THE COMPETENCE OF PRETRIAL SINCE THE DECISION OF CONSTITUTIONAL COURT NO. 21_PUU-XII_2014

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ABSTRACT

This article relies on legal issues relating to the development of pre-trial authority coverage in the practice of law enforcement in Indonesia. Based on the legal issue, it can be traced that basically the pre-trial authority only examines and decides whether or not the arrest is legitimate, the validity of the detention, the validity of the investigation, the legality of the prosecution and the demand for compensation and rehabilitation. But in its development after the decision of the Court. 21_PUU-XII_2014, the pre-trial authority is expanded so that it is also authorized to examine and decide upon whether or not a suspect's appointment is justified, whether or not the search is valid or whether the seizure is valid. Later in law enforcement practices through some court decisions, pre-trial authorities may also review and decide on the validity of investigators in conducting an investigation.

Keywords: Development, Authority, Pre-Trial.

INTRODUCTION

The law is always evolving and changing in accordance with the development of science and society where the law is located, not with the exception of criminal procedure law as stipulated in Law No. 8 of 1981 on the Criminal Procedure Law. One of the focuses of the study in this paper is related to pre-trial authority.

In practice, between competence (competence, bevoegdheid) and authority (authority, gezag) is considered not important to distinguish. Authority is called 'formiel power', the power derived from the Legislative Authority (granted by the Law) or from the Executive/Administrative Powers (Prajudi, 1983). Authority (usually consisting of several competences) is the power of a certain group of people or power over a particular area of government, whereas competence is only about a particular field, for example the competence of the court in examining and disconnecting about the pre-trial.

In principle, between Article 1 point 10 of the Criminal Procedure Code and Article 77 of Criminal Procedure Code there is no difference, only on the construction of normulation only. Nevertheless, in fact that the scope of pre-trial competence is not stagnant.

RESULT AND DISCUSSION

The scope of pre-trial competence since the beginning of the validity of Law no. 8 of 1981 on the Criminal Procedure Code until 1998 which was the beginning of the Reform Order has no progress at all, the scope of pre-trial competence is still in accordance with the provisions of Article 77 of the Criminal Procedure Code, namely whether or not the arrest, the detention,

the termination of investigation or termination of prosecution; compensation and/or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

The starting point for the development of the scope of pre-trial competence is at the beginning of the petition for judicial review of Article 1 number 14, Article 17 and Article 21 paragraph (1) Law No. 8 of 1981 (Criminal Procedure Code) by the applicant Bachtiar Abdul Fatah on February 17, 2014.

Criminal Procedure Code as a formal law in the criminal justice process in Indonesia has formulated a number of rights of suspects/defendants as a protector against the possibility of human rights violations. Nevertheless, there are still some phrases which require explanation to be fulfilled by lexcerta and lexstricta principles as general principles in criminal law to protect a person from arbitrary of initial police investigator and investigator, especially the phrase "preliminary evidence", "sufficient preliminary evidence" and "sufficient evidence" as stipulated in Article 1 point 14, Article 17 and Article 21 paragraph (1). The provisions of the Criminal Procedure Code do not provide clarification on the limitations of the number of "preliminary evidence" phrases, "sufficient preliminary evidence" and "sufficient evidence". In contrast to Law No. 30 of 2002 on the Corruption Eradication Commission which clearly sets the limit on the number of evidences, namely at least two evidences, as specified in Article 44 paragraph (2) stating, "Sufficient preliminary evidence is considered to exist if it has been found at least 2 (two) evidences,... etc. "The only article that determines the minimum boundary of evidence is in Article 183 of the Criminal Procedure Code stating, "Judges shall not impose a crime on a person except with at least two evidence...etc."; This is underlying Bachtiar Abdul Fatah proposes a material examination to the Constitutional Court.

Then in the decision of the Constitutional Court. 21_PUU-XII_2014 states that besides to those stipulated in Article 77 letter a of the Criminal Procedure Code, the scope of pre-trial competence are examine suspects, searches and seizures. In addition, the decision also provides an interpretation of the phrase "preliminary evidence" (as defined in Article 1 number 14 of the Criminal Procedure Code) "Sufficient preliminary evidence" (as stipulated in Article 17 of the Criminal Procedure Code) and "sufficient evidence" (as stipulated in Article 21 paragraph (1) of the Criminal Procedure Code) is at least two proofs contained in Article 184 of Law No. 8 of 1981 about the Criminal Procedure Law.[1] Thus, the scope of the pre-trial competence is not only as contained in Article 77 of the Criminal Procedure Code, but extended to the determination of suspects, searches and confiscation.

The Determination of Suspect

Conceptually, categorized as a suspect is a person who by reason of his or her actions, based on evidence of origin should be suspected of being a crime.[2] Concerned on Decision of Constitutional Court No. 21_PUU-XII_2014, then to determine the suspect must be supported at least two proofs as contained in Article 184 of the Criminal Procedure Code, those are: (a) Witness' testimony, (b) Experts' tertimony, (c) Documents. (d) Guidance's and (e) Defendant testimony.

The question that arises is when is the determination of suspect started? When in the process of investigation has been found that the event is a criminal event, then the next step is who the perpetrators of the criminal event. To find the perpetrator of criminal events, it is investigation step of a series of investigative actions to search for and collect evidence to clarify the crime that occurred and to find the suspect.[3] Thus, the determination of the suspect is done in

investigation. To determine the suspect, must be supported by at least two evidences. Evidence that can be collected during the investigation stage is witness' testimony, experts' testimony and documents. While other evidence such as guidance and defendant's statement can only be obtained during the court hearing.

Based on the argument above, the suspect must be determined during the investigation stage and supported by two minimal evidences, namely witness' testimony and/or experts' testimony and/or documents.

The Search Procedure

Conceptually, in the Criminal Procedure Code states that Home searches are investigative measures to enter houses of residence and other enclosed places to carry out inspection and/or confiscation and/or arrest in respect of and in accordance with the manner laid down in this law.[4] Whereas the search body is an investigator action to conduct examination of suspect bodies and/or clothing to search for objects that have been found hard on his body or carried and, for confiscation.[5]

First show the identity of the suspect or his/her family. Article 125 of the Criminal Procedure Code specifies: In the case that in the first investigator conducts a home search showing his/her identification to the suspect or his/her family, then the provisions of Article 33 and Article 34 shall apply.

Second license from the head of the local District Court. Article 33 paragraph (1) the Criminal Procedure Code, determines: With the permission of the head of the local district court the investigator in conducting the investigation may conduct the necessary searches. The permission of Chief Justice of the District Court, excluded if in the most urgent and urgent circumstances, as stipulated in Article 34 paragraph (1).

Third a written order of the investigator is required, if entered into the house. Article 33 paragraphs (2) of the Criminal Procedure Code, determines: In the case required by written order from the investigator, the police officer of the Republic of Indonesia may enter the house.

Fourth should be witnessed two witnesses in case the suspect or the residents approve it. Article 33 paragraph (3) the Criminal Procedure Code, determines: Every time entering the house must be witnessed by two witnesses in case the suspect or the residents approve it.

Fifth shall be witnessed by the village head or the head of the environment with two witnesses, in the case of the suspect or the residents refusing or not to attend. Article 33 paragraph (4) the Criminal Procedure Code, determines: Every time entering the house must be witnessed by the village head or environmental leader with two witnesses, in the case of a suspect or a resident refusing or not to attend.

Sixth create an event report on the road and the home search result signed by the suspect/family; Village Head or the head of environment, 2 witnesses. Copies are submitted to home owners.

Thus the procedure stipulated in the Criminal Procedure Code must be fulfilled in conducting a search, wherever one of the procedures is exceeded, it includes a defective search procedure.

Confiscation Procedure

Conceptually, confiscation is regulated in Article 1 paragraph 16 of the Criminal Procedure Code, which is a series of investigative actions to take over and/or keep under the control of movable or immovable, tangible or intangible objects for the purpose of proof in investigation, prosecution and judicial. To review the confiscation procedure, the focus of the study is on the provisions stipulated in the Criminal Procedure Code, as follows:

First shows the identification to the person from whom the item was confiscated. Article 128 of the Criminal Procedure Code, determines*: In case the investigator do confiscation, he first shows his/her identity to the person from whom the item was confiscated.*

Second the permission of the local district court chairman. Article 38 paragraph (1) the Criminal Procedure Code, determines: *The confiscation can only be done by the investigator with the permission of the local district court chairman*. In the most urgent and urgent circumstances, the permission of head court is unnecessary but will still report to the head of the local District Court.

Third show the object to the person from which it was confiscated or the family witnessed by the Village Head or Head of the Environment and two witnesses. Article 129 paragraphs (1) of Criminal Procedure Code, determines: *The investigator shows the object that will be confiscated to the person from whom the object will be confiscated or to his family and may ask for information about the object to be confiscated by the head of the village or the head of the environment with two witnesses.*

Fourth to make confiscation report signed by the investigator, the person concerned or his/her family, Head of Village or Head of Environment and two witnesses. Article 129 paragraphs (2) of the Criminal Procedure Code, determines: *The Investigator shall make the report of the confiscation read out to the person from whom the item was confiscated or his/her family by date and signed by the investigator or the person or his family and/or the village chief or the environmental leader with two witnesses.*

Thus the procedure prescribed in the Criminal Procedure Code must be fulfilled in the conduct of confiscation, wherever one of the procedures is exceeded, it includes a defective Confiscation procedure.

Investigator Authority

In addition to the scope of pre-trial competence as stipulated in Article 77 of the Criminal Procedure Code, this is then extended to the determination of suspects, searches and seizures.[6] In judicial practice encountered in several judicial decisions related to the development of the scope of pre-trial competence, namely:

Decision of South Jakarta District Court Number: 04/Pid.Prap/2015/PN.Jkt.Sel.

The points on which becomes the basis consideration of Judge are as follows:[7]

Article 11 letter a of Law Number 30 of 2002 provides restrictions on persons as legal subjects of the perpetrators of the Criminal Act of Corruption which is the jurisdiction of the KPK to conduct searches, investigations and prosecutions of Corruption Crimes, namely: (a) Law enforcement officers; (b) State organizers; (c) Other people who have something to do with the criminal act of corruption committed by law enforcement officers or state officials.

Decision of South Jakarta District Court Number: 36/Pid.Prap/2015/PN.JKT.Sel.

Since the appointment of independent investigators who did not come from the Investigator either from Indonesian Police or the Public Prosecutor's Office is contradictory to the law and null and void, the investigation process conducted by independent investigator Dady Mulyady (Respondent's Witness), Marina Febriana and M.N. Huda D. Santoso is to be null and void.

CONCLUSION

Based on the explanation above, then we can conclude that: Since the Criminal Procedure Code stipulated on 31 December 1981, the competence of pre-trial is limited to:

- Validity of the determination of suspect
- Validity of the termination of investigation, termination of prosecution, and
- Prosecution of compensation and rehabilitation

Since the Decision of Constitutional Court No. 21_PUU-XII_2014 on 28 April 2015 on 10.57, the pre-trial competences extended to search and decide on:

- Validity of the determination of suspect
- Validity of search
- Validity of confiscation

Then in judicial practice, the competence of pre-trial extended to not authorized investigator in conducted the investigation to the suspect (law subject).

ENDNOTE

1. Vide Putusan MK. No. 21_PUU-XII_2014.
2. Vide Pasal 1 angka 14 KUHAP.
3. Vide Pasal 1 angka 1 KUHAP.
4. Vide Pasal 1 angka 17 KUHAP.
5. Vide Pasal 1 angka 18 KUHAP.
6. Decision of the Constitutional Court No. 21_PUU-XII_2014.
7. South Jakarta District Court Decision Nomor: 04/Pid.Prap/2015/PN.Jkt.Sel, 233-238.

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