



Pretrial motion against determination of suspects and investigations into corruption crimes based on the sale and purchase agreement for assets Ex-confiscated by prosecutor's office

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Abstract

Pretrial is not an independent court institution in Indonesia and has existed for over 43 years following the issuance of Law Number 8 of 1981 concerning Criminal Procedure Law. This procedural law has been regulated in detail about the procedures for determining an individual as suspect but is occasionally disregarded by investigating apparatus, making the validity to be tested through Pretrial at the District Court. Therefore, this study aimed to use a Normative Juridical Method through Literature analysis to address the following problems. First, the validity of the investigation and enforcement of suspect against the Applicant of Pretrial (Freddy Handinata Ongkosaputra) based on the Investigation Order issued by the Head of the East Nusa Tenggara (NTT) High Prosecutor's Office, Number Print-07 / P.3 / Fd.1 / 03/2017, dated March 31, 2017. Second, whether the decision of Pretrial case Number 04 /Pid.Pra/2017/PN.Kpg. at the Kupang District Court provided a fair judgment to the Applicant. The results showed that determination of suspect and the Investigation Order of the Head of NTT High Prosecutor's Office did not meet sufficient evidence, rendering the investigation and suspect determination invalid. Furthermore, the decision was objective and fair to Pretrial Applicant through the legal considerations of the Judge in Pretrial case, specifically in granting the Applicant's request in entirety and canceling both determination of Suspect and the Investigation Order.

Keywords: Pretrial, determination of suspect, investigation, criminal procedure law, corruption

Introduction

Pretrial mechanism is not an independent court institution in Indonesia and has been in place for over 43 years since the issuance of Law Number 8 of 1981 on Criminal Procedure Law ("Law Number 8/1981"). The birth of Pretrial is considered revolutionary due to the function of testing the validity of the law enforcement process carried out by investigators and prosecutors. In this context, "Revolutionary" implies that law enforcement's paradigm is reversed while non-cumulative refers to a re-start from a new phase (Sirait, T.M., 2022, p. 4) ^[7]. This enables criminal procedure law that is born in the first independence era to be used as a control mechanism within Indonesia's criminal justice system.

As part of Indonesia's criminal justice system, Pretrials serve as an effort to overcome crimes of a penal nature by using criminal law as the main method of material and formal aspects (Sholihah, Santoso, p. 347) ^[5]. In this context, the Criminal Procedure Code has been designed to protect the human rights of suspects, defendants, and victims. The most prominent aspect of Criminal Procedure Law through Law Number 8/1981 compared to the *Het Herziene Inlandsch Reglement* (HIR) procedural law left behind by the Dutch colonial era is the presence of Pretrial institution, considered a masterpiece. However, Pretrial has experienced several transformations both in substance and procedural law (Giri, 2021, p. 173) ^[2].

Despite having a criminal procedure law that regulates the procedures for determining an individual as suspect in a criminal act, in practice there are still frequent errors in the implementation by investigators and prosecutors. A case in point is Freddy Handinata Ongkosaputra ("Freddy"), who was designated as suspect in a corruption case by the East

Nusa Tenggara (NTT) Provincial High Prosecutor's Office, as recorded in Suspect Determination Letter Number B-05/P.3/Fd.1/03/2017, dated March 24, 2017, and the Investigation Order Letter Number Print-07/P.3/Fd.1/03/2017, dated March 31, 2017.

Freddy is an entrepreneur who has various types of businesses and is the Chairman of both the Provincial Leadership Council of the Indonesian Employers Association and the Regional Leadership Body of the Indonesian Hotel and Restaurant Association in NTT Province, Indonesia. According to Freddy, determination of suspect and the investigation were wrong and did not comply with the criminal procedure law in Law Number 8/1981 prompting the filing of Pretrial motion which was accepted and registered at the Kupang District Court Clerk's Office with Case Register Number 04/Pid.Pra/2017/PN.Kpg. By filing Pretrial motion against the Respondent who was the Indonesia Head of the Attorney General's Office c.q. Head of NTT High Prosecutor's Office, Freddy tried to test through Pretrial motion of the Validity or Invalidity of the Suspect Determination against the Applicant based on the Investigation Order of the Head of NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017, March 31, 2017.

Based on the context provided, this study aimed to address the validity of determination of suspect and investigation of Pretrial Applicant (Freddy Handinata Ongkosaputra) through Suspect Determination Letter from the Head of the NTT High Prosecutor's Office Number: B-05/P.3/Fd.1/03/2017, March 24, 2017, and the Investigation Order Letter from the Head of the NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017, dated March 31, 2017. The study also addressed the fairness of the judgment

in Pretrial Case Number 04/Pid.Pra/2017/PN.Kpg at the Kupang District Court.

Materials and methods

This study used normative legal analysis which referred to literature publications and reviewed related laws and regulations as well as a case study of the Kupang District Court Decision Number 04/Pid.Pra/2017/PN.Kpg. The analysis was conducted with a focus on the legal aspect by comparing various laws and regulations as well as tracing the history of the development of related laws and regulations. This method was oriented toward understanding the applicable legal framework. Therefore, the data sources for this study were secondary including laws and regulations, legal textbooks, journals, scientific works, and other credible reference materials from the internet.

Pretrial was part of the new institutions introduced by the Criminal Procedure Code during law enforcement. The provisions of Pretrial in criminal procedure law were placed in Chapter X, Part One, as a section under the district court's jurisdiction (Harahap, 2000, p.1) [3]. Law Number 8/1981 concerning Criminal Procedure Law in Indonesia stated that "...Investigation is a series of actions by investigators in terms of the methods regulated in this law to pursue and collect evidence with which the evidence provided insights on the crime occurred to find suspect." (Article 1 number 2). The law also stated that "...A suspect is a person who due to his/her actions or circumstances based on initial evidence is reasonably suspected of being the perpetrator of a crime (Article 1 number 14). Investigators are officers of the Indonesian police or certain civil servants who are given special authority by law to conduct investigations (Article 1 number 1). Furthermore, Prosecutor is an official who is authorized by this law to act as a public prosecutor and to implement court decisions that have obtained permanent legal force (Article 1 number 6a)." According to Sirait (2019, p. 76) [8], the Indonesian Criminal Procedure Code stipulated that the District Court held the authority to examine and decide in accordance with the provisions of Article 77 of the Criminal Procedure Code. This was regarding (a) the legality or otherwise of an arrest, detention, termination of investigation, or termination of prosecution, (b) compensation and rehabilitation for a person whose criminal case was terminated at the investigation or prosecution stage, and (c) a request for an examination of the legality or otherwise of an arrest or detention was submitted by Suspect, his/her family or attorney to the Head of the District Court stating the reasons.

The authority of Pretrial was expanded through the Constitutional Court Decision Number: 21/PUU-XII/2014 dated April 28, 2014, which broadened the scope and meaning of Article 77 by including the act of determining a Suspect as an object of authority to be examined and decided by Pretrial. Article 77 letter (a) of Law Number 8/1981 concerning criminal procedure law was declared non-binding unless it was interpreted to include determination of Suspects, Searches, and Confiscations (Sirait, p. 77).

The purpose of the Criminal Procedure Code was to provide protection of human rights for suspects or defendants in balance with the public interest. The objective of achieving order and legal certainty in the law was no longer the main purpose but the aim of protecting the dignity of suspect,

accused, or defendant was the main objective. The development of national laws such as criminal procedure law was based on the motivation to create order in society (Suharto, Efendi, 2013, p. 51) [10].

Legal facts of business agreements lead to determination of suspects in corruption crimes

In the case of Pretrial Case Number 04 /Pid.Pra/2017/PN.Kpg originated from a business transaction including a sale and purchase agreement for iron obtained from Prosecutor's Office auction between Freddy Handinata Ongkosaputra (Freddy) as the Buyer and Paulus Watang (Paulus) who was the Seller as well as the owner of the goods after purchasing from the NTT Provincial High Prosecutor's Office based on the NTT Head of High Prosecutor's Office Order Number 186/P.3/CPL.2/05/2015 dated May 6, 2015. Chronologically, Pretrial case Number 04 /Pid.Pra/2017/PN.Kpg found the following legal facts.

Around September 2015, Freddy met with Paulus who subsequently offered Freddy goods in the form of used Construction Iron from a warehouse in Takari for IDR 6,500/kg. The Seller stated that the goods were not problematic because there was a direct appointment letter from the Attorney General's Office and complete with a Payment Receipt, but Freddy as the buyer said he would think about it.

A few days after the meeting, Paulus contacted Freddy again and then paid a deposit for the purchase of the goods amounting to IDR 75 million for 155 sheets of zinc and 300 C-channel iron bars. After the initial goods were sent, the Seller asked the Buyer for money for the goods to be sent but due to the miscommunication, the request was not fulfilled. Consequently, there was a commotion between Paulus and Freddy, and then Freddy canceled stating that he did not want the goods to be sent. According to Prosecutor, the goods belonging to Office were sold without the knowledge and suspects were Paulus and Yohanes S.P.B. The case in the name of Yohanes was also decided through the Corruption Crime Court Decision at the Kupang Class IA District Court Number 58/Pid.Sus/TPK/2016/PN.Kpg, dated February 14, 2017. Furthermore, the defendant Yohanes was declared legally and convincingly proven guilty of assisting in committing a criminal act of corruption and the case had permanent legal force.

Due to the decision made in the corruption case, the Attorney General's Investigator reported that prosecutor's office would conduct an exposé internally. The exposé participants agreed to determine Freddy as the buyer of the iron as suspect in the Corruption Crime of Misuse of State Property case which had attained permanent legal force.

Determination of Freddy's status as suspect was further announced by Prosecutor's Office to the public through mass media. Furthermore, determination of suspect was only known to Freddy after one year through the media reports, reflecting the existence of an act that violated the procedural law carried out by Prosecutor's Office Investigator who did not adhere to established criminal procedural law requirements.

Furthermore, believing suspect determination did not comply with the Criminal Procedure Code, Freddy applied to challenge his designation and the investigation through Pretrial lawsuit. This application was accepted and registered at the Kupang District Court Clerk's Office on April 21, 2017 with Case Register Number

04/Pid.Pra/2017/PN.Kpg against the Indonesia Head of the Attorney General's Office of c.q. Head of NTT High Prosecutor's Office as the Respondent. Freddy requested to examine and try "Whether or not determination of the Suspect against the Applicant was Valid based on the Investigation Order of the Head of the NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017 dated March 31, 2017, issued by the Head of the NTT High Prosecutor's Office".

Legal analysis of the validity of determination of suspects and investigations in Pre-trial

The Indonesian Criminal Procedure Code detailed the procedures for determining an individual as suspect, specifically requiring sufficient initial evidence. Based on the provisions of Article 1 number 14 of Law Number 8/1981, suspect served as an individual who due to the actions or circumstances and on initial evidence was reasonably suspected of being the perpetrator of a crime". At this stage, the individual was determined as suspect only based on initial evidence obtained from the results of the investigation, with the evidence forming reasonable suspicion that the individual committed a crime (Bahrán, 2017, p. 224) ^[1]. According to Bahrán (2017) ^[1], this provision allowed multiple interpretations as determining what was initial evidence depended on the quality and who provided the understanding between the Investigator and Suspect or the attorney, potentially leading to differences in understanding.

According to Pretrial Applicant (Freddy) in the application to the Court, the provisions of criminal procedure law in determining suspect were not carried out by Prosecutor's Office. Freddy asserted that Prosecutor's Office Investigators should have followed appropriate and precise procedures to maintain the principle of legal certainty, thereby upholding human rights protections. When procedures essential to suspect designation process were not met, the process became bad and required correction or cancellation.

Based on the provisions of criminal procedure law, the investigator's decision to determine an individual as suspect in a corruption crime was a follow-up to a legal investigation process carried out by the investigator. Article 1 number 5 of the Indonesian Criminal Procedure Code stated that "Investigation served as a series of investigator actions to search for and find an event suspected of being a crime to determine whether or not the investigation could be carried out according to the methods regulated by law".

The criteria used by investigators in determining an act was a criminal act of corruption for which Freddy should be held criminally responsible. Therefore, it could be upgraded to the legal process of investigation and two valid pieces of evidence should be found. Criminal responsibility cannot be separated from criminal acts. However, in the definition of criminal acts, the issue of criminal responsibility was not included which only referred to the prohibition of an act. Criminal responsibility served as the continuation of objective blame that existed in a criminal act and subjectively to an individual who met the requirements to be sentenced to a criminal penalty (Sirait, 2017, p. 351) ^[9].

The problem originated with agreement to buy and sell iron and zinc goods between Freddy (buyer), Paulus (seller), and the owner of the goods which was legally regulated in Article 1457 of the Civil Code. Additionally, the sale and

purchase agreement was canceled by Freddy because Paulus (seller) did not keep the promise to send the goods desired by the buyer.

When analyzed further, Article 1457 of the Civil Code stated that "Sale and purchase was agreement by which one party was bound to hand over an object and the other party to pay the promised price". This was appropriate to the understanding in Article 1457 of the Civil Code that there were three main definitions of Sale and Purchase including (a) Agreement on the type and form of the object being sold, (b) Agreement on the price of the object being sold, and (c) Delivery of objects, by transferring ownership rights to objects that have been sold.

The regulation regarding Agreements was further contained in Book 4, Article 1338 of the Civil Code regarding the principle of *pacta sunt servanda* and good faith in agreements that agreement was binding on the parties who made it either verbally or in writing. Both of the parties possessed the same force provided agreement met the requirements of Article 1320 of the Civil Code. Subsequently, Article 1312 only stated agreement according to experts both oral and written agreements were valid.

The conditions for a valid agreement were also contained in Article 1320 of the Civil Code stating that for agreement to be valid, four conditions were required. These conditions included (a) Agreement of parties to be bonded, (b) Ability to make a contract, (c) A certain thing, and (d) A lawful cause. Furthermore, agreement could be canceled unilaterally as stated in Article 1338 that agreement should be carried out in good faith, otherwise, the other party possessed the right to cancel.

Based on the facts that before Freddy bought the iron from Paulus, the goods had been purchased by Paulus from the previous owner, namely Attorney Djami R.L., who served as Prosecutor at the NTT High Prosecutor's Office. This was showed on the Sales and Purchase Receipt dated May 10, 2015, worth IDR 400 million for Payment of the Marble Warehouse that collapsed in Takari, Benu Village, Takari District as well as the IDR 25 million worth of two damaged forklifts, scrap iron, and machines. The Sale and Purchase between Paulus and Attorney Djami who served at the NTT High Prosecutor's Office was carried out based on the NTT Head of High Prosecutor's Office Order Number 186/P.3/CPL.2/05/2015, May 6, 2015.

In early 2015, before Freddy's transaction with Paulus, there was a scrap metal sale and purchase transaction between Attorney Djami R.L. and Mr. Tulus who was part of the Scrap Metal Entrepreneurs in Kupang City. This was confirmed in the legal considerations of the High Court of Judges at the Corruption Court at the Kupang High Court according to Decision Number 04/Pid.SusTPK/2017/PN.KPG, March 14, 2017 Point 2 page 46 which reads the following.

The defendant (Paulus Watang) was not the one who initiated the sale of state assets that had permanent legal force, because the one who had the initiative to sell the state assets was the NTT High Prosecutor's Office. The sale of the state assets was also realized due to Order Number 186/p.3/cpl.2/05/2015, May 6, 2015, issued by the head of the NTT High Prosecutor's Office. This was further submitted by prosecutor Djami R.L. to defendant Paulus to secure the demolition of the warehouse and the transportation of the scrap metal. The Defendant (Paulus

Watang) Purchased Scrap Metal worth only IDR 400 and IDR 25 Million, according to the Receipt dated May 10, 2015, and May 30, 2015, respectively at the request of assistance from Prosecutor Djami R.L. without the participation of (Paulus).

The legal fact showed that Paulus Watang bought the goods from Attorney Djami R.L. Furthermore, the goods that had become the property of Paulus were sold to Freddy (Buyer), prompting the legal event to fall into the domain of private or Civil Law and could not be classified as a criminal act of corruption.

The case also showed that the Sale and Purchase had been canceled by Freddy (buyer). Therefore, determination of Suspect in the Investigation Order Letter of the Head of NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017 was not carried out based on criminal procedure law and was invalid. This gave rise to a legal right for an individual to take Pretrial legal action to correct and test the validity of the Investigation Order Letter and determination of Freddy as a suspect through Pretrial application.

When analyzed legally, the existence of the sale and purchase agreement as well as the Letter of Order of the Head of NTT High Prosecutor's Office Number 186/P.3/CPL.2/05/2015, May 6, 2015, to sell the iron had transferred ownership to Paulus. The case was clear that the sale and purchase transaction of iron between Freddy and Paulus was not a criminal event of corruption but was a lawful business event in the Private domain as regulated in Article 1457 of the Civil Code. This was also legal in the principle of *pacta sunt servanda* and good faith in Article 1338 of the Civil Code, including the terms of agreement according to Article 1320. Agreement could also be canceled unilaterally in Article 1338 where agreement should be carried out in good faith otherwise the other party possessed the right to cancel.

Therefore, the study confirmed the investigation's validity and suspect's determination against Freddy Handinata Ongkosaputra through the Investigation Order of the Head of NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017, March 31, 2017, did not fulfill the two sufficient evidence where valid civil evidence was illegally used as criminal evidence. Therefore, the investigation and determination of suspect were invalid, because the process was not carried out based on the procedures regulated in Law Number 8 of 1981 concerning Procedural Law.

Legal analysis of the decision of the kupang District court pretrial case

Based on the Legal Facts, the study confirmed that Paulus Watang had officially purchased the goods from Attorney Djami R.L. According to the law, the ownership of the goods which had changed and became the property of Paulus and further sold to Freddy under civil law was a lawful act. The legal incident further falls into the domain of private or Civil Law and was wrong to be classified as a criminal act of corruption.

Freddy's Pretrial application was legally justified to be submitted. Additionally, because the Investigation Order and determination of suspect were not based on two sufficient pieces of evidence, determination of Suspect against Freddy (Pretrial Applicant) had created injustice. Determination of suspect should be invalid giving rise to Freddy's legal right to take legal action which was in the form of corrections and testing of the validity through Pretrial application at the Kupang District Court.

John Rawls stated that justice was fairness which focused on the basic structure of society, specifically how the principal institutions distributed fundamental rights and obligations as well as determination of the division of benefits from social cooperation (John Rawls, p. 7) ^[6]. The Constitutional Court also through Decision Number 21/PUU-XII/2014 expanded the provisions of Article 77 letter (a) of the Criminal Procedure Code. Therefore, the authority of Pretrial also included the validity or otherwise of determination of suspect. Pretrial Institution was intended as an institution which was created to supervise the protection of the rights of suspects/defendants.

In the consideration of Pretrial Judge, the study confirmed that the assessment of the substance, material, or content of the witness/suspect's statement could not be used as evidence or was not within the authority of Pretrial Judge. However, in the enforcement of criminal procedure law in Law Number 8 of 1981, matters related to the following could be viewed as the authority of Pretrial Judge's examination. These included (1) the procedures (formal) in terms of the completeness or incompleteness of the administration of the coercive measures, (2) in terms of the fulfillment or non-fulfillment of the provisions of criminal procedure law related to the procedures carried out by investigators in obtaining evidence, and (3) those related to the procedure for summoning witnesses/suspects as well as (4) the procedure for obtaining information from witnesses/suspects.

Freddy the iron buyer was determined to be suspect without first being properly summoned and examined which was further announced through news in the mass media to the public. After one year, Freddy found out through the news in the mass media on April 5, 2017, and this reflected the existence of an act that violated the procedural law carried out by Prosecutor's Investigator who did not carry out the procedures according to criminal procedural law processes. Determination of suspect was only based on the exposure of Prosecutor's Investigator without prior examination. Furthermore, announcing the report through the mass media should be stated as determination of suspect that was not appropriate to the procedures and unfair. Based on the results of the investigation and evidence obtained, this designation led the Respondent, the NTT High Prosecutor's Office to determine Freddy Handinata Ongkosaputra as a suspect via Suspect Determination Letter issued by the Head of NTT High Prosecutor's Office Number: B-05/P.3/Fd.1/03/2017 March 24, 2017. Subsequently, an Investigation Order was issued by the Head of the NTT High Prosecutor's Office Number: Print07/P.3/Fd.1/03/2017, March 24, 2017, with suspect Freddy Handinata Ongkosaputra violating procedural law. For suspect determination to proceed, there should be a reasonable suspicion which had to be supported by evidence stating the criminal act was committed by the individual.

Lacking sufficient evidence or reasonable suspicion rendered the act legally invalid. When a case does not meet these requirements, the alleged act could not be considered a criminal offense legally.

According to the considerations of Pretrial Judge in the decision, related to the evidence of the Expose Minutes, February 8, 2017, part of the main conclusion was to wait for the Yohanes Sammy Prastyo Budiarto Court Decision. Based on this evidence, the Judge thinks that this evidence was not sufficient due to the written evidence in the form of Minutes of witness examination. According to the provisions of Article 184 of Law Number 8/1981, witness statements were part of the means of evidence, and the statements of these witnesses showed that the purchase made by Pretrial Applicant (Freddy) had nothing to do with Yohanes S.P.B.

However, through the pretrial case it seems that. “..States may proclaim that justice has been served by the outcome of a dispute that the prosecutorial system alone has created. But those robbed are often not repaid, and their violations are not corrected. People who have suffered harm remain without individually tailored responses to their damage or grief. And the battered are left with injury that the criminal legal system has not healed (HLR, 2021, p. 712) ^[4].

Based on the legal considerations of Pretrial Judge, the decision of Pretrial case Number 04 /Pid.Pra/2017/ PN.Kpg at the Kupang District Court was fair to Pretrial Applicant, specifically as manifested through the decisions. These included (1) Granting the Applicant's Pretrial application in entirety, (2) Declaring that the Letter of Suspect Determination from the Head of NTT High Prosecutor's Office Number: B- 05/P.3/Fd.1/03/2017, March 24, 2017, and the Letter of Investigation Order from the Head of NTT High Prosecutor's Office Number: Print-07/P.3/Fd.1/03/2017, March 24, 2017, with suspect Freddy Handinata was invalid and did not have binding legal force, (3) Declaring that all decisions issued further by the Respondent relating to determination of Suspect against the Applicant concerning the alleged criminal act of corruption in the form of confiscated goods located in Benu Village, Takari District, Kupang Regency, NTT Province in 2015 based on a Court Decision which possessed permanent legal force in the name of Adrian Herling Waworuntu were invalid.

Conclusion

In conclusion, this study confirmed the investigation's validity and suspect's determination against Freddy Handinata Ongkosaputra through the Investigation Order of the Head of NTT High Prosecutor's Office Number Print-07/P.3/Fd.1/03/2017, March 31, 2017, did not meet the two sufficient evidence, where valid civil evidence was illegally used as criminal evidence. Therefore, the investigation and determination of suspect were invalid because the procedures were not carried out according to the processes stipulated in Law Number 8 of 1981 concerning Procedural Law. In this case, the sale and purchase agreement and the Order of the Head of NTT High Prosecutor's Office Number 186/P.3/CPL.2/05/2015, May 6, 2015, to sell the iron with Paulus leading to the ownership had changed. The study further confirmed that the sale and purchase transaction of iron between Freddy (Buyer) and Paulus (owner of the goods) was not a criminal corruption event but was a lawful business event in the Private sector. Furthermore, the legal

considerations from the Judge in the decision of Pretrial Case Number 04 /Pid.Pra/2017/ PN.Kpg was objective and fair towards Pretrial Applicant. The decision granted Pretrial application in entirety, invalidated Suspect Determination Letter and Investigation Order on the alleged corruption including the misuse of state property, specifically confiscated goods referenced in a binding Court Decision for Adrian Herling Waworuntu. It also declared all subsequent decisions or determinations by the Respondent, the NTT Prosecutor's Office regarding Freddy's suspect status as not legal validity and binding authority.

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