

# The Scientific Evidence in Suspect Determination as an Object Pre-trial

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**Abstract:** Constitutional Court's verdict number 21/PUU-XII/2014 on 28 April 2015 has expanded the determination of suspect status as one of the pre-trial hearing objects. This brings an impact on the enforcement of law, wherein the pre-trial investigation has shifted from a formal aspect to a material aspect (a validity test), and thus results in the absence of a formal law in Indonesian Criminal Code. The progress of science and technology has influenced the development of the world of criminal law, especially in the field of evidencing a crime. The modus operandi of crime has used the means of science and technology, which is done through cyberspace, cannot be expressed by conventional evidences. Law enforcement officers, need to understand and apply scientific evidence and request the help of other applied sciences to seek the real truth of criminal events. Likewise for someone who has been designated a suspect, may use pre-trial efforts to test the validity of early evidence, including scientific evidence that makes him suspect of a criminal offender.

## 1 INTRODUCTION

Technology and law are two interplaying elements that are both influential in the development of society. On the one hand, technology can be seen as a means to achieve a certain goal. On the other hand, technology can also be seen as a human activity. On the other hand, the law imposes restrictions on the community to behave and provide order, related to the use of technology to commit crimes (Sitompul, 2012).

The development of crime is always laced with advances in science and technology. Often law enforcement is constrained in the evidence because the alleged offender has used the virtual world as a means of his crime. Therefore, conventional instruments of evidence must be extended as well with other evidences related to technological developments, including electronic documents.

The Constitutional Court ruling number 21/PUU-XII/2014, dated April 28, 2015 has extended the status of the Suspect as one of the objects of pre-trial. In addition, in the Constitutional Court Decision it is stated that sufficient initial evidence in the determination of the suspect, shall meet "at least two valid evidences" in the criminal procedure law. The inclusion of suspect status as the object of this pretrial, making the shift of pretrial examination nature from the aspect of formiil to material aspect,

that is to test the validity of the evidence instruments (Mulyadi, 2018).

The expansion of the suspect status determination as one of the pre-trial hearing objects pursuant to the Constitutional Court's verdict number 21/PUU-XII/2014 on 28 April 2015 has caused numerous polemics. The Constitutional Court granted some of the appeals of corruption convicts for Biomediation Project case of PT Chevron Bachtiar Abdul Fatah, one of which is to evaluate pre-trial object provisions (Determination of a Suspect) that caused polemics especially after post pre-trial verdict of South Jakarta District Court that annuls a suspect status for Komjen (Pol) Budi Gunawan (BG) by Corruption Eradication Commission (KPK).

The expansion of suspect status determination as a pre-trial object has impacted on the law enforcement, in terms of (1) the shift in pre-trial investigation from a formal aspect to material aspect (a validity test), and (2) the absence of a formal law in Indonesian Criminal Code.

The problem of this research is formulating into question are how are the evidence instruments in the Criminal Procedure Code (Criminal Procedure Code) and what is the legal standing of Scientific Evidence in the Establishment of Suspects as a Pretrial Object.

## 2 RESEARCH METHODOLOGY

This paper uses the normative juridical method. Normative legal research method or literature law research method is a method used in legal research conducted by examining the library materials in the form of applicable legal norms contained in the legislation or judgment decisions (Soekanto, 1986). The normative juridical method in the context of this paper is used to examine the legal norms of Evidence Tools In the Book of Criminal Procedure Code (KUHAP) and The Position of Scientific Evidence in the Establishment of Suspects as Pretrial Objects. The data of this study is the secondary data consisting of (a) main legal materials in the form of a legislation, and (b) secondary legal materials including books and journals. The data were collected using the literature reviews and document analysis relating.

## 3 RESULT AND DISCUSSION

### 3.1 Evidence Tools in the Book of Criminal Procedure Code (KUHAP)

Regarding the instruments of this evidence, it is included in Article 184 of the Criminal Procedure Code, which consists of: (a) The statements of witnesses; (b) Expert description; (c) Letter; (d) Instructions; and (e) Description of the defendant. These evidences are legitimate evidence, which has to do with a crime. These tools of evidence shall be used as substantiation, in order to give rise to a judge's conviction, on the occurrence or not of a crime. For this reason the evidence will be described as follows. Statement of witnesses In general, the definition of witness statements is contained in Article 1 point 27 of the Criminal Procedure Code, which states that "witness testimony is one of the evidence in a criminal case in the form of testimony from a witness regarding a criminal case, which he hears himself, natural by itself, by mentioning the reason of his knowledge (Sabuan, 1990).

Expert information, Article 1 point 28 of the Criminal Procedure Code states that the expert's statement is the information given by a person who has special expertise on the matter necessary to make the light of a criminal case for the purposes of examination. Then in Article 186 of the Criminal Procedure Code, it is stated that the expert's skill is what the experts have stated in the court (Soeparmono, 2016). So for the validity of expert

information as evidence, then the information must be stated in court. An expert may also provide information outside the court, for example on examination of the investigation stage for example embodied in *visum et repertum*, (Simanjuntak, 2009) the results of laboratory analysis and others. This information is called a written statement, which in the examination is sufficient to be read only and the expert concerned does not need to be presented in the hearing, except for something, the expert concerned is deemed necessary to be presented in the trial.

Letter, The meaning of this letter shall be contained in Article 187 which reads as follows: "The letter referred to in Article 184 Paragraph (1) letter c, made on oath of office or affirmed by oath, is: (Ali, 2016)

- a. official reports and other letters in the official form prepared by the competent public authority or drawn up before them, containing information about events or circumstances heard, seen or experienced by themselves, accompanied by a clear and unequivocal explanation of the information.
- b. a letter made in accordance with the provisions of legislation or letters made by the officer concerning matters which fall under the management of which it is the responsibility and which is for the proof of a thing or circumstance.
- c. a certificate from an expert whose opinions are based on his or her expertise on a situation which is formally requested from him/her.
- d. other letters which may only apply if they relate to the contents of another evidentiary instrument.

Guidance, According to Article 118, instructions are actions, events or circumstances which, due to their correspondence, either between one another and the offense itself, indicate a crime has occurred and who the perpetrator is. The guidance is not a direct verification tool but basically the conclusions of other evidentiary tools, which according to Article 188 Paragraph (2) of the Criminal Procedure Code can only be obtained from the statements of witnesses, letters and statements of the accused.

Explanation of the defendant, Article 189 states "Defendant's statement is what the defendant stated in the hearing about the deeds he did or knew himself or experienced himself. Thus, the defendant's statement as evidence must be stated in the hearing. While the information is supported by a legal evidence as long as the matter is charged to him. The defendant's description can only be used against himself. The statement of the defendant is not sufficient to prove

that the guilty of committing the deed is accused of him, but must be judged by other evidence.

### 3.2 The Position of Scientific Evidence in the Establishment of Suspects as Pretrial Objects

In the development of certain criminal acts, it requires the development of evidence instruments other than those set forth in the Criminal Procedure Code. This is because the modus operandi of crime has been using the means of information technology that is closely related to cyber space in doing the crime. Therefore, the evidence instruments set forth in the Criminal Procedure Code will not be able to expose the crime in a sophisticated mode.

In the Criminal Act of Corruption, Article 26 of the Corruption Eradication Act (UU PTPK) formulates that the investigation, prosecution and examination in the trial of corruption is conducted under applicable criminal procedure law, unless otherwise provided in this Law. Based on Article 26 of the above PTPK Law, the evidence against corruption shall still refer to Article 184 of the Criminal Procedure Code. Subsequently, the above evidences, specifically for evidence guidance are extended in Article 26 A of the PTPK Law, that specifically for criminal acts of corruption may also be obtained from (a) other evidence in the form of information uttered, transmitted, received or stored electronically with optical devices or similarly; and (b) documents, i.e. any recording of data or information that can be seen, read, and or heard which may be issued with or without the aid of a means, whether contained on paper, any physical object other than paper, or electronically recorded, in the form of writings, sounds, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

The Narcotics Law also recognizes the scientific evidence formulated in article 86 paragraph (2), in the form of (a) information that is spoken, transmitted, received, or stored electronically by optical means or similarly; and (b) recording or information data that can be seen, read, and/or heard, which can be issued with or without the aid of a good instrument contained on paper, any physical objects other than paper or electronically recorded, limited to: (1) writings, sounds and/or images; (2) maps, designs, photographs or the like; or (3) letters, signs, numbers, symbols, passwords or perforations that have meaning understood by those who are able to read or understand them.

The Electronic Information Transaction Law (ITE) in Article 44 is already familiar with other evidence in the form of Electronic Information and/or Electronic Documents. Similarly, the Money Laundering Act in Article 73 states that in addition to the evidence contained in the Criminal Procedure Code, as well as other evidence in the form of information that is spoken, transmitted, received, or stored electronically with optical devices or similar optical instruments and Documents.

The extension of the status of the Suspect as the object of the Pretrial, the consequence of the Pretrial Judge has the authority to judge the validity of early evidence. This is because the determination of the Suspects is in the domain of the investigation, that is, as defined in Article 1 point 2 of the Criminal Procedure Code, which states "Investigation is a series of investigative actions in respect of and in accordance with the manner stipulated in this law to seek and collect evidence which by evidence it makes the light of the crime that occurred and in order to find the suspect ". This the meaning of the investigation must first seek and collect evidence to make light of the crime taking place. From the evidence then only the suspect is determined.

In certain criminal acts, such as criminal acts of corruption, money laundering crime, narcotics crime and criminal acts of information and electronic transactions, in the pretrial to the determination of the Suspect, it is very important to test the validity of this scientific evidence. This proof is information that is spoken, transmitted, received, or stored electronically with optical or similar devices. Therefore the science of criminal law should receive assistance from other related fields of science related to the world of informatics. This is very important to find justice and legal certainty in determining a person as a suspected suspect of a criminal. For a person who feels aggrieved over his or her determination as a criminal suspect, you can use the scientific evidence to defend him through pretrial institutions so that truth is discovered.

The status of a suspect can be studied through the philosophy of punishment due to the shift in the status of a suspect into a defendant in the criminal proceedings (Murphy, 1995). The status of a suspect within the perspective of classical school and positive school is the "right" of a criminal, not the forced efforts, despite these two schools have differences in its punishment system. The classical school requires a criminal sanction as a responsibility for the crimes committed (Zimring, 1976). While, the positive school requires the person to be given a treatment or rehabilitation (Walker, 1995). In other words, in

defining the suspect status as an entry point to the criminal justice system, someone suspected of being a criminal "reserve the right" to bear the status of a suspect after fulfilling the requirements of preliminary evidences.

#### 4 CONCLUSION

Crimes that use sophisticated mode and use cyberspace cannot be disclosed by conventional evidences based on KUHAP. Therefore it is necessary to develop and apply scientific evidence, both for law enforcement officers, and for someone who has been designated as a suspect to find the truth in a criminal event. Therefore, the criminal act of corruption, Narcotics, Money Laundering, and the Law on Information Transaction Electronic, has been set about this scientific evidence in the form of electronic information and electronic documents. Like wise with the extension of the status of the Suspect as the object of the Pre-trial, the consequence of the Pre-trial Judge has the authority to assess the validity of the evidence, including this scientific evidence. Law enforcement officers and suspects should seek other scientific assistance related to this scientific evidence.

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