

Shift In Pre-Trial Procedural Law: A Study Using Paradigm Theory

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Abstract

This study seeks to delineate the presence of pre-trial procedures within the Indonesian criminal justice system. This paper aims to examine the existing practice of implementing pre-trial procedures, which reportedly use a quasi-civil procedural law framework. This study employs normative research, utilising both a conceptual and a case approach. The study's findings indicate that the evolution of Criminal Procedure Law, viewed through the lens of Legal History, has transitioned from the inquisitorial to the accusatory legal concept. The accusatory concept of law exists only in part. Consequently, in the execution of pre-trial power, the lack of procedural law necessitates a methodical interpretation that directs attention to Civil Procedure Law. Consequently, the examination procedure in the execution of pre-trial authority entails the pursuit of formal truth. The Criminal Procedure Code fundamentally aims to ascertain material truth. Consequently, despite the diverse rulings from pre-trial judges, the pre-trial examination process invariably focuses on post-factum evidence, disregarding all subjective actions that fall outside Article 77 of the Criminal Procedure Code in conjunction with Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015. Decision of the Constitutional Court Number 21/PUU-XII/2014, dated 28 April 2015. b. The legal reform of the Criminal Code has been in progress since the establishment of the Constitutional Court, which serves as a constitutional guardian with the power to evaluate laws in relation to the 1945 Constitution. The series of rulings from the Constitutional Court, particularly Constitutional Court Decision No. 21/2014 as a pivotal ruling, has introduced new dimensions in the discourse surrounding the Criminal Procedure Code, necessitating various conditions for its validity as a procedural legal instrument. The paradigm change in the analysis of the Criminal Procedure Code, particularly regarding pre-trial procedures, is (1). The directive to implement the due process of the model concept; (2). Transgressing the Precautionary Principle, resulting in the infringement of human rights; (3). Subjective activities are subject to testing; and (4). The optimal and accurate legal procedure signifies a transition in viewpoint from the pursuit of formal truth to the pursuit of material truth.

Keywords: Pre-trial; Procedural Law; Legal Reform

Introduction

The concept of the rule of law, as articulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945), establishes a framework that constrains the actions of the State in accordance with legal principles. Nonetheless, the understanding of 'law' within the fundamental tenets of a Legal State is viewed through the lens of FJ. Stahl transcends a mere interpretation of the law. The perspective of FJ. Stahl garnered an endorsement from Padmo Wahyono, mainly through the principles surrounding the establishment of state life policies that embraced both codified and non-codified regulations. Nonetheless, Padmo Wahyono's perspective on the translation of the principle of the rule of law presents a compelling notion. The establishment of a State Life Policy necessitates a thorough evaluation encompassing several critical components: (a) the prevailing spiritual environment that shapes it, (b) the institutions responsible for executing the legislation, and (c) the methodologies employed in law enforcement.¹

Considering the aforementioned idea, it is intriguing to examine the significance of Law Number 8 of 1981 regarding Criminal Procedure Law, commonly referred to as the Criminal Procedure Code (KUHAP), which continues to be regarded as a notable achievement of the Indonesian nation in numerous reference texts to this day. Nevertheless, an intriguing perspective emerges from the Constitutional Court as articulated in Constitutional Court Decision Number 21/PUU-XII/2014, dated 28 April 2015 (Constitutional Court Decision No. 21/2014). This decision underscores the notion that the Criminal Procedure Code represents a traditional framework that has become antiquated, failing to adequately address contemporary issues, particularly in relation to the pre-trial authority of the District Court.²

In the Recital of the Criminal Code, it is articulated that 'the Republic of Indonesia is a state founded on the rule of law, rooted in Pancasila and the 1945 Constitution, which upholds human rights and ensures equal legal standing for all citizens while mandating the unwavering adherence to law and governance.' This statement encapsulates a profound aspiration to transcend the antiquated ideologies of colonialism that stand in opposition to Pancasila, which embodies the essence of national philosophy, reverence for human rights, and the foundational principle of the rule of law. In light of the necessary transition from HIR (Indonesian Civil Code) to KUHAP (Indonesian Criminal Procedure Code), it is to be expected that the State bears the responsibility of cultivating the mindset of law enforcement officials, guided by the standardisation of their functions and authorities. Recital c of the KUHAP articulates that the evolution of national law concerning criminal procedure aims to enhance public comprehension of their rights and obligations while simultaneously fostering a more principled approach among law enforcement officials in alignment with their designated roles and authorities. This is essential for the promotion of law,

¹ Claudia Permata Dinda, Usman Usman, and Tri Imam Munandar, "Praperadilan Terhadap Penetapan Status Tersangka Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi," *PAMPAS: Journal of Criminal Law* 1, no. 2 (2021): 82–103, <https://doi.org/10.22437/pampas.v1i2.9568>.

² Yohanes Pattinasarany, "Kepastian Hukum Kasasi Perkara Tata Usaha Negara Yang Dikeluarkan Oleh Pejabat Daerah," *Refleksi Hukum: Jurnal Ilmu Hukum* 6, no. 2 (2022): 203–24, <https://doi.org/10.24246/jrh.2022.v6.i2.p203-224>.

justice, and the safeguarding of human dignity, as well as for ensuring order and legal certainty in the execution of the rule of law as prescribed by the 1945 Constitution.³

The transformation regarding the authority of law enforcement officials to conduct investigations involves a reconsideration of the discourse mechanisms that deviate from established scientific norms, as articulated by Thomas S. Kuhn. This shift is facilitated by legislative action, which establishes the accusatory principle as the primary legal framework for investigations, replacing the previously dominant inquisitorial principle. To facilitate a shift in viewpoint regarding the execution of the law enforcement process in the context of Substantive Criminal Law. Consequently, examining the disposition of law enforcement officials in the execution of criminal case investigations within the pre-adjudication context presents a fresh perspective on the authoritarian practices of the colonial period. Adherence to formal requirements, understood as administrative completeness and procedural formalities, within the investigative process, serves to uphold the principles of legal certainty and the safeguarding of human rights for all individuals involved in a criminal case investigation.⁴

Nonetheless, the act of elevating the principle of legal certainty, as articulated in Article 2 alongside Article 3 of the Criminal Procedure Code (KUHAP), effectively halts the ongoing discourse surrounding the safeguarding of human rights. Article 3 of the Criminal Procedure Code effectively halts the discourse surrounding the safeguarding of human rights. Ultimately, the understanding of the Criminal Procedure Code becomes ensnared in a rigid adherence to the principle of legal certainty. Widodo Dwi Putro articulated that the discourse reached a conclusion that was confined to the attainment of legal certainty grounded in established legal norms. This phenomenon, as articulated by Margarito Kamis, reveals an inherent limitation within the discipline of law, which is deficient in legal concepts necessary for analysing legal actions or the subjective exercise of authority by law enforcement officials. The lack of a legal framework in the oversight of legal actions by law enforcement officials, particularly investigators and public prosecutors, results in a systematic interpretation of procedural law during the exercise of pre-trial authority, employing the principles of civil procedural law, which is referred to as quasi-civil procedural law.⁵

Consequently, each pre-trial request that discloses and delineates the legal actions undertaken by the investigator is confined to two specific aspects: solely those legal actions that embody coercive measures and are pertinent to pre-trial proceedings, as stipulated in Article 77 of the Criminal Procedure Code, a framework established since the Constitutional Court Decision No. 21/2014. Nevertheless, in practical terms, prior to the Constitutional Court Decision No. 21/2014, as noted by Rocky Marbun, there have been numerous instances of pre-trial proceedings that do not align with the stipulations set forth in the Criminal Procedure Code, including:

³ Erdianto Effendi, "Relevansi Pemeriksaan Calon Tersangka Sebelum Penetapan Tersangka," *Undang: Jurnal Hukum* 3, no. 2 (2020): 267–88, <https://doi.org/10.22437/ujh.3.2.267-288>.

⁴ Budi Suhariyanto, "Masalah Eksekutabilitas Putusan Mahkamah Konstitusi Oleh Mahkamah Agung," *Jurnal Konstitusi* 13, no. 1 (2016): 171, <https://doi.org/10.31078/jk1318>.

⁵ Elvara Yolanda, Usman Usman, and Elly Sudarti, "Pemidanaan Pelaku Tindak Pidana Korupsi," *PAMPAS: Journal of Criminal Law* 3, no. 2 (2023): 125–45, <https://doi.org/10.22437/pampas.v3i2.18153>.

1. Pre-trial Ruling Number 01/Pid.Prap/PN.Bky dated 18 May 2011 jo. Supreme Court Decision Number 88 PK/Pid/2011 dated 17 January 2012 which declared the seizure invalid;
2. Pre-trial Ruling Number 38/Pid.Prap/PN.Jkt.Sel dated 27 November 2012 with the Pre-trial Applicant being Bachtiar Abdul Fatah who holds the position of General Manager of Sumatra Light South (SLS) at PT. Chevron Pasific Indonesia. The verdict in the case was that the designation of the suspect was invalid;
3. Pre-trial Ruling Number 04/Pid.Prap/2015/PN.Jkt.Sel dated 16 February 2015, with the Pre-trial Petitioner being Commissioner General (Pol) Drs. Budi Gunawan, S.H., M.Si with the following verdict: a. The Investigation Warrant is invalid; b. The designation of a suspect is invalid; c. The investigation is invalid; and d. All decisions and decrees that have been issued are invalid;
4. Pre-trial Ruling Number 36/Pid.Prap/2015/PN.Jkt.Sel dated 26 May 2015, with the Pre-trial Applicant being Hadi Poernomo (former Director General of Taxes). The verdict states that a. The designation of the suspect is invalid; b. The investigation is invalid; c. The confiscation is invalid; and d. All decisions and determinations in the investigation are invalid;
5. Pre-trial Ruling Number 11/PRAPER/2016/PN.Sby dated 7 March 2016, Pre-trial Ruling Number 19/PRAPER/2016/PN.Sby dated 12 April 2016, with the Petitioner being Ir. H. La Nyalla Mahmud Mataliti (Entrepreneur and Chairman of PSSI-KPSI for the period 2012/2016), with the following rulings, among others: a. The designation of the suspect is not valid; and b. The investigation warrant is not valid;
6. Pre-trial Ruling Number 67/Pid.Prap/2015/PN.Jkt.Sel dated 4 August 2015, with Dahlan Iskan (former Minister of SOEs) as the Petitioner. The verdict includes: a. The Investigation Letter is invalid; b. The investigation is invalid; c. The suspect designation is invalid; and d. All decisions and determinations that have been issued are invalid;
7. Pre-trial Ruling Number 97/Pid.Prap/2017/PN.Jkt.Sel dated 29 September 2017, with the Petitioner Setya Novanto (Speaker of the Indonesian House of Representatives). The verdict includes: a. The designation of the suspect is invalid; and b. Ordering the investigation to be terminated;
8. Pre-trial Ruling Number 24/Pid/Pra/2018/PN.Jkt.Sel dated 9 April 2018, with the Applicant being the Anti-Corruption Society Association (MAKI). The verdict was to order the continuation of the investigation, even though there was no legal product from the Investigator in the form of an Investigation Termination Warrant (SP3).

Moreover, the Researcher identified the Central Jakarta District Court Decision Number 18/Pid.Pra/2021/PN Jkt.Pst, dated 10 January 2022. This Decision was grounded in the legal reasoning of the Pre-trial Judge, who underscored that the examination process of the criminal case was flawed and fell short of the standards set forth by the Constitutional Court Decision No. 21/2014. In a similar vein, the Decision of Ende District Court Number 2/Pid.Prap/2018/PN.End, dated 26 March 2018, underscored that the resolution to terminate the Investigation process was deemed invalid, asserting that the examination of the alleged corruption case must persist, as the Investigation process is inherently a component of the Investigation itself. The recent development arises from the Decision of the

Purwokerto District Court Number 1/Pid.Pra/2022/PN.Pwt, dated 27 December 2022, which nullifies the legal action taken by the Investigator regarding the Blocking of Assets and Property of a Suspect. This ruling is grounded in the assertion that such blocking falls under the jurisdiction of the Investigator, as delineated by Law Number 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering (Law No. 8/2010), with the blocking being deemed expired in accordance with Article 71 paragraph (3) of the same law. The Decision of the Pekanbaru District Court number 15/Pid.Prap/2022/PN Pbr, dated 22 December 2022, fundamentally asserts that the designation of an individual as a Suspect is rendered invalid due to its premature nature.

Research Methods

This paper employs a normative legal methodology, focusing on the realms of Legal Science, Legal Dogmatics, Positive Legal Science, Dogmatic Legal Science, and Practical Legal Science.⁶ This paper employs a variety of normative legal methodologies to examine the legal issues at hand. These include a conceptual framework, an analysis of relevant case law for reference to specific legal matters, and an examination of statutory provisions.⁷ The statutory framework was employed to scrutinise the regulations pertaining to the legal status of each applicant in submitting a pretrial petition. This study employed a conceptual framework aimed at a more profound examination of the legal policy articulated in the Criminal Procedure Code and the Constitutional Court Decision Number 21/PUU-XII/2014.

Discussion

Common Sense Overview of Procedural Law in the Pre-Trial Phase

The advent of the pre-trial institution represents a significant advancement, contributing to the perception that the Criminal Procedure Code is a remarkable innovation absent in prior frameworks. The Pre-trial Institution is regarded as an integral aspect of the state's oversight function concerning the operations of the elements within the Criminal Justice System, particularly during the Pre-Adjudication phase. Within the framework of the Criminal Procedure Code, a legal instrument referred to as Pre-Trial exists. The pre-trial process represents a novel institutional advancement within the framework of the Criminal Procedure Code. In conjunction with various innovations, including constraints on the arrest and detention process, the Criminal Code is often regarded as a remarkable achievement. The pre-trial phase serves as a forum for addressing grievances related to violations of human rights.⁸

The pre-trial phase is intricately connected to the procedures involved in the apprehension and/or confinement of an individual who is significantly suspected of criminal activity, aligning with the stipulations outlined in the Criminal Code for

⁶ Nanang Nurcahyo, Ramalina Ranaivo, and Mikea Manitra, "Why Have Indonesian Murderers Not Paid Victims' Heirs? Murder Victims By Gender 2019-," *Journal of Law, Environmental and Justice* 1, no. 2 (2023): 155–69, <https://doi.org/10.62264/jlej.v1i2.13>.

⁷ Januar Rahadian and Silas Oghenemaro, "Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform: Lessons from Indonesia," *Journal of Law, Environmental and Justice* 1, no. 3 (2023): 225–43, <https://doi.org/10.62264/jlej.v1i3.17>.

⁸ Linda J. Demaine and Deborah R. Hensler, "'Volunteering' to Arbitrate Through Predispute Arbitration Clauses: The Average Consumer's Experience," *Law and Contemporary Problems* 67 (2004): 55–74.

such measures. According to Article 17 of the Criminal Procedure Code, an arrest may only be executed against an individual who is significantly suspected of having committed a crime. Grounded in ample initial evidence. The compelled apprehension may lead to confinement should there exist substantial suspicion of criminal activity, grounded in adequate evidence and under conditions that raise apprehensions regarding the possibility of the suspect absconding, tampering with or eliminating evidence, and/or reoffending. This is frequently described as the principle of necessity. The suspected criminal act must be subject to a penalty of imprisonment for 5 years or more, along with specific offences enumerated in Article 21, paragraph 4, Point B of the Criminal Procedure Code, commonly known as the juridical principle.⁹

The HIR does not govern the stipulations concerning pre-trial proceedings; however, the subsequent evolution of the Criminal Code has established regulations pertaining to these proceedings, as articulated in Article 1, point 10, and Chapter X, Part One, specifically Articles 77 to 83, along with Articles 95 to 97, paragraph (3) of the Criminal Code. The lack of a pre-trial institution, as outlined in the Criminal Procedure Code, is a comprehensible position, according to R. Soeparmono. Consequently, the Code of Civil Procedure emerged during the Dutch colonial period, fundamentally shaped by legal frameworks and mechanisms designed to serve the interests of the ruling authority, namely the colonisers. The Criminal Procedure Code (KUHAP) delineates the concept of Pre-trial within the confines of Chapter I. General Provisions, Article 1 point 10 of the Criminal Procedure Code underscores that the authority of the District Court in pre-trial matters is to examine and render decisions in accordance with the procedures established by this law concerning:

- a. The legitimacy of an arrest and/or detention initiated at the behest of the suspect, their family, or a representative acting on their behalf;
- b. The legitimacy of the cessation of an investigation and/or prosecution prompted by the suspect in the interest of maintaining legal integrity and justice;
- c. A petition for restitution or rehabilitation from the suspect, their family, or a representative in instances where the matter is not adjudicated in court.

The matter at hand requires careful consideration, as the pre-trial process should not be conflated with the examination and resolution of the criminal case itself. Thus, the pre-trial decision does not constitute a standalone task or function in addressing a principal crime, nor does it serve as a conclusive determination in the matter at hand. A pre-trial decision, even when it addresses the validity of a termination of investigation or prosecution, cannot be regarded as a final decision despite the possibility of appeal. The ultimate resolution regarding this issue lies with the District Court.¹⁰

In light of the aforementioned provisions, the jurisdiction of the pre-trial is delineated as follows:

⁹ Rachmawaty Rachmawaty, Matthew Marcellinno Gunawan, and Novi Nurviani, "Judicial Perspectives on the Equitable Resolution of Anti-SLAPP Cases: Insights from Indonesia," *Journal of Law, Environmental and Justice* 2, no. 1 (2024): 18–41, <https://doi.org/10.62264/jlej.v2i1.88>.

¹⁰ Peter J Kurlmann and Jörg Kinzig, "The Acquittal (After Pretrial Detention) - A Rare but Fascinating Phenomenon of the Criminal Justice System," *European Journal of Crime, Criminal Law and Criminal Justice* 27, no. 4 (2019): 346 – 362, <https://doi.org/10.1163/15718174-02704004>.

- a. Examining and Deciding on the Legality of Forced Measures. This is the first authority granted by law to the pre-trial. Examining and deciding on the legality of (1). Arrest; (2). Detention. This means that a suspect who has been arrested, detained, searched or confiscated can ask the pre-trial court to examine whether or not the actions taken against him by the investigator are lawful. The suspect can request a pre-trial examination to determine whether the detention imposed by the investigating officer is in accordance with the provisions of Article 21 of the Criminal Procedure Code. Alternatively, the detention imposed has exceeded the time limit specified in Article 24.
- b. Examining the Validity of the Termination of Investigation or Termination of Prosecution. Is it always the case that the termination of investigation or prosecution is appropriate and correct according to the provisions of the law? The reason for termination may be misinterpreted. It is also possible that the termination is entirely unjustified. Alternatively, the termination was carried out for the personal benefit of the official concerned. For this reason, with regard to the termination of the investigation, the law gives the public prosecutor or interested third parties the right to request a pre-trial examination of the legality of the termination of the investigation. And vice versa.
- c. Examining Claims for Compensation. Article 95 regulates claims for compensation filed by the suspect's family or legal counsel with the Pre-trial Court. Claims for compensation are filed by the suspect on the following grounds: (1). Due to unlawful arrest or detention; (2). Alternatively, because of searches or seizures that are contrary to the provisions of the law and legislation; (3). Because of a mistake regarding the person who should actually be arrested, detained or examined. (4). Examining Requests for Rehabilitation. The pre-trial judge has the authority to examine and decide on requests for rehabilitation filed by the suspect, his family or his legal counsel for arrest or detention without a legal basis specified by law. Alternatively, rehabilitation for mistakes regarding the person or the law applied, where the case is not brought to trial. Moreover, the issue of rehabilitation will be elaborated on separately.
- d. Pre-trial against confiscation. Based on the assumption of the possibility of irregularities beyond the limits of the permit given by the Chief Justice, searches and confiscations can also be submitted to a pre-trial.

An analysis of the content of the aforementioned provision reveals that the pre-trial process represents a significant innovation within the Criminal Code. Alongside various other advancements, including the constraints placed on the arrest and detention process, the Criminal Code is regarded as a remarkable achievement. This pre-trial serves as a forum for addressing grievances related to violations of human rights. The act of critiquing the Criminal Code in relation to human rights appears to be a calculated endeavour. Ultimately, it is indeed the case that matters pertaining to human rights, including the deprivation of liberty, are governed by more intricate and restrictive regulations. According to legal scholars, these constraints remain conceptually justifiable. R. Soeparmono articulates that the Criminal Procedure Code delineates a balance between human rights and public interests, highlighting

fundamental distinctions from the Code of Civil Procedure, particularly regarding the safeguarding of human dignity.¹¹

This pre-trial issue gains significance when we pose the pertinent inquiry: What is the rationale behind the limitations imposed by the Criminal Procedure Code on the objects requested in the Pre-trial? Consequently, the response to the inquiry can be formulated through an analogical approach derived from the principles espoused by Criminal Law Experts. It appears that there exists a prevailing agreement that the pre-trial institution is fundamentally rooted in the concept of habeas corpus, a legal principle originating from British law as a consequence of the Magna Carta's inception. The institution of pre-trial is intricately connected to the evolution of thought surrounding the respect for human rights. This concept is often assumed and perpetuated within the pedagogical frameworks of law faculties across Indonesia. The pre-trial institution that embraces the concept of habeas corpus is exclusively orientated towards the execution of a horizontal function concerning coercive measures, particularly those pertaining to arrest and detention. The adoption of the habeas corpus concept in 1981, as part of the reform of criminal procedure law, was undeniably a groundbreaking development deserving of significant respect.¹²

The issue lies within the framework concerning the adherence of the law enforcement apparatus to the Criminal Code in its interpretation of the pre-trial institution. Despite the fact that the Whereas Recital letter of the Criminal Code has articulated the principle of the rule of law and Pancasila as a philosophical foundation, the introduction of Article 2 jo. Article 3 of the Criminal Code underscores the prominence of the Legal Positivism Paradigm as a perspective regarding the pre-trial institution. The application of habeas corpus as the foundation of the pre-trial framework must also acknowledge the underlying elements of hedonistic-egoistic ethics, thereby dismissing the narrative of the 'Judge Commissioner' as introduced in the 1974 Criminal Procedure Code Draft, which portrayed a judge responsible for overseeing the initial assessments of all legal actions undertaken by investigators and public prosecutors.¹³

The evidence suggests the occurrence of refusals from two law enforcement agencies. The most significant opposition arises from the prosecutor's office, which contests the legitimacy of a commissioner judge's role. The police express significant opposition to the notion of a commissioner judge, particularly in the context of a preliminary examination, where the focus of oversight pertains to the authority of the prosecutor's office as delineated by the existing regulations within the Criminal Procedure Code, the Basic Police Law, and the Basic Prosecutor's Law. In this age of global interconnectedness, every facet of existence is accessible via digital mass communication. All segments of society need to recognise the inherent vulnerabilities associated with the power and authority wielded by Investigators and Public Prosecutors. Particularly following the amendment of the constitution (1945 Constitution of the Republic of Indonesia), which established the institution of the

¹¹ Dewa Gede Giri Santosa and Karell Mawla Ibnu Kamali, "Acquisition and Presentation of Digital Evidence in Criminal Trial in Indonesia," *Jurnal Hukum Dan Peradilan* 11, no. 2 (2022): 195, <https://doi.org/10.25216/jhp.11.2.2022.195-218>.

¹² Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia," *JOURNAL of INDONESIAN LEGAL STUDIES* 4, no. 1 (2019): 104–15, <https://doi.org/10.15294/jils.v4i01.28224>.

¹³ Dinda, Usman, and Munandar, "Praperadilan Terhadap Penetapan Status Tersangka Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi."

Constitutional Court, the Criminal Code has faced numerous challenges through judicial review.¹⁴

Subsequent advancements, in light of the Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015 (Constitutional Court Decision No. 21/2014), have steered the framework of the Indonesian Criminal Justice System, which was initially categorised as a crime control model, towards a due process of law model. Consequently, adherence to the accusatory principle should commence during the pre-adjudication phase (preliminary examination). Nonetheless, the issue at hand is that the authority, understood as the power vested in the public prosecutor's investigator, is frequently exercised capriciously. Consequently, it is pretty frequent for the role of a witness to transform into that of a suspect swiftly. Consequently, investigators may exercise the authority construed as the capacity to detain. It is, therefore, not unexpected that the rationale for the verdict in Constitutional Court Decision No. 21/2014 characterises the designation of a suspect as a 'modified forced attempt.'

Educational frameworks moulded by relational dynamics predominantly influence the comprehension of pre-trial proceedings and are primarily governed by pre-trial determinations. Nonetheless, the edifice of understanding regarding pre-trial procedures has been gradually eroding since the establishment of the Constitutional Court, alongside the concurrent rise of organic intellectuals—specifically, legal scholars who actively engage their expertise in practical applications to illuminate the public discourse. The apex of the matter was marked by the Constitutional Court Decision Number 21/PUU-XII/2014, dated 28 April 2015, which introduced two remarkable elements: the expansion of the pre-trial object in Article 77 of the Criminal Procedure Code to include the designations of suspects, searches, and seizures.

Pre-trial Procedure Law Study Based on Paradigm Theory

The advancement of scientific knowledge may emerge from a climate of scepticism regarding specific theories among researchers. The premise suggests that science can be constructed as it is comprised of a multitude of theories. This suggests that a systematic approach exists to the advancement of scientific knowledge. The advancement of scientific knowledge transpires through the evolution of established theories. Undoubtedly, a theory is constructed upon the findings derived from rigorous scientific inquiry. Therefore, the advancement of scientific inquiry should be approached holistically. It is not solely reliant on a singular scientific dimension or a specific methodology. Both the natural sciences and the social sciences significantly influence and shape a theory.¹⁵

Thomas Kuhn, originally a physicist, redirected his scholarly pursuits to become a historian of science and a philosopher during the 20th century. The outcomes of his intellectual endeavours that gained widespread attention during that period pertained to his theory of the 'scientific revolution.' Kuhn posits that the progression of scientific knowledge does not unfold linearly or evolutionarily. In this

¹⁴ Vincentius Patria Setyawan and Djuyamto, "Kajian Terhadap Kewenangan Penetapan Tersangka Oleh Hakim Dalam Perkara Illegal Logging (Analisis Putusan No. 145/Pid.B/2014/PN.Dpu)," *Justisi* 10, no. 1 (2024): 108–19, <https://doi.org/10.33506/jurnaljustisi.v10i1.2657>.

¹⁵ LR Freedman and ML Prigoff, "Confidentiality in Mediation: The Need for Protection," *Ohio State Journal on Dispute Resolution* 2, no. 1 (1986).

realm, each scientist advances the field of science progressively and consistently across generations. However, as posited by Kuhn, the progression of scientific knowledge transpires through a series of revolutionary transformations. Kuhn presents a transformative perspective on the history of science, characterising it not as a straightforward progression but rather as a succession of discrete paradigm shifts.¹⁶

In his seminal work, *The Structure of Scientific Revolutions*, Thomas Kuhn critiques both the implicit and explicit truths inherent in the realm of science. Thomas Kuhn, through his profound understanding, endeavours to elucidate the role of science in both theoretical and practical dimensions. In contemporary discourse, scientific understanding continually evolves, transitioning from rudimentary theories to increasingly refined and sophisticated frameworks. Nonetheless, Kuhn firmly dismissed this notion; in his view, the veracity of science evolved through scientific and natural revolutions, specifically a theory about science uncovered in a singular object, which would perpetually transform despite the perception that arose being more akin to improvisation.¹⁷

Kuhn articulates a framework for the evolution and maturation of scientific inquiry that transcends mere historical narration; he also underscores the principles guiding the advancement of science itself. Kuhn posits that the evolution of science has not followed a uniform trajectory throughout history; instead, it can be categorised into two distinct phases: the period of normal science and the era of scientific revolutions. He elaborates that the principles of the scientific method assure each advancement in science. During the conventional phase of scientific inquiry, the discipline evolves in accordance with established traditions, whereas in the era of scientific revolutions, it advances through unexpected and groundbreaking innovations.¹⁸

Kuhn elucidates that within the realm of natural science, a profound revolution has occurred, characterised by a transition from an antiquated paradigm to a novel one, exemplified by the replacement of the geocentric model with the heliocentric model in a remarkably brief timeframe. Research cannot exist devoid of any paradigm. Consequently, Kuhn overtly dismisses the notion of value-neutral inquiry as advocated by positivism. A paradigm is characterised as a fundamental perspective regarding the subject matter that a particular field of knowledge ought to investigate, encompassing the enquiries that should be posed and the methodologies employed in formulating responses, as well as the subsequent interpretation of those responses. A paradigm, in this context, refers to a shared agreement among specific scientists that results in distinct approaches between various scientific communities. Various paradigm variants within the scientific realm may arise from the underlying philosophical frameworks, theoretical constructs, and methodologies employed as

¹⁶ Mardian Wibowo, I Nyoman Nurjaya, and Muchammad Ali Safaat, "The Criticism on the Meaning of 'Open Legal Policy' in Verdicts of Judicial Review at the Constitutional Court," *Constitutional Review* 3, no. 2 (2018): 262, <https://doi.org/10.31078/consrev326>.

¹⁷ Nicholas Tarling and Edmund Terence Gomez, *The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation*, *The State, Development and Identity in Multi-Ethnic Societies: Ethnicity, Equity and the Nation*, 2008, <https://doi.org/10.4324/9780203932162>.

¹⁸ Nur Annisa Fitri and Arman Arman, "Perintah Komandan Terhadap Bawahan Dalam Kasus Penembakan Polisi Duren Tiga Perspektif Filsafat Etika Immanuel Kant," *Jurnal Filsafat Indonesia* 6, no. 3 (2023): 359–65.

analytical tools. The issue becomes intricate within the Indonesian legal framework, as it appears there is a lack of universal agreement regarding the models and concepts that should be associated with the principle of the rule of law. Despite Pancasila being revered as a national philosophy and serving as the primary foundation for the development of laws and regulations, a coherent framework that encapsulates the essence of the Pancasila legal state remains elusive and lacks universal consensus.¹⁹

This influences the discourse surrounding paradigms in legal science, particularly in relation to procedural law, which sidesteps the dialectical nature of paradigms while continuing to reference the traditional framework of legal positivism. The innovation presented in Constitutional Court Decision No. 21/2014 can be effectively diminished by Supreme Court Regulation Number 4 of 2016, which addresses the Prohibition of Review of Pre-trial Decisions (PERMA No. 4/2016). Article 2 paragraph (2) of PERMA No. 4/2016 underscores that the pre-trial examination of an application concerning the illegality of a suspect's designation is limited to an assessment of formal aspects, precisely the existence of at least two pieces of evidence, without delving into the substantive elements of the case. The requirement to focus solely on the formal elements is reiterated in Article 2 paragraph (4) of PERMA No. 4/2016, which underscores that 'Pre-trial proceedings regarding the legality of suspect designation, seizure, and search shall be conducted by a Single Judge, given the brief nature of the examination and the evidence that pertains only to formal aspects.'²⁰

In the context of the legal considerations presented in Constitutional Court Decision No. 21/2014, it is underscored that:

The essence of the pre-trial system lies in its role as a supervisory and objection mechanism within the law enforcement process, intricately linked to the safeguarding of human rights. Consequently, the regulations governing pre-trial procedures have been regarded as a significant achievement within the Criminal Procedure Code. Nevertheless, it became evident that the pre-trial institution was unable to operate at its full potential due to its failure to resolve the issues present in the pre-adjudication process. The oversight role of the pre-trial institution is inherently retrospective; thus, it does not extend to the phases of investigation and examination. It is solely formal, emphasising objective elements, whereas subjective elements remain beyond the purview of judicial oversight. This situation has resulted in the pre-trial being ensnared solely in procedural formalities and confined to administrative concerns, thereby straying far from the fundamental purpose of the pre-trial institution.

In order to achieve the aims and objectives that must be upheld and safeguarded during the pre-trial process, it is essential to maintain the integrity of the law and protect the human rights of suspects and defendants throughout the investigation and prosecution phases. This is supported by the legal considerations articulated in Decision Number 65/PUU-IX/2011, dated 1 May 2012, alongside Decision Number

¹⁹ Kajian Putusan and Warih Anjari, "Penerapan Pemberatan Pidana Dalam Tindak Pidana Korupsi," *Jurnal Yudisial* 15, no. 2 (2022): 263–81, <https://doi.org/10.29123/jy.v15i2.507>.

²⁰ Dinda, Usman, and Munandar, "Praperadilan Terhadap Penetapan Status Tersangka Tindak Pidana Korupsi Oleh Komisi Pemberantasan Korupsi."

78/PUU-XI/2013, dated 20 February 2014. Furthermore, attention must be given to the human rights values enshrined in Law Number 39 of 1999 regarding Human Rights, as well as the protections outlined in Chapter XA of the 1945 Constitution. Consequently, any actions taken by investigators that fail to adhere to the principle of prudence and are suspected of infringing upon human rights may be subject to requests for protection through the pre-trial system, albeit within the constraints established by Article 1 number 10 in conjunction with Article 77 letter an of the Criminal Procedure Code. The identification of a suspect constitutes a crucial element of the investigative process, wherein there exists a potential for capricious actions by the investigator, which may encompass the infringement of an individual's human rights. Article 77, letter of the Criminal Procedure Code, delineates, among other provisions, the parameters surrounding the validity or invalidity of the cessation of an investigation. In the interim, the investigation, as delineated in Article 1 number 2 of the Criminal Procedure Code, constitutes a systematic series of actions undertaken by investigators aimed at uncovering and gathering evidence that elucidates the crime committed and identifying the perpetrator.

It is indeed the case that if Article 1 number 2 of the Criminal Procedure Code is executed in an optimal and precise manner, then the necessity for pre-trial institutions would be rendered obsolete. Nonetheless, the issue arises when the process is not executed with precision and accuracy, leading to a situation where an individual designated as a suspect endeavours to assert their rights through legal means, seeking to demonstrate the fallibility in the designation of suspicion. Despite the assurances provided by the 1945 Constitution, which affirms the right to recognition, guarantees, protection, and the certainty of equitable legal treatment and equal standing before the law, there remain significant challenges in the realisation of these principles. The classification of an individual as a suspect is an integral component of the investigative process, which raises concerns regarding the infringement of human rights. Consequently, the identification of a suspect by an investigator ought to be a matter that is safeguarded through the legal mechanisms inherent in the pre-trial system. This measure is implemented exclusively to safeguard an individual from capricious actions by investigators that may arise when one is designated as a suspect. Should an error emerge during the process, the pre-trial institution remains the sole entity capable of scrutinising and resolving the matter. Nonetheless, safeguarding the rights of the suspect does not imply their innocence, nor does it negate the possibility of criminal suspicion. Consequently, a reinvestigation may still proceed in alignment with the appropriate and established legal principles. The acknowledgement of the suspect's classification within the pre-trial framework serves to ensure that individuals involved in criminal proceedings are regarded as human beings possessing equal dignity and status under the law.

In light of the preceding argument, a significant transformation has occurred in the realm of Pre-trial Procedure Law, particularly following the advent of

Constitutional Court Decision Number 21/PUU-XII/2014, characterised by the subsequent parameters: 1. The directive to embrace the due process of model principle; 2. Breaching the Precautionary Principle, resulting in infringements of human rights; 3. Subjective actions are subject to examination; 4. An optimal and accurate legal procedure. Consequently, in light of these parameters, the Code of Procedure, when exercising pre-trial authority, can no longer invoke the essence of Quasi-Civil Procedure, which solely scrutinises formalities.

Conclusion

From the aforementioned descriptions, the subsequent conclusion may be inferred: a. The evolution of Criminal Procedure Law, viewed through the lens of Legal History, has transitioned from an inquisitorial to an accusatory legal framework. Nonetheless, the accusatory legal theory is only partially applicable. Consequently, in the execution of pre-trial power, the lack of procedural law necessitates a methodical interpretation that directs attention to Civil Procedure Law. The examination procedure in the execution of pre-trial authority entails a pursuit of formal truth. The Criminal Code fundamentally aims to ascertain tangible truth. Consequently, despite the diverse rulings from pre-trial judges, the pre-trial examination process consistently focuses on post-factum evidence, disregarding all subjective actions that fall outside Article 77 of the Criminal Procedure Code, in conjunction with Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015. Constitutional Court Decision No. 21/PUU-XII/2014, issued 28 April 2015. b. The revision of the Criminal Code has been in progress since the establishment of the Constitutional Court, which serves as a constitutional guardian with the power to evaluate laws in relation to the 1945 Constitution. The series of rulings from the Constitutional Court, particularly Constitutional Court Decision No. 21/2014 as a pivotal judgement, has introduced new dimensions in the discourse surrounding the Criminal Procedure Code, necessitating various conditions for its validity as a procedural legal instrument. The paradigm change in the analysis of the Criminal Procedure Code, particularly regarding pre-trial procedures, is (1). The directive to implement the due process of the model concept; (2). Transgressing the Precautionary Principle, resulting in the infringement of human rights; (3). Subjective activities are subject to testing; and (4). The optimal and accurate legal procedure signifies a transition in viewpoint from the pursuit of formal truth to the pursuit of material truth.

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