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Juridical Review of the Evidentiary Power as the Basis for Determining a Suspect Under Article 184 of the Criminal Procedure Code (Pretrial Decision Number: 33/Pid.Prap/2020/Pn Jkt Sel)

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ABSTRACT

The determination of suspects represents a crucial stage in the investigation process, as it carries direct implications for a person's human rights. The Criminal Procedure Code expressly requires sufficient preliminary evidence—namely, at least two valid pieces of evidence, as stipulated in Article 184. This research aims to analyze the evidentiary strength as the basis for determining suspects and to examine the judge's considerations in Pretrial Decision Number: 33/Pid.Prap/2020/Pn Jkt Sel, which declared the suspect determination invalid due to unmet minimum evidentiary requirements. The research employed normative legal research with legislative and conceptual approaches. The study found that valid evidence under Article 184 of the Criminal Procedure Code serves a fundamental function as both formal and material requirements for suspect determination. In this pretrial case, the judge determined that the investigators' evidence failed to meet adequacy standards in quality and quantity, rendering it insufficient to designate someone as a suspect. This ruling underscores investigators' obligations to act professionally, transparently, and meticulously throughout the investigation process to prevent repressive actions and human rights violations. The research contributes theoretically to criminal procedural law and offers practical guidance for law enforcement in upholding evidentiary standards under the Criminal Procedure Code and rule-of-law principles.

Keywords: *Evidence, Determination of Suspects, Pretrial*

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INTRODUCTION

The Unitary State of the Republic of Indonesia is a state of law, as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945 (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945). All elements in the state, be it the people, the government, the executive, legislative, and judicial institutions must submit and obey the law itself (Purba, 2017). The concept of the state of law shows that all actions of the government and society must be based on the provisions of the applicable law (Simamora, 2019).

Aristotle formulated that, a state of law is a state that stands on the law that guarantees justice for its citizens (Hutahaean & Indarti, 2019). One of the efforts to realize the principle of the state of law is the establishment of various kinds of legal rules that are used as the basis for the life of the nation and state (Greenstein, 2022; Sumardi et al., 2021; Taulbee & Von Glahn, 2022). One of the legal rules established by the Indonesian government is Law No. 08 of 1981 concerning the Criminal Procedure Code (KUHAP) as a formal criminal law.

According to Simons, criminal procedural law or formal criminal law is a law that regulates the ways in which the state with its tools uses its right to punish and impose punishment (Adi, 2020). The term "formal criminal law" means to distinguish it from "material criminal law". What is meant by "material criminal law" or the Criminal Code (KUHP) contains instructions and descriptions of delicacies, regulations on the conditions under which a person can be convicted and rules on punishment, namely regulating to whom and how the

crime is imposed, while the "formal criminal law" or the Criminal Code is to regulate how the state through its tools exercises its right to punish and impose a crime (Soeroso, 1993).

So, material law is a law that contains punishment material, while formal law is a law that regulates the procedures for implementing material law, so as to obtain the judge's decision and how the content of the decision must be implemented. One of the procedures regulated in the criminal procedure law is the issue of proof by investigators (Hartanto & Hidayat, 2021; Mishra & Singh, 2022; Ragni, 2023; Signorelli, 2023).

Then, in the criminal procedure law, it aims to find and get suspects or perpetrators of criminal acts. The process of determining suspects in the criminal procedure law is a very important and crucial stage in the investigation. At this stage, an individual can be charged and considered a subject responsible for a criminal act.

However, in practice, it is the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and permanently with the aim of finding out who the perpetrator can be charged with committing a violation of the law and the decision of the court to find whether it is proven that a criminal act has been committed and whether the accused person can be blamed. One of the processes that starts the legal act is the investigation and with the implementation of the investigation process, an act or act can be said to be a criminal act or a crime or cannot be (De Wahyu et al., 2024).

In this context, it is important to examine more deeply the minimum evidentiary requirements that must be met by investigators before designating a person as a suspect, as well as how existing legal mechanisms can ensure the protection of suspects' rights. One of the legal remedies to guarantee the rights of suspects is to test the validity of the evidence obtained by investigators.

There is an institution that was formed in 1981 based on the Criminal Code (Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, 1981), the institution has the function of testing the validity of coercive efforts by law enforcement officials, who carry out the law enforcement process in violation of human rights guarantees and this function is attached to the Pretrial institution. Although in the process of the Pretrial institution it is still considered incapable of protecting, and less effective in guaranteeing the human rights of citizens from the repressive actions of law enforcement officials, this is a form of guarantee and effort by the state to protect the human rights of its citizens (Afandi, 2016).

Pretrial itself is an institution that has just been formed in the judiciary in Indonesia, especially in law enforcement. The Pretrial Institution is an institution under the supervision of the District Court which is essentially a unit of the system. This is considered important because the judicial process, especially the criminal one, has several stages in which it is still in a series and unity that cannot be separated. The series includes the law enforcement process, namely investigations, investigations, prosecutions, and examinations carried out in court sessions by law enforcement officials (Jaholden, 2021).

In the criminal justice process in Indonesia, the authority to carry out investigative and investigative actions lies with the police, while the authority to prosecute is the prosecutor's office, while the authority to prosecute in the examination in court sessions lies with the judge. The authorities possessed by judges, prosecutors, and police, although different, are in principle a whole unit that cannot be separated (Hikmoro, 2013). Therefore, Pretrial is a control mechanism against the possibility of arbitrary actions from investigators or public prosecutors

in carrying out these actions. This aims to ensure that the law is upheld in the protection of human rights as a suspect as well as in the investigation, investigation and determination of suspects. In addition, Pretrial is authorized as horizontal supervision of the rights of suspects in preliminary examinations based on Article 77 of the Criminal Code (Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, 1981) concerning Pretrial Authority.

Assigning a suspect's status to a person before there is valid evidence can have a major impact on their social status, as seen in the case of the pretrial verdict Number: 33/Pid.Prap/2020/PN. Jkt.Sel, where it was stated that because there was no evidence that had value as evidence as referred to in article 184 of the Criminal Code regarding the type of legal evidence, the status of the suspect was invalid. Based on that value, investigators or public prosecutors in carrying out the actions of determining suspects, arrests, searches, confiscations, detentions, and prosecutions should prioritize the principles and principles of prudence, especially in fulfilling the minimum evidentiary requirements stipulated in the Criminal Code.

The study of this pretrial verdict is very relevant to assess the extent to which the investigator's decision to designate the suspect is in accordance with the applicable legal provisions, as well as how the court decides whether the minimum requirement of proof has been met. In addition, this study is also important to provide an overview of the protection of individual rights in the investigation and determination process of suspects. Thus, it is hoped that this study can provide a better understanding of the implementation of criminal procedure law in maintaining a balance between law enforcement and human rights protection.

Based on the description above, the author is interested in studying it in more depth, which is contained in the form of a thesis, with the title "Juridical Review of The Strength of Evidence as The Basis For Determining Suspects Based on Article 184 of the Criminal Code (Pretrial Decision Number: 33/Pid.Prap/2020/PN. Jkt.Sel)". Therefore, this study aims to conduct a juridical review of the evidentiary strength required for suspect designation under Article 184 KUHAP, with a specific case analysis of the aforementioned pretrial decision. The research is expected to contribute theoretically to criminal procedural law and serve as a practical reference for law enforcement in upholding evidentiary standards, thereby strengthening legal certainty and the protection of human rights within the framework of a rule of law.

METHOD

This research employed normative legal research, selected to address contradictions and disharmony in legal norms related to suspect determination. According to Peter Mahmud Marzuki, legal research seeks coherence by examining whether norms align with legal principles and whether actions conform to those norms.

Legal science possesses a distinctive normative, practical, and prescriptive character, studying the purposes, justice values, validity, concepts, and norms of law, alongside procedural standards for legal activities. The analysis classified collected legal materials—primary, secondary, and tertiary—using a legislative approach, then integrated them with arguments to yield accountable findings.

The study applied a statute approach, examining laws on minimum proof requirements (Article 1 number 14 and Article 17 of the Criminal Procedure Code), valid evidence types (Article 184 number 1), investigator authority (Article 7 number 1), and pretrial authority

(Article 1 number 10). It also used a conceptual approach to explore relevant doctrines, noting the Criminal Procedure Code's negative legal system under Article 183, which requires at least two valid pieces of evidence plus judicial conviction for conviction.

Primary legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 concerning the Criminal Procedure Code (*KUHAP*), Constitutional Court Decision Number 21/PUU-XII/2014, Government Regulation Number 27 of 1983, Law Number 2 of 2002 concerning the National Police, Police Chief Regulation Number 6 of 2019, and Supreme Court Regulation Number 4 of 2016. Secondary materials comprised expert opinions, books, journals, theses, and legal articles. Tertiary materials included dictionaries, encyclopedias, and relevant internet sources.

Data collection involved literature study of these materials to identify principles and norms, through stages of problem formulation, source determination, material identification, and targeted review. Analysis techniques entailed interpretation of evidence types under Article 184 of the Criminal Procedure Code, followed by harmonization of regulations, yielding arguments supported by facts to resolve the legal issues of suspect determination without sufficient evidence.

RESULTS AND DISCUSSION

Data Exposure

The case in the pretrial decision Number: 33/Pid.Prap/2020/PN. Jkt.Sel is a decision that handles criminal cases of fraud and/or embezzlement and money laundering between applicant I (H. Hendro Hassyari H), applicant II (Fadli Hasyari), and applicant III (Faizah Abidin) as the Respondent (National Police of the Republic of Indonesia cq. Metro Jaya Regional Police cq. Directorate of Criminal Investigation of the Metro Jaya Police).

The beginning of this case was the introduction between applicant I and Zainal Rachim in 2002 when they both owned a business in the Tanjung Priok area, North Jakarta, although they were of different types. Zainal Rachim during his lifetime owned PT. Mahardi Saranatama which is engaged in transportation and loading and unloading. In that year, the financial condition of PT. Mahardi Saranatama was not good, but when he met with applicant I and often discussed and consulted to get inputs in running PT. Mahardi Saranatama. Over time, Zainal Rachim's Company progressed rapidly to get a considerable profit.

The relationship between Applicant I and (Alm) Zainal Rahim is getting closer even like a brother. For his contribution in providing input and advice to (Alm) Zainal Rahim to run PT. Mahardi Saranatama and his loyalty in the joys and sorrows of Zainal Rachim so that applicant I often gets honorariums, although the amount and time are not specific. The honorarium was given by Zainal Rachim as a form of good faith, until Zainal Rachim passed away in 2017.

Then Applicant I found out that he was reported to the police with the report number: LP/102/I/2019PMJ Ditreskrimum dated January 7, 2019 regarding the alleged criminal acts of fraud and/or embezzlement and the crime of money laundering as referred to in Articles 378 and/or 372 of the Criminal Code and Articles 3, 4 and 5 of Law Number 8 of 2010 concerning the crime of money laundering.

In this case, the investigators found four pieces of evidence, namely: evidence from 16 witnesses, testimony from 3 expert witnesses, evidence from 6 letters, and clues. Furthermore,

the investigator summoned and examined witnesses, including those outlined in the Minutes of Examination as follows:

a. Minutes of Examination of Witnesses Mr. IKSAN RAHIM
b. Minutes of the examination of witnesses by Mr. Sahara;
c. Minutes of Examination of Witnesses Sdri. KAMIYARSI WINDARTI;
d. Minutes of Examination of Witnesses Mr. ABDUL MUHASIB, S.E.;
e. Minutes of Examination of Witnesses Mr. MUHAMAD PARIUSI;
f. Witness Examination Minutes of Mr. SUTRISNO;
g. Minutes of Examination of Witnesses Mr. NUR IMANSAH;
h. Minutes of Examination of Witnesses Mr. FIRMAN;
i. Minutes of Examination of Witnesses Sdri. INDAH AYU KOMALASARI;
j. Minutes of Examination of Witnesses Sdri. HADIJAH ABIDIN;
k. Witness Examination Minutes of Mr. JONIH;
l. Minutes of Examination of Witnesses Mr. SYAMSIAH Binti RAZAK;
m. Minutes of Examination of Witnesses Sdri. Ir. ASTUTI SADAPOTTO;
n. Minutes of Examination of Witnesses Mr. ABDUL MALIK, S.E.;
o. Minutes of Examination of Witnesses Sdr. SAHIRMAN, S.Pd.;
p. Minutes of Examination of Witnesses Mr. DERIEN ELNOVELLY, S.E. (Witness from Bank Mandiri).

Then the testimony of expert witnesses, one of which is Dr. Effendi Saragih, SH., MH. As well as to strengthen the postulates of the answer, the trial has submitted evidence of the letter marked T-1 to T-49, and T-51 to T-57 the evidence of the letter has been affixed with a sufficient stamp and has been matched with the original, except that the evidence of T-44 to T-48 and T-50 at the trial cannot be shown the original letter, and the evidence of the T-49 letter is in the form of a Print Out,

After a police report, on November 22, 2019, a person named Iksan Rahim as the Director of PT Marhadi Saranatama and Astuti Sadapotto as the wife of (Alm) Zainal Rachim gave a summons to return the money or property belonging to (Alm) Zainal Rachim to his family.

For the incident of the case, the petitioners I, II, and III felt that they had never committed the crime of money laundering against the company PT. Mahardi Saranatama belongs to Zainal Rachim. Also, all the honorarium that has been given by (Alm) Zainal Rachim to applicant I is only as a gift for the kindness of applicant I who has assisted (Alm) Zainal Rachim in restoring the success of his company that has gone bankrupt.

Then in this case, Petitioners I, II, and III have suffered great losses morally and materially, both regarding the good name of the polluted applicants and the disruption of Petitioner I's business activities as well as other activities of Petitioners II and III, so it is very reasonable for Petitioners I, II, and III to request that the respondent stop the investigation and cancel the determination of the suspect against the petitioners and many irregularities in all the evidence obtained by the investigator so that The applicant requested that the pretrial to examine and assess all the evidence obtained by the investigator.

Based on the incident experienced by the Petitioners, the Petitioners request that the South Jakarta District Court be pleased to adjudicate and render the following verdict:

- Declare that it accepts and grants the pretrial application from the applicants in its entirety;
- Declare the actions of the respondent that appoints the Applicant as
- suspect on suspicion of fraud and embezzlement as referred to in Article 372 and/or 378 of the Criminal Code and/or Articles 3, 4 and 5 of Law Number 8 of 2010 concerning money laundering based on the notification letter of determination of suspect Number: B/4758/III/RES.1.2/2020/Direskrimum dated March 10, 2020, Investigation Warrant Number: SP. Dik/341/III/2019/Ditreskrimum dated March 28, 2019, Police Report Number: LP/102/I/2019/PMJ/Ditreskrimum dated 7
  - January 2019 is invalid;
- Declaring the investigation conducted by the Respondent and all its legal consequences based on the Notification Letter of Determination of the Suspect Number: B/4758/III/RES.1.2/2020/Direskrimum dated March 10, 2020, Investigation Order Number: SP. Dik/341/III/2019/Ditreskrimum dated March 28, 2019, Police Report Number: LP/102/I/2019/PMJ/Ditreskrimum dated 7
  - January 2019 is invalid;
- Ordering the Respondent to stop the Investigation against PETITIONER I, II and III based on the Notification Letter of Determination of the Suspect Number: B/4758/III/RES.1.2/2020/Direskrimum dated March 10, 2020, Investigation Warrant Number: SP. Dik/341/III/2019/Ditreskrimum dated March 28, 2019, Police Report Number: LP/102/I/2019/PMJ/Ditreskrimum dated 7
  - January 2019 signed by the respondent;
- Declare invalid all decisions or determinations further issued by the respondent related to the determination of suspects against applicants I, II and III based on the notification of the determination of suspects Number: B/4758/III/RES.1.2/2020/Direskrimum dated March 10, 2020, Investigation Warrant Number: SP. Dik/341/III/2019/Ditreskrimum dated March 28, 2019, Police Report Number: LP/102/I/2019/PMJ/Ditreskrimum dated January 7, 2019 signed by the respondent;
- Ordering the respondent to pay compensation to the petitioners I, II and III in the amount of Rp. 1 (one rupiah);
- Charging the respondent for the case fee. Or if the South Jakarta District Court has a different opinion, please give the verdict as fair as possible (*e t aquo et bono*).

In the legal facts in the above case, it is proven that there has been an error in the determination of the suspect by the investigator experienced by the applicant I, II, and III without valid and sufficient preliminary evidence, which is very detrimental to the applicant.

Then the researcher also provided several comparisons about the comparison of evidence in the case of pretrial verdict No. 33/Pid.Prap/2020/PN. Jkt.Sel. with the case of decision No. 15/Pid.Pra/2021/PN. In the 2020 Jakarta District Court decision, the judge assessed that the witness statements submitted by the investigators were not strong enough. This is because there is only one witness without the support of other relevant evidence. According to Article 185 paragraph (2) of the Criminal Code, the testimony of a witness alone is not enough to prove a person's guilt, so that the evidentiary value is weak. On the contrary, in the 2021 Jakarta District Court decision, the judge considered the witness statements

presented to be relevant enough to support the alleged criminal act. Witness statements are also supported by other evidence so that they have valid probative value.

In the 2020 Jakarta District Court decision, the expert's testimony was considered worthless as evidence because the expert had entered the realm of the judge by assessing whether or not the suspect's determination was valid or not. This exceeds the limit specified in Article 1 number 28 of the Criminal Code and Article 186 of the Criminal Code, so the judge only assesses it as an ordinary opinion. Meanwhile, in the 2021 Jakarta District Court decision, expert testimony is actually considered valid as evidence. This is because experts remain focused on their scientific domain, which is to explain the technical aspects of taxation. Thus, his statement supports the fulfillment of the requirements for at least two pieces of evidence as stipulated in Article 184 of the Criminal Code.

And in the 2020 Jakarta District Court decision, the judge found a discrepancy in the sprindik number (investigation warrant) and administrative defects in the suspect determination letter. This caused the letter submitted by the investigator to be considered invalid as evidence. In contrast, in the 2021 Jakarta District Court decision, tax investigation and administration documents are considered formally valid. Because no administrative defects were found, letter evidence can be used to support other evidence. Then in the 2020 Jakarta District Court decision, the judge could not build clues because the testimony of witnesses, experts, and letters was considered problematic. As stipulated in Article 188 of the Criminal Code, clues can only be obtained from witness statements, letters, and valid statements of the defendant. Because the evidence is weak, the clues cannot be used. Meanwhile, in the 2021 Jakarta District Court decision, the judge succeeded in compiling clues from a combination of witness statements, experts, and valid letters. Therefore, the clues obtained further strengthen the existence of an alleged criminal act.

From this comparison, in the 2020 Jakarta District Court decision, almost all the evidence submitted by the investigators was considered defective: insufficient witnesses, experts exceeded authority, invalid letters, and clues could not be constructed. As a result, the judge declared the determination of the suspect invalid. On the contrary, in the 2021 Jakarta District Court decision, the judge assessed that the evidence submitted met the requirements of at least two valid evidence. Witnesses, experts, and letters are considered valid, so they can give birth to clues. As a result, the judge rejected the pretrial application and declared the determination of the suspect valid according to the law.

Discussion

The strength of valid evidence as the basis for determining suspects based on article 184 of the Criminal Code

The main condition for determining a suspect is the existence of sufficient preliminary evidence based on article 1 paragraph (14) of the Criminal Code which states "The suspect is a person who, because of his actions or circumstances based on preliminary evidence, should be suspected as a criminal perpetrator". In this case, there was a dispute between the investigator and the constitutional court in interpreting the meaning of the phrase "preliminary evidence" so that the Constitutional Court Decision Number 21/PUU-XII/2014 concerning the testing of the Criminal Procedure Code was issued which stated that what is meant by "preliminary evidence" is at least two pieces of evidence contained in article 184 of the

Criminal Procedure Code concerning valid evidence with the aim that there is no ambiguity regarding the limit on the number of the phrase "preliminary evidence" and can meet the principle of fair legal certainty as in Article 28D paragraph (1) of the 1945 Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, 1945) as well as the principle of *lex certa* and the principle of *lex stricta* in criminal law.

The types of valid evidence are regulated in article 184 of the Criminal Code which states that there are only 5 types of valid evidence in court, namely witness statements, expert witness statements, letters, instructions, and defendants' statements. In this case, it can be concluded that in addition to the 5 types of evidence in article 184 of the Criminal Code, it is included in the evidence and not the evidence.

According to the researcher about the types of valid evidence as explained in Chapter II of Theoretical Studies (See Chapter II Theoretical Studies, pp. 28-30), there are several things that must be detailed, namely the following:

1. Based on article 1 paragraph (27) of the Criminal Code, it is stated that witness testimony is information obtained from events that he hears himself, sees for himself, and experiences himself. So, if there is a witness who is not present in the event in question, his testimony is considered invalid, because it does not meet the legal requirements of a witness.

   Then based on article 185 paragraph (4) concerning the evidentiary power of witness testimony, it is stated that if the testimony of more than one person is not related to each other and justifies the event in question, then the testimony is invalid. In this case, it can be concluded that the testimony of witnesses is not seen from how many people testify but from the suitability of the witness with the facts and other evidence.
2. Based on article 1 paragraph (28) of the Criminal Code, it is stated that the testimony of an expert witness is a statement from a person who has special expertise about what is needed in the examination. In general, witness testimony should not enter the subject matter of the case because expert testimony here is only in the nature of providing information and explanation so that the judge understands the facts in the event in question, and expert witnesses should not give conclusions about the main event of the case.
3. Based on article 187 of the Criminal Code regarding letter evidence, according to the researcher, there are several things that must be reviewed and observed, namely the authenticity of the letter, the relevance of the letter to the case being examined, and the relationship of the letter with other evidence because basically the letter evidence does not stand alone, but must be supported by other evidence.
4. Based on article 188 paragraph (1) of the Criminal Code, it can be concluded that clues are evidence that cannot stand alone because the existence of clues is only obtained from witness statements, letters, and interrelated defendant statements.
5. Based on article 189 of the Criminal Code, it is stated that the defendant's statement is information submitted by the defendant/suspect in a court hearing, so if the defendant's testimony is given outside the trial, the defendant's testimony is considered invalid as evidence.

From the above details, the researcher concludes that all types of evidence that have been stipulated in article 184 of the Criminal Procedure Code have certain conditions and conditions

so that they can be declared as valid evidence so that even though the evidence exists but does not meet the conditions and conditions according to the Criminal Procedure Code, the evidence is declared to have no force as valid evidence.

The authority to assess and test the validity of evidence as the basis for determining suspects is given to the pretrial based on articles 77 to 83 of the Criminal Code concerning pretrial and its authority, then discussed further in the Constitutional Court decision Number 21/PUU-XII/2014 concerning the testing of the Criminal Code. In this case, the constitutional court is of the opinion that the provisions of Article 77 of the Criminal Procedure Code (Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, 1981) which regulates pretrial objects are considered to have the potential to significantly limit the human rights of suspects so that the pretrial object is further expanded in the Constitutional Court decision Number 21/PUU-XII/2014 by adding whether or not the determination of suspects, searches, and seizures is legal. This is done solely to protect the suspect from arbitrary actions by investigating apparatus that can occur when a person is designated as a suspect.

Pretrial is a division of the District Court which is under the leadership and supervision and guidance by the chairman of the District Court, and its existence is a unit of the District Court. So, apart from the pretrial institution, there is no other institution that can check the validity or not of the evidence that has been obtained by the investigator.

According to the system or theory of proof based on the negative law (*negative wettelijk*) adopted by the Indonesian state, it states that the judge can only impose a criminal sentence if there is a small amount of evidence that has been determined by the law, coupled with the judge's belief obtained from the existence of these evidence (See Chapter II Theoretical Studies, p. 38). This is in accordance with article 183 of the Criminal Code which states "A judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a criminal act really occurred and that it is the defendant who is guilty of committing it".

This means that before the evidence is carried out in court, the investigating apparatus must first conduct a professional and more thorough investigation in finding and obtaining at least two pieces of evidence as the basis for determining suspects based on the provisions of the law. Designating someone as a suspect must be done carefully because it must be very detrimental to the suspect morally and materially. Then if at least two pieces of evidence have been met, then it is only a question of whether the judge believes in the suspect's guilt.

Legal considerations by the judge on the evidence obtained by investigators in pretrial case Number 33/Pid.Prap/2020/PN. Jkt.Sel

Talking about the consideration of a pretrial judge in handling evidence obtained by investigators in criminal cases, it will certainly not be separated from the provisions of the Criminal Code, where the Criminal Code has regulated the mechanism for criminal law enforcement, starting from investigation, investigation, pre-prosecution, prosecution, trial, to the implementation of court decisions.

According to the legal facts found in the pretrial case Number 33/Pid.Prap/2020/PN. Jkt.Sel that there were several legal considerations by the judge regarding the evidence obtained by the investigator so as to grant the application of the applicant (suspect), namely:

Considering, that to assess the quality or binding strength of 4 (four) valid evidence referred to by the respondent in the form of: the testimony of relevant witnesses and related statements (16 witnesses); b. Proof of Letter (6 proofs of letters); c. Expert Testimony (3 Experts); and instructions (conformity between evidence), the Pretrial judge will consider the following:

Considering, that based on article 1 number 26 of the Criminal Code: A witness is a person who can provide information for the purposes of investigation, prosecution and trial about a criminal case that he himself hears, sees for himself and experiences himself. Article 27 of the Criminal Code: Witness testimony is one of the evidence in a criminal case in the form of testimony from a witness about a criminal event that he himself heard, saw for himself and experienced it himself by mentioning the reason for his knowledge. Article 108 paragraph (1) of the Criminal Code: Every person who experiences, sees, witnesses and/or becomes a victim of an event that is a criminal act has the right to submit a report or complaint to the investigator and/or investigator either orally or in writing.

Considering that based on Article 185 of the Criminal Code, it is further explained about the witnesses, namely:

1. Witness testimony as evidence is what the witness stated at the court hearing. Explanation of the article: The witness statement does not include information obtained from other people or *testimonium de auditu.*
2. The testimony of a witness alone is not enough to prove that the defendant is guilty of the acts charged against him.
3. The provisions as intended in paragraph (2) shall not apply if accompanied by other valid evidence.
4. The testimony of several witnesses who stand alone about an event or situation can be used as valid evidence if the testimony of the witness is related to each other in such a way that it can justify the existence of a certain event or situation.
5. Both opinions and fabrications, obtained from the results of thoughts alone, are not witness statements.
6. In assessing the veracity of a witness's statement, the Judge must earnestly observe:
    1. Correspondence between the testimony of witnesses with each other;
    2. Correspondence between witness statements and other evidence;
    3. Reasons that may be used by witnesses to give certain information;
    4. The way of life and the morality of witnesses and everything that can generally affect whether or not the information is believed;

    Explanation of the article: what is meant by this paragraph is to remind the judge to pay attention to the testimony of witnesses must be given freely, honestly and objectively.
7. Testimony from witnesses who are not sworn even though they are in accordance with each other, is not evidence, but if the testimony is in accordance with the testimony of witnesses who are sworn can be used as additional legal evidence.

Considering that based on article 186 of the Criminal Code: expert testimony is what an expert states in a court hearing. Explanation of the article: this expert testimony can also be

given at the time of examination by the investigator or public prosecutor which is stated in the form of a report and made by remembering the oath when he received the position or public prosecutor, then at the examination at the hearing, he is asked to provide information and recorded in the minutes of the examination. The information is given after he has taken an oath or promise before the judge;

Considering, that based on article 187 of the Criminal Code: the letter as mentioned in article 184 paragraph (1) letter c, made on the oath of office or corroborated by oath, is:

1. Minutes and other letters in official form made by an authorized public official or made before him, which make a statement about the event or circumstance heard, seen or experienced by him, accompanied by a clear and unequivocal reason for the statement;
2. A letter made in accordance with the provisions of laws and regulations or a letter made by an official regarding matters that are included in the administration that is his responsibility and that is intended for proving a thing or a situation;
   Explanation of the article: which includes a letter made by an official, including a letter issued by an authorized assembly for it.
3. A certificate from an expert who contains an opinion based on his expertise on a matter or a situation that is officially requested from him;
4. Other letters can only be valid if they are related to the content of other means of proof.

Considering, that based on article 188 of the Criminal Procedure Code:

1. An instruction is an act, event or circumstance, which, because of its suitability, is related to one another, or with the crime itself, indicates that a criminal act has occurred and who the perpetrator is.
2. Instructions as intended in paragraph (1) can only be obtained from:
1. Witness statements;
2. Letter;
3. Defendant's statement.
4. The assessment of the probative strength of an indictment in each particular circumstance is made by the judge wisely and wisely after he has conducted a thorough and impartial examination based on his conscience.

Considering that the clue is one of the valid evidence, here it is different from other evidence, the clue evidence is obtained from witness statements, letters and statements of the defendant, the clue evidence here is not direct evidence (*indirect evidence*).

Considering, that based on the above considerations, according to the Pretrial Judge, the way of formally searching for and obtaining 4 (four) pieces of evidence carried out by the respondent has followed the provisions in the investigation and investigation of criminal acts, but procedurally the implementation of the investigation was not carried out in accordance with legal procedures as regulated in the Criminal Code **,** Regulation of the Head of Police of the Republic of Indonesia Number: 6 of 2019 concerning the Investigation of Criminal Acts, and the Regulation of the Head of the Criminal Investigation Agency of the National Police of the Republic of Indonesia Number: 4 of 2014 concerning the Operational Standards of Procedures for Supervision of Criminal Investigations, for the following reasons:

1. The motion of the case carried out by the respondent (as the Proof of Letter marked T-15) is not in accordance with the provisions referred to in the case title based on article 1 number 24 of PERKAP No. 6 of 2019, and PERKABA No. 4 of 2014 as explained above;
2. The title of the case carried out by the Respondent was only carried out by the officer who conducted the investigation, and was carried out in the investigating room that handles it, without inviting the supervisory function and legal function of the police or presenting supervision of the investigation and related officials, and did not present the relevant person, namely the complainant or the reported person, without any group discussion, so that the assessment of the results of the investigation (as Evidence of Letter marked T-14) is very subjective and inappropriate;

Considering that based on the consideration of the evidence of the witnesses mentioned above, on the testimony of the corresponding and interrelated witnesses (16 witnesses) postulated by the respondent (as evidenced by the letter marked T-19 to T-34), the pretrial judge was of the opinion that the evidence of the testimony of witnesses (16 witnesses), had no value as valid evidence of witness testimony as referred to in article 184 paragraph (1) letter a of the Criminal Procedure Code jo. Article 185 of the Criminal Code, on the grounds that:

1. Reporter Iksan Rahim and as a witness should have known the event, because since 1989 until November 29, 2017 he has served as a commissioner of PT. Loading and unloading Mahardi saranatama;
2. The complainant Iksan Rahim and as a witness along with 15 other witnesses, after the pretrial judge examined the statements of all the witnesses, it turned out that he did not know, and did not hear, did not see the incident or the events himself, and did not understand the purpose and purpose for what purpose the amount of money handed over by Alm.ZAINAL RACHIM to the applicant H. HENDRO HASSYARI H., from January 2005 to December 2017, as the rules regarding complainants and witnesses in the Criminal Code, and there is no correspondence between the statements of witnesses related to the event;

Considering, that based on the consideration of the evidence of the expert testimony mentioned above, it is connected to the minutes of the expert examination (3 experts) made in the investigation (as evidenced by letters marked T-38 to T-40), because the opinions of the experts, it turns out that they have entered the subject matter of the case, the pretrial judge with the expert testimony, has no value as evidence of expert testimony as referred to in article 184 paragraph (1) letter b of the Criminal Procedure Code jo. Article 186 of the Criminal Code;

Considering, that based on the consideration of the evidence of the letter mentioned above, against the evidence of letters (6 proofs of letters) postulated by the respondent (related to the evidence of letters marked T-41 to T-51), the pretrial judge was of the opinion that the evidence of letters (6 proofs of letters), did not have value as evidence of letters as referred to in Article 184 paragraph (1) letter c of the Criminal Procedure Code jo. Article 187 of the Criminal Code, With the reason:

1. The letter (6 proofs of letters) that was confiscated, was proof of the letter, not the evidence of the letter;
2. In the evidence of the letter marked T-50 it is expressly stated "because in necessary and urgent circumstances, legal action has been taken in the form

of confiscation of letters or goods as referred to in article 39 of the Criminal Code, in the form of evidence of letters marked T-44 to T-49.

Considering, that because witness testimony evidence and letter evidence do not have value as evidence as referred to in article 184 paragraph (1) letter a of the Criminal Procedure Code Jo. Article 185 of the Criminal Code and article 184 paragraph (1) letter c of the Criminal Procedure Code Jo. Article 187 of the Criminal Procedure Code, there is no evidence of clues as referred to in article 184 paragraph (1) letter d of the Criminal Procedure Code Jo. Article 188 of the Criminal Procedure Code;

Considering that because the witness testimony evidence and letter evidence do not have the value as evidence as referred to in article 184 paragraph (1) letter a of the Criminal Procedure Code Jo. Article 185 of the Criminal Code and article 189 paragraph (1) letter c of the Criminal Procedure Code Jo. Article 187 of the Criminal Code, there is no evidence of clues as referred to in article 184 paragraph (1) letter d of the Criminal Procedure Code Jo. Article 188 of the Criminal Procedure Code.

Considering that based on the above considerations, because the evidence in the form of witness statements, expert testimony, and instructions obtained by the Respondent during the investigation of the case, does not have value as evidence as referred to in Article 184 paragraph (1) of the Criminal Code, then what is meant and hinted by the norms of Article 1 number 14 of the Criminal Code from the Constitutional Court of the Republic of Indonesia in its Decision Number: 21/PUU–XII/2014 dated April 28, 2015, does not have binding legal force as long as it is not interpreted that "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence" are at least two pieces of evidence contained in Article 184 of Law Number: 8 of 1981 concerning the Criminal Procedure Law, not fulfilled in the case of the application for pretrial aquo;

Considering, that based on the above considerations, the Pretrial Judge opined and concluded that the Determination of Suspects against the Petitioners, namely H. HENDRO HASSYARI H (Petitioner I), FADLI HASYARI, (Petitioner II) and FAIZAH ABIDIN (Petitioner III) carried out by the Respondent was invalid.

According to the researcher, based on legal considerations by the judge in the pretrial decision Number: 33/Pid.Prap/2020/PN. Jkt.Sel in assessing the validity of witness testimony evidence, letters, and pointers has provided the values of justice and legal certainty to the applicant and the respondent, but the judge in testing the validity of the evidence of expert witness testimony still has irregularities so that it does not provide legal certainty.

In this case, the judge stated that the evidence of the testimony of 16 witnesses obtained by the investigator had no value as evidence because all of the witnesses apparently did not know, did not hear, and did not see the incident themselves, so it was not in accordance with article 1 paragraph (26) of the Criminal Code which states "Witnesses are people who can provide information for the purposes of investigation, prosecution and trial of a criminal case that he hears himself, sees for himself and experiences himself", and there is no adjustment between the testimony of witnesses and the incident so that it does not meet article 185 paragraph (4) of the Criminal Code which states "The testimony of several witnesses who stand alone about an event or situation can be used as a valid evidence if the testimony of the witness is related to each other in such a way, so that it can justify the existence of a certain event or circumstance".

Then the judge stated that the evidence of 3 expert witnesses had no value as evidence because the explanation of the expert witness had entered the subject matter of the case based on article 186 of the Criminal Code which states "Expert testimony is what an expert states in a court hearing". According to the researcher in this case, the judge's reason in assessing the evidence of the expert witness testimony has nothing to do with article 186 of the Criminal Code which is used by the judge as the legal basis, so as to cause an irregularity in the judge's consideration which states that the testimony of the expert witness is invalid, and according to the researcher the explanation by the expert witness should indeed have entered the subject matter of the case because the purpose of the investigation is to find the truth with various efforts and methods that have been regulated in the provisions of the Criminal Code.

Furthermore, the judge also stated that the evidence of 6 letters obtained by the investigator had no value because the 6 letter evidence in the form of: evidence T-44: 1 Bundle of Photocopies of the Deed of Incorporation of PT. PUTRA ASPARPIN JAYA, PT. ASRA SUHADA TOURS & TRAVEL and PT AKIRA MEDIA PRODUCTION, evidence T-45: Photocopy of Deed of Statement of Resolution of Meeting of PT. Loading and Unloading of Mahardi Saranatama No. 24, dated November 29, 2017, evidence T-46: Photocopy of the Deed of Minutes of the Minutes of the Extraordinary General Meeting of Shareholders of PT. Loading and Unloading Mahardi Saranatama No. 46, dated August 12, 2008, evidence T-47: Photocopy of Copy of the Deed of Statement of Resolution of the Meeting of PT. Loading and Unloading Mahardi Saranatama No. 01, dated November 2, 2015, evidence T-48: Photocopy of Copy of the Deed of Statement of Resolution of the Meeting of PT. ASRA SUHADA TOURS & TRAVEL No. 22, dated August 15, 2016, and evidence T-49: Print Out of Bank Mandiri Account KCP Tanjung Priok Tawes in the name of PT MAHARDI SARANA TAMA Account Number: 120-009-000-126-9 for the period of January 2005 to December 2017 is evidence, not evidence because the evidence of the letter obtained is not compatible with other evidence, so that it does not meet the requirements as evidence based on article 187 of the Criminal Code which states "corroborated by oath, namely: a. minutes and other letters in official form made by an authorized public official or made before him, which contain information about the events or circumstances that he heard, saw or experienced himself, accompanied by clear and unequivocal reasons about his statement; b. a letter made in accordance with the provisions of laws and regulations or a letter made by an official who knows the matter that is included in the administration for which he is responsible and which is intended for proving a thing or a situation; c. A certificate from an expert who contains an opinion based on his expertise on a matter or a situation that is officially requested and to him; d. other letters that can only be valid if they are related to the content of other means of proof".

And finally, the judge stated that because the witness testimony evidence and letter evidence have no value as evidence, there is also no evidence of clues based on article 188 of the Criminal Code which states "Clues are acts, events or circumstances, which because of their compatibility, either between one and the other, or with the criminal act itself, indicates that a criminal act has occurred and who the perpetrator is. (2) The instructions as intended in paragraph (1) can only be obtained from; a. witness statement, b. letter, c. defendant's statement. (3) The assessment of the probative strength of a clue in any particular circumstance shall be made by the judge wisely and wisely, after he has examined it with great care and fairness based on his conscience".

From the above judge's considerations in assessing the validity or not of the evidence obtained by the investigator as the basis for determining the suspect, it can be concluded that the respondent's action in determining the suspect was not based on sufficient preliminary evidence and contrary to the principles of legality and the principle of due process of law.

CONCLUSION

The research concluded that investigators must ensure at least two sufficient pieces of valid evidence under Article 184 of the Criminal Procedure Code (*KUHAP*)—comprising witness statements, expert testimonies, letters, instructions, or defendant statements—before designating a suspect, as insufficient evidence undermines human rights, as evidenced by *Pretrial Decision Number 33/Pid.Prap/2020/PN Jkt Sel*. In that ruling, the judge invalidated the suspect determination, deeming the submitted witness statements unreliable due to lack of direct knowledge, expert opinions improperly entering the subject matter, confiscated letters merely indicative rather than probative, and clues absent, thus failing to meet evidentiary standards. For future research, comparative studies could examine similar pretrial decisions across Indonesian districts or analyze post-2020 reforms to *KUHAP* evidentiary thresholds amid evolving digital evidence practices.

REFERENCES

Adi, S. S. (2020). The position and effectiveness of justice collaborators in criminal procedure law. https://doi.org/10.24952/el-qonuniy.v5i2.2148

Afandi, F. (2016). Comparison of pretrial practices and the formation of preliminary examining judges in Indonesian criminal courts. *Journal of the Legal Pulpit*, *28*(1), 93. https://jurnal.ugm.ac.id/jmh/article/view/15868

De Wahyu, V. A., Junita, A. E., Destiana, A., Setyabudi, K. A., Daini, F. N., & Laksio, F. H. B. (2024). Analysis of investigation and investigation performance in overcoming criminal acts at the Karanganyar Police. *Journal of Law, Education, and Social Humanities*, *01*(2), 51. https://journal.appihi.or.id/index.php/Aliansi/article/view/58

Greenstein, S. (2022). Preserving the rule of law in the era of artificial intelligence (AI). *Artificial Intelligence and Law*, *30*(3), 291–323.

Hartanto, D., & Hidayat, N. (2021). Application of reverse evidence for the crime of money laundering based on the origin of narcotics. *Croatian International Relations Review*, *27*(88), 14–33.

Hikmoro, A. (2013). The role and function of pretrial in criminal law enforcement in Indonesia. *Journal of Thesis of the Faculty of Law, Atmajaya University, Yogyakarta*. https://repository.uajy.ac.id/id/eprint/4933/

Hutahaean, A., & Indarti, E. (2019). Investigative institutions in the integrated criminal justice system in Indonesia. *Indonesian Legislation Journal*, *16*(1), 28.

Jaholden. (2021). *Pretrial and criminal law reform*. CV. AA. RIZKY. https://repository.uhn.ac.id/bitstream/handle/123456789/5186/BUKU%20PRAPERADILAN.pdf?isAllowed=y&sequence=1

Mishra, U., & Singh, S. (2022). Examining the Need for a Standard Operating Procedure in Light of Criminal Investigations by Law Enforcement Agencies. *Issue 3 Indian JL & Legal Rsch.*, *4*, 1.

Purba, T. L. D. (2017). Pretrial as a legal solution for suspects. *Papua Law Journal*, *1*(2), 254. https://ejournal.uncen.ac.id/index.php/PLJ/article/view/591

Ragni, C. (2023). Digital evidence in international criminal proceedings and human rights challenges. *EU and Comparative Law Issues and Challenges Series (ECLIC)*, *7*, 1–16.

Signorelli, W. P. (2023). *Criminal law, procedure, and evidence*. Routledge.

Simamora, J. (2019). Interpretation of the meaning of the state of law in the perspective of the Constitution of the Republic of Indonesia in 1945. *Journal of Indonesian Legislation*, *16*(1), 28. https://www.researchgate.net/publication/368158077_TAFSIR_MAKNA_NEGARA_HUKUM_DALAM_PERSPEKTIF_UNDANG-UNDANG_DASAR_NEGARA_REPUBLIK_INDONESIA_TAHUN_1945

Soeroso, R. (1993). *The practice of civil procedural law: Procedures and trial processes*. Sinar Grafika. https://simpus.mkri.id/opac/detail-opac?id=6705

Sumardi, D., Lukito, R., & Ichwan, M. N. (2021). Legal pluralism within the space of Sharia: Interlegality of criminal law traditions in Aceh, Indonesia. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, *5*(1), 426–449.

Taulbee, J. L., & Von Glahn, G. (2022). *Law among nations: an introduction to public international law*. Routledge.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [1945 Constitution of the Republic of Indonesia]. (1945). https://peraturan.bpk.go.id/Home/Details/53206/uud-1945

Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana [Law Number 8 of 1981 concerning Criminal Procedure Code]. (1981). https://peraturan.bpk.go.id/Home/Details/40921/uu-no-8-tahun-1981