cases to the District Court following a preliminary ruling often faces various obstacles. One example of an issue arising in the transfer of cases following a preliminary ruling is Case No. 1545/Pid.Sus/2023/PN Tng dated November 8, 2023, involving an investment fraud case by PT. Simbolik Multitalenta Indonesia (PT. SMI) under the guise of Multilevel Marketing (MLM) related to the sale of e-books containing investment trading package offers. The package promised returns from the robot trading investment package of approximately 1% per day, 20% per month, and over 200% per year. The sales attracted the interest of victims, leading to the creation of a Ponzi scheme through robot trading investments from around 2017 until now across Indonesia, allegedly carried out by PT. SMI, namely Lauw Swan Hie Samuel (listed in the Wanted Persons List/DPO), Andreas Andreyanto (DPO), along with Suspect I Deddy Iwan ST, Suspect II Ferdi Iwan, and Suspect III Alwyn Aliwarga, with estimated losses amounting to Rp. 4.4 trillion.¹⁶

On August 28, 2023, the South Tangerang District Attorney's Office received the suspects and evidence from the Special Crimes Investigation Unit of the Indonesian National Police on behalf of suspect I Deddy Iwan ST, suspect II Ferdy Iwan, and suspect III Alwyn Aliwarga. After that, the Public Prosecutor at the South Tangerang District Attorney's Office prepared administrative files for the transfer of case files to the Tangerang District Court. However, upon further review, the Public Prosecutor realized that there were still deficiencies in the evidence in the case file. The issue is that Law No. 8 of 1981 on the Criminal Procedure Code (KUHP) does not provide for the Public Prosecutor to return the case file to the investigators after a P-21 decision has been made. According to Article 140(2)(a) of the KUHP, the Public Prosecutor has no choice but to transfer the case files to the Tangerang District Court, despite being aware of the risks involved in the upcoming trial proceedings.¹⁷

While the Public Prosecutor was preparing the administrative transfer documents, Pre-trial Decision Number 99/Pid.Pra/2023/PN JKT.SEL was issued¹⁸ and No. 102/Pid.Pra/2023/PN JKT.SEL from the South Jakarta District Court on behalf of suspect I Deddy Iwan, S.T., and suspect II Ferdy Iwan. The Public Prosecutor was not previously aware that a pretrial hearing was underway in South Jakarta regarding the aforementioned case, as the Public Prosecutor at the South Tangerang District Prosecutor's Office only received the suspects and evidence (Stage II) from the Special Crimes Investigation Directorate of the National Police Criminal Investigation Agency, which had previously conducted Stage I of the investigation at the Attorney General's Office of the Republic of Indonesia. As a result, the Public Prosecutor was unaware of the pretrial hearing, and the Investigator at the Special Crimes Investigation Directorate of the National Police Criminal Investigation Agency did not coordinate with the Public Prosecutor at the South Tangerang District Prosecutor's Office. eksus of the National Police Criminal Investigation Agency and the South Jakarta District Court did not coordinate with the Public Prosecutor at the South Tangerang District Prosecutor's Office.

In the Pre-Trial Decision, point 2 states that the designation of suspect I Deddy Iwan, S.T., and suspect II Ferdy Iwan is invalid and therefore has no binding legal force. Although the Public Prosecutor is not a defendant in this pre-trial case, the decision still has implications for the authority of the Public Prosecutor. Pursuant to Article 140 of the Criminal Procedure Code, the Public

¹² Candra Adi Prasetyo, 2020, *Analisis Yuridis Putusan Nomor 34/Pid. Sus/TPK/PN. Jkt. Pst yang mengesampingkan Putusan Praperadilan Nomor 40/Pid. Pra/2018/PN. Jkt. Sel dikaitkan dengan KUHP*. *Novum: Jurnal Hukum*, Volume 7 No. 4, hlm. 21.

¹³ Irvan Robani, 2020, *Analisis Terhadap Putusan Pemidanaan Tanpa Diktum "Memerintahkan Terpidana Ditahan" Dalam Perspektif Kepastian Hukum* (Doctoral dissertation, Universitas Islam Riau), hlm. 2-3.

¹⁴ Nyoman Serikat Putrajaya, 2016, *Tinjauan Yuridis Terhadap Pelaksanaan Asas Praduga Tak Bersalah Dalam Proses Peradilan Pidana*. *Diponegoro Law Journal*, Volume 5 No. 4, hlm. 1-2.

¹⁵ Rizky Fakhry Alfiananda, 2018, *Pengujian Sah Tidaknya Penetapan Tersangka dalam Kerangka Praperadilan*. *Wacana Hukum*, Volume 24 No. 1, hlm. 52.

¹⁶ Putusan Sela Nomor: 1545Pid.Sus/2023/PN Tng tanggal 02 Oktober 2023.

¹⁷ *Ibid.*

¹⁸ Putusan Praperadilan Nomor 99/Pid.Pra/2023/PN JKT.SEL tanggal 18 September 2023

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Prosecutor is obligated to immediately transfer the case to the District Court once the case file is deemed complete (P21). However, the pretrial ruling declaring the designation of suspects invalid has limited the Public Prosecutor's ability to proceed with this case, as there are no further provisions in the Criminal Procedure Code, Law No. 16 of 2004 on the Attorney General's Office of the Republic of Indonesia, or related implementing regulations. Therefore, the Public Prosecutor continues to transfer the case file to the District Court, fully aware of the risks involved in the trial process, particularly in ensuring justice for the victims in this fraud case.¹⁹

Based on the above description, there is a gap in the implementation of criminal procedure law, particularly in relation to the transfer of cases that meet formal and material requirements.²⁰ Facts on the ground also show that not all pretrial rulings result in the termination of investigations or judicial proceedings. This indicates ambiguity in the application of legal principles and norms relating to the transfer of criminal cases. This phenomenon illustrates that pretrial proceedings as a mechanism for controlling investigative actions are not yet fully functioning optimally in guaranteeing the rights of suspects.²¹

This study is important because the issue of case transfer following a pretrial decision has serious implications for the effectiveness of the criminal justice system in Indonesia. These issues affect the rights of suspects and defendants, as well as the integrity of the legal system as a whole. A study of the implementation of criminal case transfers based on the principles of justice and legal certainty is urgently needed, given that preliminary court decisions often serve as the starting point for further judicial proceedings. Additionally, this research is important to provide solutions to the problems in the practice of case transfer following pre-trial rulings, particularly in the context of the case studies discussed. This study is also expected to contribute to the development of criminal procedure law theory in Indonesia.

Based on the above description, the author formulates the following issues: 1) What is the impact of Pre-trial Decision No. 99/Pid.Pra/2023/PN JKT.SEL and Decision No. 101/Pid.Pra/2023/PN JKT.SEL on the authority of the Public Prosecutor in criminal cases that have accepted suspects and evidence?; and 2) How will the Criminal Procedure Code (KUHAP) regulate the authority to transfer cases from the Public Prosecutor to the District Court following the issuance of a Pre-Trial Ruling? The objectives of this study are: 1) To analyze the impact of Pre-Trial Decision No. 99/Pid.Pra/2023/PN JKT.SEL and Decision No. 101/Pid.Pra/2023/PN JKT.SEL on the authority of the Public Prosecutor in criminal cases that have received suspects and evidence; and 2) To identify and analyze the provisions in the Criminal Procedure Code (KUHAP) regarding the authority to transfer cases from the Public Prosecutor's Office to the District Court following a preliminary ruling.

II. RESEARCH METHODS

This type of research is normative or doctrinal legal research. Normative research aims to analyze and solve legal problems using applicable legal sources.²² The focus of this study is to examine how legal norms are implemented in the context of criminal case transfers following pretrial decisions.²³

This research approach uses several approaches, namely:²⁴

1. Statute Approach

The Statute Approach is essentially closely related to legal research, particularly at the level of legal dogma or research for legal practice. In the statute approach, researchers need to understand the hierarchy and principles of legislation.²⁵ Furthermore, the definition of legislation as stipulated in Article 1 paragraph 2 of Law No. 12 of 2011 is a written regulation containing legal norms that are generally binding and are formed or established by state institutions or authorized officials through procedures stipulated in legislation. Thus, what is meant by Statute (Legislation) includes legislation and regulations, while Decree is not included in the Statute Approach or Legislative Approach.

The hierarchy and types of legislation in the Republic of Indonesia are based on the provisions of Article 7(1) of Law No. 12 of 2011, in descending order of authority as follows: The 1945 Constitution of the Republic of Indonesia; Decrees of the People's Consultative Assembly; Laws/Government Regulations in Lieu of Laws; Government Regulations; Presidential Regulations; Provincial Regulations; and District/Municipal Regulations.

¹⁹ Putusan Sela Nomor: 1545Pid.Sus/2023/PN Tng tanggal 02 Oktober 2023.

²⁰ Aurelia Verina Withania, 2021, *Pembatasan Kasasi Perkara Pidana Oleh Mahkamah Agung Ditinjau Dari Hak Rakyat Untuk Memperoleh Keadilan*, Doctoral dissertation, Universitas 17 Agustus 1945 Surabaya, hlm. 3.

²¹ Mirza Elmy Safira, 2023, Model Sistem Peradilan Dalam Mewujudkan Kepastian Hukum Dan Keadilan di Indonesia. *Journal of Indonesian Comparative of Syari'ah Law*, Volume 6 No. 1, hlm. 1-2.

²² Zainal Asikin & Amiruddin, 2021, *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada, hlm. 92-105.

²³ Indriyanto Seno Adji, 2023, *Praperadilan dalam Sistem Peradilan Pidana Indonesia*. Jakarta: Kencana Prenada Media, hlm. 73-89.

²⁴ Suteki, & Galang, A., 2022, *Metodologi Penelitian Hukum: Pendekatan Filsafat, Teori, dan Praktik*. Yogyakarta: Thafa Media, hlm. 145-162.

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum – edisi revisi*, Kencana – Prenada Media Group, 2015

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A number of principles can be used to understand the Statute Approach or Legislative Approach, including the principle of *lex superior derogat legi inferiori*, the principle of *lex specialis derogat legi generali*, and *lex posteriori derogat legi priori*. All of these principles are useful for resolving conflicts between one legal rule and another.

The main thing in the legislative approach is the importance of understanding the hierarchy of laws and regulations. One of the most crucial aspects of this approach is understanding the principles of laws and regulations that are relevant to the issues that will be discussed in this study.

2. Case Approach

Conducting an in-depth review of Case No. 1545/Pid.Sus/2023/PN Tng dated November 8, 2023, to understand the application of the law and the implications of the Pre-Trial Ruling on the transfer of criminal cases.

3. Conceptual Approach

The conceptual approach is an approach that starts from the views and doctrines developed in legal science to find legal concepts and principles that are relevant to the issues being studied.²⁶

A conceptual approach is used when researchers do not deviate from existing legal rules. This is done because there are no legal rules for the issues at hand. In developing concepts, researchers must start from the views and doctrines that have developed in legal science. Thus, researchers need to refer to legal principles. These principles can be found in the views of scholars or legal doctrines. Although not explicitly stated, legal concepts can also be found in laws. However, in identifying these principles, researchers must first understand the concepts through existing perspectives and doctrines. The Conceptual Approach uses legal theories, such as the theory of law enforcement and legal certainty, to analyze the issues raised in this study.

III. DISCUSSION AND RESULT

A. The Impact of Pre-Trial Decision No. 99/Pid.Pra/2023/PN JKT.SEL and Decision No. 101/Pid.Pra/2023/PN JKT.SEL on the Authority of the Public Prosecutor in Criminal Cases that Have Received Suspects and Evidence

Pretrial proceedings in Indonesia are based on the provisions of Law No. 8 of 1981 on the Criminal Procedure Code (KUHP) as a guideline in criminal proceedings. This concept is rooted in the principle of Habeas Corpus, which aims to grant individuals the right to challenge coercive actions by investigators or prosecutors that violate human rights by filing a lawsuit with the court.²⁷

Pre-trial proceedings serve as a mechanism for supervising coercive measures in criminal investigations, such as arrest and detention. Although these measures are legally permissible and coercive in nature, in reality they often deprive individuals of their liberty and restrict their human rights, especially those of suspects. Therefore, measures that deprive individuals of their liberty must be carried out responsibly and in accordance with the principles of due process of law.²⁸

A pretrial motion may be filed by the suspect, his family, legal counsel, or an authorized party if there is evidence that law enforcement officials have acted beyond the authority granted to them by law.²⁹ For example, the use of violence to obtain evidence or the use of false evidence. In practice, the pretrial process is an integral part of the activities of the District Court (PN), where all petitions must be submitted through the head of the PN. The pretrial submission procedure consists of the following stages:³⁰

1. Submission of Application: The application shall be addressed to the head of the District Court that has jurisdiction in the area where the coercive measures are carried out or where the investigation or prosecution by the investigator or public prosecutor is terminated.
2. Case Registration: The court clerk shall record the pretrial application in a register separate from general criminal cases.
3. Appointment of Judge and Court Clerk: The head of the District Court appoints a judge and court clerk to examine the application, referring to Article 82(1)(a) of the Criminal Procedure Code, which stipulates that within three days of receiving the application, the judge must set a date for the hearing.
4. Examination by a Single Judge: Pretrial motions are examined and decided by a single judge as stipulated in Article 78 Paragraph (2) of the Criminal Procedure Code, which states that the single judge is assisted by a court clerk.

²⁶ *Ibid.*

²⁷ Kurniawan Tri Wibowo, 2021, *Prospektif Hakim Pemeriksa Pendahuluan dalam Sistem Peradilan Pidana Indonesia*. Surabaya: Pustaka Aksara, hlm. 2.

²⁸ U. M. Sosiawan, 2018, *Konstruksi Pra Peradilan Melalui Rekonstruksi Hakim Komisaris Sebagai Perlindungan Hak Tersangka Dalam Sistem Peradilan Indonesia (Pre-Judicial Construction through Judicial Reconstruction of the Jommissioner Judges in Order to Protect Rights of Suspects/Defendants in Indonesia's Criminal Justice System)*. *Jurnal Penelitian Hukum p-ISSN, 1410*, hlm. 5632.

²⁹ A. B. Malarangeng, 2012, *Solusi Praperadilan Oleh Hakim Komisaris Berdasarkan RUU KUHP*. *Pandecta Research Law Journal*, Volume 7 No. 1, hlm. 35.

³⁰ I Gede Yuliartha, 2009, *Lembaga Praperadilan Dalam Perspektif Kini Dan Masa Mendatang Dalam Hubungannya Dengan Hak Asasi Manusia* (Doctoral dissertation, Universitas Diponegoro), hlm. 84-85.

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5. Examination Procedure: The examination is conducted in accordance with certain procedures, including:

- 1) Setting the date of the hearing within three days after the motion is registered.
- 2) Immediate summoning of the parties to ensure the process proceeds swiftly.
- 3) Completion of the examination with a decision rendered no later than seven days, as provided under Article 82(1)(c) and Article 83(1)(c) of the Criminal Procedure Code (KUHP).³¹

According to Yahya Harahap, the presence of officials involved in pretrial hearings is only to provide information related to coercive measures that have been carried out. This emphasizes the importance of pretrial proceedings as a mechanism to guarantee the protection of human rights and compliance with the law at every stage of criminal investigations.³²

Weaknesses in the pretrial mechanism can be described as follows:³³

1. Limitations of the Subject Matter of Review: Not all acts of coercion can be submitted for review or assessment of their truth and accuracy through a pretrial institution. For example, acts such as searches, seizures, openings, and examinations of documents are not explicitly regulated in the Criminal Procedure Code, resulting in uncertainty regarding the competent authority to review them in the event of a violation. In this regard, pre-trial proceedings fail to provide adequate protection for the human rights of suspects or defendants regarding search and seizure actions. Yet, arbitrary searches can violate an individual's privacy, and unlawful seizures constitute a serious violation of an individual's property rights.
2. Dependence on Petitions: Pre-trial proceedings do not have the authority to examine or assess the legality of an arrest or detention without a petition from the suspect, their family, or another authorized party. As a result, if no petition is filed, arrests or detentions that deviate from legal provisions cannot be reviewed through pre-trial proceedings, even if the violation is clear.
3. Focus on Formalities: In practice, pretrial judges tend to pay more attention to formal requirements, such as the existence of an arrest warrant (Article 18 of the Criminal Procedure Code) or a detention warrant (Article 21(2) of the Criminal Procedure Code). Judges often overlook material requirements that are actually more important, namely the existence of "strong suspicion" against the perpetrator based on "sufficient preliminary evidence." This material aspect is actually the basis for the legality of coercive measures. However, in practice, pretrial judges often consider the examination of material requirements to be part of the examination of the main case, which is outside their jurisdiction.

The advantages of pretrial proceedings are as follows:³⁴

1. Transparent Process: Pretrial hearings are open to the public. Anyone is allowed to attend the proceedings, except in certain cases, such as cases involving morality or children.
2. Fast-Track Review System: The pre-trial hearing employs a fast-track review system aimed at preventing prolonged detention prior to a judge's decision. This reflects protection of human rights, particularly the right to freedom from arbitrary detention.

Legal implications of Pre-trial Decision No. 99/Pid.Pra/2023/PN JKT.SEL³⁵ and Number 101/Criminal.Pre-Trial/2023/District Court of South Jakarta³⁶ Pre-trial proceedings are a legal mechanism regulated in Articles 77 to 83 of the Criminal Procedure Code, which grants suspects or other authorized parties the right to file a lawsuit against investigative or prosecutorial actions, such as arrest, detention, or termination of investigation and prosecution.

In this case, the Preliminary Ruling No. 99/Pid.Pra/2023/PN JKT.SEL and No. 101/Pid.Pra/2023/PN JKT.SEL were filed by the suspect in the investment fraud case involving PT. Simbolik Multitalenta Indonesia (PT. SMI). The case involves a multi-level marketing (MLM) investment scheme and robot trading that caused significant losses to the public, estimated to reach Rp 4.4 trillion.

On August 28, 2023, the South Tangerang District Attorney's Office received the suspects and evidence (Stage II) from the Special Crimes Investigation Unit of the Indonesian National Police, namely Deddy Iwan ST, Ferdy Iwan, and Alwyn Aliwarga. During the preparation process for the transfer of the case to the District Court, the Prosecutor's Office learned that the suspects had filed a pre-trial motion at the South Jakarta District Court.

After going through a pretrial process, the judge granted the suspect's request, ruling that the investigators' decision to name him as a suspect was invalid. This has legal implications for the authority of the public prosecutor, because the case file has been declared complete (P-21), but the suspect's legal status has been revoked.

³¹ *Ibid.*

³² E. K. Putra, *et.al.*, 2023, *Jangka Waktu Pengajuan Pra Peradilan terhadap Objek Penghentian Penyidikan. JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, Volume 8 No. 3, hlm. 2968-2986.

³³ Dwi Nurahman, 2024, *Konstruksi Hakim Pemeriksa Pendahuluan Dalam Pembaharuan Sistem Peradilan Pidana*. (Doctoral dissertation, Universitas Lampung), hlm. 214.

³⁴ Ahmad, K., 2017, *Batasan Penerapan Asas Persidangan Terbuka untuk Umum dalam Siaran Persidangan Pidana oleh Media. Jurnal Hukum Ius Qua Iustum*, Volume 24 No. 3, hlm. 488-505.

³⁵ Putusan Praperadilan Nomor 99/Pid.Pra/2023/PN JKT.SEL tanggal 18 September 2023.

³⁶ Putusan Praperadilan Nomor 102/Pid.Pra/2023/PN JKT.SEL tanggal 18 September 2023.

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The essence of the pretrial decision granted by the South Jakarta District Court contains two main points:

1. Declaring that the designation of Deddy Iwan ST and Ferdy Iwan as suspects is invalid and has no binding legal force.
2. Affirming that all legal actions taken against suspects during the investigation process are invalid, including seizure and detention.

Thus, this ruling has a direct impact on the next stage of the criminal justice system, particularly with regard to the authority of the Public Prosecutor in transferring cases to the District Court. The legal implications for the authority of the Public Prosecutor include the following:

1. Conflict between Pretrial Decision and Formal Obligations of Public Prosecutors Normatively, Article 140 paragraph (2) letter a of the Criminal Procedure Code requires the Public Prosecutor to transfer criminal cases to the court after receiving complete case files from investigators. However, the pretrial decision that revoked the suspect's status created a contradiction in the implementation of this obligation. The legal dilemma that arose was:

- a. If the Public Prosecutor still transfers the case, this could potentially violate the principle of legality, because the legal status of the suspect has been declared invalid.
- b. If the Public Prosecutor does not transfer the case, this risks violating the formal procedures stipulated in the Criminal Procedure Code regarding the obligation to transfer cases after P-21.

This dilemma shows that the Criminal Procedure Code does not provide a clear mechanism for public prosecutors to deal with situations where the status of a suspect is revoked after the case file has been declared complete.

2. Uncertainty regarding the status of suspects and its impact on the prosecution process

A pretrial ruling only has the authority to examine the validity of the investigation process, but does not have the authority to decide whether a person is guilty or not. However, in practice, a ruling that revokes suspect status can hinder the prosecution process, because without valid suspect status, the trial cannot proceed. In this case, the public prosecutor must consider the next legal steps:

- a. Should the case be returned to the investigator for further investigation?
- b. Is it necessary to file further legal remedies, such as cassation or review, against the pretrial decision?

The Criminal Procedure Code does not provide an explicit answer to this question, indicating a legal loophole that needs to be filled with clearer regulations.

3. Risk of disparities in law enforcement

If the pretrial ruling automatically ends the legal process, there will be a legal loophole that can be exploited by criminals. In cases of illegal investment such as PT. SMI, many victims have suffered huge losses and they hope for a clear and fair legal process. Legal uncertainty resulting from a pretrial ruling that revokes suspect status may:³⁷

- a. Impeding justice for victims, as there is no clarity regarding the fate of cases that have been compiled.
- b. Causing inconsistency in the criminal justice system, as investigators may have to repeat the entire investigation process from the beginning.
- c. Reducing public trust in law enforcement, as there is no certainty regarding how cases should be followed up.

The ruling has significant implications for the authority of the Public Prosecutor, particularly in the case of investment fraud involving PT. Simbolik Multitalenta Indonesia (PT. SMI). Legally, the ruling that the designation of suspects was invalid results in a change in the legal status of the suspects and poses new challenges for the Public Prosecutor. Pursuant to Article 140(2)(a) of the Criminal Procedure Code, the Public Prosecutor is obligated to transfer the case to the District Court after the case file is deemed complete (P-21). However, with the Pre-Trial Ruling invalidating the suspect's status, the continuation of the legal process becomes unclear. This situation creates a legal dilemma between the formal obligation of the Public Prosecutor and the substantive validity of the suspect's status.

In the context of due process of law theory, this pretrial ruling is a test of the presumption of innocence principle that is upheld in the criminal justice system.³⁸ Prosecutors face obstacles in balancing the exercise of their authority under criminal procedure law and the protection of the rights of suspects who have been declared invalid as suspects. Normatively, the Criminal Procedure Code does not provide for a follow-up mechanism for prosecutors after a pretrial decision revokes a suspect's status. This indicates a loophole in the regulation that could lead to legal uncertainty.

The contradiction between the Pre-Trial Ruling and the obligations of the Public Prosecutor lies in the provisions of Article 140 of the Criminal Procedure Code, which requires the Public Prosecutor to transfer the case to the District Court after P-21, in this case, conflicts with the implications of the Pre-Trial Ruling. When the Pre-Trial Ruling revokes the suspect's status, the Public

³⁷ Eddyono, S. W., Djafar, W., Sufriyadi, Napitupulu, E. A., & Sriyana. (2014). *Praperadilan di Indonesia: teori, sejarah dan praktiknya*. Institute for Criminal Justice Reform, hlm. 6.

³⁸ A. S., Tornado, 2019, *Reformasi Peradilan di Indonesia: Tinjauan Teori, Praktek dan Perkembangan Pemikiran*. Bandung: Nusamedia, hlm. 2

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Prosecutor is faced with a situation where transferring the case could potentially violate the principle of legality, as the suspect's legal status has been declared invalid. On the other hand, the absence of an option to return the case file to the investigator after P-21 further complicates the situation.

In case study No. 1545/Pid.Sus/2023/PN Tng, even though the Public Prosecutor was aware of the weakness of the evidence, the case was still transferred to fulfill the provisions of Article 140 of the Criminal Procedure Code.³⁹ This step was taken with the risk that the trial could face serious obstacles, such as objections from the defendant based on the pretrial ruling. This indicates the need for regulatory revisions to accommodate situations such as this, so that the judicial process can proceed without sacrificing the principles of justice and legal certainty.

The pretrial ruling not only affects the public prosecutor, but also the rights of the suspect and the victim.⁴⁰ From the perspective of the suspect, the decision to revoke the suspect status serves as the basis for demanding the termination of legal proceedings. However, in this case, the transfer of the case was still carried out, which can be considered a violation of the suspect's rights. Conversely, for the victim, the transfer of the case despite the preliminary ruling provides hope that the case can still be resolved and justice can be upheld. This imbalance reflects the ambiguity in Indonesia's criminal justice system, which has not yet fully supported the balanced protection of the rights of both parties.

Pre-trial rulings declaring investigations or suspect designations invalid often influence the legal steps that can be taken by public prosecutors.⁴¹ In the context of case No. 1545/Pid.Sus/2023/PN Tng, the pretrial ruling declared the investigation invalid.⁴² The main impact is the lack of clarity regarding the authority of the Public Prosecutor to continue with the transfer of criminal cases. This situation creates potential legal uncertainty, which is contrary to the principle of legal certainty as stipulated in Gustav Radbruch's theory of legal certainty.

In the theory of legal certainty formulated by Gustav Radbruch, good law must provide certainty so that people can plan their actions based on clear rules.⁴³ In this context, the judge hearing this case analyzed that because the designation of the petitioner as a suspect was based solely on a letter, it did not meet the minimum requirement of two pieces of valid evidence as stipulated in Article 184(1) of the Criminal Procedure Code. therefore, the judge concluded that the respondent's action in designating the petitioner as a suspect, as referred to in Article 378 and/or Article 372 of the Criminal Code and/or Article 45(1) in conjunction with Article 28 and/or Article 34(1) in conjunction with Article 50 of Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Information and Electronic Transactions and/or Article 79 in conjunction with Article 69(1) of Law No. 3 of 2011 on Criminal Acts of Fund Transfer and/or Article 46 of Law No. 10 of 1998 on Banking and/or Article 8 and/or Article 9 in conjunction with Article 62 paragraph (1) and/or Article 10 of Law Number 8 of 1999 on Consumer Protection and/or Article 105 and/or Article 106 of Law Number 11 of 2020 on Job Creation Amending Law Number 7 of 2014 on Trade and/or Article 90 in conjunction with Article 104 of Law Number 8 of 1995 on Capital Markets and/or Articles 3, 4, 5, and 6 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Offenses in conjunction with Article 55 of the Criminal Code Joined with Article 56 of the Criminal Code Joined with Article 64 of the Criminal Code Joined with Article 65 of the Criminal Code by the Director of Special Crimes at the National Police Headquarters cq. Head of Sub-Directorate II for Banking cq. Head of Sub-Directorate II of the Special Crimes Directorate at the National Police Headquarters is invalid and not based on law, and therefore the designation of the suspect in question is invalid, and thus has no legal force.” Based on the judge’s analysis, the Pre-Trial Decision No. 99/Pid.Pra/2023/PN JKT.SEL and No. 101/Pid.Pra/2023/PN JKT.SEL, which pose challenges to legal certainty for the Prosecutor. Both decisions state that the designation of the suspect is invalid, thereby implying the invalidity of the legal process that has been undergone, including the acceptance of evidence by the Prosecutor.

Furthermore, the Public Prosecutor at the South Tangerang District Attorney's Office did not receive notification of the pretrial hearing at the South Jakarta District Court, even though the court clerk at the South Jakarta District Court, who was handling the pretrial proceedings, had an obligation to notify the Public Prosecutor. Within the context of the Indonesian judicial system, the role of the court clerk in notifying the public prosecutor of the court hearing date is not explicitly regulated in the Law on Judicial Power (Law No. 48 of 2009), but is regulated in:

1. Code of Criminal Procedure (KUHAP)
2. Supreme Court Regulations (PERMA)
3. Judicial Administration Guidelines (Book II MA RI)

³⁹ Putusan Sela Nomor: 1545Pid.Sus/2023/PN Tng tanggal 02 Oktober 2023.

⁴⁰ Sujiono, S., 2013, Implementasi Lembaga Praperadilan untuk Perlindungan Hukum Hak-hak Tersangka (Studi Kasus di Pengadilan Negeri Tangerang). *Arena Hukum*, Volume 6 No. 2, hlm. 272-289.

⁴¹ Sanjaya, W., 2017, Proses Penyidikan Setelah Status Penetapan Tersangka Dinyatakan Tidak Sah Dalam Putusan Praperadilan. *Jurnal de jure*, Volume 9 No. 2, hlm. 3.

⁴² Putusan Sela Nomor: 1545Pid.Sus/2023/PN Tng tanggal 02 Oktober 2023.

⁴³ Suarni, S., et.al., 2024, *Buku Referensi Hukum Pidana: Teori komprehensif*. Jambi: PT. Sonpedia Publishing Indonesia, hlm 25.

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Relevant provisions in the Criminal Procedure Code: Article 152(1) of the Criminal Procedure Code states: "On the appointed day, the presiding judge shall open the hearing and declare it open to the public, except in cases specified by law. The court clerk shall summon the defendant, the public prosecutor, the legal counsel, and the witnesses into the courtroom." The court clerk also has the obligation to provide a copy of the verdict to the public prosecutor. This is important for the public prosecutor to determine the legal stance, carry out the execution, or report the case. The legal basis for this is stipulated in Article 226 of the Criminal Procedure Code: "The court clerk prepares a copy of the decision and delivers it to the public prosecutor and the defendant or their legal counsel no later than seven days after the decision is pronounced." Additionally, in Book II of the Supreme Court of the Republic of Indonesia and the electronic court system (e-Court or SPPT-TI), the delivery of a copy of the decision to the public prosecutor is part of the integrated administrative system.

A copy of the pretrial decision must also be submitted to the public prosecutor. This is stipulated in: "Article 82 paragraph (1) letter c of the Criminal Procedure Code: "The single judge hearing the pre-trial request shall issue a decision no later than seven days after the pre-trial request is received by the court. The decision shall be notified to the petitioner, the respondent, and other interested parties."

Article 226 of the Criminal Procedure Code remains applicable to all types of decisions, including pretrial decisions. In practice, the delivery is carried out by the court clerk either directly or through an electronic system, in accordance with the guidelines of Book II of the Supreme Court of the Republic of Indonesia and the SPPT-TI system. Thus, the court clerk does indeed have a formal obligation to notify the hearing schedule and deliver a copy of the decision, including in pretrial cases.

Normatively, Article 140(2) of the Criminal Procedure Code stipulates that after a case file is declared complete (P-21), the Public Prosecutor is obliged to transfer the case to court. However, when the status of a suspect is declared invalid by a pretrial ruling, a conflict arises between the normative obligation of the Public Prosecutor to continue the legal process and the requirement to respect the pretrial ruling. This ambiguity indicates the existence of a legal loophole that hinders the implementation of the principle of legal certainty.

In this case, the Public Prosecutor faced a dilemma between continuing to transfer the case to court or halting legal proceedings to comply with the pretrial ruling. Both options had the potential to violate the principle of legal certainty due to the ambiguity of the applicable rules. As a result, the credibility of the criminal justice system was threatened.

According to John Rawls' theory of justice, the law must treat all parties fairly, especially vulnerable groups in society.⁴⁴ In this case, the pretrial ruling that revoked the suspect status was intended to protect the rights of individuals from unlawful investigative actions. However, this protection must be balanced with the responsibility to provide justice for victims, especially in cases involving significant economic losses, such as in case No. 1545/Pid.Sus/2023/PN Tng.

When a pretrial ruling protects the rights of the suspect, victims often feel that justice has not been served. In this case, the loss of Rp4.4 trillion due to robot trading fraud has had a significant impact on the community. Failure to proceed with the transfer of the case could reinforce the perception that the legal system protects perpetrators more than victims. Therefore, it is important for the public prosecutor to balance the rights of the suspect with those of the victim in making decisions after the pretrial ruling.

The pretrial judge has limited authority to review the validity of the designation of a suspect, the termination of an investigation, or the termination of prosecution.⁴⁵ Although this authority is designed to protect human rights, its impact on the legal system still poses significant challenges. Pretrial rulings often conflict with the normative obligation of public prosecutors to transfer cases once the case files are deemed complete. Therefore, there is a need to clarify the role and limits of the authority of pretrial judges so as not to undermine the balance of the criminal justice system.

The tension between the presumption of innocence and legal certainty in pretrial decisions that revoke suspect status often prioritizes the principle of presumption of innocence.⁴⁶ However, in practice, this can neglect the victim's need for justice. Therefore, law enforcement must find a balance between protecting the rights of suspects and ensuring that justice for victims is not neglected.

The principle of legality, which is a pillar of criminal law, requires that every legal action must be based on clear rules.⁴⁷ In this case, the Public Prosecutor faced a situation where Article 140 of the Criminal Procedure Code did not provide explicit guidance regarding the transfer of cases after a pretrial decision. This uncertainty disrupted the implementation of the principle of legality, as the Public Prosecutor did not have a strong legal basis to continue or discontinue the transfer of the case.

⁴⁴ Samsuri, M., 2018, Konsep Keadilan Hukum (Konsep Barat, Konsep Islam, Dan Konsep Pancasila). *Mamba'ul'Ulum*, Volume 14, No. 2, hlm. 45-60.

⁴⁵ Kusuma, I. M. W. W., & Karma, N. M. S., 2020, Upaya Hukum Praperadilan dalam Sistem Peradilan Pidana di Indonesia. *Jurnal Interpretasi Hukum*, Volume 1, No. 2, hlm. 73-77.

⁴⁶ SH, K. T. W., 2021, *Prospektif Hakim Pemeriksa Pendahuluan dalam Sistem Peradilan Pidana Indonesia*. Surabaya: Pustaka Aksara, hlm. 93.

⁴⁷ Suherman, A., 2020, Esensi asas legalitas dalam penegakan hukum pidana lingkungan. *Bina Hukum Lingkungan*, Volume 5 No. 1, hlm. 133-152.

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Furthermore, the decision of the Public Prosecutor to continue to refer the case to court can be considered contrary to the principle of legality, because continuing legal proceedings in a case where the suspect's status has been revoked by a pretrial court is debatable in terms of its validity. This situation emphasizes the need for an update to the criminal procedure law to clearly regulate the authority of the Public Prosecutor in situations such as this.

The role of the public prosecutor in maintaining balance, according to Sudikno Mertokusumo, is that ideal law enforcement must balance the interests of individuals and society.⁴⁸ In this case, the Public Prosecutor has the responsibility to guarantee the rights of the suspect while protecting the interests of the victim. The pretrial decision that revoked the suspect's status created a challenge for the Public Prosecutor to maintain this balance, especially in determining the next steps.

The Public Prosecutor's decision to proceed with the case despite the risk of an unfavorable court ruling demonstrates an effort to protect the rights of the victim. However, this decision must be made with caution to avoid violating the rights of the suspect, which have been protected by the preliminary ruling.

Impact on the law enforcement system: The pretrial ruling that overturned the suspect's indictment had a significant impact on the effectiveness of law enforcement.⁴⁹ When the Public Prosecutor must terminate legal proceedings after a pretrial ruling, there is a risk that perpetrators will escape legal accountability. This can set a precedent that undermines public confidence in the criminal justice system.

Conversely, if the Public Prosecutor continues to refer the case to court, a court decision that does not recognize the validity of the previous legal process could exacerbate legal uncertainty. Therefore, clear guidelines are needed to address this impact. To overcome the negative impact of pretrial decisions, the following strategies can be applied:⁵⁰

1. Improving the capacity of public prosecutors: Providing training to public prosecutors on case management after pretrial decisions.
2. Inter-agency Coordination: Strengthening coordination between investigators and prosecutors to ensure that case files are complete before P-21.
3. Regulatory Update: Proposing revisions to the Criminal Procedure Code to regulate the authority of prosecutors after preliminary court decisions more clearly.

The legal analysis of the Pre-Trial Ruling No. 99/Pid.Pra/2023/PN JKT.SEL and No. 102/Pid.Pra/2023/PN JKT.SEL states that the designation of the suspect is invalid and lacks legal binding force. The legal implications of this ruling are the limited authority of the Prosecutor to proceed with the transfer of the case. According to Article 140 of the Criminal Procedure Code, after the case file is deemed complete (P-21), the Public Prosecutor is obligated to transfer the case to the court. However, with the Pre-Trial Ruling invalidating the suspect's status, this authority becomes problematic due to the lack of legal clarity regarding the next steps.

In this context, the principle of legal certainty in criminal procedure law is threatened. The preliminary ruling creates a situation where the Public Prosecutor cannot proceed with the legal process without violating the ruling. Normatively, the Public Prosecutor lacks a clear legal basis to return the case file to the investigator or to discontinue the prosecution without explicit regulations.⁵¹

The pre-trial ruling that overturned the suspect's status demonstrates that individual rights must be protected from unlawful actions by law enforcement authorities. However, on the other hand, the position of the victim and the public is also disrupted because the legal process cannot proceed optimally. This imbalance underscores the need for better regulations in criminal procedure law to maintain a balance between the rights of suspects and the authority of the Prosecutor.

In the case study No. 1545/Pid.Sus/2023/PN Tng, despite the pre-trial ruling that the designation of the suspect was invalid, the Public Prosecutor proceeded with the transfer of the case. This was done considering the interests of the victims who suffered losses amounting to trillions of rupiah. However, this action raises questions about the validity of the prosecution process and the potential risk of the case being returned by the court.

The pre-trial ruling that invalidated the suspect's status highlights a significant flaw in Indonesia's criminal procedural law system. Article 140(2) of the Criminal Procedure Code does not provide flexibility for the Public Prosecutor to adjust legal steps in accordance with the pre-trial ruling. In the context of the principle of legality, the Public Prosecutor's decision to proceed with

⁴⁸ Alfiantoro, H., 2019, *Konstruksi Penegakan Hukum Pidana Bermodel Keseimbangan Kepentingan Daad-Dader Strafrecht (Kajian Kritis Membangun Paradigma Jaksa Progresif di Era Digital)*. *Fenomena*, Volume 17, No. 1, hlm 1963-1979.

⁴⁹ Putri, R. S. D., 2024, *Analisis Transparansi Proses Penyidikan dan Efektivitas Penyelesaian Perkara dalam Konteks Perlindungan Hak Tersangka di Indonesia*. *Causa: Jurnal Hukum dan Kewarganegaraan*, Volume 6, No. 5, hlm 21-30.

⁵⁰ Maringka, J. S., 2022, *Reformasi kejaksanaan dalam sistem hukum nasional*. Jakarta Timur: Sinar Grafika, hlm. 17-18.

⁵¹ Pongoh, R. R., 2020, *Persoalan Prapenuntutan Dalam Perkara Pidana Menurut KUHAP*. *Lex Crimen*, Volume 9, No. 3, hlm. 185.

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the case despite the pre-trial ruling declaring the investigation invalid may be considered a violation of this legal principle.⁵² The principle of legality requires clarity and predictability in legal actions, while regulatory gaps cause the actions of the Public Prosecutor to become legally ambiguous.

This tension not only creates legal uncertainty but also undermines public confidence in the integrity of the legal system. In an ideal system, criminal procedure law should provide explicit guidelines on the actions to be taken after a pretrial ruling, including the option to terminate the legal process or seek further review.

Implications for the Rights of Suspects and Victims: When a pretrial ruling revokes suspect status, the suspect's right to freedom from unlawful legal action must be respected. However, this right often conflicts with the interests of victims who hope that justice will be served promptly. In such cases, the transfer of the case by the public prosecutor, despite the pretrial ruling, may be considered a violation of the suspect's rights. On the other hand, the inability to continue the legal process may be seen as a disregard for the victim's right to justice.

The tension between the rights of suspects and victims reflects the need for reform in the Criminal Procedure Code to ensure balance between the two parties.⁵³ For example, provisions on mediation or restorative justice mechanisms can provide fairer solutions without compromising the principle of legality. Recommendations for strengthening regulations include the following:

1. The addition of an article in the Criminal Procedure Code is necessary to confirm that the Public Prosecutor has the authority to postpone the transfer of a case or request further approval from the court if a pretrial decision invalidates the investigation or the status of the suspect.
2. Integration of Restorative Justice Principles: Alternative dispute resolution through mediation can help resolve conflicts between suspects and victims without having to go through formal processes that may cause further tension.
3. Strengthening Inter-Institutional Coordination: Mechanisms are needed to ensure communication and cooperation between investigators, public prosecutors, and courts to resolve cases efficiently.
4. Re-evaluation of Evidence: In cases like this, a more in-depth evaluation of evidence is needed to ensure that decisions to continue or halt legal proceedings are based on a strong legal foundation.

B. Future Provisions in the Criminal Procedure Code Regarding the Authority to Transfer Cases from the Public Prosecutor to the District Court after a Pretrial Decision

Provisions regarding pretrial proceedings are regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), specifically in Article 1(10), Articles 77 to 83, Article 95(2) and (5), Article 97(3), and Article 124. The KUHP provides detailed regulations on the scope of authority of pre-trial proceedings, procedural rules, and provisions related to the dismissal of pre-trial requests. Additionally, the provisions regarding the dismissal of pre-trial proceedings are further clarified by the Constitutional Court Decision No. 102/PUU-XIII/2015, which states that a pre-trial petition is deemed dismissed when the first hearing of the main case involving the defendant or petitioner has commenced.⁵⁴

Regarding the deadline for the expiry of pretrial proceedings, this is regulated in Article 82 paragraph (1) letter d of the Criminal Procedure Code, which states: "In the event that a case has already begun to be examined by the District Court, while the examination of the request for pretrial proceedings has not been completed, then the request shall be deemed to have lapsed." This provision indicates that a pre-trial request automatically lapses if the main case has entered the examination stage at the District Court.⁵⁵

The phrase "has begun to be examined by the District Court" in the article can be interpreted in three ways:⁵⁶

1. A pretrial motion is deemed dismissed once the case file has been transferred by the public prosecutor to the court.
2. A motion is dismissed after the first hearing of the main case has commenced.
3. A motion is dismissed once the public prosecutor has read the indictment in an open court hearing.

To understand the most appropriate interpretation, systematic interpretation can be used. The systematic interpretation method emphasizes the importance of viewing laws as a whole. Thus, reading and understanding an article must be done by considering the overall structure of the regulation.⁵⁷

⁵² Huda, A. F., *et.al.*, 2024, Perlindungan Hukum Terhadap Hak-Hak Tersangka Yang Dibatalkan Surat Perintah Penyidikan Melalui Putusan Praperadilan (Kasus Putusan Nomor: 67/Pid. Prap/2015/PN. JKT. SEL.). *Jurnal Review Pendidikan dan Pengajaran (JRPP)*, Volume 7, No. 1, hlm. 760-775.

⁵³ Utama, A. N., *et.al.*, 2024, Implementasi Prinsip-Prinsip Hukum Humaniter Dalam Penanganan Tindak Pidana Terorisme. *Causa: Jurnal Hukum dan Kewarganegaraan*, Volume 5, No. 11, hlm. 61-70.

⁵⁴ Kafara, S., 2020, Analisis Hukum Pelaksanaan Putusan Praperadilan terhadap Perkara Setya Novanto oleh Komisi Pemberantasan Korupsi (Nomor 97/Pid. Prap/2017/PN. Jkt-Sel tanggal 29 September 2017). *Jurnal Penegakan Hukum Dan Keadilan*, Volume 1, No. 1, hlm. 81-94.

⁵⁵ Wulandari, S., 2016, Kajian Tentang praperadilan Dalam Hukum Pidana. *Serat Acitya*, Volume 4, No. 3, hlm. 1.

⁵⁶ Aprilia, S. S., *et.al.*, 2023, Perlindungan Hukum Terhadap Hak Tersangka Melalui Upaya Praperadilan. *PAMPAS: Journal of Criminal Law*, Volume 4, No.1, hlm. 16-32.

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Provisions regarding the transfer of case files by public prosecutors are regulated in Chapter XV of the Criminal Procedure Code concerning Prosecution, while the court examination process is regulated in Chapter XVI of the Criminal Procedure Code concerning Examination at Court.⁵⁸ Based on Article 50 paragraphs (2) and (3) in conjunction with Article 137 of the Criminal Procedure Code, the suspect has the right to have his case file submitted immediately and to be tried by a court. The transfer of case files by the public prosecutor must be carried out immediately to guarantee the suspect's right to legal certainty, which is part of a fair trial process and protects the interests of the suspect.

If we synthesize these two views, the transfer of case files by the public prosecutor to the district court does not fall within the meaning of the phrase “already being examined by the District Court.” This is because the transfer of case files is an administrative process that precedes the commencement of examination in a public court hearing. The trial officially begins when the judge declares the hearing open and open to the public. Therefore, the transfer of case files cannot be considered part of the examination of the case by the district court.

When linked to Article 147 of the Criminal Procedure Code, which states: “After the district court receives the transfer of case documents from the public prosecutor, the president of the district court reviews whether the case falls within the jurisdiction of the court he presides over,” the term “reviews” in that article cannot be interpreted as part of the examination of the main case. This review process is solely aimed at determining the relative jurisdiction of the district court to examine and adjudicate the transferred case, and thus remains within the administrative scope. The President of the District Court merely ensures that the case falls within the legal jurisdiction of the relevant court, which is not a substantive examination of the case in court proceedings.⁵⁹

Dari uraian di atas, dapat disimpulkan bahwa frasa “sudah mulai diperiksa oleh Pengadilan Negeri” dalam Pasal 82 ayat (1) huruf d KUHAP memiliki beragam interpretasi yang dapat menyebabkan perbedaan pemahaman mengenai kapan suatu perkara pokok dianggap mulai diperiksa oleh Pengadilan Negeri. Perbedaan interpretasi ini terjadi karena belum adanya regulasi yang secara rinci menjelaskan makna dari frasa tersebut.

In practice, prior to the Constitutional Court's ruling, there were often differences in interpretation regarding when a case was considered to have begun.⁶⁰ Even the Constitutional Court, in its ruling on the review of Law No. 8 of 1981 on the Criminal Procedure Code (KUHP) (State Gazette of the Republic of Indonesia of 1981 No. 76, Supplement to the State Gazette of the Republic of Indonesia No. 3209) (regarding Article 82(1)(d)) acknowledged that this difference in interpretation was not caused by issues in the implementation of the norm, but rather by the ambiguity of the norm itself. The ambiguity of the meaning of “the case has begun to be examined” in this context creates legal uncertainty regarding when a pre-trial request is deemed to have lapsed.

To address these differences in interpretation, Constitutional Court Decision No. 102/PUU-XIII/2015 states that the phrase “in the event that a case has already been examined by the District Court, while the examination of the request for a pretrial hearing has not been completed, then the request shall be dismissed” is inconsistent with the 1945 Constitution unless interpreted as meaning that the first hearing on the main case subject to the pre-trial request has already commenced.⁶¹ This ruling confirms that a pretrial motion can only be dismissed after the first hearing on the merits of the case has been held.

The legal certainty that a pretrial motion is deemed dismissed after the first hearing on the main case against the defendant or the pretrial respondent has been held prevents differing interpretations of the phrase “has already been examined by the court” as contained in Article 82(1)(d) of the Criminal Procedure Code. The clarification provided in this Constitutional Court Decision is consistent with the nature of pre-trial proceedings and the spirit embodied in Article 82(1)(d) of the Criminal Procedure Code.

According to Yahya Harahap, the first hearing referred to is the hearing at which the indictment is read out.⁶² The agenda also includes the examination of the defendant's identity. This process is carried out by matching the defendant's identity in the indictment and case files to ensure that the defendant appearing in court is the person named as the perpetrator of the criminal act

⁵⁷ Khalid, A., 2014, Penafsiran hukum oleh hakim dalam sistem peradilan di Indonesia. *Al-Adl: Jurnal Hukum*, Volume 6, No. 11, hlm. 18.

⁵⁸ Tampoli, D. C. M., 2016, Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana. *Lex Privatum*, Volume 4, No. 2, hlm. 127.

⁵⁹ Riskawati, S., 2018, Peraturan Mahkamah Agung Nomor 2 Tahun 2015 Tentang Tata Cara Penyelesaian Gugatan Sederhana Sebagai Instrumen Perwujudan Asas Peradilan Sederhana, Cepat Dan Biaya Ringan. *Veritas et Justitia*, Volume 4, No. 1, hlm. 131-154.

⁶⁰ Effendi, E., 2020, Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka. *Undang: Jurnal Hukum*, Volume 3, No. 2, hlm. 267-288.

⁶¹ Putra, E. K., et.al., 2023, Jangka Waktu Pengajuan Pra Peradilan terhadap Objek Penghentian Penyidikan. *JIM: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah*, Volume 8, No. 3, hlm. 2968-2986.

⁶² Yanuarta, T., 2023, Akibat Hukum Tidak Dilimpahkannya Turunan Surat Dakwaan Terhadap Terdakwa Dan Penasehat Hukum. *Jurnal Pendidikan Sosial dan Humaniora*, Volume 2, No.3, hlm. 11802.

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in the indictment. Thus, the pretrial motion will be dismissed if the defendant has been brought before the court and the indictment has been read.

E.Y. Kanter and S.R. Sianturi explain the concept of *ne bis in idem* or *non bis in idem*, which means that the same act cannot be tried twice.⁶³ This principle is based on the need to provide legal certainty by ending the investigation or prosecution of a particular offense at a certain point. This principle aims to prevent double jeopardy against the perpetrator and the same criminal act, as well as to avoid the investigation or prosecution of a criminal act that has already been decided by a final and binding court decision.

The principle of *ne bis in idem* applies not only at the prosecution stage, but can also be applied at the investigation stage to terminate an investigation.⁶⁴ However, the application of this principle must be distinguished from setting aside a case in the public interest. Although the principles are similar, they have different legal bases. In Article 14 of the Criminal Procedure Code, the principle of *ne bis in idem* is reflected in subparagraphs d, e, f, and g, while the act of closing a case for the sake of legal interests is explicitly stated in Article 14 subparagraph h of the Criminal Procedure Code and Article 140 paragraph (2) letter a of the Criminal Procedure Code.

Article 140 paragraph (2) letter a of the Criminal Procedure Code stipulates that the public prosecutor may discontinue prosecution if there is insufficient evidence, if the incident does not constitute a criminal offense, or if the case is closed by operation of law. This decision shall be set forth in a written decision issued by the public prosecutor.

The regulation of the authority to transfer cases from the Public Prosecutor to the District Court after a pretrial decision has been issued is one of the central issues in the criminal justice system in Indonesia.⁶⁵ Currently, the Criminal Procedure Code does not explicitly regulate the legal procedures or mechanisms that can be taken by the Public Prosecutor after a pretrial hearing decides that the investigation or the naming of a suspect is invalid. This legal vacuum has various negative implications for legal certainty, justice, and the effectiveness of law enforcement.

This study focuses on the urgent need to reform the Criminal Procedure Code (KUHAP) to provide a clear legal basis for the transfer of cases in this context. This research uses a normative legal approach by examining legal theory, applicable laws and regulations, and relevant case studies. Thus, this study aims to contribute to the reform of criminal procedure law in Indonesia.

Preliminary court decisions are an integral part of the criminal justice system in Indonesia. Under Article 1(10) of the Criminal Procedure Code (KUHAP), preliminary court proceedings aim to provide legal protection to suspects or defendants against potential arbitrary actions by law enforcement officials. However, the existence of pre-trial rulings often poses new challenges for the criminal justice process, particularly regarding the transfer of criminal cases to district courts. This chapter aims to analyze the relevant provisions in the Criminal Procedure Code regarding the authority of the Public Prosecutor to transfer cases after a pre-trial ruling has been issued.

The need to revise the Criminal Procedure Code (KUHAP) regarding the clarification of the authority of the Public Prosecutor after a pretrial decision, Article 140 of the KUHAP stipulates the obligation of the Public Prosecutor to immediately transfer the case after the case file is declared complete (P21). However, in practice, problems arise if the pretrial decision states that the designation of the suspect is invalid, as in the case under review. The Criminal Procedure Code should provide more detailed regulations regarding the authority of the Public Prosecutor to suspend or postpone the transfer of a case in such situations.

The draft alternative dispute resolution mechanism in the Criminal Procedure Code needs to adopt new approaches, such as restorative justice mechanisms, which allow cases to be resolved outside of court.⁶⁶ This mechanism can provide a solution for victims and suspects without having to be caught up in a lengthy formal process. This approach also provides flexibility for public prosecutors in handling cases affected by pretrial decisions. The revision of the Criminal Procedure Code needs to include provisions that strengthen cooperation between investigators, public prosecutors, and the courts. The formation of a joint team responsible for evaluating case files could be a solution to overcome legal obstacles caused by pretrial decisions. Such provisions would provide a clear legal basis for prosecutors to take steps in accordance with the principle of legality.⁶⁷

1. Integration of Restorative Justice Principles

In order to guarantee substantive justice, revisions to the Criminal Procedure Code need to integrate a restorative justice approach. This approach can provide an alternative for public prosecutors to resolve cases outside of court when a pretrial ruling declares an

⁶³ Makarewa, I. T., 2021, Analisis Penghentian Penyidikan dan Penuntutan Berdasarkan KUHAP. *Lex Crimen*, Volume 10, No. 9, hlm. 90.

⁶⁴ Khoiruddin, A. R., et.al., 2023, Mengadili Perkara Ne Bis In Idem. *Jurnal Yudisial*, Volume 16, No. 1, hlm. 49-64.

⁶⁵ Pattiruhu, F., et.al., 2020, Analisis Terhadap Perkara Praperadilan Yang Tidak Dinyatakan Gugur Sesuai Putusan Mahkamah Konstitusi. *Jatiswara*, Volume 35, No. 1, hlm. 15.

⁶⁶ Hariyono, T., 2021, Mediasi Penal sebagai Alternatif Upaya Penyelesaian Perkara Pidana di Luar Pengadilan. *Jurnal Penegakan Hukum dan Keadilan*, Volume 2, No. 1, hlm. 1-18.

⁶⁷ Syaputra, E., 2021, Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang. *Lex lata*, Volume 3, No. 2, hlm. 236.

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investigation invalid. For example, mediation mechanisms can be used to resolve cases with high social impact, such as investment fraud in this case study.

2. Strengthening the Mechanism of Supervision between Law Enforcement Agencies

After a pretrial ruling, there is often a tug-of-war between investigators and public prosecutors over jurisdiction. The revision of the Criminal Procedure Code needs to clarify the supervisory mechanisms between institutions to ensure better coordination. For example, the formation of a joint team between investigators and public prosecutors could be a solution for resolving cases that have been ruled invalid by a pretrial court.

Based on the theory of legal justice put forward by John Rawls, it emphasizes the importance of fair treatment for all parties, including suspects, victims, and the community.⁶⁸ In this context, revisions to the Criminal Procedure Code must consider the balance between the rights of suspects guaranteed by the Pre-trial Decision and the rights of the public to obtain justice through a lawful legal process.

According to Satjipto Rahardjo's theory of legal utility, law must provide the greatest possible benefit to society.⁶⁹ In this case, the rearrangement of the Public Prosecutor's authority after the pretrial decision must ensure that the legal process continues without sacrificing legal certainty. For example, granting additional authority to the Public Prosecutor to amend case files without returning them to investigators can reduce the losses suffered by victims.

In legal certainty theory, the revision of the Criminal Procedure Code needs to provide clarity on the legal status of suspects and evidence after a pretrial decision.⁷⁰ This clarity is important to avoid diverse legal interpretations by law enforcement officials, which can disrupt the smooth enforcement of the law. Gustav Radbruch's theory of legal certainty emphasizes that laws must be clear and reliable for all parties.⁷¹ In the context of pretrial rulings, the unclear status of suspects and evidence causes uncertainty for victims and the public. With the new rules, prosecutors will have a stronger legal basis for action, making the law enforcement process more consistent and predictable.

According to John Rawls, justice can only be achieved if all parties are treated fairly.⁷² Pre-trial rulings that protect the rights of suspects must not prejudice victims who are also entitled to justice. The revision of the Criminal Procedure Code must balance these two interests, for example by providing additional powers to public prosecutors to continue legal proceedings while complying with the restrictions imposed by pre-trial rulings. New provisions in the Criminal Procedure Code must include mandatory coordination mechanisms between investigators and public prosecutors following a pre-trial ruling. This aims to ensure that legal efforts are carried out collectively and in a focused manner, avoiding conflicts between institutions that could harm the overall legal process.

The current legal vacuum in the Criminal Procedure Code (KUHAP) is that the KUHAP does not provide explicit guidance on the actions that must be taken by the Public Prosecutor after a pretrial ruling that revokes the status of a suspect or investigation. Article 140(1) and (2) of the KUHAP state that the Public Prosecutor is obligated to transfer the case to the District Court after receiving the case file declared complete (P-21). These provisions only regulate the obligation to transfer the case after the case file is declared complete, but do not address the steps that the Public Prosecutor must take if the pre-trial ruling declares the investigation invalid or revokes the designation of the suspect. This legal vacuum creates uncertainty for law enforcement officials, resulting in legal ambiguity in the exercise of the Public Prosecutor's authority, particularly regarding the transfer of cases. This legal vacuum has the following implications:⁷³

1. Legal uncertainty: the absence of clear guidelines in the Criminal Procedure Code causes uncertainty for public prosecutors in exercising their authority after a pretrial ruling.
2. Injustice for suspects and victims: on the one hand, suspects may feel that their rights have been violated if legal proceedings continue after a pretrial ruling overturns their designation as suspects. On the other hand, victims of crime may be harmed because their cases cannot be further processed.
3. Potential Legal Conflicts: A pre-trial ruling that revokes an investigation may conflict with the Public Prosecutor's obligation to transfer cases that have been declared complete.

⁶⁸ *Ibid*, hlm. 10

⁶⁹ Supriyono, S., 2017, Terciptanya Rasa Keadilan, Kepastian Dan Kemanfaatan Dalam Kehidupan Masyarakat. *Fenomena*, Volume 15, No. 1, hlm. 1567-1582.

⁷⁰ Silalahi, A. M., & Tajudin, I., 2018, Profesionalisme Penegak Hukum Terhadap Penetapan Tersangka Setelah Putusan Praperadilan Yang Menyatakan Tidak Sahnya Penetapan Tersangka. *Jurnal Bina Mulia Hukum*, Volume 2, No. 2, hlm. 179-191.

⁷¹ Firman, Z., *et.al.*, 2024, Kualifikasi Delik Trading In Influence Dalam Tindak Pidana Korupsi. *Seikat: Jurnal Ilmu Sosial, Politik dan Hukum*, Volume 3, No. 5, hlm. 440-448.

⁷² Taufik, M., 2013, Filsafat John Rawls tentang teori keadilan. *Mukaddimah: Jurnal Studi Islam*, Volume 19, No. 1, hlm 41-63.

⁷³ Pambudi, B. R., *et.al.*, 2023, Recall Election Melalui Peradilan Sebagai Mekanisme Demokratisasi Pasca Pemilu. *Mimbar Hukum*, Volume 35, No. 2, hlm. 48-83.

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There is a recommendation to add an article to the Criminal Procedure Code, namely that an article should be added to the Criminal Procedure Code that explicitly regulates the authority of the Public Prosecutor after a pretrial decision.⁷⁴ For example, the article could grant prosecutors the authority to request additional approval from the court before transferring cases affected by a pretrial ruling.

1. Mechanism for Reviewing Pretrial Decisions

The Criminal Procedure Code needs to regulate the mechanism for reviewing pretrial decisions. This mechanism can provide space for public prosecutors or investigators to file objections if pretrial decisions are deemed detrimental to the legal process. This procedure must be designed to uphold the principles of justice and legal certainty.

2. Mandatory Consultation Between Investigators and Public Prosecutors

In cases where a pretrial ruling affects the validity of a case, mandatory consultation between the investigator and the public prosecutor is required. This is aimed at developing strategic measures in handling the case in question, including the possibility of gathering additional evidence.

3. Formulation of Special Procedures for Case Transfer

The Criminal Procedure Code must include special procedures for the transfer of cases affected by a pretrial decision. These procedures include:

- 1) Re-evaluation of evidence and case documents.
- 2) Determination of the appropriateness of transfer based on the principle of due process of law.
- 3) Providing strong legal grounds to the court if the case is still transferred.

4. Establishment of an Independent Supervisory Body

This body is tasked with ensuring that the actions of the Public Prosecutor and investigators after a Pre-Trial Ruling are in accordance with legal provisions. This body may also function as a mediator in disputes between law enforcement officials and relevant parties.

The implications for the judicial system under this new arrangement not only provide legal certainty for law enforcement officials but also guarantee the rights of the parties involved. The judicial system will become more responsive to complex and dynamic situations, such as the impact of pretrial decisions on criminal proceedings.

For comparison, several countries already have more advanced regulations regarding the transfer of cases after a pretrial decision.⁷⁵ For example:

1. The German Criminal Justice System

The criminal justice system in Germany adopts the continental (civil law) model, which has many similarities with the Indonesian legal system, particularly in terms of the structure of the judiciary and the role of the Public Prosecutor in the criminal justice system. One aspect that could serve as a reference for Indonesia is the flexibility granted to the Public Prosecutor in handling cases where the investigation has been declared invalid by the preliminary court.

In the German criminal justice system, the preliminary investigating judge (*Ermittlungsrichter*) has the authority to assess the validity of investigations conducted by the police or the Public Prosecutor. If the judge determines that an investigation is invalid due to violations of the suspect's human rights or procedural irregularities, the Public Prosecutor still has legal options to address these deficiencies. The Public Prosecutor may file an appeal against the judge's decision or continue the legal process by conducting additional investigations to meet the established legal standards.

The advantage of this system is that it strikes a balance between protecting the rights of suspects and the effectiveness of the criminal justice system. By giving prosecutors the opportunity to correct investigative procedures that have been declared invalid, this system prevents impunity for perpetrators of crimes due to procedural errors that are not substantive in nature.

In the Indonesian context, the Criminal Procedure Code does not clearly regulate the mechanisms available to public prosecutors after an investigation has been declared invalid by a pretrial court. This creates problems in practice, such as in the case that is the focus of this study, where public prosecutors have no alternative but to refer the case to court despite legal obstacles arising from the pretrial court's decision. Therefore, the German system could serve as a reference for Indonesia in formulating revisions to the KUHAP, particularly in providing flexibility to the Public Prosecutor to address deficiencies in the investigation before proceeding to the prosecution stage.

⁷⁴ Akbar, M., *et.al.*, 2024, Efektivitas Kewenangan Kejaksaan Dalam Undang-Undang Nomor 11 Tahun 2021 Tentang Kejaksaan Republik Indonesia Terhadap Penyidikan Tindak Pidana Korupsi Akibat Kerugian Negara. *Journal of Lex Philosophy (JLP)*, Volume 5, No. 2, hlm. 552-569.

⁷⁵ Waskito, A. B., 2018, Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi. *Jurnal Daulat Hukum*, Volume 1, No. 1, hlm. 287-304.

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2. The Dutch Criminal Justice System

The Netherlands is one of the countries whose legal system has many similarities with Indonesia, as Indonesia was once under Dutch colonial rule. One interesting aspect of the Dutch criminal justice system is the pretrial mechanism (*gerechtelijk vooronderzoek*), which is more collective and participatory in nature than the system in Indonesia.

In the Dutch criminal justice system, the evaluation of the validity of an investigation is not only carried out by a pretrial judge, but also involves the Public Prosecutor, investigators, and an investigating judge (*rechter-commissaris*). This model emphasizes the principle of checks and balances, whereby each stage of the investigation process is monitored to ensure that the legal process proceeds without violating the rights of the suspect. If there are procedural irregularities in the investigation, corrective measures can be taken quickly without hindering the overall legal process.

In the Indonesian context, pretrial decisions often cause legal deadlocks for public prosecutors in transferring cases to court, as there is no explicit mechanism enabling coordination between public prosecutors, investigators, and judges in handling pretrial decisions that invalidate investigations. If Indonesia were to adopt the Dutch model, there would be a collective evaluation mechanism enabling actors within the judicial system to collectively determine the best legal steps that not only ensure the rights of the accused but also prevent legal vacuums in the resolution of criminal cases.

In addition, the model in the Netherlands shows how the pretrial system can be integrated with the principle of due process of law, whereby joint evaluation mechanisms between law enforcement officials can ensure that a case can continue without violating the principle of procedural justice. This model can inspire criminal procedure reform in Indonesia to improve the effectiveness of the pretrial system and ensure legal certainty for all parties involved.

The urgency of new regulations in the Criminal Procedure Code in the context of modern criminal procedure law requires comprehensive regulations to bridge the gap between the authority of the Public Prosecutor and the implications of pretrial decisions. Reform of the Criminal Procedure Code, including regulations on the authority to transfer cases after pretrial decisions, will provide the following benefits:⁷⁶

1. Improving Legal Certainty, Public Prosecutors have clear guidelines in carrying out their duties, thereby reducing the potential for legal conflicts.
2. Protecting the Rights of Suspects and Victims, The new regulations ensure that the rights of all parties are protected in accordance with the principles of due process of law.
3. Enhancing the Effectiveness of Law Enforcement: Law enforcement officials can perform their duties more efficiently, without being hindered by legal vacuums.
4. Strengthening Public Trust in the Judicial System: With comprehensive regulations in place, the public will have greater confidence in the integrity and fairness of the criminal justice system.

CONCLUSIONS

Following the Pre-Trial Ruling No. 99/Pid.Pra/2023/PN JKT.SEL and No. 102/Pid.Pra/2023/PN JKT.SEL of the South Jakarta District Court on behalf of suspect I Deddy Iwan, S.T., and suspect II Ferdy Iwan, which stated that the designation of suspect I Deddy Iwan, S.T., and suspect II Ferdy Iwan as suspects was invalid and therefore had no binding legal force, a legal vacuum has arisen regarding the authority of the Public Prosecutor in the process of transferring the case to the District Court. The legal vacuum regarding the authority of the Public Prosecutor results in the absence of clear legal rules (normative provisions) governing the actions, limitations, or procedures that the Public Prosecutor must follow in the performance of their duties. As a result, injustice arises against the victims, who feel wronged by decisions not based on clear rules.

In order to create legal certainty and justice, the Criminal Procedure Code (KUHP) must include provisions regarding time limits and procedures for the transfer of cases by the Public Prosecutor after a preliminary ruling declaring that the investigation or designation of a suspect is invalid, as this has caused legal uncertainty and potential conflicts of authority between law enforcement agencies. Although the Constitutional Court Decision No. 102/PUU-XIII/2015 has interpreted that a pre-trial request is deemed withdrawn after the first hearing of the main case begins, the normative gap in the Criminal Procedure Code regarding the legal steps that the Public Prosecutor may take remains a serious issue. Mechanisms for transferring cases after pre-trial rulings, including strengthening coordination among law enforcement agencies, integrating substantive justice principles such as restorative justice, and adopting comparative legal practices from other countries, are essential to ensuring that the judicial process in Indonesia proceeds fairly, effectively, and guarantees legal certainty for all parties involved.

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