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ANALYSIS OF THE RIGHTS OF SUSPECTS IN PRETRIAL DECISIONS IN MAKASSAR STATE COURT DECISION NUMBER 6/PID.PRA/2020/PN.MKS

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Abstract: Makassar District Court Decision Number 8/Pid.Pra/2020/PN.Mks, present to annul Makassar District Court Decision Number 6/Pid.Pra/2020/PN.Mks. This means that there is a conflict between the two decisions, where the Makassar District Court Decision Number 6/Pid.Pra/2020/PN.Mks., should have been implemented before the Makassar District Court Decision Number 8/Pid.Pra/2020/PN.Mks. was issued. The above conditions cause the suspect's rights to not be exercised. as if the Makassar District Court Decision Number 6/Pid.Pra/2020/PN.Mks., is something that doesn't need to be implemented, even though it is a decision that has permanent legal force. This research is a normative research that is descriptive in nature, analyzes the judge's legal considerations in deciding the Pretrial Decision Number 6/Pid.Pra/2020/PN.Mks so that the applicant accepts the request based on juridical considerations, namely the suspect is not on DPO status, and the determination of the applicant as a suspect does not meet the evidence. enough start. Furthermore, the judge's legal considerations in deciding the Pretrial Decision Number 8/Pid.Pra/2020/PN.Mks., so that the applicant's application is accepted is based on juridical considerations, namely the issuance of SP3 by the Makassar Polrestabes which was carried out on a holiday, as well as the issuance of a complete letter of investigation results. by the public prosecutor (P-21).

Keywords: Convict, Pre-Trial, Decision.

INTRODUCTION

Protection of Human Rights (HAM) for citizens who are undergoing legal proceedings is a manifestation of Article 28D of the 1945 Constitution which stipulates that "everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law". Through this Article, every citizen should receive the guarantee of equal legal treatment without any distinction, and it should be carried out with reference to the applicable laws and regulations without any discrimination.

To ensure the implementation of Article 28D of the 1945 Constitution,

Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), it is not uncommon for the application of the Criminal Procedure Code to occur at the stage of determining suspects. A suspect is a person who because of his actions or circumstances, based on preliminary evidence, should be suspected of being the perpetrator of a crime (Article 1 number 14 of Law Number 8 of 1981 Concerning Criminal Procedure Code (KUHAP)) with sufficient preliminary evidence. It is this initial evidence that determines whether a person can be named a suspect or not, and it is the police who determine the initial evidence because they are at the investigation stage.

Chandra M. Hamzah explained that there are two categories of preliminary evidence. The first category, the function of sufficient preliminary evidence is initial evidence to suspect the existence of a crime and can then be followed up by conducting an investigation. Whereas for the second category, the function of sufficient preliminary evidence is preliminary evidence that the (alleged) crime was allegedly committed by someone. (Chandra M. Hamzah, 2014)

Judging from the Continental European legal system, the scope regulated by the Criminal Procedure Code is actually a pretrial institution that resembles the function of examining judges (Rechter Commissaries), namely overseeing whether or not a coercive measure is legal. But the authority of the Rector Commissaries is even wider because it is also possible to act as an investigating judge such as calling witnesses and experts in making arrests and visiting the homes of witnesses and suspects to check a truth (Alfitra, 2016)

The presence of a pretrial institution in the Criminal Procedure Code in Indonesia is a new chapter in the context of creating and realizing a better and more humane criminal justice system. One of the positive laws currently in force is Law Number 8 of 1981 concerning Criminal Procedure Law. Criminal procedural law was made with the aim of seeking truth and justice through written guidelines and providing guarantees for the enforcement of material criminal law in order to obtain legal certainty. This is of course a mandate that is very much in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the State of Indonesia is a State of Law, which means that the law in this country is placed in a strategic position within the constitutional constellation. The general elucidation of the Criminal Procedure Code has stated that the Criminal Procedure Code is national in nature so that it must be based on the philosophy/view of life of the nation and the basis of the state. Therefore, the material provisions of articles or paragraphs in this law should reflect the protection of human rights. (Dinda, 2020)

The Constitutional Court then in the Decision of the Constitutional Court Number 21/PUU-XII/2014 confirmed that "sufficient initial evidence" and "sufficient evidence" is a minimum of 2 (two) legal pieces of evidence. The Court considers that the minimum requirement of two

pieces of evidence and examination of potential suspects is for transparency and protection of a person's human rights so that before a person is named a suspect, he can provide balanced testimony. This avoids arbitrary actions by investigators, especially in determining sufficient initial evidence.

Based on the above explanation, the Makassar City Police (Polrestabes) are considered to have made a mistake in determining someone as a suspect. This is contained in the Makassar District Court (PN) Decision Number 6/Pid.Pra/2020/PN.Mks. In the verdict, in essence the judge granted the pretrial request relating to the alleged case of embezzlement. The Pretrial Petitioner in the Decision is Hengky Lisadi alias Ucok who was reported by Lau Tjiop Djin alias Aco in the alleged crime of embezzlement against a Decision issued by the respondent namely the State of the Republic of Indonesia Cq President of the Republic of Indonesia Cq Head of the Indonesian National Police Cq Head of the South Sulawesi Regional Police (Kapolda South Sulawesi) Cq Resort Police of the Big City of Makassar (Polrestabes Makassar).

In Ruling Decision No. 6/Pid.Pra/2020/PN.Mks, it was decided that the determination of the suspect by the Makassar Polrestabes against Hengky Lisadi alias Ucok was invalid.

Following up on the decision, the Makassar Polrestabes then issued an Investigation Termination Order (SP3) Number: SP3/84.B/lV/Res.1.11/2020/Reskrim. Lau Tjiop Djin alias Aco, who did not receive the SP3 because he felt disadvantaged, then filed a pretrial against the SP3. So the Makassar District Court (PN) Decision Number 8/Pid.Pra/2020/PN.Mks was born, which granted the Pretrial of Lau Tjiop Djin alias Aco.

In the Makassar District Court (PN) Decision Number 8/Pid.Pra/2020/PN.Mks, the judge granted the entire request of Lau Tjiop Djin alias Aco, and the judge stated that the Investigation Termination Order (SP3) Number: SP3/84.B /lV/Res.1.11/2020/Reskrim dated 10 April 2020 issued by the Makassar Polrestabes (respondent) is null and void.

Referring to the Constitutional Supreme Court Decision Number 102/PUU-XII/2015, the Pretrial request cannot be accepted if the case file has already started its first session. Meanwhile, in the case submitted to Hengky Lisadi alias Ucok for alleged embezzlement, the first trial has not yet entered. The Makassar District Attorney's Office issued a complete Notification of Investigation Results (P.21) Number B-134/P.4.10/Epp.1/01/2020 and a complete notification of the results of the complete investigation of the name Hengky Lisady Alias Ucok (P.21 A) with number: B- 951/P.4. 10/Eoh. 1/03/2020 March 11 2020. Even though the file has been completed at the Attorney General's Office, it has not yet entered the first trial. This means that there is nothing wrong with Decision Number 6/Pid.Pra/2020/PN.Mks.

Meanwhile, the Makassar District Court (PN) Decision Number 8/Pid.Pra/2020/PN.Mks, is present to annul the Makassar District Court (PN) Decision Number

6/Pid.Pra/2020/PN.Mks. This means that there is a conflict between the two decisions, where the Makassar District Court (PN) Decision Number 6/Pid.Pra/2020/PN.Mks. should have been implemented before the Makassar District Court (PN) Decision Number 8/Pid.Pra was issued. /2020/PN. Mks.

The above conditions caused the suspect's rights to not be exercised upon the issuance of the Makassar District Court (PN) Decision Number 6/Pid.Pra/2020/PN.Mks. as if the decision of the Makassar District Court (PN) Number 6/Pid.Pra/2020/PN.Mks., is something that does not need to be implemented, even though it is a decision that has permanent legal force.

MAIN PROBLEM

Based on the background described above, the following problem formulation can be taken as to what the judge's legal considerations are in deciding the Pretrial Application (Makassar District Court Decision Number 6/Pid.Pra/2020/PN.Mks and Makassar District Court Decision Number 8/Pid. Pre/2020/PN.Mks)

METHOD OF RESEARCH

This research is a normative research that is descriptive analysis in nature, namely a research that intends to provide an overview of something about social phenomena that aims to provide a systematic, factual and accurate description. It is carried out using a statutory approach to analyzing existing legal norms legally by using applicable laws and regulations and legal theories supported by literature data studies. (Hasrina, 2021) This type of research is the main characteristic of legal research, even legal research is often identified with only normative research. (Irwansyah, 2020)

RESEARCH RESULT AND DISCUSSION

The judge's consideration is very important in becoming a reference for a decision on a criminal act, but it turns out that the judge's consideration is influenced by several good things related to material truth in using expert testimony in evidence and related to the judge's beliefs. (Muksin, 2020).

Furthermore, efforts to improve the quality of court decisions, the Supreme Court of the Republic of Indonesia in its Instruction No. KMA/015/inst/VI/1998 dated 1 June 1998, instructed judges to establish professionalism in realizing a quality trial with executable judge decisions containing ethos (integrity), pathos (first and foremost juridical considerations), philosophical (core justice and truth), sociological (according to the prevailing cultural values in society), logos (accepted by common sense) for the sake of creating the independence of the organizers of judicial power) (Rais, 2017)

Juridical considerations are judges' considerations based on juridical facts revealed in the trial and by law determined as must be included in the decision, for example the indictment of the public prosecutor, the testimony of the accused, witness statements, evidence and articles in the regulations. criminal law. Juridical

considerations of the offense being charged must also be in accordance with theoretical aspects, doctrinal views, jurisprudence, and the position of the case being handled, only then can a limited basis be determined. After the inclusion of these elements, in practice the judge's decision is then considered the things that can lighten or aggravate the defendant. The things that were aggravating, for example, the defendant had been convicted before, because of his position, and used the national flag. (Adami Chazawi, 2003)

Because this is a pretrial decision, not yet included in the main case, not all indicators in the definition of juridical considerations according to Adami Chazawi are used as the basis for the judge's considerations.

In the a quo pretrial decision, there are at least two juridical considerations that become the judge's argument, namely (i) the pretrial ban on DPOs and (ii) the determination of the suspect with sufficient initial evidence.

Based on the Supreme Court Circular Number 1 of 2018 concerning the Prohibition of Pretrial Submissions for Suspects who have fled or are currently on the Wanted List (DPO) Status, it stipulates that if a suspect runs away or is on DPO status, a pretrial petition cannot be filed. If a DPO has been determined or the suspect has run away, but is still submitted by legal advisers or his family, the judge will issue a decision declaring the pretrial request unacceptable.

Facts at the trial stated that the respondent (Polrestabes Makassar) had issued a DPO against the applicant (Hengky Lisadi), because the applicant was not present at the summons for information by the respondent. The judge then argued in his consideration that the applicant's absence was due to illness, where the applicant attached a sick certificate from Siloam Hospital. In addition, the judge also postulated that the issuance of the DPO by the respondent was issued on February 20 2020, while the applicant's pretrial petition was dated February 14 2020. So the judge considered that the applicant's pretrial application was carried out before the applicant was declared a DPO. This means that the applicant's pretrial did not violate SEMA Number 1 of 2018 as previously mentioned by the author.

Article 1 number 14 of the Criminal Code stipulates that a suspect is a person because of his actions or circumstances, based on "preliminary evidence" he should be suspected of being the perpetrator of a crime. Then it was clarified by the Constitutional Court Decision Number 21/PUU/XII/2014 dated 28 April 2015 which explained that to determine someone to be a suspect in a crime, there must be at least 2 (two) preliminary evidences. So, the "initial evidence" referred to is at least 2 (two) pieces of evidence. The evidence referred to refers to Article 184 paragraph (1) of the Criminal Code, namely a) witness statements; b) expert testimony; c) letters; d) instructions; and e) the testimony of the accused.

The judge then assessed each of the 5 (five) pieces of evidence, namely:

First, witness testimony. Witness testimony as evidence is what the witness stated in court. The

statements of several independent witnesses regarding an incident or situation can be used as a legal means of evidence if the statements of the witnesses relate to each other in such a way as to justify the existence of a certain event or situation.

From the testimony of the witnesses, in substance it can be explained that Lau Tjiop Tjin owes Hengky Lisady (the applicant) Rp. 4 billion, while according to Henky Lisady the debt from Lau Tjiop Tjin is Rp. 9 billion and as collateral 10 SHM and 4 SHM have been sold so that the remaining 6 SHM has been made, and a Power of Attorney has been made to sell the SHM and there has been a Deed of Sale and Purchase of SHM made before a Notary. The judge then assessed that in his opinion the testimony of the witnesses was more dominant in civil cases because there was a legal relationship between Lau Tjiop Tjin and Hengky Lisady regarding borrowing money with Collateral SHM Land and accompanied by a Power of Attorney to sell the SHM collateral.

The judge considered that the testimony of the witnesses was more dominant in civil cases. This is because the relationship between Lau Tjiop Tjin (reporter) and the applicant (reported) began with a loan-borrowing relationship guaranteed by a Certificate of Ownership (SHM) for the land and strengthened by a power of attorney given from the complainant to the applicant to sell the SHM on the land. For these reasons, the judge considered that the testimony of the witnesses was not sufficiently strong and convincing to be used as evidence in a criminal case of embezzlement.

Second, expert testimony. In the a quo pretrial decision, expert Baharudin Badaru provided information that the applicant had committed embezzlement because the SHM as collateral for a 4 billion debt had been sold by the applicant without the knowledge of LAU Tjiap Tjin.

The judge then considered that the expert's statement was not sufficient as evidence in the embezzlement case, because the expert only assessed the criminal side (embezzlement) without commenting on the Power of Attorney to Sell Guarantees that had been received by the applicant from Sianny Octavia, which in fact was a civil element. The expert ignores the civil relationship that exists between the reporter and the applicant (reported).

Third, letters. The facts of the trial were presented in several letters, including: 1) SHM NO. 20270, SHM No. 20263, SHM No. 27541, SHM NO. 20282, SHM NO. 20281, an. Hengky Lisady and SHM No, 20192 an. Meiliana Lingrat made before a Notary; 2) proof of letter in the form of Deed of Sale and Purchase No. 52, 87, 86, 65,64,63,24, 27 all of which were made before a Notary; 3) proof of letter also submitted Power of Attorney to Sell No.31, 25, 28 made before a Notary; 4) proof of receipt of money in the form of a receipt that gave Hengky Lisady to Lau Tjiop Tjin.

The judge considers that the above letter evidence is a letter of agreement/agreement between Hengky Lisady and Sianny Octavia and also with Lau Tjiop Tjin regarding debts and receivables guaranteed by

SHM, so that the evidence of the letter is more appropriate to be submitted in a civil case because there is a civil law relationship, which if one party does not fulfill the agreement, it can file a lawsuit for default, so that the evidence of this letter is also not sufficient as evidence in a criminal case.

Fourth, instructions. A clue is an act, event or circumstance, which because of their correspondence, both between one and the other, as well as with the crime itself, indicates that a crime has occurred and who the perpetrator is. Clues were obtained from the testimony of witnesses, letters and statements of the accused.

The judge then assessed that in the a quo pretrial decision that the testimony of witnesses and experts was not sufficient as evidence in a criminal case, likewise in the evidence there was no statement from the accused, because in the Case Report (BAP), Hengky Lisady was still a witness and there was no suspect yet, so the evidence instructions are also not sufficient in the criminal case filed by the Respondent.

Fifth, the testimony of the accused. The defendant's statement is what the defendant stated in court about the actions he committed or that he himself knew or experienced. The defendant's statement given outside the trial can be used to help find evidence at trial, as long as the statement is supported by valid evidence insofar as it concerns the matter against which he was charged.

The judge considered that the BAP statement submitted by the respondent in pretrial could not be used as evidence because at that time the applicant was still a witness, not a defendant.

Non-juridical considerations can be seen from the background of the defendant, the condition of the accused and the religion of the accused. (Rusli Muhammad, 2007) Even MH Tirtaamidjaja is of the opinion that the judge in giving consideration must pay attention to: (MH. Tirtaamidjaja, 1955)

1. The nature of the criminal offense (whether it is a serious or minor criminal offense).
2. The threat of punishment for the criminal offence. The circumstances and the atmosphere at the time the criminal offense was committed (which provided and mitigated)
3. The personality of the accused, whether he is a criminal who has been repeatedly convicted or a criminal for just this one time, or whether he is a young person or a young person or a person of old age.
4. The reasons for committing a criminal offense.
5. The attitude of the defendant during the examination of the case.

Because this is a pretrial request, it has not yet been included in the main case, the judge does not assess (give consideration) related to non-juridical reasons, even in this pretrial petition, the civil aspect which the judge considers is more dominant than the criminal aspect.

From the considerations above, it is the reason for the judge in accepting the applicant's pretrial request. With reference to the Constitutional Court Decision Number 21/ PUU-XII/ 2014, dated 28 April 2014 which expands Article 77 letter a of the Criminal Code, it states that the pretrial request is related to whether the determination of the suspect is valid or whether the confiscation is valid or not. Determination of suspects by the respondent based on existing evidence is not strong and convincing. So the judge then decided based on the 2 (two) considerations above that the determination of the suspect and the confiscation by the respondent were invalid.

Furthermore, with regard to the Pretrial Decision Number 08/Pid.Pra/2020/PN-mks., there are at least two juridical considerations which form the judge's argument for accepting the applicant's pretrial request, namely (i) Issuance of an Investigation Termination Order (SP3) and (ii) Issuance of a Completed Letter of Investigation by the Public Prosecutor (P-21).

As a follow-up to the Pretrial Decision Number 06/Pid.Pra/2020/PN-mks., the Makassar Polrestabes (respondent) then held a case title with the result that the case in question did not meet the evidence. The respondent then issued an Investigation Termination Warrant (SP3) Number SP3/84.B/lV/Res 1.11/2020/Reskrim, dated 10 April 2020. Lau Tjop Djin alias Aco (applicant) who felt disadvantaged as a result of the issuance of the a quo SP3, filed a petition pretrial at the same District Court. So that the Pretrial Decision Number 08/Pid.Pra/2020/PN-mks. was issued, which seemed to annul the previous pretrial decision.

In the a quo pretrial decision, the judge considered that the a quo SP3 was illegal because it was made on a non-working day, which coincided with a Christian holiday, namely Good Friday.

Starting with reports of criminal acts regarding fraud and embezzlement committed by Hengky Lisadi alias Ucok, the respondent then followed up by issuing an investigation warrant Number SP.Lidik/557/II/Res.1.11/2019/Reskrim dated 28 February 2019, then upgraded to investigative stage. The respondent then sent the case files to the Makassar District Attorney based on letter Number: c.1/79/Vl/Res.1.11/2019/Reskrim dated 20 June 2019. By the Makassar District Attorney, a Letter of Notification of Complete Investigation Results was issued or P.21 with number: B-134/P.4.10/Epp.1/01/2020, dated 22 January 2020.

The judge then considered that the respondent had conducted an investigation against the suspect on behalf of Hengky Lisadi alias Ucok on April 9 2019 with an Investigation Warrant Number Sp-Sidik/103.A/IV/Res.1.11/2019/Reskrim, where the results of the investigation had been reported and investigated by the Makassar District Prosecutor's Office which then on January 22 2020, the Makassar District Attorney notified that the case file on behalf of the suspect Hengky Lisadi alias Ucok was complete by

issuing a Complete Notification of Investigation Results (P.21) Number B-134/P .4.10/Epp.1/01/2020, January 22, 2020, with an order for the respondent to immediately submit case files, suspects and evidence to the Public Prosecutor (Phase Two). However, the respondent had not submitted the case files, suspects and evidence to the Makassar State Prosecutor's Office so that the Makassar District Attorney issued a Complete Notification of Follow-up Investigation Results (P-21A) Number B-951/P.4.10/Eoh.1/03/2020 , March 11, 2020.

CONCLUSION

The judge's legal considerations in deciding the Pretrial Decision Number 6/Pid.Pra/2020/PN.Mks so that he accepted the applicant's application was based on juridical considerations, namely that the suspect is not DPO status, and the determination of the applicant as a suspect does not meet sufficient preliminary evidence. Furthermore, the judge's legal considerations in deciding the Pretrial Decision Number 8/Pid.Pra/2020/PN.Mks., so that the applicant's application is accepted is based on juridical considerations, namely the issuance of SP3 by the Makassar Polrestabes which was carried out on a holiday, as well as the issuance of a complete letter of investigation results. by the public prosecutor (P-21).

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