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Expansion of Pre-Trial Jurisdiction Following the Enactment of Law No. 20 of 2025 on the Criminal Procedure Code

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Abstract

Pretrial hearing is a part of criminal justice system based from Indonesian criminal code procedure normative according regulated about competence of local court for check and decide rightful or not, about arrest and detention from request by suspect or their family or other person or from their lawyer; rightful or not termination of investigation or termination of prosecution by request; requested of indemnity or rehabilitation by suspect or their family or other party or their lawyer whose the case to trial in the local court for the enforcement of law and justice, but in fact has a other regulation about pretrial hearing except from Indonesian criminal code procedure this is caused extension competence of pretrial hearing, after implementation new Indonesian Law about criminal law procedure, this article uses juridical normatives method, with statute approach and conceptual approach, for analyst some regulation of law about pretrial hearing for find new construct about limitation pretrial hearing in criminal justice system.

Keywords: pretrial hearing, suspect, investigation, competence.

A. INTRODUCTION

The provisions governing criminal law in Indonesia is divided into two branches: substantive criminal law, which regulates the substance or content of the substantive aspects of criminal sanctions (*steelsel*) and as regulated under the Criminal Code (KUHAP) in accordance with all classifications of acts that are unlawful (*wedderrechtelijk*), referred to as criminal offences (*delict*) along with their respective legal classifications, whereas procedural criminal law specifically governs the procedures of criminal

proceedings, from the initial stage of investigation through to the final stage of enforcement (KUHAP).

The establishment of the Code of Criminal Procedure (KUHAP) was prompted by two considerations: first, to establish provisions that would support the conduct of fair criminal proceedings (*fair trial*); and second, the urgent need to replace the colonial-era procedural legislation set out in the *Herzien Inlandsch Reglement* (HIR), which failed to guarantee and provide adequate protection for human rights, from the investigation of suspects through to the

criminal proceedings,¹ Prior to the establishment of the KUHAP, there were no legal provisions regarding an judicial oversight mechanism authorised to scrutinise the legality of actions taken by law enforcement officials in the exercise of their powers.

In light of this urgency, the government established a pre-trial mechanism under the jurisdiction of the relevant District Court, intended to act as a 'counterbalance' between the interests of the individual (the suspect or defendant) and the authority of investigators and public prosecutors to employ coercive measures within the criminal justice system.

From the perspective of the structure and organisation of the judiciary, the Indonesian pre-trial mechanism is not an independent judicial institution., nor is it a judicial instance vested with the authority to deliver a final judgment on a criminal matter. Pre-trial proceedings are simply a new institution whose characteristics and existence²:

1. *it forms an integral part of the District Court and, as a judicial institution, exists only at the District Court level as a unit inseparable from the District Court.*
2. *accordingly, pre-trial proceedings does not exist outside, alongside, or on an equal footing with the District Court, but merely constitutes a division within the District Court.*
3. *its judicial administration, personnel, equipment, and financial resources are integrated with those of the District Court, and it operates under the leadership, supervision, and guidance of the Chief Judge of the District Court.*
4. *the administration of its judicial functions forms part of the judicial functions of the District Court itself.*

As set out in Articles 77 to 83 of the Code of Criminal Procedure, the pre-trial mechanism grants the relevant District Court the authority to examine and determine on the legality of an arrest and/or detention; a request made by the suspect, their family, another party, or their legal representative; the lawfulness of discontinuing an investigation or prosecution at the request of the suspect, their family, another party, or their legal representative; and a request for compensation or rehabilitation where the case has not been brought before a court, in the interests of the rule of law and justice. The pre-trial examination procedure is presided over by a single judge.³

In this context, the 'subject matter of the case' refers to the proceedings from the filing of an indictment alleging that a criminal offence has been committed through to the examination of the criminal case.⁴

¹ Nefa Claudia Meliala, *Upaya Pembaharuan Hukum Acara Pidana Nasional Melalui Hakim Komisaris sebagai Pengganti Praperadilan*, Master's Thesis, Faculty of Law, Postgraduate Programme, Universitas Indonesia, Jakarta, 2012, pg. 24.

² Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, 14th edn, Sinar Grafika, Jakarta, 2012, pg. 1.

³ See Article 77 of the KUHAP.

⁴ Wahyu Januar, *Wewenang dan Fungsi Praperadilan Menurut Hukum Acara Pidana Indonesia*, CV Mediatama, Surakarta, 2011, pg. 33.

The pre-trial institution in Indonesia is comparable to the pre-trial institution in the United States, the *rechter-commissaris* in the Netherlands, and the *juge d'instruction in France*, with similar mechanisms.⁵

Subsequently, regarding the jurisdiction of pre-trial proceedings, the Constitutional Court (MK) issued Decision No. 21/PUU-XII/2014 dated 28 April 2015. The decision has legal implications, namely the expansion of the scope of pre-trial proceedings to include the determination of suspect status, searches, and seizures.⁶

In addition to these provisions, the Supreme Court issued Supreme Court Regulation (PERMA) No. 4 of 2016 concerning the prohibition of pre-trial decisions. Article 2(1) of PERMA No. 4 of 2016 provides, "The object of pre-trial review is:"

- a. *the lawfulness of an arrest or detention, the termination of an investigation or prosecution, the determination of suspect status, and seizure and search;*
- b. *compensation and/or rehabilitation for a person whose criminal case has been terminated at the investigation or prosecution stage."*

Based on the legislation and other regulations, including decisions of the Constitutional Court and regulations issued by the Supreme Court governing pre-trial decision, the relevant provisions do not clearly define what is meant by the determination of suspect status, nor do they clarify whether this includes the determination of a new suspect. Consequently, the ambiguity in the legal norms concerning the authority of pre-trial proceedings has resulted in legal uncertainty.

The expansion of the powers or scope of pre-trial proceedings has legal implications for the decision of the South Jakarta District Court in pre-trial case No. 24/Pid.Pra/2018/Pn.Jkt.Sel. In this case, the court granted the applicant's application and determined a new suspect whose status had previously remained at the inquiry stage.

B. DISCUSSION

1.1 The Purpose of Pre-Trial Proceedings

The pre-trial proceedings mechanism did not exist during the colonial period within Indonesia's criminal justice system, but was introduced as a new mechanism following the enactment of the Indonesian Code of Criminal Procedure (KUHP). It was established with the aim of upholding the rule of law and protecting the human rights of suspects, particularly at the investigation and prosecution stages.

For the proper conduct of criminal proceedings, the law grants investigators and public prosecutors the authority to take coercive measures, such as arrests, detentions, and seizures. Any coercive measure undertaken by an investigator or public prosecutor against a suspect constitutes a form of treatment that is⁷:

- a. *coercive measures permitted by law for the purposes of investigating the alleged criminal offence attributed to the suspect;*
- b. *a form of coercive action justified by law, as any coercive measure inherently constitutes an encroachment*

⁵ *Wahyu Januar, ibid., pg. 70.*

⁶ See Constitutional Court (Mahkamah Konstitusi) Decision No. 21/PUU-XII/2014, dated 28 April 2015.

⁷ *Yahya Harahap, ibid., pg. 3.*

upon the suspect's human rights and a restriction of the suspect's liberty and freedom;

Coercive measures undertaken by law enforcement agencies constitute a restriction on the liberty and fundamental rights of suspects. Therefore, such measures must be carried out responsibly and in accordance with the applicable legal provisions and the principles of due process of law.

As coercive measures undertaken in contravention of the law constitute coercive interference with the suspect's human rights, it is therefore necessary to establish a body to monitor and examine such measures. This body must be authorised to determine the lawfulness of coercive measures imposed upon suspects, as well as to examine and assess the lawfulness of coercive measures undertaken by investigators or public prosecutors. This authority was subsequently vested in pre-trial court.

Put simply, the primary purpose of pre-trial proceedings under the Code of Criminal Procedure (KUHP) is to provide horizontal oversight over coercive measures imposed upon suspects during the investigation or prosecution stages, ensuring that such measures do not contravene the law or applicable legislation.⁸

1.2 The Authority of Pre-Trial Proceedings under the Indonesian Code of Criminal Procedure (KUHP)

a. Examining and Determining the Lawfulness of Coercive Measures

The authority conferred by law upon pre-trial is to examine and determine the legality of:

- a. an arrest;
- b. detention;

This means that a suspect subjected to coercive measures, such as arrest, detention, search, or seizure, may apply to pre-trial court for an examination of the legality of the actions taken against them by the investigator. A suspect may apply to pre-trial review for an examination on the grounds that the detention imposed by the investigator contravenes Article 21 of the Code of Criminal Procedure, or that the detention has exceeded the time limit specified in Article 24 of the Code of Criminal Procedure. The requirements for lawful detention have already been discussed in the relevant section.⁹

b. Examining the Lawfulness of the Termination of an Investigation or Prosecution

Another area of authority is to examine and determine the lawfulness of the termination of a prosecution by the public prosecutor.

Both investigators and public prosecutors are authorised to terminate an investigation or prosecution where the results of the investigation or prosecution reveal insufficient evidence to proceed with the case to trial, where the conduct alleged against the suspect does not constitute a criminal offence, or where the investigation or prosecution is terminated on the grounds of *nebis in dem*,¹⁰ as the offence alleged against the suspect has previously been prosecuted

and tried and the resulting judgment has acquired final and binding legal force (*inkracht*).

An investigation may also be terminated by the investigator or public prosecutor in relation to a suspect on the grounds that the limitation period for prosecution has expired.¹¹ If, during the examination of the suspect, it is established that the limitation period for prosecution has expired, it is therefore appropriate for the investigation or prosecution to be terminated and for the case not to be brought before the court.

An investigation or prosecution may be terminated without justification, or such termination may even be carried out for personal interests. Therefore, even where a body is authorised to examine and determine the lawfulness of the termination of an investigation or prosecution, such oversight is intended to prevent abuse of authority.¹² Accordingly, the law grants the public prosecutor or an interested third party the right to apply to pre-trial court for an examination of the lawfulness of the termination of an investigation.

c. The Authority to Examine Claims for Compensation through Pre-Trial Proceedings

According to the Code of Criminal Procedure, claims for compensation made by the suspect, their family, or their legal adviser through pre-trial proceedings may be made on the following grounds¹³:

- a. unlawful arrest or detention;
- b. a search or seizure carried out in contravention of the law.
- c. where there has been a mistake as to the identity of the person who should have been arrested, detained, or examined.

For example, if A is the perpetrator of the criminal offence, but B is instead arrested or detained, this mistake gives rise to B's right to claim compensation through pre-trial court.

d. The Authority to Examine Applications for Rehabilitation through Pre-Trial Proceedings

In exercising its authority, pre-trial court has the authority to examine and determine applications for rehabilitation made by the suspect, their family, or their legal adviser in relation to an arrest or detention without a legal basis prescribed by law.¹⁴ or for rehabilitation arising from an error as to the identity of the person or the law applied to the case, where the case has not been brought before a court..

e. The Authority of Pre-Trial Proceedings over Seizure

Coercive measures in the enforcement of criminal law are fundamentally grounded in human rights principles, which must be carefully safeguarded. Therefore, state action through the police must comply with the applicable rules of criminal procedure (due

⁸ Yahya Harahap, *ibid.*, pg. 4.

⁹ Lilik Mulyadi, *Putusan Hakim dalam Hukum Acara Pidana*, PT Citra Aditya Bakti, Bandung, 2007, pg. 143.

¹⁰ See Yahya Harahap, *op. cit.*, pg. 5.

¹¹ See Articles 76 and 78 of the Indonesian Criminal Code (KUHP).

¹² See Article 77(a) of the KUHP.

¹³ See Article 95 of the KUHP.

¹⁴ See Yahya Harahap, *op. cit.*, pg. 6.

process)¹⁵ and the applicable law within the criminal justice system..

From the perspective of both universal standards and the Code of Criminal Procedure, coercive measures constitute an infringement of human rights through the deprivation of an individual's liberty or privacy rights by the authorities (law enforcement officials) in administering the criminal justice system, as set out below in accordance with the applicable procedures¹⁶:

- a. arrest;
- b. detention;
- c. search;
- d. seizure, confiscation, and forfeiture (*seizure*);

In its application under the Code of Criminal Procedure (KUHP), the use of these coercive measures is governed by two systems, namely:

- a. coercive measures involving arrest, as provided for in Article 16 of the KUHP, and detention, as provided for in Article 20 et seq. of the KUHP;
- b. coercive measures involving search, as provided for in Article 32 of the KUHP, and seizure, as provided for in Article 38 of the KUHP, which require authorisation from the Chief Judge of the relevant District Court.

With regard to the procedures governing the implementation of such coercive measures, differences of opinion have arisen regarding their application. Some argue that coercive measures subject to review by for the purpose of determining their lawfulness are limited to arrests and detentions on the grounds of due process, or where the person arrested or detained is not the person who should have been arrested or detained (*error in persona*). Meanwhile, coercive measures such as searches or seizures are considered to fall outside the jurisdiction of pre-trial proceedings, as such measures involve judicial intervention, namely, the obligation to obtain authorisation from the Chief Judge of the relevant District Court.¹⁷

Given the possibility of deviations beyond the scope of the authorisation granted by the Chief Judge of the District Court, searches and seizures may also be challenged through pre-trial proceedings, whether in relation to claims for compensation or the determination of the lawfulness of the seizure, provided that a legal violation has occurred, such as a search conducted without the authorisation or approval of the Chief Judge of the District Court. This concludes the discussion of searches and seizures as coercive measures that may be brought before pre-trial court.¹⁸

1.3 The Authority of Pre-Trial Proceedings Following the Issuance of Constitutional Court Decision No. 21/PUU-XII/2014

The issuance of Constitutional Court Decision No. 21/PUU-XII/2014 has its own legal implications, particularly with regard to

the legal protection of suspects. Furthermore, the rationale for the Constitutional Court Decision is to promote the enforcement, protection, and respect of human rights.

The Constitutional Court considers that the Code of Criminal Procedure, enacted in 1981 as the legal framework governing criminal procedure, is no longer fully relevant in light of contemporary developments in Indonesian criminal law. This is particularly evident in the provisions concerning suspects' human rights, which are considered insufficiently protected and respected under the Code of Criminal Procedure.¹⁹

Article 28I of the 1945 Constitution expressly provides that Indonesia recognises the existence of human rights, which provides, in full, that "To uphold and protect human rights in accordance with the principles of a democratic state governed by the rule of law, the implementation..." On the basis of this provision, the Indonesian Government is obliged to protect human rights, even where a person has been designated as a suspect.²⁰ Within the authority of pre-trial jurisdiction, a suspect may challenge state law enforcement authorities who are considered to have acted arbitrarily. This is closely linked to the emergence of pre-trial proceedings, which was regarded as a landmark feature of the Criminal Procedure Code (KUHP) at the time, as it accommodates the protection of human rights within the criminal justice system. In the course of its application in Indonesia, the scope of pre-trial proceedings under the Criminal Procedure Code (KUHP) was expanded following an application for judicial review of the Criminal Procedure Code submitted by Bachtiar Abdul Fatah.²¹

Prior to the Constitutional Court's Decision, Article 77 of the Criminal Procedure Code governing pre-trial proceedings provided for the following matters: Article 77, letter (a): concerning the lawfulness of an arrest, detention, termination of an investigation, or termination of a prosecution; and Article 77, letter (b): concerning compensation and/or rehabilitation for a person whose criminal case had been terminated at the investigation or prosecution stage. However, following the Constitutional Court's Decision, Article 77, letter (a), was expanded to include the authority to examine and determine the lawfulness of the designation of a suspect.

Among the arguments put forward by Bachtiar Abdul Fatah in his application for judicial review of the Code of Criminal Procedure (KUHP) was that Article 77 of the KUHP was alleged to be inconsistent with Articles 28D and 28I of the 1945 Constitution concerning human rights. More specifically, Article 28I of the 1945 Constitution provides, "To uphold and protect human rights in accordance with the principles of a democratic state governed by the rule of law, the exercise of human rights shall be guaranteed, regulated and enshrined in legislation".

¹⁹ Matius Priyonegoro, *Implikasi Putusan Mahkamah Konstitusi Terkait Penetapan Tersangka sebagai Objek Praperadilan*, Master's Thesis, Faculty of Law, Universitas Airlangga, Surabaya, 2017, pg. 72.

²⁰ See Article 28I of the 1945 Constitution of the Republic of Indonesia.

²¹ See Constitutional Court (Mahkamah Konstitusi) Decision No. 21/PUU-XII/2014.

¹⁵ See Lilik Mulyadi, op. cit., pg. 55.

¹⁶ See Yahya Harahap, op. cit., pg. 7.

¹⁷ See Articles 32(1) and 38(1) of the Indonesian Code of Criminal Procedure (KUHP), and Articles 34(1) and 38(2) of the KUHP.

¹⁸ See Article 82(3) of the KUHP.

In line with the foregoing, the role of the Criminal Procedure Code (KUHP) as legislation serving as the principal framework for criminal procedure in Indonesia must therefore incorporate provisions concerning the enforcement and protection of human rights in order to ensure due process for every citizen. On the basis that suspects must be afforded the opportunity to seek justice, and given that the term ‘suspect’ refers to a person who is merely suspected or alleged to have committed a criminal offence, they must retain access to legal avenues through which to seek justice. This is guaranteed by the 1945 Constitution, particularly Article 28D(1) and Article 28I(5), as elaborated above.

In principle, the designation of any person as a suspect is undesirable, regardless of whether the person considers themselves to have committed a criminal offence. Furthermore, the designation of a suspect under the statutory framework forms part of the final stage of an investigation, whereby the investigation itself involves the gathering of evidence to elucidate a case and identify the suspect. Consequently, the process of designating an individual as a suspect must not be carried out arbitrarily or without proper basis, as such arbitrary designation may encourage the abuse of authority by law enforcement officials and cause significant harm to society. Constitutional Court Decision No. 21/PUU-XII/2014, which included the designation of a suspect as an object subject to review through pre-trial review, was issued, among other reasons, to prevent arbitrary exercise of authority and abuse of power by law enforcement officials.

Furthermore, Constitutional Court Decision No. 21/PUU-XII/2014 further expanded the scope of pre-trial proceedings by clarifying the evidentiary requirements in criminal cases, in order to avoid ambiguity or uncertainty regarding ‘preliminary evidence’ and ‘sufficient evidence’.

In practice, the designation of a suspect, as provided for in Article 1(14), Article 17 and Article 21 of the Code of Criminal Procedure, has been considered lawful on the basis of ‘preliminary evidence’ or ‘sufficient evidence’. The term ‘preliminary evidence’ has long been considered difficult to interpret under the Code of Criminal Procedure, as the Code does not provide sufficient clarification regarding the evidentiary requirements or the form that such evidence must take. A similar issue arises with the term ‘sufficient evidence’ as a requirement for designating a person as a suspect. These matters have created considerable ambiguity, which in turn creates uncertainty for suspects. Such ambiguity creates a situation that is highly susceptible to abuse and may provide a legal loophole that can be exploited by law enforcement officials, potentially enabling the arbitrary exercise of authority in designating a person as a suspect.

In summary, Constitutional Court Decision No. 21/PUU-XII/2014 places greater emphasis on human rights and legal certainty for individuals designated as suspects. The Decision is expected to encourage law enforcement authorities, particularly the Public Prosecutor’s Office and the Police, to exercise greater caution when designating individuals as suspects. Pre-trial proceedings can therefore remain a landmark feature of the Code of Criminal Procedure (KUHP), as the KUHP, following Constitutional Court Decision No. 21/PUU-XII/2014, can remain responsive to contemporary legal developments while retaining its essential function as a mechanism for overseeing the actions of law enforcement authorities, particularly the Police and the Public Prosecutor’s Office. Constitutional Court Decision No. 21/PUU-XII/2014 is particularly significant for protecting the rights of

individuals designated as suspects, given that the Code of Criminal Procedure was enacted as early as 1981. Consequently, the Constitutional Court considered it necessary to introduce certain amendments to the provisions governing pre-trial proceedings under the Code of Criminal Procedure in order to ensure that the KUHP remains consistent with contemporary legal developments.

1.4 The Authority of Pre-Trial Proceedings under PERMA No. 4 of 2016

The Supreme Court subsequently issued Supreme Court Regulation (PERMA) No. 4 of 2016 concerning the prohibition of reconsideration of pre-trial decisions. In particular, Article 2(1) of PERMA No. 4 of 2016 provides that,

“Obyek Praperadilan adalah: a. sah atau tidaknya penangkapan, penahanan, penghentian penyidikan atau penghentian penuntutan, penetapan tersangka, penyitaan dan penggeledahan; b. ganti kerugian dan atau rehabilitasi bagi seseorang yang perkara pidananya dihentikan pada tingkat penyidikan atau penuntutan”.

Accordingly, under the three legal instruments referred to above, a pre-trial decision that “designates a new suspect” does not fall within the scope of a pre-trial judge’s authority.

Further analysis of Article 2(2) and (4) of PERMA No. 4 of 2016 makes clear that the examination of an application challenging the lawfulness of a suspect’s designation through pre-trial proceedings is limited to formal aspects, namely, whether there are two valid items of evidence. The examination does not extend to the merits of the case and is presided over by a single judge, as the examination is brief and limited to formal aspects.

Whether a pre-trial decision constitutes a fundamental deviation is subject to the supervision of the Supreme Court. This supervisory function is provided for in Article 4(2) of PERMA No. 4 of 2016. The Supreme Court’s supervisory function involves monitoring the conduct of judges in the performance of their duties and the exercise of their powers, requesting information regarding the technical aspects of the examination, and providing guidance or issuing reprimands or warnings following a pre-trial decision deemed to constitute a fundamental deviation.

However, the problem with the implementation of PERMA No. 4 of 2016 is that it does not elaborate on or clearly define the phrase “a pre-trial decision deemed to constitute a fundamental deviation.” Accordingly, the phrase “a pre-trial decision deemed to constitute a fundamental deviation” may be understood as referring to a ruling made outside the scope of pre-trial proceedings as provided for in Article 2(4) of PERMA No. 4 of 2016. This provision stipulates that the examination of pre-trial applications concerning the unlawfulness of the designation of a suspect, seizure, and search is conducted expeditiously, with the examination of evidence limited to formal aspects.

Pre-trial rulings are not subject to ordinary or extraordinary legal remedies. In practice, the Criminal Procedure Code prohibits legal remedies, including appeals, against pre-trial rulings. This is provided for in Article 83(1) of the Criminal Procedure Code. Constitutional Court Decision No. 65/PUU-IX/2011 further reinforced the prohibition on appeals by removing the exception that previously permitted an appeal to be lodged in pre-trial proceedings under Article 83(2) of the Criminal Procedure Code.

Judicial review (PK) is likewise not available in respect of pre-trial rulings, as provided for in Article 3(1) of PERMA No. 4 of 2016, which states that “A pre-trial ruling may not be subject to judicial review.”

Although the issuance of Supreme Court Regulation No. 4 of 2016 does not provide a clear solution or mechanism for addressing rulings deemed to constitute a fundamental deviation, pre-trial rulings are, on the other hand, not subject to any legal remedies, including appeal, cassation or reconsideration. Accordingly, the appropriate measure for reforming the law governing pre-trial proceedings would be to undertake an immediate revision of the Code of Criminal Procedure (KUHAP).

1.5 The Jurisdiction of Pre-Trial Proceedings under Law No. 20 of 2025 on the Code of Criminal Procedure

Although the issuance of Supreme Court Regulation No. 4 of 2016 does not provide a clear solution or mechanism for addressing decisions deemed to constitute a fundamental deviation, pre-trial decisions are not subject to any legal remedies, including appeal, cassation, or reconsideration. Accordingly, the appropriate measure for reforming the law governing pre-trial proceedings would be to undertake an immediate revision of the Code of Criminal Procedure (KUHAP).

The objects of pre-trial proceedings under the new Criminal Procedure Code have also been expanded pursuant to Article 158 of the new Criminal Procedure Code. The objects of pre-trial proceedings under this provision include, among others:

- a. the lawfulness or otherwise of the use of coercive measures;
- b. the lawfulness or otherwise of the termination of an investigation or prosecution;
- c. a claim for compensation and/or rehabilitation by a person whose criminal case has been terminated at the investigation or prosecution stage;
- d. the seizure of property or goods unrelated to a criminal offence;
- e. the suspension or deferment of detention.

Applications for pre-trial proceedings concerning the seizure of property or goods unrelated to a criminal offence may be submitted by a third party, pursuant to Article 160(2) of the new Code of Criminal Procedure.

Applications for pre-trial proceedings to examine the lawfulness of the termination of an investigation or prosecution may be submitted by the victim, complainant, or their legal representative, pursuant to Article 161 of the new Code of Criminal Procedure.

Applications for compensation and/or rehabilitation arising from the unlawful termination of an investigation or prosecution may be submitted by the victim or complainant, pursuant to Article 162 of the new Code of Criminal Procedure.

The time limit for pre-trial proceedings examination remains seven days. However, the calculation of this period has been clarified, namely that it runs from the time the application is read out, as provided for in Article 163(1), letter (c), of the new Code of Criminal Procedure.

This provides greater clarity than the provisions governing the time limit for the resolution of cases under Article 82(1), letter (c), of the former Code of Criminal Procedure.

Furthermore, under the new Code of Criminal Procedure, while the examination is ongoing, proceedings concerning the merits of the case before the court may not proceed, pursuant to Article 163(1), letter (e).

With regard to the implementation of pre-trial proceedings under the new Code of Criminal Procedure, the author’s analysis identifies a number of issues. One such issue is that proceedings concerning the merits of the case cannot be conducted while the pre-trial proceedings is ongoing, as the ruling must first be rendered. This constitutes a new feature of the pre-trial proceedings framework under the new Code of Criminal Procedure.

Similarly, this provision constitutes part of the State’s efforts to guarantee human rights. However, its implementation in practice is not without challenges. For instance, where applications concerning different types of coercive measures are submitted separately and successively by the suspect, the suspect’s family, or their legal counsel, a question arises as to whether the proceedings on the merits of the case must remain suspended in accordance with Article 163(1), letter (c), of the new Code of Criminal Procedure.

Moreover, coercive measures under the new Code of Criminal Procedure encompass various distinct actions, including the designation of a suspect, arrest, detention, search, seizure, interception, examination of correspondence, blocking, and prohibiting a suspect or defendant from leaving the territory of Indonesia, as provided for in Article 89 of the new Code of Criminal Procedure.

This may give rise to a situation in which the suspect, the suspect’s family, or their legal counsel first submit an application challenging the lawfulness of the arrest and detention.

Then, during the following seven-day period after a ruling has been rendered on the lawfulness of the arrest and detention, the suspect, their family, or their legal counsel may submit a further application challenging the designation of the suspect, followed by applications concerning other coercive measures, and so forth, until the limitation of one application in respect of the same matter has been reached, pursuant to Article 89 in conjunction with Article 160(3) of the new Code of Criminal Procedure .

Such circumstances may give rise to legal uncertainty, as an application submitted by the suspect, their family, or their legal counsel may be intended to obstruct or delay proceedings on the merits of the case.

Similarly, where a pre-trial application concerning the seizure of property or goods unrelated to a criminal offence is submitted by a third party, the question arises as to whether the proceedings on the merits of the case must be suspended while the application is being determined, despite the fact that the matter is not directly related to the defendant’s fundamental rights.

Although the seized property may subsequently become evidence falling within the category of admissible evidence under Article 235(1) of the new Code of Criminal Procedure.

Accordingly, to address the challenges and difficulties arising in the implementation of pre-trial proceedings, the Supreme Court may provide guidance to judges on the examination and adjudication of pre-trial cases in accordance with the new Code of Criminal Procedure.

C. CONCLUDING REMARKS

Conclusion

The purpose and objective of pre-trial proceedings is to uphold and protect the human rights of suspects, particularly during the investigation and prosecution stages.

Article 1(10) of the Code of Criminal Procedure provides that, "Pre-trial proceedings is the authority of the District Court to examine and adjudicate, in accordance with the procedures prescribed by this Law, matters concerning:"

- a. whether an arrest and/or detention is lawful, at the request of the suspect, their family, or another party acting on the suspect's behalf;
- b. whether the discontinuation of an investigation or prosecution is lawful, at the request of a party seeking to uphold the law and justice;
- c. a claim for compensation or rehabilitation by the suspect, their family, or another party acting on their behalf, where the case has not been brought before a court.

Subsequently, in 2015, the pre-trial jurisdiction was strengthened by Constitutional Court (Mahkamah Konstitusi) Decision No. 21/PUU-XII/2014, dated 28 April 2015. The decision significantly expanded the scope of pre-trial proceedings by including the determination of suspect status, searches, and seizures as matters subject to judicial scrutiny. These constituted new areas of pre-trial jurisdiction, as they were not expressly provided for under the Indonesian Code of Criminal Procedure (KUHP).

The Supreme Court (Mahkamah Agung) subsequently issued Supreme Court Regulation (Peraturan Mahkamah Agung or PERMA) No. 4 of 2016 concerning the prohibition of judicial review of pre-trial decisions.

Under the implementation of Law No. 20 of 2025 on the Criminal Procedure Code, however, several potential challenges may arise. One such challenge concerns the inability to proceed with the examination of the main criminal case while pre-trial proceedings are pending and a pre-trial decision has yet to be rendered. This requirement represents a significant development in the concept of pre-trial proceedings under the new Criminal Procedure Code.

This provision may be regarded as part of the State's efforts to safeguard and strengthen the protection of human rights. Nevertheless, its implementation may give rise to a number of practical and procedural challenges. For instance, where pre-trial applications concerning different types of coercive measures are brought separately and successively by a suspect, the suspect's family, or their legal counsel, it remains uncertain whether the examination of the main criminal case must continue to be suspended pursuant to Article 163(1), letter (c), of the new Criminal Procedure Code.

This situation could potentially create a procedural scenario in which a suspect, the suspect's family, or their legal counsel first challenges the legality of the suspect's arrest and detention through pre-trial proceedings. Once a decision has been rendered in relation to such an application, a further pre-trial application concerning another coercive measure could subsequently be filed. If such applications were submitted successively, the examination

of the main criminal case could potentially remain suspended for an extended period.

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