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Normative examination of the considerations of pre-trial judge on distortion of the value of the instruments of evidence

Fadlan Fadlan*), Apridony Apridony
Fakultas Hukum, Universitas Batam, Indonesia

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ABSTRACT

Currently there is a pretrial decission No.5/Pid.Pre/2018/PN BTM which cancels the determination of the suspect with the consideration that the evidence for the determination of the suspect has been distorted by the investigation period which is considered too long, it's necessary to analyze the construction flow of the judge's legal considerations and normative juridical examination as well as the legal consequences of the decission against the investigator. This research used descriptive analytical method using a normative approach (legal research) to obtain secondary data and an empirical approach (juridical sociological) to obtain primary data through observation (observation). The results showed that pretrial judges form a new legal method regarding the distorted value of evidence based on the period of investigation in which this consideration was no longer on the assessment of formal aspects, from this decission Investigators if they want to re-determine someone as a suspect must use two different pieces of new evidence. For this reason, the Supreme Court is expected to establish special rules regarding mechanisms and clear boundaries for pretrial judges in establishing the rule of law, besides that a clear definition of deviant and/or fundamentally deviant decissions is needed and the annulling mechanism to anticipate legal smuggling.

Corresponding Author:

Fadlan Fadlan,
Universitas Batam,
Email: fadlan@univbatam.ac.id

Introduction

Pretrial comes from the word pre which means "preceding" and "pretrial" is the same as the introduction before the trial in court" (Hamzah, 2019; Tornado et al., 2019; Washington, 2016). The term pretrial is also taken from the word "pretrial", although the function and purpose of pretrial is to examine whether there is a sufficient legal basis to file a prosecution regarding a case of criminal accusation before a different court with the intent of pretrial which aims to protect the suspect's human rights against violations of formal requirements and legal assistance. The history of the birth of the pretrial concept was inspired by the principle of habeas corpus which is stated in the Magna Charta to oppose the doctrine of the relationship between the ruler and his people with the term that every ruler has greater rights than his people. In 1215 the Magna Carta was signed by King John of England which changed the relationship between the Ruler and his subjects with the new doctrine of habeas corpus which stated that valid law applies to everyone, regardless of family background and sosial class.

In Indonesia, pretrial is an imitation of the Rechter Commissioner in the Netherlands (Kripsiaji & Minarno, 2022; Situmorang, 2018). The Rechter Commisaris Institution (the judge who leads the preliminary examination), emerged as a manifestation of the active participation of Judges (Hamzah & Surachman, 2015),

which in Central Europe gave the role of the Rechter Commisaris a position that has the authority to handle coercive (dwang middelen), detention, confiscation, body rummage, houses, investigate papers (Oemar, 1980 in Siar, 2019). At first glance, pretrial may appear only for the interest of the suspect or defendant (Sumadi, 2021), but based on article 1 point 10 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) the institutionalization of pretrial is not only for legal purposes suspect or defendant but also for the interest of the Investigator and General Prosecutor (Marbun, 2021).

So pretrial is essentially part of the procedural law which is intended for the sake of upholding the submission of the parties to the law and statutory regulations. Likewise, Judges who handle every pretrial case are bound by the rules of law and legislation that limit their authority in determining a decission. As for the object of pretrial, Article 1 point (10) of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) limitatively states in the form of legal or not an arrest and or detention, termination investigation or termination of prosecution and compensation or rehabilitation of suspects whose cases have not been submitted to the Court, but since the Constitutional Court Decission No. 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) has been expanded in the form of naming suspects.

In pretrial cases where the object of the determination of the suspect is legal or not, the parties, both the applicant, the respondent, and the judge who examine and adjudicate the case must still comply with the rules that bind each party. The Petitioner is bound by the arguments and evidence, the Respondent is bound by law in determining a person as a suspect based on the two pieces of evidence he has found and the Judge is also bound by the regulations that bind him. All are legally bound with their respective consequences. In the context of scientific studies that make pretrial decissions as the object of study, the fulcrum of the assessment lies with the judge who makes the decission, the pretrial judge's decission can be judged (aximinated) in a normative juridical manner about how aspects of the legal literature are considered by judges in making decissions and what are the legal consequences of the pretrial decission to the parties, especially investigators. In essence, the study will assess the judge's attachment to the laws and regulations that bind him in making pretrial decissions.

One of the rules that bind pretrial judges is Article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) which states "pretrial examination of applications regarding the invalidity of the determination of the suspect only assesses the formal aspect, namely whether there are at least 2 (two) pieces of evidence that are valid and do not intervene the matter of the case" (Firdaus et al., 2022). The judge in examining the application regarding the validity of the determination of the suspect only assesses the formal aspect and does not get into the case material. However, one pretrial decission has been found which makes the basis for the judge's consideration in his decission no longer on the formal aspect but on the assessment of two pieces of evidence used by investigators to determine someone as a suspect.

The decission is the pretrial decission Number 5/Pid. Pre/2018/PN BTM at the Batam District Court. This decission can be considered different from others, a decission that was born from the formulation of a new legal rule, where the obvious evidence used by the investigator to determine a person as a suspect is judged by the judge to have been distorted by the time spent by the investigator in the investigation process. With this decision, many questions arise regarding the accuracy of natural judges in assessing the strength or weight of evidence, the assessment of evidence that is no longer on the formal aspect, whether this decision cannot be considered an aberrant decision as referred to in Article 4 paragraph (2) letter c of Supreme Court Regulation (PERMA) Number 4 of 2016 concerning Prohibition of Review of Pre-Trial Decision (State Gazette of the Republic of Indonesia 2016 Number 596), and whether if the investigators want to re-designate the applicant as a suspect, they will use new evidence. Departing from these problems, it is necessary to conduct research that is expected to enrich the literature of legal studies, especially regarding pretrial.

Previous research on this matter was conducted by Pratama (2021), where the research focused more on the basic reasons for the pretrial application made by the applicant. Then the research conducted by Kaifa (2021) discusses whether the pretrial judge's consideration. Meanwhile, this study discusses the analysis of the flow of construction of the judge's legal considerations and normative juridical analysis, as well as the legal consequences of the decision on the investigator.

Method

Research Approach

This research is analytical descriptive, namely research that describes real facts and situations in detail, systematically and thoroughly with regard to pretrial judges' considerations with the formulation of new legal

rules in assessing evidence based on the duration of the investigation and the legal consequences of pretrial decissions No. 5/Pids. Pre/2018/PN. Btm against investigators.

Data Sources and Data Collection Tools

Sources of data in this study are primary data and secondary data. The source of the primary data comes from a copy of the pretrial decission Number 5/Pid. Pre/2018/PN BTM. Secondary data collection is carried out through library research by reviewing books, journals, research results, conventions and laws and regulations as well as through internet media concerning matters related to research problems.

Data analysis

Data analysis in this study uses qualitative methods, because it does not use statistical formulations, while the use of numbers is only limited to percentage figures in order to obtain a clear and comprehensive picture of the problem being studied. All data obtained both primary data and secondary data, are systematically arranged, processed, researched and analyzed qualitatively and translated logically systematically to then draw conclusions using deductive methods. The conclusion is the answer to the problem so that it is expected to provide a solution to the problems in this study.

Results and Discussions

Construction of Pretrial Judges' Considerations in Assessing Distortion in the Value of Evidence

Overview of Case Position and Trial Chronology

The following is a brief description of the position of the case and the chronology of the trial as well as the arguments/reasons of the parties and the judge as material for understanding the case that will be discussed in detail in this study. Friday, June 8, 2018 The sole pretrial judge, Taufik Abdul Halim Nainggolan at the Batam District Court, issued a decission on case Number: S. Tap/44/X/2016/Ditreskrimsus with the object of the case being the suspect. Where Bambang Supriadi as the Petitioner and the Riau Archipelago Police Cq. The Directorate of Special Criminal Investigation of the Riau Islands Police as the Respondent. Previously, on May 21 2018, Bambang Supriadi through his legal representative registered his application at the Batam District Court Registrar. Then on May 31, 2018 Investigators also registered a procuration from the Riau Islands Police Cq. Directorate of Special Criminal Investigation at the Registrar's Office of the Batam District Court.

Bambang Supriadi's application questioned the formal and material requirements for determining the suspect attached to him as regulated in Articles 16, 17, 18, 19, 20, 21, 28 and 39 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76). The determination of the suspect's status on him is considered legally flawed on the grounds of procedural defects because he does not meet at least two pieces of evidence as referred to in Article 184 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76). Bambang Supriadi also questioned the length of the investigation process carried out by the Ditreskrimsus Investigator of the Riau Islands Police, he was designated a suspect since October 26, 2016 until his application was registered with the Batam District Court clerk on May 21, 2018. Bambang Supriadi considers his fate to be in uncertain condition and there is no legal certainty with the status of a suspect. He considers the legal process that he has experienced is no longer in line with the provisions of Article 50 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) because it has the potential to be a violation of Human Rights.

At the trial, the Ditreskrimsus Investigator as the recipient of the procuration from the Riau Islands Police in his answers and responses denied Bambang Supriadi's (pretrial applicant) accusations. Investigators of the Ditreskrimsus Polda Kepri consider that the determination of the suspect against the Pretrial Petitioner is not procedurally flawed because before the determination of the suspect is issued/issued, the investigator has carried out a series of procedures starting with the public report, the issuance of an information report, the Issuance of an Assignment Order to the investigator to carry out a series of procedures investigation, either in the form of collecting information from related parties or collecting documents (evidence of letters). After the investigator found the alleged unlawful act committed by the Petitioner, the investigator then exposed the results of the investigation to the State Audit Board of the Republic of Indonesia (BPKP) for the purposes of the investigation. Prior to the determination of the suspect against the applicant, the investigator first carried out a case title, issued a Police Report (LP), an Assignment Order and an Investigation Order (Sprindik), then the investigator carried out a series of investigations which then the investigator found two pieces of evidence that led to the suspect's actions (the Petitioner).). The evidence referred to in the form of statements of 34 (thirty-four) witnesses, expert statements including evidence of letters in the.

After the investigator found the alleged unlawful act committed by the Petitioner, the investigator then exposed the results of the investigation to the Kepri Province Financial and Development Audit Agency (BPKP)

for the purposes of investigation. Prior to the determination of the suspect against the Petitioner, the Investigator first conducted a case title, issued a Police Report (LP), an Assignment Order and an Investigation Order (Sprindik), then the Investigator conducted a series of investigations which then the investigator found two pieces of evidence leading to the actions of the Suspect (Petitioner)). The evidence referred to is in the form of statements from 34 (thirty-four) witnesses, expert statements as well as documentary evidence in the form of an audit from the State Audit Board for Finance and Development (BPKP). Subsequently, the case was held again to determine the Petitioner as a suspect.

After the above administrative steps have been passed, on October 26, 2016 Investigators determined the Petitioner as a Suspect with Number: S Tap/44/X/2016/Ditreskrimsus, copied to the Petitioner. Furthermore, the Investigator sent a Notice of Investigation Commencement (SPDP) to the Riau Islands High Court. The investigator then summons the suspect with a summons for examination on November 2, 2016 accompanied by the Petitioner's Attorney, then for the purposes of the investigation including for the purpose of confiscation of objects related to the criminal act allegedly committed by the Petitioner, the investigator issues a letter of determination detention. In the course of the legal process, upon the request for a suspension of detention submitted by the Petitioner and his Legal Counsel, the Investigator issued/issued a letter of Detention Suspension which then on December 1, 2016 the Respondent conducted additional examination of the Petitioner accompanied by the Petitioner's attorney.

Furthermore, investigators complete and compile case files to be transferred to the Riau Islands High Court and the Public Prosecutor will research it. On November 14, 2016 the Public Prosecutor stated that the results of the investigation were incomplete (P18) and the prosecutor returned the case files to the investigators. On December 15, 2016 the Investigators sent back the case files to the Riau Islands High Court and on January 30, 2017 the case files were returned to the Investigators on the grounds that they were incomplete (P19). Subsequently on May 4, 2017 the Respondent sent back the case file to the Riau Islands High Court but on 17 May 2017 the Kepri Kejati returned the case file to the Respondent with the reason that it was incomplete (P19).

Based on the above process, investigators from the Ditreskrimsus Polda Riau Islands considered that before the pretrial Petitioner was designated as a suspect, a series of processes were regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) and Perkaba No. 3 of 2014 has been carried out, so that the Investigator objected to the Petitioner stating that the determination of the Suspect against him was not carried out in accordance with the procedure. While the material on the Petitioner's objection to the pending fate of the Petitioner with the status of a Suspect, the Investigator answered that the case file had been submitted to the Prosecutor's Office three times, but after the repairs as instructed by the Prosecutor's Office were completed, the case file was still returned to the Investigator and this took place three times. In other words, the length of the investigation process is not the will of the Respondent but in the context of carrying out the procedure for handling the case.

Taking into account the facts of the trial as well as the arguments of the Petitioner and the Investigator, the sole Judge at the beginning of his consideration stated that the law is abstract but very dynamic, legal rules are often delayed from social events that occur, the dynamics of legal rules does not only take place in the field of material law even in line with it also takes place in the field of formal law. This situation can take place because not all aspects, both in formal law and in the field of material law, have been regulated in an applicable statutory regulation (Linggama, 2018). The judge stated that Law Number 8 of 1981 concerning the Code of Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) had not regulated the deadline for investigations and or investigations, but according to law, it does not mean the rules regarding the expiration of investigations and or investigation are not needed in the Indonesian criminal law enforcement system. Rules regarding the expiration of investigations and or investigations are needed to maintain and protect the credibility and reputation of investigators and investigative activities, so that public trust in law enforcement is maintained and is not continuously distorted with prejudices that something has gone wrong in an investigation and or investigation process.

Regarding the valid evidence in determining the suspect status of the pretrial Petitioner, the sole judge also considers that the evidence found by the investigator in an investigative activity, the quality and value of the evidence will be greatly influenced by how long the investigation period is used by the investigator before the evidence used in the evidentiary process in court. The judge said that the longer and longer the time spent by investigators in the investigation process, the value and quality of evidence from evidence will be lower, on the contrary, the shorter the time spent by investigators in the investigation process, the value and quality of evidence of an evidence will increase high. The judge considered that the plenary evidence used by the investigators to determine the applicant as a suspect in the form of testimony from witnesses, the suspect's statement and the opinions of 6 (six) experts had been distorted by the length of the investigation period, which was calculated

from the date the applicant was declared a suspect on 26 October 2016 until the decission was pronounced in the Court of 1 (one) year and 7 (seven) months.

Thus, the sole Judge in his decission stated that he had agreed with the argument of the Petitioner's petition on the contrary to disagree with the Investigator. The Judge considered that the principal of the Petitioner's petition was reasonable enough to be granted so that in his decission, the Judge declared that the Decree Number: S.Tap/44/X/2016/Ditreskrimsus was invalid, dated October 26, 2016, as of the date the decission was pronounced which was declared at the trial open to the public. The Constitutional Court's decission No. 21/PUU-XII/2014 dated October 28, 2014 has expanded the object of pretrial as stated in Article 77 letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code in the form of determining suspects, searches and confiscations. Thus, the determination of the suspect has become a pretrial competence as in the case in Decission Number 5 Pid. Pre/2018/PN BTM Batam District Court. Judges in their considerations have constructed legal arguments by forming new legal rules in making their decissions which this rule is classified as outside the habit. At least, there are two legal rules stated by the pretrial judge:

Construction of Judges' Considerations

The dynamics of legal rules

The judge said *"law is abstract but very dynamic, legal rules are often delayed from social events that occur, dynamics of legal rules do not only take place in the field of material law, even in line with this it also takes place in the field of formal law. This situation can take place because not all aspects, both in formal law and in the field of material law, have been regulated in an applicable statutory regulation."*. The initial construction of judge's legal considerations is built on the basis of legal dynamics, law in the formal and material fields develops dynamically, legal events have occurred while there are no normative rules, so it is necessary to establish legal rules to answer and adjudicate a legal event.

Furthermore, the judge considers the legal vacuum that regulates the expiration or duration of the investigation and investigation process that is not regulated in the Criminal Procedure Code or the laws and regulations. The time period for determining the status of the Petitioner as a Suspect is seen by the Judge as a long time so that it reduces the value/weight of the evidence, which was initially complete and then distorted (Siregar, 2018). Moving on from this fact, the Judge established a new legal code, the Judge stated that *"the longer and longer the investigator spends in the investigation process, the lower the value and quality of evidence from a piece of evidence, on the contrary, the shorter the time spent by investigators in the investigation process, the lower the time spent by investigators in the investigation process the value and quality of evidence from a piece of evidence will be higher.*

Distortion of the Value of Evidence Based on the Period of Investigation

The determination of the suspect against the Petitioner according to the Criminal Procedure Code must meet at least two initial pieces of evidence as referred to in Article 184 of the Criminal Procedure Code. However, the Criminal Procedure Code does not regulate the expiration or distortion of the value of evidence, the knowledge of procedural law so far only assesses evidence from an authentic and inauthentic perspective (underhand), is it original or only a copy, legalized or not, has gone through digital forensics (forensic testing) or not and so on. There is no or at least there is no legal norm that regulates the distortion or expiration of the value of evidence based on the period of investigation as determined by the judge.

Investigators in their answers and duplicates have explained that, the period of time taken by investigators is due to undergoing the administrative stages of delegating cases to the High Prosecutor's Office. Three times the investigator sent the case file to the high prosecutor and three times the file was returned to the investigator's hands, both in the form of P18 and P19. This fact shows that the investigator is not in the context of hanging someone's fate, but the investigator is only in the context of going through the stages of the administrative procedure for delegating the case. However, the judge in this context sees the legal rules that are general in nature, in the form of benefits, justice and legal certainty, simple, fast and low cost. This general rule becomes a means for judges to formulate new legal rules that are specific to this case. The judge considered that the period of determination of the suspect was contrary to the general principles above, so that the rule of distorting the value of evidence based on the period of investigation was raised by the judge.

In addition, the Judge also quoted Article 50 of the Criminal Procedure Code. This article regulates the rights of suspects, which in its explanation states *"the granting of the rights of suspects or defendants in this article is to keep the possibility of the fate of someone suspected of committing a crime being suspended, especially those who are subject to detention, so that they do not receive an examination for a long time. So that there is no legal certainty, there is arbitrary and unfair treatment. Besides that, it is also to realize a trial that is carried out in a simple, fast and lighthearted way"*. For these two things, the Judge then formulates a new legal rule in the form of *"the longer and longer the time spent by investigators in the investigation process, the value and quality of evidence from a piece of evidence will be lower and the quality of evidence from a piece of evidence will be higher"*.

From the explanation above, with the judge's assessment of the distortion of the value of the evidence used by investigators in determining the pretrial applicant as a suspect, the Judge considers the value of the evidence in question no longer complete. However, the Judge in his decission dictum stated that the editorial composition of the verdict was not with the sentence *"distortion of the value of evidence", but followed the sentence structure of everyday pretrial decissions, "declaring invalid determination of suspects etc... etc...".* So that the pretrial ruling reads *"declaring the stipulation letter number: S Tap/44/X/2016/Ditreskrimsus invalid, dated October 26, 2016, as of the date this decission was pronounced".*

Normative Examination of Pretrial Judges' Considerations in Assessing Distortion of Evidence
Judges Create Laws Not Find Laws

Pretrial judges in consideration of their decissions have formed two new legal rules as mentioned in the previous description, with these two legal rules the Judge makes a decission, but in this context the judge does not find the law (rechtsvinding), but rather formulates the law rules that are better known with the term create law (judge made law). Both legal discovery and law creation are the rights of judges in forming new legal norms that are not clearly stated in written law. However, this right must be placed in the legal system that applies in a country. The creation of law is only known in countries that adhere to the common law legal system or what is often called Anglo Saxon. By adhering to the freie rechtslehre, judges are allowed to create laws (judge made law) by referring to precedents or norms that live in society. However, Indonesia is an adherent of the continental European legal system or what is often referred to as the civil law system the provisions of legal discovery (rechtvinding) apply. An attempt by the judge to make legal discoveries based on the applicable laws and regulations. This is in line with the provisions of Article 20 of Algemene Bepalingen van Wetgeving voor Indonesie (AB) which regulates the general provisions of laws and regulations, where it is stated that "Judges must judge based on the law". However, judges still have the freedom to interpret and express opinions. Judges have free attachment (vrije gebondenheid) in carrying out their duties to adjudicate a case.

One of the main characteristics of the civil law legal system is that it uses written and recorded (codified) rules as its legal source. To translate these legal rules into concrete events, especially when a dispute occurs, the role of a judge is needed. In contrast to the creation of law (judge made law) in the commen law legal system, judges have a role in forming a binding legal norm based on concrete cases. If the discovery of the law the judge is required to interpret the written legal norms, while the creation of the law the Judge relies on a concrete case that is linked to the precedent system (a kind of jurisprudence) or customary law or law that runs dynamically in line with the dynamics of society (Posner, 2014).

The difference between law creation and legal discovery can simply be distinguished from the basis of the Judge's legal analysis, if the Judge is based on concrete cases and then the Judge forms a norm with consideration of the dynamics of society, then that is the creation of law. Meanwhile, if the basis of the Judge's legal analysis is a norm, in this case it is a vague, general or unclear norm which is then linked or connected with a concrete event, then that is a legal discovery. Judge considerations on pretrial decission Number 5/Pid.Pra/2018/PN BTM cannot be said to be a breakthrough or legal discovery, because methodically, a legal discovery only recognizes at least two ways, namely through an interpretation or construction approach, this decission does not fulfill both.

If using the interpretation method, it must be attached to an existing concept, if the investigation period is used as the basis for assessing the weight of the evidence which then renders a decission that the determination of the suspect is invalid because of the distorted evidence, the pretrial judge in his consideration does not attach to the rule of law or certain norms. Which legal rules are interpreted to suit concrete events? The Judge's consideration does not mention which phrases, words, sentences in the laws and regulations are considered unclear, vague and became the basis for interpretation. Meanwhile, if a legal discovery is made using a construction method, a legal discovery can be made if the object moves. However, it is still based on certain norms or concepts which are analogized or legalized or interpreted in reverse (a contrario) to be applied to a concrete event.

It is true that the pretrial Judge has quoted article 50 of Law Number 8 of 1981 concerning the Book of the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) which regulates the rights of suspects which in their explanation mentions the granting of rights to the suspect or defendant in this article is to prevent the possibility of the fate of a person suspected of having committed a criminal act being suspended, especially those who have been subject to detention, they should not receive an examination for a long time. So that there is no legal certainty, there is arbitrary and unfair treatment. Besides that, it is also to realize justice which is carried out in a simple, fast and low cost way".

However, the pretrial Judge did not use Article 50 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) as the basis for his considerations

in making decissions, Article 50 of Law Number 8 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) above is only used as a complement or complement to the formulation of the Judge's argumentation regarding the dynamics of legal rules. This means that the Judge first has a certain conclusion, and then it is supplemented by citing Article 50 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) above. The pretrial judge also did not mention which words, phrases or sentences in Article 50 of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) above need to be constructed to be applied to this case (Sopinah, 2021). Thus the consideration of the pretrial Judge in imposing the pretrial decission Number 5/Pid. Pre/2018/PN BTM is not appropriate if it is said to be a legal discovery (rechtvinding) but rather to the creation of a law (judge made law) which is not properly applied to the conception of the Indonesian legal state that adheres to continental Europe.

Judge's Assessment Is Not On Formal Aspects

Guidelines for pretrial judges in conducting assessments in examinations are regulated in Article 2 section (2) of the Regulation of the Supreme Court (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) which states "pretrial examination of applications regarding the validity of the determination of the suspect only assesses the formal aspect, namely whether there are at least 2 (two) valid evidences that do not enter the matter of the case.". The formal aspect can be interpreted as an administrative aspect as mandated by the law, so that the Judge only conducts an administrative review of the determination of a person as a suspect, such as the date, identity in the order for the start of the investigation (sprindik), a brief description of the crime, a copy to the family or legal representative and other matters of a formal administrative nature.

The assessment of the formal aspect has also been clearly emphasized in Article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) with the sentence "that is, are there at least 2 (two) valid evidence", the sentence "is there any" essentially emphasizes that the judge's assessment is sufficient on the formal aspects as mentioned in the previous sentence.

Whereas what is meant by valid evidence can be seen in Article 184 section (1) of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) covering: (1) 1. Witness testimony, witness testimony relates to witnesses who saw, heard and felt directly the occurrence of a criminal act. (2) Expert testimony, expert testimony is used to determine whether a criminal act is appropriate and fulfills the elements of the criminal act which will later be decided. (3) Letters, letters can be in the form of deeds, agreements, notes and other letters that are closely related to the case as material for consideration in deciding a case. (4) Instructions, instructions are usually found if there are clues or other facts in court or that the judge has dug up in the community. (5) Defendant's statement, the defendant's statement relating to the case being faced to be assessed by the judge in the context of collecting evidence to become the basis for the judge's consideration.

In the investigation process, it is only possible to obtain valid evidence in the form of witness statements, expert statements and letters. Meanwhile, evidence in the form of instructions is obtained from the judge's assessment after conducting an examination in the trial, and evidence for the defendant's statement is obtained when a defendant is in trial as stipulated in the provisions of Article 188 section (3) of Law Number 8 of 1981 concerning the Book of Law of Criminal Procedure (State Paper of the Republic of Indonesia of 1981 Number 76) and the provisions of Article 189 paragraph (1) of Law Number 8 of 1981 concerning the Code of Criminal Procedure Law (State Paper of the Republic of Indonesia of 1981 Number 76).

If during the investigation process there is a police report in which the police report can be categorized as witness testimony, then one valid evidence is added, then a person can be designated as a suspect, and the legal evidence in question is witness testimony, expert testimony and letters. It should also be emphasized that the sentence "at least 2 (two) valid pieces of evidence" as stated in Article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) cannot be separated from the provisions of Article 185 paragraphs (2) and (3) of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) regarding the principle of unus testis nullus testis (one witness is not a witness), the testimony of a witness must be accompanied by other valid evidence and even then must be in accordance with other existing evidence.

Therefore, it is very easy to understand how the process of proving at a pretrial hearing is, namely whether two of the evidences have been fulfilled by investigators in establishing a person as a suspect, which at the same time is also assessed for fulfilling the administrative formal requirements. If between the two pieces of evidence

above the formal requirements are met, then the evidence is legally valid. The evidence carried out in the pretrial process is to use a quick examination as regulated in Article 82 section (1) letter c of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) which states "examination The pretrial process is carried out quickly and must be completed no later than 7 days, the judge must give a decission". In addition, pretrials are only led by one judge (sole) as stipulated in Article 78 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) which states that "the pretrial shall be presided over by a single judge appointed by the chairman of the district court and assisted by a clerk". This is an indication that pretrial judges in the process as examining judges are only given a portion as procedural administrative examiners.

From the information above, if the judge binds himself to Article 2 section (2) of the Regulation of the Supreme Court (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596), the judge does not need to bother himself anymore. to explore and form new legal rules. The judge only examines and assesses how the actions of the investigator and his authority in determining a person as a suspect as contained in Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) are carried out in accordance with legal provisions procedure (procedural administration), the rest is the authority of the judge in the ordinary proceedings.

This examination is related to Article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596), meaning that this examination is based on the level of regulations issued/issued by Supreme Court. Of course from this the question arises, what about the validity of legal products issued by the Supreme Court? The answer to this question can be referred to Law Number 10 of 2004 (State Paper of the Republic of Indonesia of 2004 Number 53) which has been replaced by Law Number 12 of 2011 concerning the Establishment of Legislations (State Paper of the Republic of Indonesia of 2011 Number 82). Article 7 section (1) states: the types and hierarchy of laws and regulations consist of: The 1945 Constitution of the Republic of Indonesia; (1) Decree of the People's Consultative Assembly; (2) Laws/Government Regulations in Lieu of Laws; (3) Government regulations; (4) Presidential decree; (5) Provincial Regulations; and (6) Regency/City Regional Regulations

Furthermore, article 8 section (1) mentions the types of laws and regulations other than those referred to in article 7 section (1) include regulations arranged by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the State Audit Board. Finance, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions of the same level established by law or by the Government by order of law, Provincial DPRD, Governor, Regency/Municipal Regional People's Representative Council, Regent/Municipal Mayor, Village Head or equivalent.

This formulation is also contained in article 7 section (4) and the explanation of Law Number 10 of 2004 (Addition to the State Paper of the Republic of Indonesia Number 4389), article 8 section (1) confirms that the existence of the legislation is recognized and has binding legal force as long as it is ordered by a higher statutory regulation or is formed based on authority. Because of article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) which is the main basis for this examination, it has legal validity and is binding based on article 8 of the Law Number 10 of 2004 (State Paper of the Republic of Indonesia of 2004 Number 53) as has been replaced by Law Number 12 of 2011 concerning the Establishment of Legislations (State Paper of the Republic of Indonesia of 2011 Number 82).

Pretrial Judge Exceeds Authority

In the legal literature, the notion of exceeding authority (excess of power or excès de pouvoir) can simply be interpreted as an act that exceeds the limits of its authority (unlawful act) so that the legal consequences become invalid (illegal), the same as decissions / actions taken without basis of authority (unauthorized) (Bailey, 2006 in Miles, 2013). Judges are not justified in rejecting cases that come to them and if there is a vacancy in the rule of law or the rules are not clear, then based on the law, the judge has the authority to dig to find the law (recht vinding). Thus, digging and finding the law regarding the weight of evidence is also not wrong from a legal point of view, but must be carried out by the right party in accordance with the proportions/authorities granted by the law. In ordinary examination procedures, it is known that there is a proof mechanism and in the legal literature it is known as the law of proof. After the Public Prosecutor has read out his indictment on the day of the first trial, the agenda of the trial will then be continued with the agenda of evidence, either by examining witnesses, examining experts, including letters up to the stage of examining the accused.

At this stage of proof, the Judge evaluates the evidence presented by the investigator as stated in the minutes of examination (BAP). either by considering the investigator's procedure in obtaining evidence, the duration of the investigation as well as other matters regarding the validity and quality of the evidence. That is one of the reasons why at the beginning of the trial an examination of the verbal witness (Investigator) was conducted. The Supreme Court as the highest judicial institution has limited the authority of Judges in pretrial hearings only on the formal aspects as previously mentioned, but if the judges judge not on the formal aspects, it can be said that the judges have exceeded their authority.

That is also why a trial like this is called a pretrial. In terminology, pretrial is a process before a trial, the word pre in linguistics is known as prior understanding, while the judiciary is a trial process to seek justice. So the definition of pretrial is the trial process before the trial and before the main issue of the case is tried. The definition of the main case is the material case, while in pretrial the trial process only examines the process of investigation and prosecution. Thus, the consideration of the pretrial judge who judged the distorted value of the evidence based on the period of investigation that became the basis for decision Number 5/Pid. Pre/2018/PN BTM can be said as an act that exceeds the authority.

Deviant Pretrial Decission

Pretrial decission number 5/Pid.Pre/2018/PN BTM can be said to be a deviant decission, at least it can be seen from the following reasons: (1) The judge did not find the law but rather created the law even though Indonesia is a legal state with the concept of continental Europe (civil law system) as described at the beginning of this chapter. There is no legal discovery method adopted by the Judge, neither law discovery by interpretation nor construction. (2) Pretrial Decission Number 5 Pid.Pre/2018/PN BTM is based on the judge's consideration that it does not assess the formal aspect as regulated in Article 2 paragraph (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) so that it can be said that the judge has exceeded the authority that has been given by the law consideration of the decission is not based on the correct object assessment, namely the formal aspect (administrative procedural) but enters the realm of the value/weight of the evidence. (3) The judge's mistake in determining the object of the assessment resulted in an error in passing the verdict. If the judge has wrongly determined the premise in the ratio decidendi, it will definitely be wrong in dropping the conclusion (decission dictum).

From the description above, the pretrial decission Number 5 Pid. Pre/2018/PN BTM can be said to be a deviant decission. However, whether this pretrial decission can be considered fundamentally deviant as referred to in Article 2 section (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596). Article 4 section (2) letter c of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) does not concretely state the definition of fundamental deviation, but only states that "The Court The Supreme Court provides instructions, warnings, or warnings that are deemed necessary for pretrial decissions that are fundamentally deviant." (Menkes, 2014).

The absence of an explanation of what is meant by fundamental deviation and the existence of the authority of the Supreme Court to give instructions, warnings, or warnings to judges who render pretrial decissions can be understood that the one authorized to conclude or decide whether a decission is fundamentally deviant or not is the Supreme Court. Investigators or other parties who feel aggrieved by this decission may file a complaint or report to the Supreme Court for later examination of the professionalism of the Judge and the proceedings of the trial. The Supreme Court will conduct an examination and its decission. However, even if the Judge is given a guilty verdict/demotion in this case, either on the grounds of the code of ethics, or the reason the Judge has exceeded his authority, or is wrong in making a decission, the pretrial decission that has been issued remains legally binding and binding. Because the object examined by the Supreme Court in this case is the judge, not the decission. The decission can only be annulled if in the future a legal product is found that regulates the mechanism for annulling pretrial decissions that are considered deviant and/or fundamentally deviant.

Pretrial Decissions Cause Legal Uncertainty

The pretrial decission was taken from the conclusion of the judge's consideration which stated that "Considering, that based on the entire description of the considerations above, by upholding the principles of expediency, justice and legal certainty, the pretrial sole judge concluded that, all the evidence used by the pretrial Respondent to determine the Pretrial Petitioner" as a suspect at the investigation level, only has a plenary Evidence value from October 26, 2016 until before this pretrial application is registered with the Batam District Court or in other words the determination of the pretrial Petitioner as a suspect only has legal validity from October 26, 2016 until before this Pretrial Application is registered with the Batam District Court

From the conclusion of the Judge's consideration, there will be potential for legal uncertainty, especially if this consideration is applied to other cases. The time limit for the legal validity of the evidence for determining the suspect is only before the pretrial application is registered with the District Court, of course this time limit will be very relative and depends on the position of the case. This rule does not limitatively state the validity period of evidence, such as 1 (one) year or 2 (two) years, but it is stated until the pretrial case is registered with the district court. What if this rule is used by the suspect to escape from legal snares, even though the investigation process does not take a long time? Therefore, the conclusion of the Judge's consideration in making his decission will have the potential to cause legal uncertainty, and has the potential to be misused, especially if the assessment lies in the subjectivity of the judge and not on the correct object of the case. Moreover, it is now common knowledge that there has been widespread legal industrialization.

Legal Consequences for Pretrial Decission Number 5/Pid.Pra/2018/Pn Btm Against Investigators
Pretrial Decission Number 5/Pid.Pra/2018/Pn Btm Final And Binding

Previously, the Law had limited the right to appeal against pretrial decissions only to Investigators or Public Prosecutors regarding the invalid decission to terminate an investigation or prosecution as regulated in Article 83 section (1) and (2) of Law Number 8 of 1981 concerning the Book of Criminal Procedure Law (State Paper of the Republic of Indonesia of 1981 Number 76). Article 83 section (1) states "About pretrial decissions in the case as referred to in article 79, article 80 and article 81 cannot be appealed", then section (2) states "excluded from the provisions of section (1) is a pretrial decission that stipulates not the validity of the termination of the investigation/prosecution, this can be requested for a final decission to the high court" (Mulyadi, 2012).

Investigators and Public Prosecutors as regulated and referred to in article 83 section (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76) because they are contrary to article 27 section (1) and Article 28D section (1) of the 1945 Constitution because it does not equalize the position of citizens in law and government and does not provide fair legal certainty. The ruling of the Constitutional Court (MK) Number 65/PUU-IX/2011 states: (1) Article 83 section (2) of Law Number 8 of 1981 concerning Criminal Procedure Code (State Paper of the Republic of Indonesia of 1981 Number 76, an additional Sheet of the Republic of Indonesia Number 3209) is contrary to the 1945 Constitution of the Republic of Indonesia. (2) Article 83 section (2) of Law Number 8 of 1981 concerning Criminal Procedure Code (State Paper of Indonesia of 1981 Number 76, an additional Sheet of the Republic of Indonesia Number 3209) does not have binding legal force.

Thus, the pretrial decission Number 5/Pid.Pra/2018/PN Btm based on the decission of the Constitutional Court (MK) Number 65/PUU-IX/2011 cannot be appealed. In addition, the pretrial decission cannot be appealed as stated in Article 45A of Law Number 5 of 2004 (State Paper of the Republic of Indonesia of 2004 Number 9 concerning amendments to Law Number 14 of 1985 concerning the second amendment to Law Number 3 of 2004). 2009 concerning the Supreme Court (State Paper of the Republic of Indonesia of 2009 Number 3) which states: (1) The Supreme Court at the cassation level hears cases that meet the requirements to be filed for cassation, except for cases which are restricted by this Law. (2) The excluded cases as referred to in paragraph (1) consist of: (a) Decissions on pretrial; (b) Criminal cases punishable by imprisonment for a maximum of 1 (one) year and/or a fine; (c) State administrative arbitrator whose object of lawsuit is a regional official's decission whose range of decissions is valid in the region concerned.

Based on article 45A section (1) and (2) letter a of Law Number 5 of 2004 (State Paper of the Republic of Indonesia of 2004 Number 9 concerning amendments to Law Number 14 of 1985 concerning the second amendment to Law Number 3 of 2009 regarding the Supreme Court (State Paper of the Republic of Indonesia of 2009 Number 3) above, the pretrial decission Number 5/Pid.Pra/2018/PN Btm cannot be filed for cassation to the Supreme Court. Furthermore, pretrial decissions cannot be subject to review as stipulated in article 3 of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) which states: (1) Pretrial decissions cannot be submitted for review. (2) The application for reconsideration of the pretrial is declared inadmissible by the determination of the Head of the District Court and the dossier of the case is not sent to the Supreme Court. (3) The determination of the Head of the District Court as referred to in section (1) cannot be submitted for legal action. If the pretrial decission cannot be filed for appeal, cassation and review, the pretrial decission Number 5/Pid.Pra/2018/PN Btm cannot be annulled by anyone, meaning that this pretrial decission is final and binding *(in kracht van gewijsde).*

The Evidence for the Determination of The Suspect no Longer Has Legal Validity

As explained in the previous chapter, that with the conclusion of the judge's consideration which states: Considering, whereas based on the entire description of the considerations above, by upholding the principles of expediency, justice and legal certainty, the pretrial sole Judge concludes that, all evidence used by the pretrial Respondent to determine the Pretrial Petitioner as a suspect at the investigation level, is as high as possible has

a complete Evidence value since October 26, 2016 until before this pretrial application is registered with the Batam District Court or in other words the determination of the pretrial Petitioner as a Suspect only has legal validity from October 26, 2016 until before this Pretrial Application is registered with the District Court Batam And the presence of the Judge's decission *declaratoir* "declaring invalid Decission Letter Number: S.Tap/44/X2016/Ditreskrimsus, dated October 26, 2016, as of the date this decission was pronounced" indicates that all evidence in determining the suspect no longer has validity of law.

Authority of the Investigator to Redefine the Suspect

If the pretrial decission is final *(in kracht van gewijsde)* while a legal event that has been decided at the pretrial in question is still considered a crime by the investigator, the investigator has the right to re-establish a person as a suspect by presenting new evidence as stipulated in article 2 paragraph (3) Regulation of the Supreme Court (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596) which states:

The pretrial decission that grants the request regarding the invalidity of the determination of the suspect does not invalidate the investigator's authority to determine the person concerned as a suspect again after fulfilling at least two new legal pieces of evidence, different from the previous evidence relating to the case material. At the end of section (3) above, it is stated that "different from the previous evidence relating to the matter of the case" can be understood as a rule stating that the two pieces of evidence that have been used by investigators to determine a person as a suspect do not have legal validity and/or are not valid for prosecution re-establish the pretrial Petitioner as a suspect. Therefore, if the investigator wants to continue the investigation process, the investigator must present 2 (two) new pieces of evidence other than the one that has been used previously.

Pretrial Decissions Can Become Jurisprudence

Judges' decissions that have permanent legal force and are based on legal findings in turn become one of the sources of law, what is called jurisprudence. Jurisprudence is a source of formal law in addition to laws, customs and treaties. Jurisprudence is the decissions of previous judges that have permanent legal force regarding a new and interesting case from the point of view of law, or a new interpretation or legal reasoning against a legal norm followed by judges or other judicial bodies in deciding cases or cases that same.

Jurisprudence cannot be separated from the development of legal science in Indonesia. Jurisprudence is very familiar in the world of justice. The role of jurisprudence in Indonesia is so important, apart from being a source of jurisprudence law, it is also a guideline for judges in deciding cases. Jurisprudence is a legal product of the judiciary. The function of jurisprudence itself in terms of judges making decissions is to fill the legal vacuum because basically judges cannot reject cases because there is no law that regulates them. The legal vacuum can only be overcome and covered by legal findings *(rechtsvinding)* which will be used as guidelines as jurisprudence until the creation of a complete and standard codification of law (Rajagukguk et al., 2019). The judge's decission can become jurisprudence after going through the examination and annotation process of the Supreme Court with a recommendation as a decission that has met the legal standards of jurisprudence. The decission will be selected by a special team and if deemed worthy to become jurisprudence, it will be published by the Supreme Court.

The jurisprudence requirements are: (1) Decissions on legal events with unclear regulations. (2) The decission has permanent legal force. (3) Decissions are repeatedly used as the legal basis for deciding the same case. (5) The decission has been confirmed by the Supreme Court. Based on the above explanation, the pretrial decission Number 5/Pid.Pra/2018/PN Btm may become jurisprudence, if this decission is repeatedly used by other judges and after the Supreme Court has examined and annotated this decission and concluded that this decission meet the requirements then it will become jurisprudence. Before this decission becomes jurisprudence, other judges can take this decission as an example in taking the same legal considerations in making decissions, of course this will greatly affect the performance of investigators in establishing someone as a suspect, in the future investigators will be required to pursue time so that a The suspect was immediately transferred to the Prosecutor's Office. If not, it is feared that the suspect will file a pretrial application and will get the same decission as this (Mertokusumo, 1919 in Anshori, 2018).

Conclusions

From the description above, the writer concludes, first, Construction of the Judge's legal considerations in making the decission Number 5/Pid. Pra/2018/PN BTM starts from the Judge's understanding of the dynamics of the rule of law, the law according to the judge is often left behind from the events so that the judge believes that the void of rules regarding the expiration of evidence needs to be given a rule formula. The judge then establishes a new rule in which the validity of the evidence is determined by the length of time the investigator spends in the investigation process. The judge considered that the evidence used by the investigators in determining the suspect was already completed, but due to the length of the investigation period, the value of

the evidence was distorted. The judge assessed that the evidence for determining the suspect in this case only had legal validity until the pretrial application was registered at the Batam District Court. From the construction of these considerations, the Judge then handed down a verdict that the determination of the suspect Number: S.Tap/44/X/2016/Ditreskrimsus was invalid since the verdict was read.

Second, Pretrial Judges' considerations regarding the distortion of the value of evidence, namely by establishing new rules, are not appropriate in this case, because the judge's decission considerations prioritize the creation of law rather than finding law, while Indonesia with a civil law system does not recognize judge made law but recognizes *rechtsvinding*. The object of the judge's assessment in this case is not in the formal administrative aspect as safe as Article 2 paragraph (2) of the Supreme Court Regulation (PERMA) Number 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decissions (State Paper of the Republic of Indonesia of 2016 Number 596), the object of pretrial has been transferred to the quality of the evidence so that it should be said that this decission is deviant and can cause legal uncertainty, as well as the judge can be said to have exceeded his authority. Thrirt, This decission is final and binding *(in cracht van gewijsde)* because it cannot be appealed, appealed or reviewed. Since this case was decided, the evidence in determining the suspect no longer has legal validity, but if the investigator still wants to determine the suspect again, the investigator must use new evidence. This decission can also become jurisprudence, so that in the future investigators must catch up with time so that a suspect is immediately transferred to the Prosecutor's Office. If not, it is feared that the suspect will file a pretrial application and the Judge will make a decission like this.

References

Anshori, A. G. (2018). *Filsafat hukum*. Ugm Press.

Firdaus, S. R., Yuningsih, H., & Adisti, N. A. (2022). *Pelaksanaan Pemulihan Nama Baik Tersangka Oleh Pihak Kepolisian Terhadap Tidak Sahnya Penetapan Tersangka Yang Ditetapkan Melalui Praperadilan (Studi Kasus Kepolisian Daerah Sumatera Selatan)*. Sriwijaya University.

Hamzah, A. (2019). *Hukum Acara Pidana Indonesia* (Edisi 2). Sinar Grafika.

Hamzah, A., & Surachman, R. M. (2015). *Pre-trial justice & discretionary justice dalam KUHAP berbagai negara*. Sinar Grafika.

Kaifa, R. P. (2021). Praperadilan dan Prosedur Penyidikan Penyidik Pegawai Negeri Sipil. *Jurnal Hukum Pidana Dan Kriminologi*, *2*(1), 52–72.

Kripsiaji, D., & Minarno, N. B. (2022). Perluasan Kewenangan dan Penegakan Hukum Praperadilan di Indonesia dan Belanda. *Al-Mazaahib: Jurnal Perbandingan Hukum*, *10*(1), 29–56.

Linggama, S. (2018). Pelaksanaan Pemeriksaan Praperadilan Berkaitan dengan Masalah Penahanan Bagi Tersangka Oleh Penyidik Menurut UU No. 8 Tahun 1981. *Lex Crimen*, *7*(5).

Marbun, R. (2021). Trikotomi Relasi dalam Penetapan Tersangka: Menguji Frasa "Pemeriksaan Calon Tersangka" Melalui Praperadilan. *Undang: Jurnal Hukum*, *4*(1), 159–190.

Menkes, R. I. (2014). Peraturan Menteri Kesehatan Republik Indonesia Nomor 75 Tahun 2014 Tentang Pusat Kesehatan Masyarakat. *Departeman Kesehatan Republik IndonesiaI*, *3*(11).

Miles, C. (2013). Persuasion, marketing communication, and the metaphor of magic. *European Journal of Marketing*, *47*(11/12), 2002–2019.

Mulyadi, L. (2012). Hukum Pidana Umum dan Khusus Indonesia dalam Teori dan Praktek. *Bandung: Alumni*.

Posner, R. A. (2014). *Economic Analysis of Law: Four Edition*. Little, Brown and Company, UK.

Pratama, M. (2021). *Tinjauan Yuridis Praperadilan Atas Penetapan Tersangka Pada Tindak Pidana Penipuan Dan Penggelapan (Studi Kasus Putusan Praperadilan Nomor : 5/Pid.Pra/2018/Pn. Mks)*. Universitas Hasanuddin.

Rajagukguk, S. B. T., Rozah, U., & Cahyaningtyas, I. (2019). Analisis Yuridis Normatif Peninjauan Kembali Oleh Jaksa Dalam Putusan Mahkamah Konstitusi Nomor 33/Puu-Xiv/2016 Tentang Uji Materi Pengujian Pasal 263 Ayat (1) Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana. *Diponegoro Law Journal*, *8*(3), 2342–2366.

Siar, P. R. (2019). Politik Hukum Praperadilan Dalam Rangka Penegakan Hukum Pasca Keluarnya Putusan Mahkamah Konstitusi No. 98/Puu-X/2012. *Lex Administratum*, *7*(1).

Siregar, C. F. (2018). *Kewenangan Hakim Memerintahkan Penetapan Tersangka Tindak Pidana Melalui Pemeriksaan Praperadilan (Analisis Putusan Praperadilan Nomor24/Pid/Pra/2018/PN. Jaksel)*.

Situmorang, M. (2018). Kedudukan Hakim Komisaris Dalam RUU Hukum Acara Pidana. *Jurnal Penelitian Hukum De Jure*, *18*(4), 433–444.

Sopinah, D. (2021). *Kedudukan Akta Notaris Sebagai Alat Bukti Dalam Perkara Pidana Berdasarkan Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana Studi Kasus Pada Perkara Nomor 55/Pid*. Fakultas Hukum Universitas Pasundan.

Sumadi, R. (2021). Praperadilan Sebagai Sarana Kontrol Dalam Melindungi Hak Asasi Manusia (HAM)

Tersangka. *Jurnal Hukum Sasana*, *7*(1).
Tornado, A. S., SH, M. H., & Kn, M. (2019). *Praperadilan: Sarana Perlindungan Tersangka dalam Sistem Peradilan Pidana Indonesia*. Nusamedia.
Washington, E. T. (2016). State courts and the promise of pretrial justice in criminal cases. *NYUL Rev.*, *91*, 1087.