

Implementation of Legal Certainty, Justice, and Expediency in the Pretrial Case of the Alleged Criminal Offense of Misusing the Transportation of Fuel Oil (Study of the Decision Number 21/Pid.Pra/2022/PN Kpg and Number 22/Pid.Pra/2022/PN Kpg)

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DOI: <https://doi.org/10.37729/amnesti.v5i2.3390>

Submitted: Juni 2023

Revision: Juli 2023

Accepted: Agustus 2023

ABSTRACT

Kata Kunci:
*Judge's
Decision,
Pretrial,
Certainty,
Justice,
Benefit*

After the Constitutional Court Decision No. 21/PUU-XII/2014 dated April 28, 2015, the authority of pretrial object in Article 77 of KUHAP has expanded to include testing the validity of the determination of a suspect. This has also been confirmed in the Supreme Court Regulation Number 4 of 2016 concerning Prohibition of Review of Pretrial Decision Article (2) number (1) letter (a) which explicitly or explicitly states that the object of pretrial includes the validity of the determination of a suspect. This study aims to analyze the judge's decision in the pretrial case of alleged criminal acts of misusing the transportation of fuel oil in accordance or not with the aspects of legal certainty, justice, and benefit as using normative legal research methods. The results of the study found that pretrial decisions Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg were in accordance or based on aspects of certainty, justice, and legal benefits. The suggestion given by the author is the need for preventive efforts in the form of dismissal and impeachment of the law done by the law enforcement agency, the Police and the Prosecutor's Office about the regulation of the abuse of oil fuel transportation (BBM) and also the need to do a repressive effort of giving a sanction explicitly for those who deliberately take legal action to smuggle oil fuel (BBM).

ABSTRAK

Keywords:
Putusan
Hakim,
Praperadilan,
Kepastian,
Keadilan,
Kemanfaatan

Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 tertanggal 28 April 2015 telah memperluas kewenangan objek Praperadilan pada Pasal 77 KUHAP termasuk dalam pengujian tentang sah atau tidaknya penetapan tersangka. Hal ini pula telah ditegaskan dalam Peraturan Mahkamah Agung Nomor 4 Tahun 2016 tentang Larangan Peninjauan Kembali Putusan Praperadilan Pasal (2) angka (1) huruf (a) yang secara implisit maupun eksplisit menyatakan objek Praperadilan termasuk sah atau tidaknya penetapan tersangka. Penelitian ini bertujuan untuk menganalisis putusan hakim dalam perkara Praperadilan dugaan tindak pidana menyalahgunakan pengangkutan bahan bakar minyak telah sesuai atau tidak dengan aspek kepastian, keadilan, dan kemanfaatan hukum serta menggunakan metode penelitian hukum normatif. Hasil penelitian ditemukan bahwa putusan Praperadilan Nomor 21/Pid.Pra/2022/PN.Kpg dan Nomor 22/Pid.Pra/2022/PN.Kpg telah sesuai atau berdasarkan aspek kepastian, keadilan, dan kemanfaatan hukum. Saran yang diberikan oleh penulis ialah perlu adanya upaya preventif berupa penyuluhan dan imbauan hukum yang dilakukan oleh aparat penegak hukum yakni Kepolisian dan Kejaksaan tentang pengaturan mengenai tindakan penyalahgunaan pengangkutan bahan bakar minyak (BBM) serta perlu pula dilakukan upaya represif berupa pemberian sanksi secara tegas bagi orang yang dengan sengaja melakukan tindakan hukum menyelundupkan bahan bakar minyak (BBM).

1. INTRODUCTION

Law is a means of regulating society as social control and maintaining patterns of community behavior to remain orderly (Firdaus et al., 2020). Legal protection of the community in concrete terms can be seen in Law Number 8 of 1981 concerning Criminal Procedure (KUHAP) which explicitly regulates the way law enforcement enforces material criminal law by upholding human dignity (Wewo et al., 2018), which basically every human being has the same position before the law, so that acts of arrest, detention, determination of suspects, searches, seizures, termination of investigations and prosecutions cannot be carried out arbitrarily (Marbun, 2021). This mechanism embodies the protection of human rights from being violated (Setiawan, 2020). The main essence of Criminal Procedure is the guarantee of the protection of human rights which is placed proportionally as a form of respect for the dignity of human beings who are caliphs on earth (Rahman, 2019). In addition, Criminal Procedure contains substances that provide protection for the human rights of suspects and defendants since undergoing criminal cases starting from the

stages of investigation, prosecution and trial so that the fulfillment of human rights is fulfilled properly (Amin et al., 2022).

As an effort to protect the human rights of the public in facing criminal proceedings, Criminal Procedure through Article 77 has regulated pretrial (Firmansyah & Farid, 2022). Conceptually, pretrial is a mechanism of criminal procedure law that can be taken to test the validity of the actions or actions of law enforcement officials (Pattiruhu et al., 2020). The validity of actions or actions taken by law enforcement officers in the form of whether or not the arrest and/or detention is valid (Apriansah & Waluyo, 2021), whether or not the termination of investigation or termination of prosecution is valid, and the request for compensation or rehabilitation by the defendant or his family or through his legal counsel (Hutasuhut & Fadlian, 2021). Furthermore, this is also rigidly regulated in Article 1 paragraph (10) of Criminal Procedure.

After the Constitutional Court Decision Number 21/PUU-XII/2014 dated April 28, 2015, the authority of pretrial object in Article 77 of Criminal Procedure has been expanded to include testing the validity of the determination of a suspect (Darwin et al., 2019). Then, this has also been confirmed in the Supreme Court Regulation Number 4 of 2016 concerning Prohibition of Judicial Review of Pretrial Decision Article (2) number (1) letter (a) which explicitly or explicitly states that the object of pretrial includes the validity of the determination of a suspect (Sofian & Hasibuan, 2020).

Pretrial applications are addressed to the President of the District Court covering the region of Criminal cases are investigated and prosecuted (Hasan & Lestari, 2022). The application for filing a pretrial petition must contain a complete statement containing the name, address, occupation, and other personal data, material requirements contain the basic reasons and legal basis (*fundamentum petendi* or *posita*) which describes and describes in advance the events of the case as well as the reasons based on the law which are used as the basis for filing a claim or request to be decided by a pretrial judge. This is also expressly regulated in Article 77 of Criminal Procedure which states that the institution authorized to examine and hear pretrial motions is the District Court (Widyastuti et al., 2020).

The form of pretrial decision is quite simple without reducing the content of clear considerations based on the law and the law (Pramana et al., 2020). The form of pretrial decision is almost similar to voluntary decision in civil procedure, pretrial decision is *declaratoir* which contains a statement about the

validity or invalidity of arrest, detention, search or seizure or determination of suspect. Pretrial decisions are not made specifically but are recorded in the official report as stipulated in Article 203 paragraph (3) letter (d) of Criminal Procedure. Meanwhile, the content of the pretrial decision is as stipulated in Article 82 paragraph (2) and paragraph (3) of Criminal Procedure. Similarly, the dictum of the pretrial decision must be *condemnatory in* nature which contains an order (Arzaky & Tanudjaja, 2023).

Looking at the discussion presented, the author traced and found 2 (two) Pre-Trial Decisions of the Kupang District Court Class 1A in the same case regarding the alleged criminal offense of misusing the transportation of fuel oil. From the perspective of these decisions, it is known that previously the Plaintiffs in Decision Number 21/Pid.Pra/2022/PN Kpg and Number 22/Pid.Pra/2022/PN Kpg had been named as suspects by the Kupang City Resort Police using Articles 53 letter (c) and 55 of Law Number 22 of 2001 concerning Oil, Gas and Natural Gas (UU Migas) in conjunction with Article 55 paragraph (1) to 1(e) of the Criminal Code (KUHP). The determination of the suspects against the Plaintiffs apparently caused objections, so that the Plaintiffs through their Attorney filed a Pretrial Application at the Kupang District Court dated December 30, 2022 and was examined and decided by the Panel of Judges dated January 20, 2023 which basically granted the Pretrial Application of the Plaintiffs in its entirety.

The judgment of the Pretrial case Number 21/Pid.Pra/2022/PN Kpg and Number 22/PID/2022 /PN KPg has the same meaning that it is a pre-trial case on alleged misuse of oil fuel transportation (BBM). Then, there is no fundamental difference between the two things because it is one thing that the examination file is done separately.

The granting of the Petitioners' pretrial petition in its entirety attracted the author's attention to examine and analyze the decision because of course there were reasons from the Panel of Judges to grant the Petitioners' Petition in its entirety and the criminal acts alleged against the Petitioners required quality evidence and evidence. These reasons will be examined and researched by the author who is then connected to aspects of legal certainty, justice, and benefit.

2. RESEARCH METHODS

The method in this study uses a type of normative juridical research method to examine the implementation Article 53 letter (c) and Article 55 of

Law Number 22 of 2001 concerning Oil and Gas, Article 40 of Law Number 11 of 2020 concerning Job Creation, Article 77 of the Criminal Procedure Code in conjunction with the Constitutional Court Decision Number 21/PUU-XII2014, and Article 184 paragraph (1) of the Criminal Code (Benuf & Azhar, 2020). The approach is carried out qualitatively to describe the extent of the legal concepts or principles related to research issues on pretrial that have actually occurred in the form of 2 (two) Decisions of the Kupang District Court Class 1A regarding Pretrial. Sources of data used are obtained from primary data sources obtained from interviews and observations, whatever secondary data obtained from favorable legal regulations relevant to the topic of the study (Marzuki, 2009).

3. RESULTS AND DISCUSSION

This research analyzes 2 (two) Decisions of the Kupang District Court Class 1A regarding pretrial against the determination of a suspect with suspicion of Article 53 letter (c) and Article 55 of Law Number 22 of 2001 concerning Oil and Gas jo Article 40 of Law Number 11 of 2020 concerning Job Creation jo. Article 55 paragraph (1) to 1(e) of the Criminal Code. The case is one unit but for the pretrial examination process, this case was separated, resulting in 2 (two) different Court Decision numbers, namely Kupang District Court Decision Number 21/Pid.Pra/2022/PN Kpg and Number 22/Pid.Pra/2022/PN Kpg. The case positions of the 2 (two) decisions are described as follows.

3.1 Case Position

Decision Number 21/Pid.Pra/2022/PN Kpg is hereinafter referred to as the first decision. Before the Panel of Judges rendered a decision, of course, it was preceded by a Pre-Trial Petition from the Applicant. The a quo petition was filed by the Petitioner with the initials AKU, who filed a Pretrial Petition against the determination of a suspect by the Head of the Kupang City Resort Police (Kapolres) cq Head of the Criminal Investigation Unit of the Kupang City Resort Police (Kasat Reskrim) hereinafter referred to in the a quo decision as the Respondent.

The Respondent named the Applicant as a suspect on the grounds that the Applicant had stored government-subsidized diesel fuel in the Applicant's warehouse which was obtained from the Public Fuel Filling Station (SPBU) located in Nunbaun Sabu Village, Alak Subdistrict, Kupang City by means of the Applicant purchasing the subsidized diesel fuel in stages using jerry cans

and accommodated in oil drums in the Applicant's warehouse, and then the fuel oil was transported using a PT tank truck. Tavin Jaya and sold to PT Sari Karya Mandiri in Noemuti, North Central Timor District by Mr. YMS (Director of PT Tavin Jaya). Subsequently, the Respondent named the Applicant as a suspect in accordance with Suspect Determination Letter Number S-TAP TSK/134/XII/2022/Criminal Investigation dated December 27, 2022.

Referring to the determination of the Applicant as a suspect by the Respondent, on December 30, 2022, the Applicant through his attorney filed a Pre-Trial Petition at the Kupang District Court Class 1A and the petition of the Pre-Trial Petition is basically as follows:

1. Grant the Applicant's pretrial motion in its entirety;
2. Stating the law that the determination of the Applicant as a suspect based on the Investigation Order Number: Sprindik/1504/XII/2022/Reskrim, dated December 02, 2022 is invalid and not based on law and therefore has no binding legal force;
3. Stating the Law that the Letter of Determination of Suspects Number: SP-Tap/133/XII/2022/Reskrim dated December 27, 2022 concerning the Determination of Suspects is invalid and not based on law, therefore it does not have binding legal force;
4. Stating the law that all results of the investigation carried out by the Respondent against the Applicant related to the alleged criminal act of misusing the transportation and/or trading of government-subsidized fuel oil and any person who conducts storage without a storage business license, as referred to in Article 55 of Law Number 22 of 2001 on Oil and Gas, as amended by Law Number 11 of 2020 on Job Creation and Article 53 letter (c) of Law Number 22 of 2001 on Oil and Gas *jo.* Article 55 paragraph (1) to 1(e) of the Criminal Code are invalid and not based on the law and therefore have no binding legal force;
5. Stating the Law that the Case a quo is not a Crime;
6. Declare that the Respondent's determination of the Applicant as a suspect is invalid and void or null and void;
7. Declare invalid the confiscation carried out by the Respondent against the evidence in the case a quo;
8. Stating that the evidence used by the Respondent to establish the Applicant as a suspect is invalid and cannot be used anymore;

9. Order the Respondent to immediately issue an Order to Discontinue Investigation (SP3) against the Applicant;
10. Declare invalid any decision or determination issued by the Respondent relating to the determination of the Applicant as a suspect and which is detrimental to the Applicant;
11. Restore the Applicant's rights in his/her ability, position, dignity and respect.

The Kupang District Court Class 1A through a single Panel of Judges then examined the Pretrial Petition starting from the stages of the reading of the Petition, the Respondent's answer, the Applicant's Replik, the Respondent's Duplicate, the Examination of Evidence of the Petitioner and Respondent, Expert Examination and Conclusion. Then, finally on January 20, 2023, the Panel of Judges tried the case and handed down the following decision:

1. Grant the Applicant's pretrial motion in its entirety;
2. Stating the law that the determination of the Applicant as a suspect based on Investigation Order Number: Sprindik/1504/XII/2022/Reskrim, dated December 02, 2022 is invalid and not based on law and therefore has no binding legal force;
3. Stating the Law that the Letter of Determination of Suspects Number: SP-Tap/133/XII/2022/Reskrim dated December 27, 2022 concerning the Determination of Suspects is invalid and not based on law, therefore it does not have binding legal force;
4. Stating the law that all results of the investigation carried out by the Respondent against the Applicant related to the alleged criminal act of misusing the transportation and/or trading of government-subsidized fuel oil and any person who conducts storage without a storage business license, as referred to in Article 55 of Law Number 22 of 2001 on Oil and Gas, as amended by Law Number 11 of 2020 on Job Creation and Article 53 letter (c) of Law Number 22 of 2001 on Oil and Gas Jo Article 55 paragraph (1) to 1e of the Criminal Code are invalid and not based on the law and therefore have no binding legal force;
5. Stating the Law that the Case a quo is not a Crime;
6. Declare that the Respondent's determination of the Applicant as a suspect is invalid and void or null and void;

7. Declare invalid the confiscation carried out by the Respondent against the evidence in the case a quo;
8. Stating that the evidence used by the Respondent to establish the Applicant as a suspect is invalid and cannot be used anymore;
9. Order the Respondent to immediately issue an Order to Discontinue Investigation (SP3) against the Applicant;
10. Declare invalid any decision or determination issued by the Respondent relating to the determination of the Applicant as a suspect and which is detrimental to the Applicant;
11. Restore the Applicant's rights in his/her ability, position, dignity and respect;
12. Charges the Respondent with court costs in the amount of nil.

The second decision that forms the basis of this research is Decision Number 22/Pid.Pra/2022/PN Kpg. From the perspective of this decision, the Respondent named the Applicant YMS as a suspect on the basis that the Applicant took government-subsidized diesel fuel from AKU's warehouse located in Nunbaun Sabu Village, Alak Subdistrict, Kupang City by moving or siphoning the subsidized diesel fuel gradually from AKU's drum or container and then transferred it to the Applicant's truck or tank, and then the fuel was sold to PT Sari Karya Mandiri in Noemuti, North Central Timor Regency by the Applicant. Similarly, the Respondent's determination of a suspect against the Petitioner was based on the Suspect Determination Letter Number: S-TAP TSK/134/XII/2022/Criminal Investigation, dated December 27, 2022.

Based on the Respondent's determination of the Applicant as a suspect, on December 30, 2022, the Applicant through his attorney filed a Pre-Trial Petition at the Kupang District Court Class 1A and the Pre-Trial Petition was granted in its entirety by the Case Examining Judge with the following ruling:

1. Grant the Applicant's pretrial motion in its entirety;
2. Stating the law that the determination of the Applicant (YMS) as a suspect based on the Investigation Order Number: Sprindik/1504/XII/2022/Reskrim, dated December 02, 2022 is invalid and not based on law and therefore has no binding legal force;
3. Stating the Law that the Letter of Determination of Suspects Number: SP-Tap /134/XII/2022/Reskrim dated December 27, 2022 concerning the

Determination of Suspects is invalid and not based on law, therefore it does not have binding legal force;

4. Stating the law that all results of the investigation conducted by the Respondent against the Applicant related to the alleged criminal act of misusing the transportation and/or trading of government-subsidized fuel oil and any person who conducts storage without a storage business license, as referred to in Article 55 of Law Number 22 of 2001 on Oil and Gas, as amended by Law Number 11 of 2020 on Job Creation and Article 53 Letter c of Law Number 22 of 2001 on Oil and Gas *jo.* Article 55 paragraph (1) to 1e of the Criminal Code is invalid and not based on the law and therefore has no binding legal force;
5. State the law that the case *a quo* is not a criminal matter;
6. Declare that the Respondent's determination of the Applicant as a suspect is invalid and void or null and void;
7. Declare invalid the confiscation carried out by the Respondent against the evidence in the case *a quo*;
8. Stating that the evidence used by the Respondent to establish the Applicant as a suspect is invalid, and can no longer be used;
9. Order the Respondent to immediately issue an Order to Discontinue Investigation (SP3) against the Applicant;
10. Declare invalid any decision or determination issued by the Respondent relating to the determination of the Applicant as a suspect and which is detrimental to the Applicant;
11. Restore the Applicant's rights in his/her ability, position, dignity and respect;
12. Charges the Respondent with court costs in the amount of nil.

3.2 Integration of Legal Certainty, Justice and Benefit in Decisions of Judgement Pretrial Number 21/Pid.Pra/2022/Pn.Kpg and Number 22/Pid.Pra/2022 /Pn

Based on the judge's decision above, it is known that the *aquo* case is a pretrial case regarding the validity or invalidity of the determination of a suspect experienced by the Applicant in Pretrial Case Number 21/Pid.Pra/2022. The examination and decision made is in accordance with the provisions of Article 77 of the Criminal Procedure Code in conjunction with the Constitutional Court Decision Number 21/PUU-XII/2014 which essentially

states that the district court has the authority to examine and decide whether or not the determination of a suspect is valid. The legal basis clarifies the position that in the *aquo* case the judge has the authority to examine and decide on the validity or otherwise of the pretrial determination of a suspect.

The next analysis is about the procedural law used in examining and issuing a decision on the *aquo* case. The formal legal basis used to examine and decide pretrial cases is regulated in the provisions of the Criminal Procedure Code which is specifically contained in Articles 77 to 83 of the Criminal Procedure Code which regulates the authority of the court to hear pretrial cases. By regulating the procedural law in pretrial cases, it can regulate the protection of the dignity of the suspect or defendant, and also regulate the rights and obligations of law enforcers.

In accordance with the main core of the author's research problem which connects Pretrial Decisions Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg have realized aspects of legal certainty, justice, and benefits or have not realized them, then the author first connects them with aspects of legal certainty.

The judge's decision is part of the law enforcement process which aims to achieve legal truth or for the realization of legal certainty. Conceptually, legal certainty is a judicial protection against arbitrary actions, which means that a person will be able to obtain something that is expected in certain circumstances. Society expects legal certainty, because with legal certainty society will be more orderly. The law is tasked with creating legal certainty because it aims for public order and in the opposite context the community expects benefits in the implementation or enforcement of the law (Moho, 2019).

From the perspective of Pretrial Decision Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg, the Pretrial Judge did not assess the quantity of evidence but the quality of evidence. At the pretrial hearing in Case Number 21/Pid.Pra/2022/PN.Kpg, the pretrial Applicant submitted 13 (thirteen) letters of evidence and 2 (two) experts to provide testimony while the Respondent denied it by submitting 39 (thirty-nine) letters of evidence and 1 (one) expert to provide testimony. This is different from Pre-Trial Case Number 22/Pid.Pra/2022/PN.Kpg, where the Applicant submitted 19 (nineteen) pieces of evidence and 2 (two) experts to provide testimony while the Respondent, to refute the argument of the

Applicant, submitted 40 (forty) pieces of evidence and 1 (one) expert to be heard.

The Panel of Judges in Pre-Trial Cases Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg after carrying out the evidentiary stage then gave consideration basically as follows:

Consideration of the Panel of Judges in Pretrial Decision Number 21/Pid.Pra/2022/PN.Kpg:

- a. That based on the facts mentioned above, it is clear that in the case *a quo*, the actions of the Applicant are clearly not a criminal offense because the Solar Fuel Oil which was later used as the object of the case was not subsidized Fuel Oil but belonged to the Radar Unit of the Indonesian National Army Air Force (TNI-AU) and was transported by PT. Tavin Jaya which is a partner of the Indonesian National Army Air Force and the quality of the Applicant in the case *a quo* is only as a party who helps PT. Tavin Jaya whose tank car must be repaired so that PT. Tavin Jaya entrusts it to the warehouse supervised by the Applicant and the Applicant knows that the Solar Fuel Oil type *a quo* is diesel which is not problematic according to the law, as described by the Applicant;
- b. That if the actions of the Applicant who helped store Solar Fuel Oil for 6 (six) hours on the basis of the request of Mr. MS did not have a permit from the central government, then neither the Applicant nor Mr. MS would be subject to criminal sanctions, but administrative sanctions would be imposed on Mr. MS or PT. Tavin Jaya who carried out downstream business activities, as stipulated in Article 23A of the Law of the Republic of Indonesia Number 22 of 2001 concerning Oil, Gas and Natural Gas, as amended by the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation;
- c. That in the case *a quo*, if it is true that the Applicant is suspected of committing the crime in question, then there should be supporting evidence to prove that the Fuel Oil *a quo* is subsidized or not subsidized, so that it is clearer and clearer the criminal act or violation that has been committed.

Consideration of the Panel of Judges in Pretrial Decision Number 22/Pid.Pra/2022/PN.Kpg:

- a. That based on the facts mentioned above, it is clear that in the case a quo, the actions of Applicant MS are clearly not a criminal offense because the BBM/Solar which was later made the object of the case was not subsidized Solar Fuel Oil but belonged to the Radar Unit of the Indonesian National Army and was transported by PT. Tavin Jaya which is a partner of the Indonesian National Army and the quality of the Applicant MS in the case a quo is only as Director of PT. Tavin Jaya whose tank car belonging to PT. Tavin Jaya must be repaired so that PT. Tavin Jaya entrusts it to the Warehouse supervised by brother AKU and the person concerned knows that the Fuel Oil type Solar a quo is solar which is not problematic according to the law, as described by brother AKU;
- b. That if the actions of the AKU brothers who helped store Solar Fuel Oil for 6 (six) hours on the basis of the request of the MS Applicant did not have a permit from the central government, then neither the AKU brothers nor the MS Applicant would be subject to criminal sanctions, but administrative sanctions would be imposed on the MS Applicant or PT Tavin Jaya who carried out downstream business activities, as stipulated in Article 23A of the Law Number 22 of 2001 concerning Oil, Gas and Natural Gas, as amended by the Law Number 11 of 2020 concerning Job Creation.
- c. That in the case a quo, if it is true that the Applicant or brother MS is suspected of committing the crime in question, then there should be supporting evidence to prove that the Fuel Oil a quo is subsidized or not subsidized, so that it is clearer and clearer the crime or violation that has been committed.

The consideration of the Panel of Judges in Pre-Trial Decision Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg has reflected the aspect of legal certainty because there is no preliminary evidence, sufficient preliminary evidence, sufficient evidence as stipulated in the Criminal Procedure Code to determine the Petitioner in Pre-Trial Case Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg as a suspect (Siswanto, 2021). Despite the superiority in terms of quantity of letter evidence, the Respondent's letter evidence was not sufficient to prove that the Applicant in Pre-Trial Cases Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg owned the diesel fuel which was the object of the

determination of the suspect, but on the contrary the Applicant was able to prove that he was not the owner of the diesel fuel based on the evidence of the Pretrial Petitioner's letter Number 21/Pid.Pra/2022/PN.Kpg, namely the letter of the Sector II Command of the 226th Radar Unit Number: B/241/X/2022 concerning Request for Custody of Bio Solar to PT Tavin Jaya.

Further legal certainty is that the decision does not deviate from Article 23A of the Law Number 22 of 2001 concerning Oil, Gas and Natural Gas, as amended by the Law Number 11 of 2020 concerning Job Creation which only provides administrative sanctions against legal subjects who store fuel oil for a certain period of time, instead providing legal lessons for police and prosecutors to apply the precautionary principle in determining suspects in similar cases.

The next aspect to be examined is the aspect of justice. In fact, measuring justice in a judge's decision is very difficult because fairness for one party is not necessarily fair for the other party. Judges have the duty to uphold justice in accordance with the head of the decision which reads "*For the Sake of Justice Based on God Almighty*". *First*, the thing that needs to be seen in Pretrial Case Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg is that the examination of the case since the reading of the petition, answering, proof, and conclusion has achieved aspects of justice because the Panel of Judges examining the case provides equal opportunities for the Petitioner and Respondent and without overriding the rights and obligations of the Petitioner or Respondent in the Pretrial case. *Second*, the decision of the Panel of Judges has reflected aspects of justice because it has eliminated the suspect status of the Pre-Trial Petitioners Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg and restored the dignity of the Petitioners as they should. *Third*, the decision of the Panel of Judges is the decision desired by the Plaintiffs so that with the granting of the Plaintiffs' application, the Plaintiffs have regained their legal rights.

The next aspect analyzed is the aspect of expediency. The judge's decision will reflect expediency if it has an impact on the parties and society in general. In addition, the judge's decision should not only rely on textual circumstances but there is a combination of contextual and textual so that the judge in providing legal considerations is obliged to think ahead whether the decision has an impact or does not have a significant impact.

Connecting it with Pretrial Decisions Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg has provided benefits. *First*, for the Petitioner with the judge's decision has provided happiness and satisfaction because the pretrial request was granted by the Panel of Judges, while for the Respondent it provides a legal lesson so that it is more careful in determining the suspect. *Second*, this decision can be used as a reference for similar cases for Judges, Prosecutors, Police, and Advocates.

4. CONCLUSIONS

Based on the descriptions that have been explained, it is concluded that Pretrial Decisions Number 21/Pid.Pra/2022/PN.Kpg and Number 22/Pid.Pra/2022/PN.Kpg are in accordance or based on aspects of certainty, justice, and legal benefits. The suggestion given by the author is the need for preventive efforts in the form of dismissal and impeachment of the law done by the law enforcement agency, the Police and the Prosecutor's Office about the regulation of the abuse of oil fuel transportation and also the need to do a repressive effort of giving a sanction explicitly for those who deliberately take legal action to smuggle oil fuel.

REFERENCES

- Amin, R., Manalu, I., Hemert, W. A. Van, & Al-Aziz, M. F. (2022). Penyelesaian Ganti Kerugian Dalam Perkara Pidana Berdasarkan Penetapan Praperadilan: Studi Di Pengadilan Negeri Jakarta Selatan. *Jurnal Hukum Sasana*, 8(1), 19–32. <https://doi.org/10.31599/sasana.v8i1.974>
- Apriansah, Y., & Waluyo, B. (2021). Kajian Yuridis Putusan Praperadilan atas Penangkapan Ravio Patra (Studi Kasus Putusan Pengadilan Nomor 63/Pid.Prap/2020 PN.Jkt.Sel). *Humani (Hukum Dan Masyarakat Madani)*, 11(1), 179–192.
- Arzaky, M. D. W., & Tanudjaja. (2023). Kepastian Pemberian Ganti Kerugian melalui Putusan Praperadilan (Studi Kasus Putusan Nomor 10/Pid.Pra/2022/PN.MTR). *Bureaucracy Journal : Indonesia Journal of Law and Social-Political*, 3(1), 1043–1071.
- Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Jurnal Gema Keadilan*, 7(1), 20–33.
- Darwin, D., Dahlan, D., & Suhaimi, S. (2019). Analisis Yuridis Putusan Praperadilan dalam Perspektif Sistem Peradilan Pidana. *Jurnal Mercatoria*,

- 12(1), 68–78. <https://doi.org/10.31289/mercatoria.v12i1.2363>
- Firdaus, I., Dewi, A. A. S. L., & Karma, N. M. S. (2020). Praperadilan Penetapan Status Tersangka Dalam Dugaan Tindak Pidana Korupsi. *Jurnal Analogi Hukum*, 2(3), 366–371. <https://doi.org/10.22225/ah.2.3.2516.366-371>
- Firmansyah, S. H., & Farid, A. M. (2022). Politik Hukum Praperadilan sebagai Lembaga Perlindungan Hak Tersangka Ditinjau dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 mengenai Penetapan Tersangka. *Jurnal Penegakan Hukum Dan Keadilan*, 3(2), 90–103. <https://doi.org/10.18196/jphk.v3i2.15195>
- Hasan, Z., & Lestari, S. C. (2022). Pertimbangan Hukum Diterimanya Pengajuan Praperadilan Pelaku Tindak Pidana Korupsi Proyek Jalan Di Kabupaten Lampung Timur. *Muhammadiyah Law Review*, 6(1), 28. <https://doi.org/10.24127/lr.v6i1.1844>
- Hutasuhut, R. R., & Fadlian, A. (2021). Praperadilan Atas Penetapan Tersangka Diluar Ketentuan KUHAP. *Jurnal Ilmiah Living Law*, 13(2), 91–99.
- Marbun, R. (2021). Trikotomi Relasi dalam Penetapan Tersangka: Menguji Frasa “Pemeriksaan Calon Tersangka” Melalui Praperadilan. *Undang: Jurnal Hukum*, 4(1), 159–190. <https://doi.org/10.22437/ujh.4.1.159-190>
- Marzuki, P. M. (2009). *Penelitian Hukum*.
- Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan. *Jurnal Warta*, 13(1), 138–149.
- Pattiruhu, F., Adu, S., & Wewo, J. A. (2020). Analisis terhadap Perkara Praperadilan yang Tidak Dinyatakan Gugur sesuai Putusan Mahkamah Konsitusi. *Jatiswara*, 35(1), 1–18.
- Pramana, R. A., Ismail, & Martua, J. (2020). Studi Putusan Hakim Menolak Permohonan Praperadilan terhadap Terbitnya SP3 (Surat Perintah Penghentian Penyidikan) Putusan No.06/Pra.P/2018/PN.Tjb. *Jurnal Tectum*, 1(2), 201–207.
- Rahman, W. (2019). Wewenang Praperadilan: Memeriksa dan Memutus Penetapan Tersangka. *De Jure: Jurnal Penelitian Hukum*, 4(1), 167–177.
- Setiawan, P. J. (2020). Sistem Pemulihan Kerugian Integratif Bagi Korban Penipuan Skala Masif di Indonesia. *Kertha Patrika*, 42(3), 230. <https://doi.org/10.24843/kp.2020.v42.i03.p02>
- Siswanto, A. (2021). Permohonan Praperadilan dalam Upaya Pemberantasan Tindak Pidana Korupsi. *Lex Crimen*, X(4), 81–90.
- Sofian, A., & Hasibuan, B. M. (2020). Pengaturan dan Praktek Praperadilan

Tindak Pidana Pajak di Indonesia. *Jurnal Hukum Dan Pembangunan*, 50(3), 701–718.

Wewo, J. A., Stefanus, K. Y., & Pekuwaki, U. L. (2018). Code of Ethics Urgency in the Implementation of General Election in Indonesia. *Jurnal Dinamika Hukum*, 18(2), 194–199. <https://doi.org/10.20884/1.jdh.2018.18.2.1744>

Widyastuti, I. A. W., Dewi, A. A. S. L., & Sugiarta, I. N. G. (2020). Kewenangan Pengadilan Negeri Memutus Perkara Praperadilan Mengenai Tidak Sahnya Penetapan Tersangka. *Jurnal Analogi Hukum*, 2(3), 351–355. <https://doi.org/10.22225/ah.2.3.2519.351-355>



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