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THE MEANING OF TWO VALID MEANS OF EVIDENCE IN DETERMINING A SUSPECTS IN THE PRE-TRIAL PROCESS

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Abstract

The purpose of this study is to find out whether 2 (two) valid evidence is only based on the quality of the evidence or should the quality of the evidence; and analyze the difference between examining the quality of evidence and examining the subject matter at trial. The method of this research is normative juridical with conceptual, statutory and comparative approaches. The results of the study show that the proof of 2 valid evidence to establish a person as a suspect in the pretrial process does not focus on determining the material truth, but rather on procedural and formalistic aspects. Basing the decision on two pieces of evidence quantitatively can cause big problems for the judge so that in addition to having to pay attention to the amount of evidence, but also having to check the quality of the evidence as the principle *of evidence* in Perma Number 4 of 2016 emphasizes that the testing of the quality of this evidence must be carried out carefully and carefully, so that the legal process remains fair and does not harm the rights of the suspect.

Keywords: ***Evidence; Assignment; Pretrial; Suspect.***

INTRODUCTION

The criminal justice system in Indonesia is based on the principle that the law enforcement process must uphold the principles of justice, legal certainty, and the protection of human rights (Mujiburrhman, 2021). One of the important instruments in this system is pretrial, which serves as a control mechanism for the authority of investigators and public prosecutors, especially related to the determination of suspects, detention, and seizure (Sekti et al., 2024). Pretrial is an institution born from the idea of carrying out surveillance actions against law enforcement officials (Police, Prosecutors, and Judges) in order to exercise their authority (Ramadhani & Fikri, 2024).

Pretrial institutions are the result of efforts to demand the protection of human rights, especially those involved in criminal cases (Prasnada et al., 2023). Pretrial, in accordance with Article 1 point 10 of the Criminal Code, is the authority of the district court to review and decide whether the arrest and/or detention carried out at the request of the suspect, his family, or other parties represented by the suspect is legal or not. However, currently the existence of Pretrial does not fully guarantee the protection of suspects' rights because the Criminal Code limits pretrial authority, while judges narrow the limited authority only to test the legality of arrest and detention (Eddyono, 2014).

Evidence is evidence that has the value of independent evidentiary strength as determined there are five pieces of evidence in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP) (Jaholden, 2018). The evidence includes witness statements, expert statements, letters, instructions and statements of the defendant. However, in the pretrial process, it was determined that the use of "two valid evidence" was the main condition that must be met by the judge (Triantono & Marizal, 2021). This provision aims to ensure that the determination of suspect status is carried out fairly and based on strong evidence (Sunarto & Toerino, 2022). However, the understanding and application of the concept of "two legitimate pieces of evidence" is often a legal debate. Many cases show that there are differences in interpretation regarding whether the evidence used meets the legal criteria or not. This has implications for the judge's assessment in deciding whether the determination of the suspect is valid in the pretrial process (Kaifa, 2021). Indonesia does not yet have a process for testing evidence both in terms of quality

and quantity. This makes the Pretrial institution trapped only in formal and administrative problems that are far from the essence of the existence of the judicial system (Dermawan, 2019). Previous research that examined pretrial related to the determination of suspect status shows a variety of different perspectives in the context of Indonesian law and comparison with other countries. The research focuses on various aspects related to the pretrial process, the authority of law enforcement agencies, the protection of suspects' rights, and practices that apply in Indonesia and other countries. In contrast to the study, this research was carried out to offer a more specific perspective on the meaning of two valid pieces of evidence in the context of pretrial, especially in determining the validity of the determination of the suspect by investigators. This distinguishes it from previous research that has examined the authority of pretrial institutions, comparisons with foreign legal systems, or the protection of suspects' rights. This research emphasizes the importance of the quality and quantity of evidence in pretrial judges' decision-making, which is a crucial element in realizing procedural justice. Therefore, thepurpose of this study is to find out whether 2 (two) valid evidence is only based on the quality of the evidence or should the quality of the evidence; and analyze the difference between examining the quality of evidence and examining the subject matter at trial.

LITERATURE REVIEW

This research has an originality value that significantly differentiates it from previous studies that examined pretrial in the context of determining suspect status. Several previous studies have discussed similar issues with different focuses and approaches, including research on pretrial on the determination of the status of suspects in corruption crimes by the Corruption Eradication Commission (Dinda et al., 2021), Comparative research pexpansion of authority and enforcement of pretrial law in Indonesia and the Netherlands (Kripsiaji & Minarno, 2018). Then there is also research that examines the evidence in the judge's decision of the pre-trial case study of the Melina Setiaharta case (Widiatmoko et al., 2024), pretrial legal politics as an institution for the protection of suspects' rights is reviewed from the Constitutional Court Decision Number 21/PUU-XII/2014 concerning the Determination of Suspects (Firmansyah & Farid, 2022), pretrial problems in order to fulfill the rights of suspects (Taghupia et al., 2022). An overview of the object of pretrial in the criminal justice system in Indonesia (Parikesit et al., 2017), and a comparison of the Pretrial System in Indonesia and the United States (Haeranah, 2023).

Thus, this study differs significantly because it offers a more specific and contextual perspective on the meaning of two (2) valid evidence, namely whether the assessment of the sufficiency of evidence is solely determined by quantity or whether the quality of the evidence must also be considered. In addition, this study also highlights the difference between the examination of the quality of evidence in the pretrial stage and the examination of the subject matter in the trial. These aspects have not been studied in depth in previous studies. Therefore, the originality offered in this study is an important contribution to the development of the study of criminal procedural law in Indonesia, especially in strengthening the pretrial position as a mechanism to protect the rights of suspects in the law enforcement process.

METHOD

This research uses a normative juridical method, namely legal research focused on the assessment of norms.norm laws written in laws and legal literature (Scott, 2015). This research uses several approaches, namely (1) a legislative approach, carried out by examining relevant laws and regulations, especially the Criminal Procedure Code (KUHAP). (2) Conceptual approach, used to understand and explore the concept of "two valid pieces of evidence" as well as procedural limitations in pretrial. (3) A comparative approach is carried out by comparing practices and regulations related to pretrial in Indonesia with other countries that have similar legal systems, to gain a broader perspective. Data source research It uses secondary data sourced from primary legal materials, secondary legal materials and tertiary legal materials. The data in this study was collected through a literature study (*Library Research*). This study includes a search of legal literature, legal documents, court decisions, and relevant scientific publications. The data that has been collected is analyzed qualitatively, namely by grouping and interpreting the data based on its content and relevance to the research problem. This technique aims to produce conclusions that are comprehensive and in accordance with the purpose of the research.

RESULTS AND DISCUSSION

Meaning of 2 (Two) Valid Evidence in the Pretrial Process

In the Indonesian criminal law system, the determination of a person as a suspect is a legal step that must be based on valid evidence in accordance with Article 184 of the Criminal Procedure Code (KUHAP). Evidence in criminal procedure law uses terms such as "preliminary evidence", "sufficient preliminary evidence", and "sufficient

evidence", but these three terms have fundamental differences in the context of their use, although the Criminal Code does not provide an explicit definition.(Giri, 2021, p. 183) Article 1 point 14 of the Criminal Code mentions preliminary evidence as preliminary evidence that shows the possibility of a criminal act and the involvement of a person in the criminal act. This evidence does not have to meet the requirements for the amount or type of evidence as stipulated in Article 184 of the Criminal Procedure Code, but it can be in the form of a police report, preliminary information, or indications obtained from observations and does not necessarily lead to the determination of a suspect, but it is enough to direct investigators to dig further (Adawiyah & Wulan, 2024).

Sufficient preliminary evidence is regulated in Article 17 of the Criminal Code, which is at a higher level of proof than "preliminary evidence," which is sufficient evidence to strongly suspect that a person has committed a criminal act.(Muntaha, 2018, p. 469) Its function is as a basis for the determination of a person as a suspect, and is used by investigators to take legal action such as arrest or detention. This characteristic refers to valid evidence as stipulated in Article 184 of the Criminal Code, although it does not have to meet the standard of proof in a court hearing (at least two pieces of evidence), usually in the form of witness statements, expert testimony, or documents that show a person's involvement in a criminal act. In relation to the determination of suspects, it must refer to the elements of the alleged crime (Hutabalian, 2023).

Sufficient evidence is regulated in Article 21 Paragraph (1) of the Criminal Code, where the standard of proof is higher than "sufficient preliminary evidence," namely evidence that meets the minimum requirements as stipulated in Article 184 of the Criminal Code to conduct detention or continue the case to the court stage (Tornado, 2018). Its function is used to justify legal actions such as detention of suspects and serves as a basis for judges to decide whether a case can proceed to trial. The characteristics of sufficient evidence include having to meet at least two valid pieces of evidence; give confidence to the investigator or judge that the crime really occurred and the suspect is the perpetrator; and heavier than "sufficient preliminary evidence," because it is close to the evidence used in the trial.

Based on the description of the meaning of evidence in the Criminal Procedure Code above, it can be seen that these three terms are gradually related to each other, along with the investigation and prosecution process in the criminal procedure law. All of the evidence must refer to the formulation of the crime that will be alleged to the suspect, because each element of the crime determines the relevance and adequacy of the evidence submitted. Preliminary evidence is the starting point in the research process; sufficient preliminary evidence is used to designate a person as a suspect; and sufficient evidence to be the basis for further legal action, such as detention or transfer to court.

The principle of legality and the principle of minimum proof in the criminal justice system are fundamental principles in criminal law in Indonesia. Article 6 Paragraph (2) of Law No. 48 of 2009 concerning Judicial Power emphasizes that no person can be sentenced to a crime without a trial; must be based on valid evidence according to the law; and the judge must be convinced of the defendant's guilt. Then Article 183 of the Criminal Procedure Code expands and clarifies this principle by stipulating that judges may not impose a criminal sentence without at least two valid evidences and the judge's conviction must be based on such evidence. Article 183 of the Criminal Code regulates, to determine whether a defendant is guilty or not and to impose a criminal sentence on the defendant: 1. His guilt is proven by at least two valid evidences and; 2. Proof with at least two valid evidence, the judge obtains the conviction that the criminal act really occurred and that the defendant is guilty of committing it (Zurnetti et al., 2021).

The two valid pieces of evidence in Article 183 of the Criminal Code are known as the minimum principle of proof, where at least two pieces of evidence (such as witness statements, documents, instructions, etc.) must be submitted to support a criminal decision, and the judge's conviction must not be based solely on intuition or personal opinion, but must be born from the assessment of legally obtained evidence.(Sukarna, 2016, p. 6) Article 6 Paragraph (2) of Law No. 48 of 2009 regulates the general principle that no person can be convicted without due process of law based on valid evidence, while Article 183 of the Criminal Code specifically stipulates that valid evidence must be sufficient at least two and accompanied by the judge's belief that the defendant is truly guilty of the criminal act.

The meaning of Article 183 of the Criminal Procedure Code mentioned above shows that what is adopted in the evidentiary system is a negative system according to the law (*negatief wettelijk*). Then, the mention of the word "at least two pieces of evidence" means that a criminal judge should not impose a criminal sentence on a person based on only one piece of evidence. By requiring two pieces of evidence, this system provides additional protection to the defendant. If there is only one piece of evidence, then it cannot be said that the criminal act is really proven according to the law. In this evidentiary system, the integrated unity of the merger between the *conviction in time* system and *the positive legal proof* system (*positivof wettelijk stelsel*) Article 183 of the Criminal Code and those

formulated in Article 294 of the Criminal Code, both adhere to the negative legal proof system. The difference between the two, lies only in the emphasis alone. In Article 183 of the Criminal Code, the requirements for proof according to legal methods and evidence, are more emphasized in its formulation. This can be read in the sentence: sufficient evidentiary provisions to convict a defendant of at least two valid evidence.

Criterion 2 (Two) Valid Evidence Based on Quantity and Quality in Considering the Validity of the Determination of Suspects in the Pretrial Process

Evidence related to evidence in the pretrial must be limited only to the quantity of evidence related to *Minimum evidence then* quality of evidence relating to *Evidence* (Alfiananda, 2018). Evidence in criminal cases has an important role related to it, especially with the ability of judges to reconstruct past events or events as a truth. The primary purpose of proof in a legal context is to help establish the guilt or innocence of a defendant. Judges and jurors rely on the evidence presented at trial to establish a fair and accurate belief about the facts related to criminal cases. Evidence such as witness statements, expert testimony, letters, instructions, and defendants' statements are used to build a strong case or defend the interests of the defendant. Strong and valid evidence is the basis for the court to make a fair decision based on convincing evidence (Dee, 2024).

The determination of evidence in the pretrial process is procedural, not material. This means that the pretrial judge is only authorized to confirm whether the two valid pieces of evidence have been fulfilled in accordance with the provisions of Article 184 of the Criminal Code (Latupeirissa et al., 2023). The judge must not enter the realm of substance assessment, such as whether the evidence is true and relevant to prove that a person is a criminal perpetrator. In other words, what is examined is not the quality of the evidence but the quantity of the evidence, such as for example *whether* have fulfilled 2 (two) pieces of evidence. The two pieces of evidence presented by the judge to consider the validity of the determination of the suspect in the pretrial process are still a debate, namely whether the two pieces of evidence are quantitatively sufficient or must be supported by a qualitative assessment. Qualitatively, two pieces of evidence must have witness testimony and expert testimony or witness testimony and expert letter or testimony and letter or so on, meaning two of the five pieces of evidence in Article 184 of the Criminal Code. Meanwhile, quantitatively, two witnesses or two letters or two experts have been counted as two pieces of evidence (Dermawan, 2019).

The quantity of evidence in Indonesian criminal law has been clearly regulated in Article 183 of the Criminal Code, which is a requirement for a minimum of two valid pieces of evidence. In pretrial, this standard remains relevant as a basis for testing the legality of investigators' actions, such as suspect designation, seizure, or search. Without meeting these conditions, the determination of suspects can be considered invalid. The implication of quantity in the determination of the first suspect is that one piece of evidence is not enough. If there is only one piece of evidence, the pretrial judge will most likely declare that the determination of the suspect is invalid because it does not meet the minimum standards. Second, the relationship between evidence. The two pieces of evidence submitted must support each other and be relevant to the alleged crime. Example: In the case of the determination of a suspect in a corruption crime, the witness statement must be supported by audit documents or clues in the form of relevant conversation recordings.

The quality of proof is very important to be maintained so that what is produced from the evidentiary process becomes valid and meets the nature of material truth as the purpose of criminal law enforcement (Triantono, 2020). The quality of the initial evidence is also important in order to achieve the principle of fair legal certainty (Priyanka, 2021). Evidence meets the quality aspect determined by two things, namely a legitimate source and does not violate the rights of the suspect. A Legitimate Source that evidence must be obtained through procedures in accordance with the law. Example: A search warrant issued by the authorities. Does not violate the Suspect's Rights that evidence obtained illegally, such as the results of illegal wiretapping, cannot be used in the pretrial process. The relevance of the quality of evidence refers to the extent to which the evidence supports the legal facts being tested. In pretrial, the relevance of evidence is very important because the focus of the examination is on the formal aspect, not the material. For example, witness statements must be directly related to the alleged event; and letter documents, for example, financial statements must be able to show indications of irregularities.

Pretrial as a control mechanism for investigators' authority, aims to prevent arbitrariness in determining suspect status. Therefore, in the pretrial, the evidence submitted by the investigator must be tested both qualitatively and quantitatively. In this case, quantitative testing refers to the minimum amount of evidence needed to justify the determination of a suspect, while qualitative testing is concerned with the quality and relevance of the evidence. In Article 2 paragraphs (2) and (4) of Perma Number 4 of 2016, there are provisions that regulate pretrial procedures,

including how investigators must show evidence to the judge, even though they are not required to show it to the suspect (Pakpahan, 2024). This aims to avoid arbitrariness in the determination of suspects and to avoid *Unfair Prejudice* or unreasonable suspicion of someone (Handoko et al., 2021). Investigators, although they are not obliged to disclose evidence to suspects, must ensure that the existing evidence is adequate and valid according to the applicable legal provisions.

As stipulated in Perma Number 4 of 2016, the testing of evidence in pretrial must pay attention to the principle of *evidence* assessment, which requires a confrontation between evidence and each other. This confrontation aims to ensure that the evidence presented by investigators truly meets legitimate standards, both formally and substantively. Thus, even though the pretrial only aims to test procedural validity, testing evidence that is not only formalistic (the need for evidence quality tests) will reduce the possibility of errors or abuse of authority in determining suspects.

One example of a pretrial case in Indonesia is the pretrial decision case Number: 6/Pid.Pra/2020/PN.Tjk which rejected a pretrial application. This reflects the importance of the judge's basis for consideration in assessing pretrial applications, especially those related to the determination of suspects. Judge In this case, it has carefully examined and considered both the application submitted by the applicant (suspect) and the exception submitted by the respondent (investigator or law enforcement officer). Both sides are given the opportunity to present arguments and evidence in support of their claims, which is a fundamental principle in *Asaz Audi And Alteram Partem* (providing an opportunity for both sides to be heard) (Hartono et al., 2022). Although the suspect submitted an application to test the determination of the suspect, the judge argued that it could not be granted. This is based on the understanding that Article 77 of the Criminal Code does not explicitly include the determination of suspects as objects that can be tested in pretrial (Wibowo & Sunarto, 2024). In Article 77 of the Criminal Code, what is regulated is the arrest, detention, search, confiscation, and termination of investigation or prosecution as a pretrial object, while the determination of suspects is not included in the list.

The Difference Between the Quality Examination of Evidence and the Examination of the Subject Matter at the Trial

Differences between examination The quality of evidence in pretrial and examination of the subject matter at trial is very basic, both in terms of the purpose, scope, and legal approach used. First, the difference in the aspect of the purpose of the examination (Savitri & Simangunsong, 2023). The quality of evidence checks in the pretrial focus on the formal and procedural process in determining suspects and testing the validity of the evidence Used by investigators. The main purpose of pretrial is to ensure that the determination of suspects is carried out by following correct procedures and using valid evidence in accordance with the provisions of applicable law (Makaruku, 2019). The pretrial judge does not assess the material truth of the criminal act, but only whether the process of determining suspects and collecting evidence is in accordance with the rules. The examination of the subject matter at the trial aims to find the material truth or legal facts that occurred, whether a defendant really committed the criminal act accused against him. In the trial, the judge examines all the evidence and witnesses presented by both sides to determine whether the defendant is guilty or innocent. This involves an in-depth examination of the substance of the case, including a broader and in-depth examination of evidence.

Second, differences in the aspect of the scope of examination. In pretrial, the scope of the examination is limited to the formal process and the validity of the evidence used for the determination of the suspect. The pretrial judge only checks whether the evidence submitted by the investigator has met the provisions set out in the criminal procedure law, especially regarding whether two valid pieces of evidence already exist and whether the procedure for determining suspects is carried out correctly. The judge did not test whether the evidence really proved the defendant's guilt. The examination of the subject matter at trial has a much wider and substantial scope of examination, involving all aspects of the criminal case, both in terms of the defendant's defense and the prosecutor's indictment. All relevant evidence, including witnesses, letters, defendants' statements, and other evidence, will be tested in court. The judge will assess the authenticity, credibility, relevance, and strength of evidence to determine whether the prosecutor's indictment is legally and convincingly proven.

Third, the difference in the aspect of the legal approach used. In pretrial, the approach used is procedural and formalistic. The main focus is to ensure that the evidence submitted meets the standards set out in the criminal procedure law, such as provisions on the type of evidence that is legal and how it is collected. The examination of the quality of evidence is limited to formal process and whether the evidence is legally valid (e.g., whether it was obtained by lawful means or in accordance with applicable procedures). In contrast to the examination of the subject matter in the trial, which uses a substantial and material approach. In this case, the evidence presented will be tested

in depth to see the strength of the evidence, and whether the evidence can prove the indictment beyond *reasonable doubt*. This approach examines whether the evidence as a whole proves the truth of the charges and shows the defendant's involvement in the crime.

Fourth, the difference in the aspects of results and decisions issued. The examination of the quality of evidence in the pretrial resulted in a limited decision limited to the legality of the determination of the suspect or the legality of the investigation process. If the pretrial judge finds that the evidence used is invalid or inadequate, then the judge can cancel the determination of the suspect or the investigation process that is not in accordance with procedure. The judge does not decide whether the defendant is guilty or not, but only checks whether the determination of the suspect was carried out legally. While the examination of the subject matter at the trial, the decision taken is much more substantial, namely the verdict on whether the defendant is guilty or innocent. The judge will decide whether the defendant is convicted or acquitted based on the evidence presented at trial, which includes an in-depth analysis of the material truth of the facts at hand.

Fifth, differences in the aspects of the duration and the examination process. The examination of the quality of evidence in the pretrial has a relatively short duration, usually only lasting 7 days in accordance with the provisions in Article 82 paragraph (1) of the Criminal Code. In this short time, the judge will only check whether the procedure for determining suspects is in accordance with the rules, and whether the evidence used has met the applicable provisions. In contrast to the examination of the subject matter in the trial which can last longer, depending on the complexity of the case, the amount of evidence and witnesses that must be examined, and the debate between the prosecutor and the defense. In the trial, the judge has more time to conduct a more in-depth examination of the evidence and witnesses.

The pretrial that applies and is carried out in Indonesia can be compared with foreign countries such as the Netherlands and France. This shows that there are fundamental differences in authority and procedure which is carried out in the examination of criminal cases. In the Dutch legal system, *Judge Commissioner* (Judge Commissioner) plays an important role in the pretrial process. It has broad authority, not only to deal with forced attempts (dwangmiddelen), but also to regulate the detention, confiscation, search, and examination of papers. This is different from the pretrial system in Indonesia, where pretrial judges only examine the process and procedures for determining suspects and are not authorized to conduct material examinations of existing cases or evidence. In France, the institution equivalent to pretrial is called *Investigating Judge* (Investigating Judge), who has broader authority in the preliminary examination. This judge can examine defendants, witnesses, and other evidence, as well as conduct searches of certain houses and places. After examination The preliminary is over, the judge determines whether there are sufficient grounds to transfer the case to the court or whether the case should be dismissed. In contrast to Indonesia, where pretrial does not include a substance examination or a direct search, this right is more limited to the procedural examination of the determination of the suspect (Fani, 2021).

Based on the description of the pretrial comparison above, it can be seen that pretrial in Indonesia prioritizes formal and procedural processes, namely whether the determination of suspects is carried out in accordance with the applicable legal provisions. The pretrial judge only checks whether there are two valid pieces of evidence and the correct procedure in determining the suspect, but is not authorized to test the quality of the evidence materially or conduct a search. However, the Netherlands and France do not limit pretrial to the submission of an application by the aggrieved party. They have a more proactive mechanism and give judges greater authority to conduct preliminary examinations of acts such as detention, confiscation, and searches. This allows the judge to be directly involved in the early stages of the investigation. In addition, pretrial in the Netherlands and France is more about examining the substance and completeness of evidence to determine whether a case is sufficient evidence to proceed to court, while in Indonesia, pretrial is more limited to examining the procedural and regulatory validity followed by law enforcement officers in carrying out their duties.

CONCLUSION

In the pretrial process, especially when testing the determination of a person as a suspect, the evidentiary process does not focus on determining the material truth, but rather on procedural and formalistic aspects. In the pretrial, although the quantity of evidence has been filled with two valid evidence, the quality of the evidence also plays an important role. In the pretrial process, the judge does not decide on the material truth, but it is important for the judge to conduct an evidentiary test that not only refers to the quantity, but also to the quality of the evidence presented. The principle *of proof* in Perma Number 4 of 2016 emphasizes that testing the quality of this evidence must be carried out carefully and carefully, so that the legal process remains fair and does not harm the rights of suspects. With this approach, it is hoped that the pretrial process can be an effective means to prevent arbitrariness

in the determination of suspects and provide optimal legal protection for suspects in every stage of the criminal legal process. The examination of the quality of evidence in pretrial is different from the examination of the subject matter at trial in terms of the purpose, scope, legal approach, and decision produced. The examination of the quality of the evidence in the pretrial focuses more on the procedure and validity of the evidence related to the determination of the suspect, while the examination of the subject matter focuses more on proving the indictment and seeking the material truth in the criminal case.

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