



DETERMINATION OF SUSPECT TOWARD WITNESS THAT PROVIDED INFORMATION IN CRIMINAL TRIALS: EXPANSION OF THE AUTHORITY OF JUDGES

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Date received :	This research is based on the power of the judiciary through the implementation of the main functions and duties of the judge to resolve a case submitted to him as well as to uphold the law and provide justice. The method used in this research is normative legal research with data sources obtained from primary legal materials, namely laws and regulations and secondary legal materials, namely books, legal journals, results of scientific research, and opinions of experts. The data obtained was then processed and analyzed using a qualitative descriptive method, namely by describing the data in the form of regular, coherent, logical, and effective sentences so as to facilitate understanding and interpretation of the data and describing the data in the form of sentence descriptions. The results of the study show that the Criminal Procedure Code has been perfected by the existence of the Constitutional Court Decision Number 21/PUU-XII/2014 which explains that the conditions for determining a suspect must be based on at least 2 (two) pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code and accompanied by an examination of potential suspects.
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INTRODUCTION.

State power, according to Montesquieu is divided into three parts, namely: (1). Legislative power (*la puissance legislature*) as legislators; (2). Executive power (*la puissance executive*) as the executor of the law; and (3). Judicial powers (*la puissance de juger*) as supervisors of the implementation of laws.¹ The distribution of state power is based on a frame of mind that refers to the rule of law principle as stipulated in Article 1 point 3 of the 1945 Constitution, and the principle of democracy as a dual principle in administering the state.

So that in essence, the principles of power sharing or separation are intended to limit state power from the possibility of becoming a source of oppression and arbitrary actions against weak people. This is as stated by Lord Acton "Power tends to corrupt but absolute power corrupt absolutely". That power has a tendency to

¹ M. Iwan Satriawan dan Siti Khoiriah, *Ilmu Negara*, (Depok: Rajawali Pers, 2017), hlm. 100.



deviate (corruption) and absolute (unlimited) power definitely commits deviation (corruption).²

Judicial power, which is represented through the implementation of the main functions and duties of a judge is to resolve a case submitted to him while the function of the authority to adjudicate can be interpreted into two meanings, namely "upholding the law" and "providing justice". Upholding the law is a process to achieve justice while justice is the goal to be achieved from law enforcement itself. The law here must be interpreted broadly not only as law in the form of legislation (positive law) but also includes all the norms and rules that live in society.³

So from this explanation the judge also has a function as a legal inventor in his position as a law enforcer. The judge as the inventor of law (*rechtsvinding*) based on the first basic regulations in the Dutch East Indies era was *Algemeene Bepalingen van Wetgeving voor Indonesia*, abbreviated as AB in Article 22 AB which emphasized "De regter die weigert te spreken onder voorwendsel van stilzwijgen duisterheid der wet kan uit hoofde van rechtswigering gevolgd worden" which means: "A judge who refuses to settle a case on the grounds that the relevant laws and regulations do not state it is unclear or incomplete, then he can be prosecuted for being punished for refusing to try".⁴ Thus, if laws or customs do not provide regulations that can be used to resolve the case, the judge must be able to invent a new law in order to fill the void in the law.⁵

Judges in examining and deciding cases have the main foundation in the form of independent judicial power, this is regulated in Article 24 paragraph (1) of the 1945 Constitution [1945 Constitution of the Republic of Indonesia] which affirms "Judicial power is an independent power to administer justice in order to uphold the law and justice". Therefore, the judge is an independent legal subject in giving, examining, and deciding a case without intervention from any party. This is intended so that judges in deciding and examining a case are more based on the interests of justice. This freedom is also normative in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power [Law No. 48/2009] which emphasizes "Judges and judges of the constitution are obliged to explore, follow, and understand the legal values and sense of justice that live in society".

Based on these regulations, which are stated as "provisions", there is much hope for judges to decide on a case by paying attention to the values of justice that grow in people's lives. With this provision, it is also the duty of judges to explore, follow, and understand the values of justice that grow in people's lives. Then, all components of the "provisions" must be contained in each decision.⁶

Ade Saptomo stated that in carrying out his duties in accordance with Article 22 *Algemeene Bepalingen (AB)* a judge may not refuse to examine a case (to adjudicate). Judging is a series of actions by judges to receive, examine and decide on criminal cases based on the principles of being free, honest and impartial at trial in matters and according to the manner regulated in the Criminal Procedure Code.⁷

² *Ibid*, hlm. 101.

³ Darmoko Yuti Witanto dan Arya Putran Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana*, (Bandung: Alfabeta, 2013), hlm. 19.

⁴ Boy Nurdin, *Kedudukan Dan Fungsi Hakim Dalam Penegakkan Hukum Di Indonesia*, (Bandung: PT. Alumni, 2012), hlm. 86.

⁵ *Ibid*, hlm. 87.

⁶ Immanuel Christophel Liwe, "Kewenangan Hakim Dalam Memeriksa Dan Memutus Perkara Pidana Yang Diajukan Ke Pengadilan" dalam *Lex Crimen* (Volume III Nomor 1, Januari-Maret 2014): 134—135.

⁷ Paku Utama, *Buku Informasi - Modul Kitab Undang-Undang Hukum Acara Pidana (KUHP)*, (Jakarta: KPK, 2021), hlm. 18.



Thus, judges as executors of judicial power, have the power and authority to resolve disputes in social life. Therefore, judges conventionally do not have power and authority in the realm of pre-trial (investigation and prosecution), including that they do not have the authority to designate a suspect.

In determining the suspect according to the Criminal Procedure Code, the investigation stage is carried out which is preceded by the investigation stage. The investigation is carried out before the investigation process. It has been stated above that the investigation functions to find out and determine what events have actually occurred whether it is a criminal incident or not. When, an act is considered as a crime, an investigation process can be carried out. Investigation is an integral part of investigation. Investigation is a method or sub of the investigative function that precedes other actions, namely prosecution which is arrest, detention, search, confiscation, examination of letters, summons, inspection actions, and submission of files to the public prosecutor. With the investigation phase, it is also hoped that a more humane attitude of caution and a sense of legal responsibility will grow in carrying out law enforcement duties. Avoiding methods of prosecution that lead to an attitude of prioritizing confessions rather than finding information on evidence.⁸

Meanwhile, the authority possessed by investigators in Article 7 paragraph (1) of the Criminal Procedure Code which confirms "Investigators as referred to in Article 6 paragraph (1) letter a because of their obligations have the authority to: a. receive a report or complaint from a person regarding a criminal act; b. take the first action at the scene; c. order a suspect to stop and examine the suspect's identification; d. carry out arrests, detentions, searches and confiscations; e. examine and confiscate documents; f. take fingerprints and photograph a person; g. summon people to be heard and examined as suspects or witnesses; h. bring in the necessary experts in connection with the examination of cases; i. carry out the termination of the investigation; and j. take other responsible actions according to law". Therefore, referring to Article 7 paragraph (1) of the Criminal Procedure Code above, determining someone as a suspect is the authority of the investigator.⁹

However, in certain criminal acts, especially Law Number 18 of 2013, the state gives authority to judges in the trial process to designate a witness as a suspect. According to the provisions of Article 36 letter d of Law no. 18/2013 stipulates that for the purposes of investigations, prosecutions, or examinations at court, investigators, public prosecutors, or judges have the authority to: "Determine a person as a suspect and put him on the wanted list".¹⁰

Meanwhile, for the object of this study, the Curup District Court Decision Number: 42/PID.SUS/2021/PN.CRP indicates the behavior of NESHA SALSABILA Alias NESA Binti PATRA JAYA, as a witness, which explains that the Witness's Child (Nesha Salsabila) has sold her child Victim (Alda Cahaya) more or less about 10 (ten) times what was done at the Child Witness contract because the Victim's Child traveled for 14 (fourteen) days at the Witness' Child contract, besides that the Victim's Child was charged a rate of Rp. 250,000.00 (two hundred and fifty) thousand rupiahs) to Rp. 400,000.00 (four hundred thousand rupiahs) at which rate the Child Victim pays a room rental fee of Rp. 50,000.00 (fifty thousand rupiahs) or Rp.

⁸ Ramadhan Kasim dan Apriyanto Nusa, *Hukum Acara Pidana*, (Jawa Timur: Setara Press, 2019), hlm. 56-57.

⁹ Indonesia, *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 06 Tahun 2019 tentang Penyidikan Tindak Pidana*.

¹⁰ Indonesia, *Undang-Undang Nomor 18 Tahun 2013 tentang Pencegahan dan Pemberantasan Perusakan Hutan*, Lembaran Negara Republik Indonesia Tahun 2013 Nomor 130, Tambahan Lembaran Negara Republik Indonesia Tahun 2013 Nomor 5432.



100,000.00 (one hundred thousand rupiahs) to the Child Witness. So to fulfill their daily needs, the Witness Child uses the profits he has received from the Victim's Child, while the Victim's Child uses the tariff that he has previously set.

In order to maintain the authenticity of this research, the authors first describe several previous studies that are within the same scope, namely as follows:

1. Research conducted by Panca Sarjana Putra in the form of an ICEHHA Journal Article entitled "The Antinomy Of Value In Determining A Suspect By A Judge: An Anachronism In The History Of Human Rights" which was published in the ICEHHA Journal, Vol. 3, No. 6, 2021. Researchers in their research try to question the provisions of Article 36 letter d of Law no. 18/2013, if related to the constitutional mandate contained in the Constitutional Court Decision No. 21/2014, so as not to generate an anomaly at the level of criminal law practice. In this study, the researcher concluded that Article 36 letter d of Law Number 18 of 2013 [Law No. 18/2013] which gives authority to judges to designate someone as a suspect based on absence from the criminal justice process if it is interpreted absolutely and it is possible based on the semiotic data above there will be a disregard for a person's rights. To convey a balanced statement on the evidence collected by the investigator. In fact, the anomaly that creates an anomaly and an antinomy of these values is precisely because investigators have examined a person as a suspect without protection of their human rights to present beneficial information. In the end, the jury based on Article 36 letter d of Law Number 18 of 2013 took over the function of investigation and investigation in the pre-trial realm.¹¹

The weakness of this research lies in the ambiguity of a parameter from the Judge which is not fully explained. However, the researchers took a logical leap by stating that there was a potential for human rights violations. However, the logic that is constructed is something that really deserves to be questioned in more detail.

2. Research conducted by Tabah Santoso in the form of an Equitable Journal article with the title "Authority of Pre-trial Judges to Determine Corruption Suspects Based on Judicial Power" which was published in the Equitable Journal, Vol. 4, No. 1, 2019. The formulation of the problem raised by Tabah Santoso is as follows: a. How is the juridical review of the authority of the pre-trial judge against the decision to order the suspect in the alleged criminal act of Bank Century corruption based on Law Number 48 of 2009 concerning Judicial Power? b. What is the ideal concept of the authority of a pre-trial judge against a decision to order a suspect in the alleged criminal act of Bank Century corruption? Tabah Santoso as a researcher provides the following conclusions: a. The authority of pre-trial judge Effendi Mukhtar to make a decision to order KPK investigators to continue the investigation and name corruption suspects in the names of Boediono, Muliaman D. Hadad, Raden Pardede, et al is perfectly valid. The authority of pre-trial judges in accordance with Article 1 number 10 in conjunction with Article 77 of the Criminal Procedure Code is supplemented by the Constitutional Court Decision Number 21/PUU-XII/2014 regarding pre-trial objects and this decision is considered as a legal leap or breakthrough in progressive legal theory as long as it is not interpreted as a follow-up action on the investigation. Judge Effendi Mukhtar also made an interpretation or

¹¹ Panca Sarjana Putra, "The Antinomy Of Value In Determining A Suspect By A Judge: An Anachronism In The History Of Human Rights", Prosiding ICEHHA, Vol. 3, No. 6, Tahun 2021, hlm. 6.



interpretive that judges are also included in a law enforcement agency besides investigators and public prosecutors. This means that the decision is valid as long as it is not interpreted that the judge is taking over the duties and functions of the investigator. The pre-trial judge's decision is not intended to interfere with the authority of each institution but is solely intended as a control mechanism over the process and enforcement of criminal procedural law regulated in legislation; b. The ideal concept of the pre-trial judge's authority in deciding cases, which in its main content orders KPK investigators to carry out further investigations and identify new suspects, should be seen as evidence of legal certainty and justice in law enforcement in Indonesia that needs to be addressed. This means that judge Effendi Mukhtar conducted *rechtsvinding* (legal discovery) in order to fill the legal void in the impasse in handling cases. Progressive theory states that judges can make legal leaps or breakthroughs as an effort to enforce the law which seems "stagnated" or stopped. Whereas in the theory of legal discovery that judges can make interpretations because of the uncertainty and protracted handling of criminal cases like cases of alleged corruption in the Century Bank.¹²

Based on the descriptions above, the Researcher deems it necessary to find "What is the ideal model or mechanism for a judge to be able to designate a witness as a suspect?"

RESEARCH METHODS

In this study, researchers used legal research methods based on secondary data through library research. In this study, researchers used several approaches, namely the case approach, the conceptual approach, and the statutory approach, as well as the legal political approach. These approaches are used to analyze existing legal norms in relation to the determination of a person to become a suspect, by making predictions about future legal interests.

ANALYSIS AND DISCUSSION

The expansion of pre-trial objects regarding the determination of suspect status has been stipulated by Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015 [MK Decision No. 21/2014]. Originally the object of pre-trial was based on Article 77 of the Criminal Procedure Code that: "Whether or not the arrest, detention, termination of investigation, or termination of prosecution is legal; and compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution." However, since the Constitutional Court Decision No. 21/2014 there has been an expansion of the object of pretrial authority. The expansion of the determination of the status of a suspect is an integral part of the investigation process as we know that to designate someone as a suspect is the aim of the investigative process which is carried out by finding and collecting evidence.

Based on the Criminal Procedure Code as a guideline for the implementation of criminal procedural law in Indonesia, investigations are carried out by investigators, assistant investigators, and Civil Servant Investigators (CSI). The Criminal Procedure Code regulates criminal procedural law in general, but for certain laws and regulations different provisions may apply to the provisions of criminal

¹² Tabah Santoso, *Kewenangan Hakim Pra-peradilan Menetapkan Tersangka Tindak Pidana Korupsi Berdasarkan Kekuasaan Kehakiman*, Jurnal *Equitable*, Vol. 4, No. 1, Tahun 2019



procedural law in the Criminal Procedure Code. One of them is the provision in Article 36 letter d of Law no. 18/2013 which confirms that judges have the authority to designate a person as a suspect and include them on the wanted list.

The special authority granted by the Forestry Law to judges to determine the status of a suspect certainly has many implications when applied in practice. Defining the status of a suspect by a judge is of course different from determining the status of a suspect by investigators during the investigation stage. If the judge determines the status of a suspect, of course this process is carried out in the examination stage at trial, it means that it can be assumed that previously the process of examining the accused has been carried out and witnesses found to have anything to do with forestry crimes and were made suspects by the judge. A person named as a suspect by a judge is someone who is being examined during the examination of the accused or someone who is a fugitive or has been put on the wanted list.

The consequence of determining the status of a suspect by this judge is that the judge in his considerations must make special considerations to make a witness or someone who has been named in the Wanted List as a suspect. Furthermore, in his decision the judge ordered the Prosecutor as the executor to find and summon someone who the judge made a suspect for then the Public Prosecutor could coordinate with Police or CSI investigators to examine the suspect determined by the judge to then be delegated back to the Prosecutor's Office to carry out the prosecution which began with the process of delegating suspects and evidence as well as making indictments.

In terms of the mechanism of the case flow, it is possible to implement the determination of the suspect by the judge, but if examined more deeply there are still problems with implementing this article. The problem is in terms of examining the determination of suspect status, does the pre-trial judge have the authority to examine the judge who determines the suspect status if someone who is made a suspect by this judge submits a pre-trial lawsuit to the District Court? This problem creates a legal vacuum in implementing the determination of suspect status by judges, according to the Criminal Procedure Code and the Constitutional Court's decision regarding the expansion of pre-trial objects that can be pre-trial is a coercive effort by investigators, in this case the police and prosecutors, but not the case with judges.

So, in the problem it can be concluded that for this mechanism additional arrangements are needed regarding pre-trial for forestry crimes which are specifically regulated in the law considering that Article 284 of the Criminal Procedure Code opens to make provisions that are different from criminal procedural law. in general for specific crimes. The author is of the opinion that this mechanism can also be considered for handling other specific crimes, but in essence it is necessary to make additional provisions regarding pre-trial in the law or by revising the Criminal Procedure Code by adding these provisions and it can also be done by the Court. The current constitution adds pre-trial objects to its decisions.

This is interesting to study in more depth and can be implemented not only for the Forestry Law but also for other specific criminal acts. So that the examination process does not only examine the accused who is before the court but can be expanded by "dragging in" other parties, in this case witnesses or someone who is still included in the Wanted List of Persons to be used as a suspect.



CONCLUSION.

If, during a trial, evidence of the witness' involvement in a crime is found, the judge may request other law enforcement officials to follow up on the alleged involvement of the witness. In addition, if sufficient evidence is found in the same case, the witness may be subject to suspect status. The judge's authority to directly designate a witness as a suspect is contained in the Criminal Procedure Code, but only for the crime of giving false testimony. This authority is regulated in Article 174 of the Criminal Procedure Code. Before the status of a suspect is determined, the judge first warns the witness in the form of threats of sanctions for giving false statements. If the judge continues to provide information that the judge suspects is false, the judge immediately orders the witness to be detained and prosecuted by the public prosecutor for perjury. If the judge decides so, the clerk will immediately draw up a trial dossier to be submitted to the public prosecutor as a basis for prosecuting the suspect.

With the issuance of the Constitutional Court Decision Number 21/PUU-XII/2014 regarding the widening of the object rather than the pre-trial, namely by adding legal aspects of whether or not the suspect's status is in the pre-trial authority, the pre-trial with the request may be carried out considering that the Constitutional Court's decision is final and binding. Regarding the disagreement among judges regarding this matter, this decision should have been answered through the Constitutional Court Decision which then regulates whether or not the determination of the suspect's status as an object rather than pre-trial is legal. Because differences in interpretation by judges whose decisions tend to be subjective can be detrimental to society as seekers of justice by not getting legal certainty as the purpose of the law itself.

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