

AN ANALYSIS OF PRETRIAL DECISION OF BOYOLALI DISTRICT COURT NUMBER: 01/PRA/2014/PN.BYL VIEWED FROM FORMAL JURIDICAL ASPECT AND PROGRESSIVE LAW.

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ABSTRACT

This study examines pretrial decision of Boyolali District Court No. 01/PRA/2014/PN.Byl and its review based on formal juridical aspect and legal progressive side. This research is a form of doctrinal or normative research with evaluative research form and descriptive research nature. Sources of data used are secondary data sources with primary legal materials. The data collection technique is done by analyzing the judge's decision with the available legal material so that the result of the research shows that the judge in examining and deciding the pretrial case concerning the approval of the amendment of Regulation Law No. 4 of 2004 on the legislative Status of the Regency of Boyolali especially regulates the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Fixed Service Travel Allowance, and Operational Supporting Cost of the Leader, that the judge in giving a decision not only by applicable law, but also must based on legal values living in society with justice and protecting human rights. This research finds that pretrial process in case of corruption of member of DPRD Boyolali in accordance with provisions of KUHAP formally and has significance for handling corruption case in Indonesia

KEYWORDS:

Pretrial, Legal Process, Progressive Law

1. INTRODUCTION

The legal issues in the era of law enforcement have recently undergone a process of rapid development, widespread, and progressive. Law is not only seen as the written rules in a legal text. However, the expectation is that the law can go beyond the development of society and the rapid development of crime mode. One of the most important aspects of our legal domain is the 'judge's decision' as one of the legal products produced by the judiciary of the pillars of law enforcement in Indonesia. The judge's decision becomes important because it becomes a representation of how the law will be enforced.

A good judge's verdict certainly reflects the value of community justice, can provide benefits, and provide legal certainty. The judge should be based on his or her decisions in the existing law both material and formal. However, the judge in his judgment is also allowed to make a legal breakthrough that sometimes does not coincide with the existing positive legal norms. Somehow,

the purpose of such a breakthrough should not be separated from the value of justice to be achieved in a judge's decision.

The judiciary is a regulated system in Indonesian legislation. The final result of pretrial institutions is a pretrial verdict. The scope of pretrial institutions is also regulated in the Criminal Procedure Code (*KUHAP*) contained on Article 77 of the Criminal Procedure Code. Equally with the judge's decision, the pretrial decision must also accommodate the values of community justice, benefit, and legal certainty. A pretrial judgment must be able to provide justice for the parties concerned, although the value of justice for each party is felt differently but it is considered to natural. Pretrial judgments must also be able to provide benefits to the parties concerned as one of the objectives of the law, which is to provide benefits to the community. Besides that, the pretrial judgment must also be based on the legal certainty. So, the law keeps running on the track.

The preliminary verdict of Boyolali District Court No. 01/PRA/2014/PN.Byl becomes interesting to be studied because in the pretrial decision contains the complexity of existing legal issues. Pretrial legal process in pretrial decision of Boyolali District Court No. 01/PRA/2014/PN.Byl originated from the legal handling of former members of *DPRD* Boyolali during 1999-2004 period, following the plenary session to approve the change of *APBD* in 2004 of Boyolali Regency about approval of change Local Regulation No. 4 Year 2004 on Legislative Status of *DPRD* Boyolali specially regulates the purpose of Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Fixed Service Travel Allowance, and Operational Supporting Cost of the Leader

It will become a norm when a law enforcement process related to a political institution such as parliamentary institutions will be political nuances as well. Even though the law enforcement process should be free from political elements or things that can damage the value of legal justice itself. However, the political nuances of law enforcement are almost inevitable in today's era of law enforcement, especially to the interests of political institution

The pretrial step in this case is a follow-up step in a law enforcement process of former members of *DPRD* Boyolali during 1999-2004 period following the plenary session to approve the change of *APBD* on 2004 Boyolali Regency regarding approval of the amendment of Regulation Law No. 4 Year 2004 on the Legislative Status of the Regency of Boyolali especially regulates the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Fixed Service Travel Allowance, and Operational Supporting Cost of the Leader, conducted by third parties represented by some persons having an interest in the handling of the former law a member of the *DPRD* Boyolali during 1999-2004 period who participated in plenary session to approve the change of *APBD* in 2004 Boyolali Regency about the Legislative House of *DPRD* Boyolali especially regulating the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Travel Service Allowance and Operational Supporting Cost of the Leader.

Actually, the pretrial process is a legal step that justified because it has been set in the legislation. However, what is interesting in this case is the political aroma in the filing and handling of this pretrial process. Inquire in the beginning of this pretrial process is about to handle the law of former member of *DPRD* Boyolali during 1999-2004 period following the plenary session to approve the change of *APBD* in 2004 of Boyolali Regency about the approval of the regulation change No. 4 Year 2004 on Legislative Status of *DPRD* Boyolali specially regulated the

The parties who submitted this pretrial process of course also have importance thing over to handle the law of former members of *DPRD* Boyolali period 1999-2004 which followed the siding plenary to approve the change of District Budget 2004 Boyolali Regency about the approval of the enactment of the amendment of local regulations No. 4 Year 2004 on Legislative Status of *DPRD* Boyolali specially regulated to the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Travel Service Allowance and Operational Supporting Cost of the Leader.

Therefore, the preliminary verdict of Boyolali District Court Number 01/PRA/2014/PN.Byl becomes necessary to be studied because it will give us a full view of the law enforcement process in Indonesia, especially the handling of legal cases related to political power.

2. RESEARCH METHODOLOGY

According to Soerjono Soekanto, legal research is a form of scientific activity, which is based on methods, systematics, and certain thoughts that aims to study or some specific legal symptoms by analyzing them. In addition, there is also a deep examination of a legal factor to then seek a solution to the problems that arise in the symptom concerned (Soerjono, 1981: 43).

A study that aims to find an answer, then the study requires to be an appropriate method. Method is a tool to find answers to a problem under study.

3. FINDING AND DISCUSSION

1. Who are the third parties concerned in the pretrial?

Pretrial is the authority of the district court in accordance with the laws and regulations. Pretrial is intended for the purpose of overseeing the protection of the rights of the accused or defendant, then surely the protected right is not only to an arrest and detention, but also to the whole of the forced effort by force is an act which will reduce the rights of the suspect or defendant, so it needs to be done a supervision to the executor.

As stipulated in the provisions of Article 77 of Law Number 8 of the year 1981 on the Book of the Law of Criminal Procedure. The District Court is authorized to examine and decide upon, in accordance with the provisions of this law as follows:

- a. Legitimate or not, arrest, detention, suspension of investigation or termination of claim,
- b. Compensation or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

The provisions of the role of the public in controlling the pretrial process both from the level of investigation and prosecution through pretrial mechanisms in the Criminal Procedure Code are regulated in detail in Article 80 of *KUHAP*: "Request to verify that is legitimate or not is a suspension of investigation or an interested third party to the chairman of the district court by stating the reason". The third party referred to in article 80 of the Criminal Procedure (*KUHAP*) shall be the party directly in investigation and prosecution, but the other parties wishing to participate in the control of law enforcement in the level of investigation or prosecution to the

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victim or the reporting witness and the community which usually represented by Non-Governmental Organization (*Lembaga Swadaya Masyarakat* or *LMS*).

As stipulated in Article 80 of the Criminal Procedure Code as follows, a request to verify that is legitimate or not is a termination of the investigation may be filed by an investigator or public prosecutor or an interested third party to the chairman of the district court by stating the reasons. In The Provisions Of Article 1 Point 10 Of The Criminal Procedure Code (Law No. 8 Of 1981 Of *KUHAP*), The Pretrial Is The Authority Of The Judge To Examine And Decide In Accordance With The Provisions Set Forth In The Law On:

1. Legitimate Or Not, Arrest Or Detention Of A Suspect Or His Or Her Family Or Any Other Person Of The Suspect's Authority Is Required;
2. Legitimate Or Not, The Termination Of Investigation Or Cessation Of Prosecution Upon Request For The Upholding Of Law And Justice;
3. The Request For Compensation Or Rehabilitation By The Suspect Or His Or Her Family Or Any Other Party Of His Or Her Family For Any Other Person Whose Case Is Not Brought To Court.

The Provisions On Its Legal Requirements Carried Out By The Pretrial Are Very Limitative And Restricted To Those Already Known. The Parties Who Can File A Pre-Trial Are As Follows:

1. The Request For Examination Of The Validity Of An Arrest Or Detention Shall Be Filed By The Suspect, His Family Or His Proxy To The Head Of The District Court By Mentioning The Reason (Article 79 Of *KUHAP*).
2. Requests To Verify Whether Or Not A Suspension Of An Investigation Or Prosecution Can Be Filed By A Public Prosecutor Or Public Prosecutor Or An Interested Third Party To The Head Of A District Court By Mentioning The Reason (Article 80 Of *KUHAP*).
3. The Request For Compensation And / Or Rehabilitation Resulting From The Illegality Of Enforcement Or Detention Or The Unlawful Consequence Of The Suspension Of Investigation Or Prosecution Shall Be Filed By A Suspect Or An Interested Third Party To The Head Of The District Court By Mentioning The Reason (Article 81 Of *KUHAP*).

The Court Is Presided Over By A Single Judge Appointed By The Head Of The District Court And Assisted By A Clerk (Article 78 Paragraph 2 Of *KUHAP*). The Pretrial Hearing Process Described In Article 82 Paragraph 1 Of *KUHAP* Is As Follows:

1. Within Three Days After Receipt Of The Request, The Designated Judge Establishes The Day Of The Hearing.
2. In Examining And Deciding That Arrest Or Detention Is Legitimate Or Not, Also The Termination Of Investigation Or Prosecution Is Appropriate Or Not; Demand For Compensation And / Or Rehabilitation Resulting From The Illegality Of Arrest Or Detention, Due To The Unauthorized Termination Of Investigation Or Prosecution There Is A Seized Item Which Does Not Belong To The Means Of Verification, The Judge Hears The Statement Of Both From The Accused Or The Applicant And The Competent Authority;
3. The Examination Is Done In A Fast Manner And Within Seven Days The Judge Must Have Passed The Verdict.

4. In That Case, It Has Already Begun To Be Examined By The District Court While The Examination Of The Request To The Pretrial Has Not Been Completed, Then The Request Is Void;
5. The Pretest Verdict On The Level Of Investigation Does Not Rule Out The Possibility Of Conducting Pretrial Hearings Again At The Examination Level By The Public Prosecutor, If A New Request Is Made.

Legal examination of The Letter of Cessation of Case Investigation or usually called *SP3* is one of the spheres of pretrial authority. The investigating party or an interested third party may file a pretrial (legal) appeal on the lawful or non-stop of the investigation. The request was filed with the head of the district court by mentioning the reason (article 1 point 10 letter b j.o article 78 of the *KUHAP*).

In essence, the pretrial process in the corruption case of *DPRD* Boyolali members seeks to use existing legal channels to obtain legal certainty and justice in litigation.

What is the significance of third parties doing pretrial efforts?

Law No. 8 of 1981 on the Criminal Procedure Code (abbreviated as *KUHAP*) contains principles or legal principles. Among the principles of legality, the principle of equilibrium, the principle of presumption of innocence, the principle of restrictions on detention, the principle of redress and rehabilitation, criminal incorporation and compensation demands, on unification, functional principle, co-ordination principle, simple, and pretrial principles are open to the public.

The enforcement of these legal principles in the Criminal Procedure Code (*KUHAP*) is nothing, but to ensure law enforcement and human rights that have been set forth in the constitutional foundations (read: 1945 Constitution) as well as in Law Number 39 Year 1999, the regulation of human rights protection in the enforcement area or context the law affirmed in article 28D paragraph 1 of the 1945 Constitution that "Everyone is entitled to equal recognition before the law". Similarly, it is clearly defined in Article 34 of Law No. 39 of 1999 on Human Rights "Everyone should not be arrested, detained, tortured, excommunicated, exiled, or arbitrarily disposed of".

KUHAP that accommodates the rights and basic rights or privacy of each person means that the greeting of a forced action or effort against a person is not justified because it is an ill-treatment. According to Yahya Harahap, every effort of force in the form of arrest, detention, seizure, is essentially treatment that follows:

1. Forced acts justified by the Act in the interest of a criminal investigation suspected to the suspect.
2. As a forced which justified by law and the Act, any forced action which in itself constitutes deprivation of liberty and freedom and restrictions on the human rights of the suspect.

The action of the investigating official is the reduction, restraint and restriction of the suspect's human rights. Therefore, the action must be done in a responsible manner based on proper legal procedures. The act of forcible attempts made against the law and the Act is a rape of the suspect's human rights. The purpose of pre-trial can be determined from the explanation of Article 80 of the *KUHAP* that affirms "The purpose of pre-trial is to enforce law, justice and truth through horizontal oversight means". The essence of pretrial is to oversee the act of forced

attempts by the investigator or the public prosecutor against the suspect, so the act is actually carried out in accordance with the provisions of the Act in accordance with the proportionate provisions of the law, not an act of contrary to law.

The purpose or intent of pre-trial is to place equal rights and obligations between the examiner and those examined. Placing the suspect not as a forced object, the application of the *aquisatoir* principle in the criminal procedure law guarantees the protection of the law and the interests of human rights. The law provides the means and space to claim castrated rights through pretrial. In detail of Yahya Harahap (2002: 4), he stated "Pretrial Institution as a horizontal oversight of the act of forced effort imposed on the suspect while he is under investigation of prosecution, so the action is absolutely not contrary to the provisions of law and constitution".

The law has authorized or authorized the investigating authority to carry out its duties and authorities. If in the performance of such duties and authorities performs acts contrary to law, then the pretrial institution shall judge whether the official's action is contrary to the existing law provisions.

Pretrial justice is an institution that examines, assesses, seeks the true or false, legitimate or indispensable actions of officials who make enforced efforts against a suspect. The provisions of the law of pretrial authority are stipulated in article 1 paragraph 10 that the pretrial is the authority of the District Court to examine and decide upon in accordance with the law regulated in:

1. Legitimate or not, arrest or detention of a suspect or his or her family is suspected of suspect's power.
2. Legitimate or not, the termination of the investigation or termination of prosecution at the request of the prosecutor or investigator for the sake of law and justice.
3. A request for compensation or rehabilitation by a suspect or his or her family or any other party over his or her proxy whose case is not brought to court.

The affirmation of Article 1 paragraph 10 *KUHAP* which is obtained in the pre-trial is further detailed in Article 77 of *KUHAP* which affirms "The District Courts have the authority to examine and decide. In accordance with the provisions set forth in this Law is about:

1. Legitimate or not, arrest, detention, cessation, and investigation or cessation of prosecution should be valid.
2. Compensation and / or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

In the attachment of Decree of the Minister of Justice of the Republic of Indonesia Number M.01.PW07.03 Year 1982 dated February 4, 1982 regarding Guidance on the implementation of Criminal Procedure Code is affirmed, among others:

1. Legitimate or not, arrest, detention, and suspension of investigation or cessation of charges (except for public defects and the General Attorney).
2. Compensation and / or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution (Article 77 of the Criminal Procedure Code).
3. The validity of the seized items as evidence (Article 82 paragraph 1 and paragraph 3).

4. The claim of compensation by the suspect or his heirs of arrest or detention and other acts without cause based on the Law because of the mistake of the person or law applied his case is not filed to the District Court (Article 95 paragraph 2).
5. The request for rehabilitation by a suspect for arrest or improper detention based on a law or a mistake regarding a person or applicable law whose case is not filed with the District Court.

In addition, Yahya Harahap (2002: 5-8) also specifies in detail the prewriting authority that adapted to the provisions of the Criminal Procedure Code (article 1 paragraph 10, article 77, article 95, article 97) are as follows:

1. Checking and deciding the attempts are in the form of arrest and detention are legitimate or not.
2. Checking for validity of the investigation and prosecution.
3. Authorizing to check for compensation claims.
4. Checking for rehabilitation requests.
5. Pretrial action against foreclosure.

In the Criminal Procedure Code (*KUHAP*), the implementation of forced efforts that creates legal and multi-perception issues in the application as follows:

1. Some people have the opinion that the means of forcible attempts that include pretrial jurisdiction to test its validity are limited to the arrest and detention actions of the undue process or persons detained or wrongly arrested (error in persona).
2. Whereas the act of forcible search or seizure attempts is considered to be outside the jurisdiction of pre-trial for reasons in search or seizure contained court intervention in the form of:
 - a. In the usual process, it must first obtain a license from *KPN* (article 32 paragraph 1 and Article 38 paragraph 1 *KUHAP*).
 - b. In urgent circumstances, may act first but must seek approval *KPN* (Article 34 paragraph 1 and Article 38 paragraph 2 *KUHAP*) (Harahap, 2002: 7).

In relation to the above, due to the existence of court intervention in granting permission for the act of forced effort in search and seizure, so it is inevitable or impossible for the court to assess the act of forced searching and or seizure attempts by the official concerned, since the court has granted him permission considered to be an act of intervention and the involvement of the District Court in the act of forcible attempts. Yahya Harahap commented on the opinion, that it is possible to deviate beyond the permit limit granted by *KPN*. Against searches and seizures may be brought to pre-trial forums both with respect to claims for damages and with respect to the lawful or forfeiture by reference to the application of following:

1. In case of search or seizure without permission or approval by *KPN* is absolutely a pretrial jurisdiction to check its validity.
2. In the case of searches or seizures that have obtained a permit or letter of approval from *KPN* can still be submitted to the pre-trial forum with a narrower scope of authority, namely:
 - a. The pre-trial is not justified in assessing the permit or approval issued by *KPN* on the matter.

- b. What can be judged by the pre-trial is limited to the issue of the implementation of the permit or letter of consent, in the sense that the executive is in compliance or exceeds the permit or not.

Other reasons that support foreclosure actions include pretrial jurisdiction with regard to seizures made against third party goods and such goods not including to the tools or evidence. Such a presence, the owner of the goods shall be granted the right to render the pre-trial foreclosure unlawful.

The importance of pretrial efforts in handling corruption cases of former members of the *DPRD* Boyolali is to maintain legal certainty over the efforts of law by the State Prosecutor of Boyolali. The defendant of corruption also has the right to be guaranteed legal certainty.

4. KESIMPULAN

Article 80 of KUHAP has been mentioned regarding a request to verify whether or not a termination of an investigation or prosecution may be filed by an investigator or public prosecutor or an interested third party to the President of the District Court by stating the reasoning, who is meant by an interested third party not explained further in the Criminal Procedure Code but in Decision of the Constitutional Court Number 98/PUU-X/2012 has interpreted the interested third party is including Victim Witness or Reporter, Non-Governmental Organization or Community Organization (*LSM*).

The importance of pretrial efforts on corruption cases concerning the approval of the amendment of Regulation Law No. 4 of 2004 on the Legislative Status of the *DPRD* Boyolali especially regulated the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Travel Service Allowance and Operational Supporting Cost of the Leader by a third party represented by several persons that having an interest in the handling of the law of former members of Boyolali during 1999-2004 period following the plenary session to approve the change of *APBD* in 2004 of Boyolali Regency about the approval of the regulation change No. 4 Year 2004 on Legislative Status of *DPRD* Boyolali specially regulated the Allowance for Income Repair, Welfare Allowance, Full Subsidiary Allowance, Travel Service Allowance and Operational Supporting Cost of the Leader is a means and effort from the community to conduct check and balance in law enforcement process.

5. SUGESSTION

The handling of corruption requires a step ahead of the crime itself. The Government through its authority and legislative institutions should establish ways of handling and preventing criminal acts of corruption. In addition, the high pressure and political influence make law enforcement officers must maintain the independence of the judiciary and the impartiality of the law enforcement apparatus in order to have an accountable accountability to the public.

In the Criminal Procedure Code, there is no specific and strict rules regulating the legal acts committed by Law Enforcement Officials regarding the duration of the investigation of a person allegedly committing a crime so that not infrequently the investigations conducted by Law Enforcement Officials may be months, the time of his legal logic investigation follows the time period of detention. The absence of a legal certainty in the investigation process resulted in the

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reliance of a slow investigation and the position of a person allegedly committed a corrupt criminal offense so that the process could take months or even years. Although there is also a process of rapid corruption investigation, it means that there is no clear standard in the *KUHAP* regarding the time period of the investigation.

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