



## Expansion Of Pretrial Authority After The Ruling Of The Constitutional Court

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**Citation:** Yahman et. al (2024), Expansion Of Pretrial Authority After The Ruling Of The Constitutional Court *Educational Administration: Theory And Practice*, 30(5), 9804- 9810

Doi: 10.53555/kuey.v30i5.4657

### ARTICLE INFO

### ABSTRACT

In the trial process, the pre-trial substance examined is the process of obtaining facts and evidence, which are used as a reference to prove a case that was obtained in an appropriate manner. This research is useful for analyzing and understanding the need for legal aid and the findings in the 2014 Constitutional Court decision, using a normative legal approach which focuses on legal concepts and decision making. This research uses a conceptual and case-based approach, which aims to strengthen the authority of law enforcement agencies beyond just legitimacy. arrest and detention extended to search and confiscation. In conclusion, in a pre-trial hearing, the substance examined is a process of obtaining facts and evidence that can be used as a reference for proving a case, which is obtained in an appropriate manner. The process of obtaining evidence is very important to realize legal certainty that is fair to the protection of human rights.

**Keywords:** Authority, Pretrial, Justice, Legal Certainty.

### INTRODUCTION

The judiciary, In the Indonesian law enforcement system, a new institution has been founded. system, is limited to examining and deciding to arrest, detain, provide compensation, and/or rehabilitate perpetrators. The judge works with the authorities to determine damages for personal injury sustained in both contract and tort cases. Civil lawsuits need an application outlining the extent of the claim before they may proceed (Jaddou, 2023).

The Criminal Procedure Code, Article 77 regarding There isn't enough information in the text to create a summary still does not touch on community legal issues because it is considered to violate the premise in this process , the idea of a fair legal process, as explained in Rule 21/PUU-XII/2014 of the Constitutional Court is a landmark decision that sets the framework for the Philippine constitutional order, is discussed. A person does not have the legal authority to interpret such circumstances as a violation, infringement, or violation of his or her rights. (Triwahyuningsih, 2018).

The government originates from the authority to enforce the law to enforce the law against those who do not want to enforce it. They must also provide guidance, protection and assistance to the community. However, weak implementation of the law can result in weak power to enforce and protect society 1945's Republic of Indonesian Constitution is a historical document containing the rules and legislation of the Republic of Indonesia. as constitutional provisions can be used to protect people's rights with the law as a guide.

The Criminal Law promulgated by HIR (Het Herziene Inlandsch Reglement) in 1981 aims to strengthen constitutional rights in the practice and enforcement of the law. The law requires the reaffirmation of nonviolent behavior and avoids the imposition of harsh penalties. This article 8 of the 1981 Constitution is the basis for this statement, which mandates implementation and The legal system is governed by a legal system apparatus (Agustine, 2017). The meaning of the development of criminal procedural law in the legal implementation regulations for appointing a judge, as explained a statement has been released by the Chief Justice of the Supreme Court., functions as a road map.

"The legal basis of an agreement is to obtain the material truth in identifying the perpetrator of a criminal act which is applied in the provisions of a law honestly and precisely, then asking the court for an investigation and determination to determine whether a criminal act is true or not." whether a criminal act has been proven and whether the defendant can be held responsible." (Rahmmad, 2005).

Relationship between mass media and law enforcement agencies is carried out both in the process of investigating criminal offenses and in the process of their coverage for the public. At the same time, such coverage can have both positive and negative aspects. On the one hand, the mass media in some cases take a rather aggressive position, covering the course of the pretrial investigation. "Driven by the desire to reach (and keep) a larger audience and pressured by the competition of new communication channels such as social networks and video sharing platforms, the media are often tempted to ignore the fundamental rights of suspects and accused persons and publish information that would affect the presumption of their innocence. At the same time, in many countries, media laws do not address in detail the coverage of criminal cases, leaving the media to define the rules themselves through self-regulation instruments like ethics guidelines or codes of conduct" (Markov, 2023).

Some authors consider constitution as a process that establishes a hierarchy of normative legal texts, statutes and other legal sources. The established hierarchy ensures effective rule of law by linking all subjects and groups in society under the same rule of law, enshrining the basic norms that characterize all legal communities (Da Silva, 2020). This definition reveals only a fraction of the functional utility and constitutional necessity.

Judges can create legal norms through legal discovery mechanisms as implied in Article 5 paragraph (1) of Law No. 48/2009 on Judicial Power, but it is not appropriate. If there is a problem in a case, then the judge will seek and find dri punishment. Second, Article 77 of the Criminal Procedure Code is a deterrent, so it is valid, the discovery is only limited to the objects that have been regulated in this article, but pretrial decisions that have been made so far show that judges use the discovery method, so there must be rules regarding the limits of judges in making legal determinations. The judges' legal findings can be through previous court decisions on cases that then influence the decisions taken by judges in deciding a case.

Law enforcement involves protecting the rights of all citizens and promoting social justice, fairness, and equality. It is critical to ensure one essential idea that fosters social fairness is the rule of law. prevents corruption, ensuring that all citizens, including those in government, comply with the same laws that are enforced in public and in the courts (Bhatia, 2020) .

The Constitutional Court is an important step in substantive law and provides decision-making power. The Constitutional Court differentiates between the right to be tried based on applicable law and the right to defend the defendant's constitutional rights. The process of resolving this problem involves legal assistance such as ensuring the safety of the defendant, upholding the defendant's rights, and establishing the Police Station as an enforcement agency for the Constitutional Court to prevent violations of people's constitutional rights.

The birth of the Criminal Procedure Law, known as the Pretrial Institution, as a monitoring mechanism, so that errors do not occur This is a branch of law enforcement research and violate the constitutional rights of the community and the judiciary. This supervisory institution is the authority of the District Court (Damis, 2018). The supervision model The criminal procedure is the main topic of this work Code is not a separate institution, but is part of the authority of the District Court to decide on applications received by the District Court in assessing whether there are procedural errors that are not in accordance with the proper mechanism. Not reviewing there is a legal matter at hand in this instance., but rather the responsibility of the Chairman of the District Court in its implementation. The doctrine of protecting people's constitutional rights is the desire of the government and society to protect against bad treatment carried out by judicial institutions in order to create fair legal certainty, especially for law violators.

Currently, the Criminal Procedure Law is considered not to be in accordance with legal developments in society, everything seems complicated so that it is no longer relevant in protecting people's constitutional rights. The repressive actions of the Judiciary regarding the Law and its provisions have become unclear, resulting in the absence of fair legal certainty for people dealing with the law (Devi, 2022). According to Law 28 D Article 1 In this case, there is a legal issue at hand rights are protected. The constitution stipulates that every individual has the right to utilize, enjoy and utilize good and fair rights in the legal system. If the right to utilize these rights is not recognized as a rights-based or rights-based right, the constitution may be deemed unconstitutional (Rahman, 2020). The Criminal Procedure Code provides limitations on the provisions that are given authority in the Pretrial Institution process which in this is based on part 1 of section 10 which states that a person must be "legitimate" or not involved in the activity, a person must be "legitimate" or not encourage it, and a person must "provide compensation." loss" or rehabilitation for those not involved in the activity.

The people of Jakarta are represented in politics by the DKI Jakarta Regional People's Representative Council (DPRD). was formed in 2015. issued a statement regarding the appointment of Budi Gunawan, As Commissioner General, the Chief of the Indonesian National Police (Kapolri) has been named. (Komjen) - a position held by the President of Indonesia. KUHAP and the Considerations of Constitutional Court Judges, but in law enforcement practice this decision has become jurisprudence in determining someone as a suspect.

This illustrates that determining a suspect's phrase is not commensurate with the text provided. It should be implemented by a judicial institution called the Corruption Eradication Commission.

Deddi Diliyanto, Zainal Asikin, (2018) The article "Requirements for the Revision The Constitutional Amendment Law Number 21-PUU-XII-2014 is a noteworthy piece of legislation designed to improve people's rights and liberties" uses an approach in law, regarding the approach to cases occurring in a criminal act and about approaches that are explained conceptually. In contrast to this article, researchers only use a conceptual and case approach. Previous research, Asy'ari et al. (2016) examines examples the procedure used to carry out and enforce Constitutional Court rulings, while this article focuses on the expansion of pre-trial authority after Constitutional Court decisions. Furthermore, previous research conducted by Haryono, (2022) examined the method of interpreting Constitutional Court decisions using a conceptual approach, while this research examines the expansion of pre-trial authority using a conceptual approach and a case approach.

As stated by Rozi, (2018), the process of obtaining facts and evidence can be used as a reference for proving a case regarding the expansion of pre-trial authority. This is confirmed by research (Sepang, 2018) that the letter the Constitutional Court's ruling is codified in Criminal Procedure Code Article 184., so the arrest order must be accompanied there are a minimum of two pieces of evidence that back up the assertion. However, the Supreme Court's current decision considers the condition or circumstances of the applicant, where he feels his rights have been impaired (Alfath, 2020). In published developments, Present before the court is Constitutional Court Judge Number 102/PUU-XIII/2015. Application was declared void.

This is a confirmation according to the consideration of the Constitutional Court Judge Number comes after Article 82 Paragraph (1) of the Criminal Procedure Code.: Investigation Order Letter 130/PUU-XIII/2015 was issued a week after being asked, this statement was included in the conclusion of the statement. From this discussion, legal issues were obtained, namely how to expand the authority of pre-trial institutions and reject applications for pre-trial regulations decision Number 21/PUU-XII/2014 of the Constitutional Court governed how the statute was implemented. This study was then used to understand and analyze the expansion of judicial authority and the reasons for rejecting judicial requests following The Philippines' constitutional system is governed by an important judicial decision known as Constitutional Court Decision No. 21/PUU-XII/2014. Researchers hope that this research can make the President or DPR more responsive to the implementation of the Indonesian Constitution which is under the jurisdiction of the Indonesian Ministry of Foreign Affairs. It was 1945 because theoretically they are the institutions that have the authority to implement The Constitutional Court's ruling on improving the wording of laws.

## RESEARCH METHODS

Observation This uses hard law , meaning that observation analyzes legal foundations, legal principles, legal rules and court decisions (Soimin & Nurkaromah, 2020). This research uses a conceptual approach. This means evaluating various legal concepts and legal issues that have been raised discussed in the statement discussed. The case method of looking at the legal department has made several decisions. Based on legal issues from a criminal law perspective. By conducting document research, the legal materials for this research were collected. Based on the category of legal analytics, it is used to analyze the legal issues discussed in this research.

## RESULTS AND DISCUSSION

### Authority of Supervisory Institutions

The authority of the Supervisory Agency which is called Pretrial an extensive synopsis of the content of judgment No. 21/PUU-XII/2014 is given in the summary judgment of the relevant clauses. is available in the text, the Department of Public Works must not only carry out its duties but also be involved in their use and provision. The decision focuses on the development of the South Jakarta Public Works Department. determination as a suspect on behalf of the Police Drs. Budi Gunawan who served as Commissioner the Chief Justice of the Indonesian Supreme Court., 2015). This illustrates that the expressive the acts of the prosecutor's office. must not be carried out in a standardized way in accordance with procedures that do not conflict with the law.

If examined more deeply, the progressive actions of the judiciary take the form of coercion. Summons, arrests, and detention are covered by the Criminal Procedure Code. The activities and services related to these topics are governed by Constitutional Judge Number 21/PUU-XII/2014 and Court Judges 04/Pid. Prap/2015/PN South Jakarta, which was published on January 26, 2015., in its decision rejecting the designation of the suspect on behalf of the Police Drs. Budi Gunawan who is Commissioner General. In the Criminal Procedure Code, supervision of repressive actions by judicial institutions.

Pretrial mechanisms, such as internal supervision of the Criminal Justice Acts of 2014, Numbers 14 and 6, and 2019 is in accordance with this text. (KN Indonesia, 2019). This regulation regulates procedures for internal supervision of internal investigators. It is hoped that this supervision can prevent procedural errors in law enforcement. This regulation was issued as a form of commitment by the Republic of Indonesia's

National Police is in charge of upholding peace and order throughout the nation. to transparently prioritize the Human Rights (HAM) of someone who is undergoing a legal process. This may include arraignment, discovery, pretrial motions, and plea negotiations.

In the context of law enforcement, especially criminal law, to protect a person's rights, always through good legal processes and procedures. The provisions that have been regulated regarding the Criminal Procedure Law provide provisions that cannot be exceeded by the Judicial Institution. Criminal Procedure Law. This is done to ensure fair legal certainty, transparent procedures through procedural mechanisms and application of the law through legal processes (Latipulhayat, 2017). Examining the Judge's Considerations On March 6 2014, the Supreme Court decided that the judge's decision was Article 28 I of the 1945 Constitution states that Indonesia is a state that respects human rights basic rights, including the law enforcement process against violators. the law or rights of other people with the procedures and mechanisms for enforcing the law . *legal proceedings* .

Because law is a collection of regulations that are unique to diversity, in this case, law must be understood from a broad perspective (Menski, 2014). " Kees Waaldijk investigates the complex web of ideas from which legislation might emerge. points out, law is also a field of science that continues to develop

Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees criminals the right to life. allows law enforcement against forgery, violations and abuses. become the ideals of society. Pretrial authorities oversee the process of formal law application and substantive law enforcement. Therefore, Pre-trial power exceeds the jurisdiction of the Constitutional Court, which does not apply Article 82(1)(d) of the Criminal Procedure Code and deals with activities that are in contradiction with existing laws and regulations under Article 77(c) sufficient reasons to reject a pretrial application. The preliminary exam and main exam complement each other.

### **Dismissal of pretrial motions**

Submission of Paragraph (1) of Article 82 Letter D of the Criminal Procedure Code is recognized as a reference:

"The government's legal analysis has not been completed, but the legal analysis regarding returns is still ongoing. The request was rejected."

There was a debate regarding the interpretation of "an examination Due to a case that the District Court reported, there is ambiguity and question regarding the law. in the submission of a pretrial petition. As a result, the rights of suspects and their legal representatives to submit pretrial applications are neglected. What is meant by the phrase "an examination of the case which has been reported by the District Court has been carried out" is, 1) When the criminal case file has been handed over or handed over to the District Court through the Public Prosecutor, at that time the pretrial application is calculated to be rejected, 2) at the time the first trial of a main case begins, the pre-trial is counted as aside, and 3) when the public prosecutor reads the letter of indictment or submits a letter of indictment regarding the main case. in a trial, the pretrial is counted as being set aside.

In order to ensure the provisions of the Constitutional Court made a decision that reads:

1. The Constitutional Court judge partially granted the petition submitted by the Petitioner;
2. The Constitutional Court judges stated that the law cannot articulate the phrase "a person is a slave" as "permission to follow up" unless the individual is detained and has been given the first and second instructions of a slave, or the right to follow up .
3. The proposal and its modifications have been approved by the Panel of Judges of the Constitutional Court.
4. The Panel of Judges at the Constitutional Court has approved the proposal and its amendments.

During the legal process at trial, examinations are carried out separately. From segment i interpretation According to the Panel of Judges in Constitutional Court Decision Number: 21/PUU-XII/2014, judges of the Constitutional Court are required by Article 77 of the Criminal Procedure Code to have an independent opinion on pre-trial authority. This opinion also determines the validity of suspect determinations, searches, and confiscations as pre-trial objects. The components of criminal procedural law as intended in Article 79 and Article 80 foster, protect and guarantee the rights of suspects.

The suspect has the right to submit a pretrial application. Therefore, the pretrial process must end when the main case trial begins in court. Likewise, the punishment is based on Paragraph 1 of Article 82 KAHAP. intended to ensure that there are no differences in examination results between p The judge's considerations in The Criminal Procedure Code's Article 82 Paragraph (1) Letter D, which recognizes the Criminal Procedure Code's provisions—such as pretrial plaintiff examination, application investigators, and public prosecutors—as acknowledged by the Constitutional Court Judge, is based on Decision Number 102/PUU-XIII/2015.

The application of Article 82(1)(d) due to legal concerns resulting from the parties' respective interests, several interpretations of the Criminal Procedure Code exist. judge who hears the case. The norm that cases reported by district courts are investigated does not require interpretation. Based on the KUHAP regulatory mechanism, prosecutors' requests to district courts are regulated, among other things, by the provisions of Chapter 15 Article 143 of the KUHAP.

Case files, then prosecution, the provisions regulated in Chapter 2 letter if read from the moment the file is submitted, the Criminal Procedure Code's provisions become meaningless. This is predicated on how Article 143, Article 1 of the Constitution is interpreted. stated that the prosecutor must immediately refer the case to the district court with a request to hear the indictment. The norms regulated in Article 143 Paragraph 1 of the Criminal Procedure Code, which requires the trial of cases to be carried out immediately, require that the filing of a case by the public prosecutor not only has an impact on the scope of the commencement of a trial but also affects the scope of justice. system. It has been confirmed that management. Consideration of this issue has not yet begun. Subject to Article 153 paragraph 2(a) of the Criminal Procedure Code, a panel of judges is chosen by the chairman of the district court to oversee a trial. The chief judge takes on the job in the event that a case is started. The judges' panel, however, determined that the trial has not yet started..

The suspect has the right to submit a pretrial application. Therefore, the pretrial process must end when the main case trial begins in court. Likewise, this explanation is based on Article 82 Paragraph 1 of KAHAP. It is intended that there will be no differences in the results of the examination between the pre-trial examination of the plaintiff and the pre-trial examination of the plaintiff. Examination by application investigators and public prosecutors. In practice, it is often found that pretrial applications are often rejected, because the pretrial application is based on article In accordance with Article 82 letter d of the Criminal Procedure Code, the prosecutor purposefully chose not to appear at the initial preliminary hearing for a number of reasons. The Constitutional Court provides sufficient time to prepare the main case, for example in presenting favorable witnesses in the investigation.

If the phrase "an investigation was carried out on the case reported by the district court" is interpreted as "reported", then the preparation of the indictment by the prosecutor is not in accordance with the previous statement, and the intention is that a pre-trial be carried out. motion is rejected. Furthermore, according to the Criminal Procedure Code, the prosecutor has the right to correct the charges submitted to the district court based on Article 144. This action violates rights and justice. Therefore, it is necessary to consider that consideration of this trial will be carried out while waiting for the pre-trial decision. When a suspect or his legal representative submits a pretrial application, the aim is so that he is not taken advantage of by law enforcement officials . If viewed from the considerations of the Constitutional Court Judges, it is relevant to state that:

".....Because the subject of the examination as intended in Article 77 is a matter that needs to be clarified and decided before the examination of that subject begins, the event is called a pre-trial or pre-trial review proceeding. court process".

However, the Constitutional Court judge's declaration did not mention the availability of funds, stating that funds were not available for the purpose of the request." by Constitutional Court Judges is irrelevant and the Pretrial Institution assists in testing repressive actions in enforcing the law with its authority and procedures. To understand the importance of the local market and the level of competition involved, it is important to make a decision to adopt a new policy. through mechanisms and procedures whether or not . This is related to the facts in the main case that can be used as a reason for the judge to determine guilt against a defendant. If it is obtained non-procedurally, then at this stage the reality what is obtained is not can be thought of as a letter shape. strong. or real evidence.

If the pretrial examination process is declared invalid because the first trial has been held at the Principal of the School. There is no time or space to question the validity of the evidence obtained at the main trial. Thus, if the objection as intended cannot change Article 156 of the Criminal Procedure Code. carried out the properties of materials are not related to the material itself. which is obtained. Regarding the law enforcement context, it was found that the pretrial request was rejected. Also known as discovery, carried out thoroughly, can help the parties gather evidence, assess the strengths and weaknesses of their case.

Because the Respondent did not attend the first hearing without justifiable reason. Therefore, there is no time and space to take legal action. He even asked for a postponement of the trial. The Respondent can take advantage of this condition to spend time preparing the main case submission, so that the pre-trial examination becomes invalid, as a result the existence of the pre-trial institution loses its substance. Pretrial mechanisms must be implemented transparently. Yahya Harahap's opinion regarding the provisions of Article 82 Paragraph 1 letter a of the Criminal Procedure Code, the obligation to schedule a general hearing within three days of the application being received by the case file and the judge appointed by the Chairman of the District Court . However, the trial could only be held three days after the judge was appointed.

This is determined by a rapid examination in the pretrial application analysis process, during a certain period, the legal authority that manages it must determine whether it will be sent or rejected. pretrial. In the context of law enforcement, the seven days are counted consecutively as long as the seven days in which the petition hearing has been decided, there are also those who argue that seven days means seven days of trial. Even though the days are not consecutive, what is important is that seven days after the Petition hearing is decided. This shows that this process is not yet complete, and the field of environmental studies is called environmental studies relevant because it has nothing to do with the main case. However, examination of the main points of the case can cause the pretrial application to be dismissed.

Pretrial decisions have fundamental legal consequences that are closely related to the subject matter. If the pretrial decision is related to an investigation warrant, it is considered invalid or invalid according to law. As



a result, the evidence and evidence obtained during the investigation were declared invalid. As a result, a person's status as a suspect cannot be decided based on techniques and evidence that are considered invalid. As a result, the main case cannot be tried in court. There is no legal reason for the suspect or his legal representative regarding their constitutional rights in the pretrial petition. Regarding Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that protection, legal certainty and justice will be provided, including for someone who is designated as a suspect. Apart from that, article 82 paragraph (1) letter d of the Criminal Procedure Code states that protection, legal certainty and justice will be provided when submitting a pretrial application because the main case has already been heard by the court. It's not something you do. A pretrial decision is a decision made by the court before the trial begins. This may include things such as admissibility of evidence, legal arguments, or procedural issues.

## CONCLUSION

Pre-trial authority supervises the process of implementing formal law and enforcing substantive law. Therefore, pretrial authority is broader than in this writing based on Article 77 of the Criminal Procedure Code, precedents and considerations of Constitutional Court judges. The addition of one letter to Article 77(c) of the Criminal Procedure Code defines legal acts that conflict with applicable laws and regulations . "Article 82(1)(d) of the Criminal Procedure Code does not provide sufficient reasons to reject a pretrial application. The preliminary exam and main exam complement each other.

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