INJURITY: Journal of Interdisciplinary Studies
Volume 3, Number 11, November 2024
e-ISSN: 2963-4113

LEGAL POLICY OF PRETRIAL ARRANGEMENTS IN CRIMINAL PROCEDURE LAW IN INDONESIA BY THE CONSTITUTIONAL COURT

Daswanto
Universitas Pancasila, Indonesia
Email: daswanto.up@gmail.com

Abstract

This research examines the legal policy direction of pretrial arrangements in Indonesia's criminal procedure law, focusing on Constitutional Court Decisions Number 21/PUU-XII/2014, 102/PUU-XIII/2015, and 66/PUU-XVI/2018. These decisions have significantly shaped the evolution of pretrial provisions, ensuring alignment with constitutional principles of justice, legal certainty, human rights protection, and simple, fast, low-cost justice. Through normative legal research employing statutory, conceptual, and case-based approaches, the study analyzes how the Constitutional Court's rulings address ambiguities in existing norms, enhance judicial oversight, and strengthen the protection of suspects' rights. Findings indicate that the Constitutional Court's decisions aim to refine pretrial norms by expanding judicial authority, clarifying procedural ambiguities, and balancing human rights protection with efficient judicial processes. The research underscores the role of legal politics in harmonizing criminal procedural law with evolving societal and legal demands, offering insights for further reforms to uphold justice and human dignity. Future research could explore comparative analyses, implementation challenges, and the integration of digital technologies to enhance the efficiency and equity of pretrial systems.

Keywords: Criminal Procedure Law, Legal Policy, Constitutional Court, Pretrial

INTRODUCTION

Countries in the world through the United Nations General Assembly have formulated Sustainable Development Goals (SDGs) which include 17 (seventeen) global goals and targets. One of the global goals and targets is "Peace, Justice and Strong Institutions" which demands guarantees of legal protection and human rights that are fairer and more advanced (Arifin & Waspiah, 2018). This also extends to the quality of enforcement of criminal procedural law which is also influenced by whether or not the fulfillment of human rights is ignored, including suspects in fighting for their rights through pre-trial.

The regulation of criminal procedural law in Indonesia generally refers to Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter abbreviated as KUHAP) which came into force in 1981. Through the provisions contained therein, there are a series of regulations that contain the ways and how -the ruling government body, regarding the initiation of an investigation by the police, then regarding the prosecutor's office as a public prosecutor, and regarding the necessity for the court to act to achieve state goals in relation to the enforcement of criminal law. Through the means of criminal procedural law, perpetrators of crimes who are threatened with criminal punishment receive commensurate or appropriate punishment based on the level of their guilt (Dachak, 2021). Therefore, criminal procedural law remains related to efforts to fulfill human rights.

One of the important juridical problems regarding the KUHAP is the guarantee of the contents of several of its articles which have the potential to no longer be relevant because changes have been made to the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the UUD 1945) as the Indonesian constitution in 1999-2000. The results of these changes are acknowledged to further strengthen the recognition, guarantee and protection of

human rights as demonstrated by the presence of Articles 28A to Article 28J of the UUD 1945. Apart from that, these changes also result in the presence of the Constitutional Court which has the authority to delete or correct the formulation of articles in the Act, including the Criminal Procedure Code, which is not in line with the values of the 1945 Constitution through a judicial review mechanism.

Specifically regarding pretrial arrangements, Article 1 paragraph (10) of the KUHAP states that there are 3 (three) scopes of authority for the court in examining and issuing decisions. These three things are: first, regarding "whether or not an arrest and/or detention is valid at the request of the suspect or his family or other party under the suspect's authority." Second, regarding "whether or not it is legal to stop an investigation or stop a prosecution at a request for the sake of upholding law and justice." And third, regarding "requests for compensation or rehabilitation by suspects or their families or other parties on their behalf whose cases have not been submitted to court."

The provisions of Article 1 paragraph (10) of the KUHAP are then followed by the presence of Article 77 letter a of the KUHAP which states that district courts also have the authority to examine and decide on "whether or not an arrest, detention, termination of investigation or termination of prosecution." However, the Constitutional Court through decision number 21/PUU-XII/2014, then expanded its pre-trial authority in Article 77, where it also has the authority to "examine and decide whether suspects, searches and confiscations are legal or not" (Decision Number 21/PUU-XII/ 2014, p. 97). The Constitutional Court's decision is also considered to give new hope to justice seekers in order to be able to test the validity of coercive efforts by law enforcement officers. This shows how legal developments in society have brought a desire to ensure that suspects' rights are guaranteed, including through expanding pretrial authority in carrying out judicial supervision of the Indonesian criminal justice system (Afandi, 2016).

However, not long ago, a request for a judicial review of the KUHAP was again submitted to the Constitutional Court. The object of the requested material review is Article 82 paragraph (1) letter d of the KUHAP which reads: "in the event that a case has begun to be examined by the district court while the examination regarding the request to the pre-trial has not been completed, then the request is dismissed." What the Petitioner is questioning is the content of the article in the phrase "beginning to be examined by the district court". This phrase is considered to have multiple interpretations because it is not clear whether a pre-trial can be terminated from the time the case file is transferred by the public prosecutor to the District Court, or from the time it is examined at the initial trial, or from after the reading of the indictment. Then, the Constitutional Court through Decision Number 102/PUU-XIII/2015 finally decided that for the sake of legal certainty and justice, the pretrial was declared invalid when the first trial had been held on the main case on behalf of the pretrial applicant.

From the description above, the discussion regarding the pretrial provisions requested by the suspect cannot be said to be something simple. This is because the pretrial provisions themselves still contain text formulations that are not yet ambiguous, are susceptible to various interpretations, and do not have legal certainty. Such conditions have the potential to harm the sense of justice for the suspect's honor and dignity. Therefore, research into the formulation of texts surrounding the Criminal Procedure Code, in this case regarding pretrial arrangements, should be carried out continuously to refine the substance of the norms. In addition, to better guarantee the protection of the suspect's human rights.

In this regard, in 2018 a request for a judicial review of the KUHAP was again submitted to the Constitutional Court. The request was made by the Indonesian Young Advocates Association, which was decided by the Constitutional Court through Decision Number 66/PUU-XVI/2018. In summary, in the reasons for his petition the applicant states that Article 82 paragraph (1) letter c of the KUHAP is contrary to Article 28D paragraph (1) of the UUD

1945, if not interpreted: "In the event that a request to the pre-trial has already begun to be examined, while the examination of a case in the district court has not yet started, then the district court must postpone the examination of a case until a pretrial decision is made." The applicant further stated, "That if Article 82 paragraph (1) letter c KUHAP has been declared conditionally contradictory to the 1945 Constitution by the Constitutional Court, then the provisions of the norms of Article 82 paragraph (1) letter d are 'mutatis mutandis' contradictory to the UUD 1945 and have no binding legal force, because its existence is no longer relevant."

In contrast to the two previous decisions in which it is known that the Constitutional Court granted the applicant's request in part, in Decision Number 66/PUU-XVI/2018 the Constitutional Court actually rejected the applicant's request in its entirety. In this way, the applicant's argument for stating that the district court must postpone the examination of a case (main) until a pre-trial decision is made is rejected by the Constitutional Court. The three decisions above show the important role of the Constitutional Court in directing the formulation of norms regarding pre-trials that are different from before. It is also difficult to deny that the legal considerations contained in the Constitutional Court's decision have become legal politics that must be used as guidance by law makers (the Presidential Institution and the House of Representatives). Even though the Constitutional Court in Decision Number 66/PUU-XVI/2018 actually rejected the Petitioner's petition in its entirety, the legal considerations given were of course very related to the 2 (two) previous decisions.

Legal policy according to MD (2009) is "... official policy regarding law which will be enforced either by new legal acts or by replacing old laws, in order to achieve state goals". Therefore, in addition to the institutions of the President and the House of Representatives as law makers, the Constitutional Court is also an institution that has the authority to formulate legal politics (Nugroho, 2016), in this case regarding pre-trial arrangements. Legal policy regarding pretrial provisions in criminal procedural law in Indonesia continues to change along with the development of society, including developments in science and technology which demand a more just and advanced democratic and nomocracy civilization. Legal policy is a tool or means and steps that can be used by the government to create the desired national legal system and with this national legal system the ideals of the Indonesian nation will be realized (Kurniawan & Huda, 2022).

What the Constitutional Court did in its three decisions, namely Decision Number 21/PUU-XII/2014, Decision Number 102/PUU-XIII/2015, and Decision Number 66/PUU-XVI/2018, was actually a legal political direction towards pretrial provisions. Therefore, this research aims to analyze the legal political direction of pretrial regulation in criminal procedural law in Indonesia by the Constitutional Court, especially through Decision Number 21/PUU-XII/2014, Decision Number 102/PUU-XIII/2015, and Decision Number 66 /PUU-XVI/2018.

The purpose of this research is to analyze and evaluate the legal policy direction of pretrial arrangements in Indonesia's criminal procedure law as influenced by Constitutional Court decisions. It aims to explore how these decisions align pretrial provisions with constitutional values, including justice, legal certainty, human rights guarantees, and principles of simple, fast, and low-cost justice. Additionally, the study is expected to provide insights into the impact of the Constitutional Court's rulings on the evolution of pretrial arrangements and their compatibility with contemporary legal and societal needs.

The analysis in this article complements the pretrial study which uses the Constitutional Court decision as written by Firmansyah & Farid (2022). Apart from that, it also complements the article written by Handoko et al. (2021) and the article written by Siar (2019). In contrast to the studies mentioned above, this research uses 3 (three) Constitutional Court decisions simultaneously and analyzes the legal political direction aimed at pretrial regulation through these three decisions.

RESEARCH METHOD

This research is classified as normative legal research, as it relies on secondary data sources to analyze legal principles and frameworks. The research adopts a descriptive approach, aiming to explore, analyze, and thoroughly reveal data related to conditions or phenomena surrounding various Constitutional Court decisions that examine pretrial arrangements. This approach facilitates a comprehensive understanding of the decisions and their implications, focusing on uncovering detailed insights into the legal phenomena under study.

This research utilizes secondary data, including Act Number 8 of 1981 concerning Criminal Procedure Law, Constitutional Court decisions (21/PUU-XII/2014, 102/PUU-XIII/2015, and 66/PUU-XVI/2018), and relevant legal doctrines and conceptual frameworks. Data collection is conducted through a document study, reviewing legal statutes, Constitutional Court decisions, and supporting legal literature, such as academic journals and case studies. The analysis employs a qualitative legal approach, incorporating statutory interpretation to assess legal texts, conceptual analysis to explore underlying principles and values, and case analysis to examine the impact of the Constitutional Court's decisions on pretrial provisions in alignment with constitutional and human rights values.

RESULT AND DISCUSSION

Pretrial Arrangements in Criminal Procedure Law in Indonesia

UUD 1945 contains 3 (three) fundamental principles: first, guarantee of human rights for all citizens; second, the establishment of a basic constitutional structure; and third, the existence of division and limitation of constitutional duties which are also fundamental (Handoko et al., 2021). All three remind what Frederich Julius Stahl succinctly stated as a government surrounded by legal regulations (Akbar, 2019). For this reason, positive legal products should be formulated precisely to provide guidance not only for law makers, but also for judicial institutions that implement laws and for administrators or implementers of decisions issued by judicial institutions.

The authority to form laws regarding criminal law lies with the President and the House of Representatives as regulated in Article 4, Article 5 and Article 20 of the UUD 1945. These articles indicate the strategic role of the state in tackling various crimes by forming policies and regulations in field of criminal law. Specifically regarding criminal procedural law, its provisions are codified in KUHAP. One thing that is also regulated in it is pre-trial, which generally functions to horizontally monitor acts of limiting the suspect's personal freedom that involve coercion. Pretrial is understood as an institution that was created to carry out supervisory actions against law enforcement officers. According to the guidelines for the Implementation of the KUHAP, it is stated that the existence of pre-trials is aimed at ensuring that the interests of examining cases that reduce the human rights of suspects are still carried out within the corridors of law so that protection of the human rights of suspects continues to be created.

Pretrial indirectly supervises the activities carried out by investigators in the context of investigation and prosecution, considering that the investigator's actions are basically attached to the agency concerned. According to Rahmad (2010), it is time to build a culture of mutual control in the era of legal supremacy, between all law enforcement components so that legal certainty can truly be provided for those seeking justice.

Pretrial itself is understood to be an institution that is temporary in nature, meaning that its existence exists when a lawsuit is filed by certain parties. The large number of requests for pre-trial examination of cases after the amendment to the Constitution of Indonesia was due to the desire to obtain justice before the case proceeded to the main trial in court. Article 82 paragraph (1) letter d of the KUHAP also states that in the event that a case has begun to be

examined by the District Court, while the examination regarding a pretrial request has not been completed, then the request is void. Of course, not all pretrial decisions can be won by the defendant or applicant or the party submitting the request during the pretrial examination hearing process (Rahmad, 2010).

The juridical basis for pretrial is shown in the presence of Article 1 paragraph (10) of the KUHAP which outlines the concept of pretrial. This shows that pre-trial is an 'institution' that was born along with the birth of the KUHAP itself. However, pretrial is not an independent institution or stands apart from the district court because from the formulation of Article 1 paragraph (10) of the KUHAP above, it can be seen that pretrial is the authority of the district court. The district court is a general court that exercises judicial power to examine, decide or adjudicate and resolve criminal cases and civil cases at the first instance. This is as emphasized in Law Number 2 of 1986 concerning General Courts (as amended by Act Number 8 of 2004 and Act Number 49 of 2009). Article 2 of the Law states that, "The General Court is one of the executors of judicial power for people seeking justice in general." This provision is followed by the presence of Article 50 which states that, "The District Court has the duty and authority to examine, decide and settle criminal cases and civil cases at the first instance."

Pretrial is also understood to have several characteristics and existence. According to Rahmad (2010), the characteristics and existence of pretrial include: First, pretrial exists and is an integral part of the district court, and as a court institution, pretrial can only be found at the district court level as a task force that is not separate from the district court. Second, pretrial is not outside or next to or parallel to the district court, but is only part or division of the district court. Third, regarding judicial administration, personnel, equipment and finances, they are united with the district court, and are under the leadership and supervision and guidance of the Chairman of the District Court. And fourth, the problem of administering its judicial function is part of the judicial function of the district court itself.

So in principle, the pre-trial institution is not an independent judicial institution, but rather a new authority and function delegated by the KUHAP to each district court. Pretrial exists because of the authority and function of district courts that have existed so far, namely to try and decide criminal and civil cases as their main task, and as an additional task to assess the legality of an arrest or detention. Apart from that, it also includes whether a confiscation is legal or not, whether or not the termination of an investigation or prosecution carried out by an investigator or public prosecutor is legal.

It must be acknowledged that pretrial is a new thing in the life of law enforcement in Indonesia, which is to be enforced and protected, namely the upholding of the law and the protection of suspects' human rights at the level of investigation and prosecution. So, in principle, the main objective of pretrial institutions in the KUHAP is to carry out "horizontal supervision" of all acts of coercion carried out by investigators or public prosecutors against suspects during the investigation or prosecution. This is none other than ensuring that the action in question does not conflict with applicable legal provisions and Acts.

According to Article 77 of the KUHAP, the court that has the authority to examine pre-trial proceedings is the district court. The provisions of Article 77 of the KUHAP were then complemented by the presence of Article 78 of the KUHAP, which also emphasized that the pre-trial was held by the district court which was presided over by a single judge and assisted by a clerk. As is known, Article 78 of the KUHAP states: "(1) Those who carry out the authority of the district court as intended in Article 77 are pre-trial; and "(2) The pretrial is presided over by a single judge appointed by the chairman of the district court and assisted by a clerk."

Apart from the norms already mentioned, pretrial provisions also relate to other articles, namely Article 79, Article 80, Article 81, Article 82 and Article 83 of the KUHAP which are still related to the scope of authority of pretrial 'institutions'. Apart from that, it is also regulated in Articles 95 to 97 of the KUHAP which regulates the provisions for compensation and

rehabilitation. Furthermore, the articles in the KUHAP that are still related to pretrial provisions are regarding confiscation as stated in article 1 paragraph (16) and Articles 38 to Article 46 of the KUHAP. Then regarding the inspection of letters as stated in Article 47, Article 48, Article 49 of the KUHAP. These provisions are then complemented by the formulation of norms contained in Articles 128 to Article 132 of the KUHAP.

In turn, it can be said that the existence of pretrial institutions can certainly provide legal guarantees for the implementation of restrictions on a suspect's freedom in order to avoid arbitrariness. However, if the opposite is true, it will result in violations of human rights (HAM). After all, pretrial is part of applicable law, and law is also the object of legal politics (Opolska, 2022). However, in practice the existence of pretrial proceedings has not had a significant impact on the enforcement and protection of suspects' rights. This is proven by the fact that there are still several cases of violations of suspects' rights during the arrest and detention process (Firmansyah & Farid, 2022).

What is aimed at pretrial arrangements is to reflect the aims of the criminal procedural law itself. Doctrinally, the aim of criminal procedural law to seek the truth is only an intermediate goal, and the ultimate goal is actually to achieve order, tranquility, peace, justice and prosperity in society (Kasiyati, 2020; Suramin, 2021). This is also reflected in the preamble to the Criminal Procedure Code as the basis for the objectives of criminal procedural law, where in the preamble to letter c, it is stated that, "The development of such national law in the field of criminal procedural law is for the public to appreciate their rights and obligations. and to improve the development of the attitudes of law enforcers in accordance with their respective functions and authorities towards upholding the law, justice and protection of human dignity, order and legal certainty for the sake of implementing a rule of law in accordance with the Constitution of Indonesia (UUD 1945)."

Legal Policy of Pretrial Arrangements by the Constitutional Court based on Decision Number 21/PUU-XII/2014, Decision Number 102/PUU-XIII/2015, and Decision Number 66/PUU-XVI/2018

It is difficult to deny that pretrial justice is a hope of justice for every suspect due to the large potential for arbitrariness in the enforcement of criminal procedural law. It can be said that the guarantee of legal protection in the Criminal Procedure Code regarding pretrial proceedings is in line with efforts to improve the quality of human rights enforcement. Pretrial is even considered an innovation in the KUHAP along with other innovations such as limitations on the arrest and detention process, which made the KUHAP at the beginning of its birth a 'masterpiece'. Even though further evidentiary efforts are needed, many parties consider that the drafting of the KUHAP was indeed inspired and refers to international law on human rights which has become International Customary Law (Parikesit & Soponyono, 2017).

After the amendments to the Constitution of Indonesia were implemented, it began to be realized that the KUHAP contained important weaknesses, one of which was the absence of the concept of habeas corpus because pretrial in the formulation of the KUHAP articles was more directed towards mere administrative supervision. For example, pre-trial cannot be used to test: first, whether the juridical principles and the principle of necessity in this coercive measure are valid in a material sense; and second, whether there is "sufficient preliminary evidence" as a basis for determining status as a suspect and then being able to determine that coercive measures such as detention are materially valid.

The above explanation is strengthened by the argument that determining what articles a suspect will be charged with is entirely within the authority of the formal investigator. Likewise, in determining the need to detain a suspect, the investigator's concerns are subjective in nature. Apart from that, the Criminal Procedure Code also does not yet recognize the concept of investigating judges in France or Rechter Comisaries in the Netherlands who have the

authority to determine the charges that will be levied against someone. This is certainly a legal vacuum.

The legal vacuum in pre-trial as explained above can actually be filled by jurisprudence so as to return pre-trial to its proper position. Filling the legal vacuum (*rechtvacuum*) is the function of jurisprudence so that the law is not neglected. As one of the institutions whose function is to "fill" the legal vacuum, the Constitutional Court, through its authority, carries out judicial reviews of the provisions of the law so that they do not conflict with and are in line with the 1945 Constitution. In this connection, the Constitutional Court through its decisions can not only cancel a norm formulation (negative legislature), but can also play a role in changing the formulation of norms (positive legislature). In this context, the Constitutional Court has actually determined the direction of legal policy in Indonesia through the judicial political function it carries out.

A rule that will determine how someone should carry out the action they are trying to create is the realm of the concept (it could even be called a theory) of legal politics. According to Utrech and Jindang, legal politics investigates what changes must be made by the positive law currently in force so that it adapts to social reality (social *wekelijkheid*). Furthermore, according to Utrecht, legal politics can also be interpreted as "policies" adopted by the state to decide which laws need to be replaced or modified, maintained and which need to be regulated so that state administrators' policies can run well and in an orderly manner and therefore state goals can be realized gradually. and planned (Dirgantara, 2022). However, it is not uncommon for legal politics to actually distance the law from social reality due to the influence of powerful groups (Firmansyah & Farid, 2022). It has been explained above that the Constitutional Court has helped determine the direction of legal politics through its 3 (three) decisions, namely: Decision Number 21/PUU-XII/2014, Decision Number 102/PUU-XIII/2015, and Decision Number 66/PUU- XVI/2018.

Legal Policy of the Constitutional Court Decision Number 21/PUU-XII/2014

Decision Number 21/PUU-XII/2014 was requested by Bachtiar Abdul Fatah who is an employee of PT Chevron Pacific Indonesia. According to the Petitioner, Article 1 paragraph (2), Article 1 paragraph (14), Article 17, Article 21 paragraph (1), Article 77 letter a, and Article 156 paragraph (2) in Law Number 8 of 1981 or The "KUHAP" is contrary to the principles of the 1945 Constitution. In summary regarding the Petitioner's petition, the Constitutional Court stated that it partially granted the Petitioner's petition. The Constitutional Court specifically stated that it had granted the Petitioner's petition in Article 77 letter a of the Criminal Procedure Code so that the phrase "determining suspects, searching and confiscating" was included in the pre-trial objects. Thus, the Constitutional Court has changed the formulation of Article 77 letter a of the Criminal Procedure Code so that pre-trial authority includes matters regarding "determining suspects, searches and confiscations."

Determining a suspect is part of the investigation process which is a limitation on human rights. Therefore, the determination of a suspect by investigators is an object that can be requested for protection through pre-trial. This is solely to protect a person from arbitrary actions by investigators which are likely to occur in determining a suspect. In reality, it is very possible for mistakes to occur, so there is no mechanism other than pre-trial that can examine and decide. According to the author, the Constitutional Court aims to ensure that the treatment of suspects in the criminal process continues to pay attention to honor, dignity and equal standing before the law.

In order to protect the rights of suspects or defendants, the Criminal Procedure Code should provide a control mechanism for possible arbitrary actions by investigators or public prosecutors through pre-trial institutions (Decision Number 21/PUU-XII/2014, p. 101). This can be seen from the description of the Constitutional Court in its decision which stated that

(Decision Number 21/PUU-XII/2014, p. 104): "... the essence of the existence of pretrial institutions is as a form of supervision and a mechanism for objections to the law enforcement process which is closely related with guarantees of human rights protection,…. However, along the way, it turned out that the pre-trial institution could not function optimally because it was unable to answer the problems that existed in the pre-adjudication process. ... This actually causes pre-trial to be trapped only in formal matters and is limited to administrative matters so that it is far from the essence of the existence of pre-trial institutions."

Through the existence of Decision Number 21/PUU-XII/2014, the Constitutional Court has participated in legal politics related to formal criminal law provisions so that they are in line and in harmony with the fundamental principles in the 1945 Constitution. The discourse on pretrial institutions cannot of course be separated from the law. criminal law, and discussions about criminal law are of course also related to legal politics. The politics of criminal law basically aims to reduce the number and even prevent the occurrence of criminal acts in the future so that if we discuss the politics of pre-trial law, pre-trial is aimed at providing justice for suspects who have a low position when in conflict with the investigating agency which has full authority over suspect. This effort is preventive in nature to avoid violations of the suspect's human rights and when these rights violations occur again, the suspect can seek justice for himself through pre-trial institutions (Firmansyah & Farid, 2022).

Legal Policy of the Constitutional Court Decision Number 102/PUU-XIII/2015

Decision Number 102/PUU-XIII/2015 is a case that tests pre-trial provisions in the Criminal Procedure Code and norms in Act Number 30 of 2002 concerning the Corruption Eradication Commission. It is known that the request for judicial review was submitted by Rusli Sibua, who at that time was the Regency Regent. Specifically the KUHAP, the Petitioner argued that Article 50 paragraph (2) and paragraph (3), Article 82 paragraph (1) letter d, Article 137, Article 143 paragraph (1) of the KUHAP were considered to be contrary to the contents of Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution (Decision Number 102/PUU-XIII/2015, p. 46).

The Petitioner's request for a judicial review of the pretrial provisions, namely in relation to Article 82 paragraph (1) letter d of the KUHAP, which states, "in the event that a case has begun to be examined by the district court while the examination regarding the request for pretrial has not been completed, then the request is dismissed. ." According to the Petitioner, this provision creates multiple interpretations, where the phrase "started being examined at the district court" gives rise to various interpretations, for example: whether since the case files were transferred from the public prosecutor to the District Court, or whether since they were examined at the initial trial, or whether since after reading of the indictment? According to the Petitioner, the diversity of interpretations violates the principles of *lex certa* and *lex stricta*, and can result in legal uncertainty.

The Constitutional Court granted the Petitioner's petition by making changes to the formulation of norms in Article 82 paragraph (1) letter d of the KUHAP. The Constitutional Court in its decision stated that in order for Article 82 paragraph (1) of the Criminal Procedure Code to be in line with UUD 1945, the phrase "a case has begun to be examined" must be interpreted to mean "the pretrial request is terminated when the main case has been transferred and the first trial of the main case has begun. name of the defendant/pretrial applicant" (Decision Number 102/PUU-XIII/2015, p. 56-57).

Taking into account the above, there have been changes to the pretrial provisions regulated in Article 82 paragraph (1) letter d of the KUHAP, which means that the Constitutional Court has determined the legal political direction of these norms. The phrase "a case has begun to be examined" becomes clearer and has legal certainty, namely when "... has

been delegated and the first trial has begun on the subject matter of the case on behalf of the defendant/pretrial applicant." The reason is that according to the Constitutional Court, in practice it turns out that the provisions of Article 82 paragraph (1) letter d of the KUHAP often give rise to differences in interpretation and implementation by pre-trial judges. Such differences in interpretation are not merely a matter of application or implementation of norms because differences in interpretation arise as a result of the unclear meaning contained in the formulation of the norm itself, in this case the meaning of "the case begins to be examined" which can lead to pretrial failure. This means that the intended interpretation and implementation is regarding when the time limit for a pretrial petition case is declared invalid due to an examination of the subject matter of the case in the district court.

It must be admitted that in practice there is no uniform interpretation among pre-trial judges regarding this matter. There are pre-trial judges who are of the opinion that the pre-trial petition case is dismissed after the main case files are handed over by the Public Prosecutor and registered at the District Court on the grounds that juridical responsibility has shifted from the Public Prosecutor to the District Court. On the other hand, there are also pre-trial judges who are of the opinion that the deadline for a pre-trial application to fail is when the main case has begun to be heard.

According to the author, the direction of legal politics contained in Decision Number 102/PUU-XIII/2015 covers 2 (two) important things. Firstly, it is intended that the pretrial provisions have consistency with what has been decided in Decision Number 21/PUU-XII/2014 so that they are worthy of being interpreted as a continuation of the legal political process regarding pretrial which further guarantees respect, recognition and protection of human rights. And secondly, none other than in order to provide more guarantees of legal certainty as one of the objectives of law (apart from justice).

In relation to the first point above, it would be unfair if a pre-trial petition case whose examination had already begun or was in progress was discontinued simply because the principal case file in the name of the pre-trial defendant had been handed over and had been registered by the district court. In fact, when a pretrial petition case has started or is in progress, it only takes a maximum of 7 (seven) days for a decision to be made on the pretrial petition case. Therefore, it is not surprising that the Constitutional Court then considered that Article 82 paragraph (1) letter d of the KUHAP had given rise to many interpretations, thereby triggering legal uncertainty. As for the connection with the second point above, namely regarding guarantees of legal certainty. So, in order to create legal certainty, the Constitutional Court has correctly provided an interpretation that confirms the time limit referred to in this norm, namely "the pretrial request is declared invalid when the first trial of the subject matter for which the pretrial request has been started."

Legal Policy of the Constitutional Court Decision Number 66/PUU-XVI/2018

The Constitutional Court through Decision Number 66/PUU-XVI/2018 again decided on a pretrial case which also questioned the provisions of the norms of Article 82 paragraph (1) letters c and letter d of the KUHAP, the same as in Decision Number 102/PUU-XIII/2015. The request for a judicial review was carried out by the All Indonesian Young Advocates Association, represented by Minola Sebayar and Herwanto. In the reasons for his petition, the applicant states that Article 82 paragraph (1) letter c of the KUHAP is contrary to the principle of the rule of law based on Article 1 paragraph (3) of the UUD 1945 and the principle of fair legal certainty based on Article 28D paragraph (1) of the UUD 1945, if not interpreted as follows: "In the event that a request to the pre-trial court has begun to be examined, while the examination of a case in the district court has not yet begun, then the district court must postpone the examination of the case until a pre-trial decision is made" (Decision Number 66/PUU-XVI/2018, p. 19).

The Petitioner emphasized that the application for judicial review was not nebis in idem based on Law Number 8 of 2011, because it used different constitutional grounds. In comparison, in the Constitutional Court Decision Number 102/PUU-XIII/2015 the Petitioner argues that Article 82 paragraph (1) letter d of the KUHAP along with the phrase "begins to be examined by the district court" is considered to have multiple interpretations because whether the pretrial can be terminated since the case files are handed over by the public prosecutor. to the District Court, or since being examined at the initial trial, or since after the reading of the indictment (Decision Number 102/PUU-XIII/2015, p. 51). Meanwhile, in Decision Number 66/PUU-XVI/2018, the Petitioner argued that Article 82 paragraph (1) letter d of the KUHAP along with the phrase "the request is dismissed" had negated pretrial as an institution whose existence guaranteed human rights (suspects) and prevented the Petitioner from finding out the results of the pretrial process being handled. The reason is that a pretrial is declared invalid if the first trial of the case begins without knowing the outcome at all (Decision Number 66/PUU-XVI/2018, p. 8).

In Decision Number 66/PUU-XVI/2018, the Constitutional Court decided to reject the applicant's application in its entirety. In this way, the applicant's reasons for stating that the district court must postpone the examination of a case (main) until a pre-trial decision is made, can be said to have been rejected by the Constitutional Court. As is known, Article 82 paragraph (1) letter c of the KUHAP contains provisions regarding the deadline for examining pretrial requests, namely no later than 7 (seven) days. This arrangement is considered to cause problems because in practice the pre-trial judge can postpone the trial beyond the time limit for the pre-trial examination, either because the respondent is not present or at the request of the respondent to postpone the trial. Absence or postponement of pretrial hearings is often used, especially by investigators, as an effort to stall for time so that the main case can begin to be heard.

Meanwhile, Article 82 paragraph (1) letter d of the KUHAP stipulates that if a case has begun to be examined by the District Court, while the examination regarding a pretrial request has not been completed, then the request is void. Through Decision Number 102/PUU-XIII/2015, the Constitutional Court has changed the formulation of Article 82 paragraph (1) letter d of the KUHAP so that the pretrial court is disqualified when the first trial has been held in the main case on behalf of the defendant/pretrial applicant. In the Constitutional Court's interpretation, a pretrial can be declared invalid when a case has been delegated and the first trial has begun, whatever the agenda of the first trial.

The provisions that limit the process of examining pretrial applications to 7 (seven) days as intended are then assessed by the judge to reflect the principle of speedy trial, bearing in mind that the essence of pretrial applications is only to test the formal validity of the process carried out by investigators or public prosecutors based on Article 77 of the KUHAP and Decision Number 21 /PUU-XII/2014. The provisions in question provide certainty by explicitly limiting the length of time that pretrial applications are examined. According to the Constitutional Court, if this norm is declared unconstitutional, or is given a condition that the main trial of the case can only begin after the decision on the pre-trial petition is completed, it will actually trigger legal uncertainty which is not in accordance with the previous Decision Number 102/PUU-XIII/2015.

By referring to Decision Number 102/PUU-XIII/2015, in fact there is a sufficient additional time period because if calculated by the time between case registration until the first hearing of the main case examination in judicial practice so far it is not less than 7 (seven) days, it can even be more. Therefore, if there is a problem as argued by the Petitioner regarding a pre-trial investigation that has already begun, then there should be no concern that the pre-trial will not be decided before the first hearing of the case. Because, within 7 (seven) days the pretrial application must be decided.

Because the time to determine the first trial is very dependent, among other things, on the domicile of the witnesses who will be examined at the first trial, which is closely related to the distance between where the witnesses live and the time limit for the procedures for summoning witnesses to appear at the trial by following the applicable law on summons. Meanwhile, if the examination of a pretrial petition begins before the main case hearing, then it is the authority of the judge in the pretrial hearing and the panel of judges hearing the main case to consider the sense of justice without interfering with their respective authorities and harming the suspect's rights.

The Constitutional Court's consideration of the 7 (seven) day deadline provision actually stems from the principle of simple, fast and low-cost justice. This is in line with Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power which states that: "Judicial proceedings shall be conducted in a simple, speedy and low-cost manner". This principle was emphasized by the Constitutional Court in its consideration of the 7 (seven) day deadline for pretrial decisions.

In addition to the description above, in considering the constitutionality of the norms of Article 82 paragraph (1) letters c and d of the KUHAP, the Constitutional Court emphasized that these two norms are provisions which essentially order the acceleration of the case delegation process in the case of criminal case trials. According to the Constitutional Court, accelerating the resolution of cases is one of the rights of suspects and aims to protect suspects from the arbitrariness of law enforcers who delay the resolution of cases. The length of time the case is resolved has an impact on the length of the detention period which is basically considered a deprivation of liberty for the suspect.

However, if a case investigation is carried out for a long time, it will have various detrimental consequences for the suspect being investigated. This is in accordance with the general adage in upholding justice, namely, "Justice delayed, justice denied". This means that delaying the implementation of the justice enforcement process by law enforcers has the potential to cause injustice as a result. That the limitation of pretrial time and provisions that cancel pretrial proceedings when the trial regarding the subject matter of the case begins are essentially related to the implementation of the above principles.

Thus, at least 3 (three) important substances can be drawn from the judge's considerations in Decision Number 66/PUU-XVI/2018 in reviewing Article 82 paragraph (1) letters c and d of the Criminal Procedure Code. First, if the norm is declared unconstitutional, it will actually trigger legal uncertainty which is not in accordance with Decision Number 102/PUU-XIII/2015. The reason is that the time to determine the first trial is very dependent on the domicile of the witnesses who will be examined at the first trial, which is closely related to the distance between where the witnesses live and the time limit for the procedures for summoning witnesses to appear at trial by following the applicable law on summons. In addition, if the examination of a pretrial application begins before the main case hearing, then it is within the authority of the pretrial application judge and the panel of judges hearing the main case to consider the sense of justice without interfering with their respective authorities and harming the suspect's rights. Second, the judge's considerations are also based on the principles of simple, fast and low-cost justice based on Act Number 48 of 2009 concerning Judicial Power. And thirdly, even though the a quo decision of the Constitutional Court panel of judges can be said to have correctly rejected the Petitioner's petition, it cannot be denied that the a quo decision actually does not answer the main epicenter of the problem raised by the Petitioner regarding the very likely possibility of the Investigator and Public Prosecutor stalling for time by postponing the trial. above the 7 (seven) day deadline for handing down pretrial decisions.

Especially in the third substance above, it is difficult to deny that it can create an opening for investigators and public prosecutors to request a postponement of the trial in the hope of being able to prepare the main case files so that they can be handed over immediately (taking

time beyond 7 days) with the aim that the pre-trial petition can be declared invalid. . As a result, the Petitioner's petition could be dismissed and destroy the hopes of justice seekers regarding the pretrial decision he proposed. In this context, Decision 66/PUU-XVI/2018 actually still has "homework" left, that is, it has not fully answered the concerns of justice seekers who hope for the results of the pretrial decision.

From the three Constitutional Court Decisions, the overall direction of legal politics aimed at is how to ensure that pre-trial provisions can be in line with: (1) justice, (2) legal certainty, (3) respect, recognition and protection of human rights; and (4) the principle of simple, fast and low-cost justice. From these four aspects, cumulatively, the three decisions have 1 (one) consistency that pre-trial must actually lead to respect, recognition and protection of human rights.

CONCLUSION

The Constitutional Court of Indonesia, through Decisions Number 21/PUU-XII/2014, 102/PUU-XIII/2015, and 66/PUU-XVI/2018, has significantly influenced the legal politics of pretrial provisions in the country's criminal procedural law. These decisions emphasize aligning pretrial provisions with principles of justice, legal certainty, human rights protection, and simple, fast, and low-cost justice. Decision 21/PUU-XII/2014 highlights the preventive nature of pretrial to safeguard human rights, while Decision 102/PUU-XIII/2015 adds legal certainty to its scope. Decision 66/PUU-XVI/2018 further reinforces these principles by addressing procedural efficiency and justice accessibility. Future research could explore comparative analyses of pretrial systems globally, implementation challenges, the impact on human rights and legal certainty, and the integration of technology in pretrial processes to enhance their effectiveness and inclusivity. Additionally, examining pretrial provisions' role in broader criminal justice reforms and their impact on vulnerable groups could provide valuable insights for advancing justice in Indonesia.

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