

## The pre-trial application granted in the case of Budi Gunawan

Cokky Wijaya Saputra <sup>1</sup>

### Abstract

*This study tries to analyze cases that have been experienced by prospective police chief Budi Gunawan (BG) on the application of pre-trial which was considered odd in the event of violations in the verdict given by Sarpin Rizal as chairman of the court. This resulted in the KPK not being able to submit another legal effort to sue again, because the pretrial decision was final and binding on a lawsuit case. The analysis method used in this study is a qualitative research method in which data analysis is carried out in a descriptive manner that refers to a particular problem and is associated with existing legislation, namely: 1) The 1945 Constitution of the Republic of Indonesia; 2) Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP); 3) Law Number 48 of 2009 concerning judicial authority. The collection of legal materials is done by library research. Judge Sarpin Rizaldi's decision reaped many irregularities. The irregularity lies in the decision that does not pay attention to the existence of pretrial as stipulated in the Criminal Procedure Code and legislation relating to corruption.*

**Keywords:** Case; Decission ; Suspected

### Author's Information:

<sup>1</sup> Law Department,  
Universitas Airlangga,  
Indonesia  
([cokkywijaya@gmail.com](mailto:cokkywijaya@gmail.com))

### Article's Information:

DOI:

<https://doi.org/10.35326/volkgeist.v4i1.478>

### 1. Introduction

The rapid progress of technology, and the human economy in this day and age are actually growing more conventional criminal acts and special criminal acts, but with a new modus operandi and sophisticated technology that requires more investigation from law enforcement officials to determine whether these actions can be categorized as acts criminal or not. In the study, researchers conducted an analysis of the cases that were being experienced by the prospective police chief, Budi Gunawan, on the application of pretrial which was considered odd. Article 77 of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which reads

"The district court has the authority to examine and decide upon, in accordance with the provisions stipulated in this Law concerning: a) The validity of the arrest, detention, cessation of investigation or cessation of prosecution; b) Compensation and / or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution "

The question now, is that apart from the two pretrial reasons above, it is still possible for other pretrial reasons, such as whether or not an investigation is valid or valid or whether a suspect is determined as a pretrial object in a pretrial case submitted by the Commission General. Pol. Budi Gunawan.

In the tempo.co newspaper dated Monday 16 February 2015 13.47 WIB stated that there was a violation in the decision, said Deputy Chief of the Supreme Court Suwardi, who responded to Budi Gunawan's pretrial ruling which was granted, even won by Budi

Gunawan, for the decision given by Sarpin Rizal as chairman the court is handling this case, so according to Suwardi the KPK cannot submit other legal remedies after the verdict, because the pretrial verdict is final and binding on a lawsuit case, provisions and legislation mentioning the party that lost in the pre-trial cannot submit an appeal 'he said', so it will suffice.

Listed in article 45a paragraph (1) and (2) of the Supreme Court law. Which article 45a paragraph (1) states that the supreme court in the cassation level hears cases that meet the requirements for submission of cassation, except for cases which by law are restricted from filing. Paragraph (2) states that exempted cases are pretrial decisions, criminal cases that are threatened with a maximum imprisonment of 1 year and / or are threatened with fines, as well as state administration cases where the object of the lawsuit is in the form of a regional official's decision, the extent of the decision applies in certain regions.

So in other words, it is feared that there will be similar cases where the suspects will file a pretrial suit if the suspect is determined by the KPK, in this case pretrial can be interpreted as an effort from someone who according to his arrest, detention, cessation of investigation or termination of prosecution is not appropriate with the procedure, pretrial can be done as an effort to defend or rebuttal from an illegitimate procedure, then it can be seen in the procedure of pretrial or righteousness lawsuit of someone who is pretrial.

The strength of this pretrial decision is very strong, namely that the Pre-Judgment Ruling cannot be appealed against Article 79, Article 80 and Article 81 of the Criminal Procedure Code. Decisions that determine the invalidation of an investigation or prosecution can be invoked can be requested by the final decision of the high court in the region

The relevant law is in accordance with Article 83 paragraph (2) of the Criminal Procedure Code. From the legal processes that the author has described above related to the case that the writer chose it turns out that the writer found irregularities why SP3 was issued, in this case which tells about a prospective National Police Chief. Budi Gunawan.

## **2. Research methods**

The method of analysis used in this study is a qualitative research method in which data analysis is done in a descriptive manner that refers to a specific problem and is associated with existing legislation, and is carried out with legal materials such as laws and also legal articles in accordance with the material used. found to be related to legal issues and collected systematically with a view to getting conclusions.

The collection of legal material is done by means of library research, that is, researchers collect legal materials (consisting of primary and secondary legal materials) then study the book in which the laws and articles have a relationship with the problems in this thesis. book articles are also directed to view the media, in the form of magazines, newspapers, and articles that are published on the website.

Primary legal material in this case is binding legal material in the form of statutory regulations, official records, as well as Minutes of Lawmaking and Judge's Decision namely

1. The 1945 Constitution of the Republic of Indonesia
2. Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP).
3. Law Number 48 of 2009 concerning judicial authority.

Secondary legal material is material that supports primary legal material in this writing, namely Law Book, Ilmiah Journal / Work, Articles contained in print and electronic media, and other supporting writings can be encyclopedias, dictionaries and other writings related to legal issues this writing.

### **3. Results and Discussion**

Budi Gunawan (BG) is news that enlivens Indonesia. Not only because BG was designated as a suspect when he was nominated to be the Chief of the Indonesian National Police (Kapolri). BG has also become a central theme in various media in Indonesia due to its controversy pretrial.

#### **3.1.1 Submission of Pre-trial Budi Gunawan**

Based on the decision of the South Jakarta District Court Number: 04 / Pid.Prap / 2015 / PN.Jkt.Sel., BG is a suspect in the case of suspicious / improper transactions and / or alleged receipt of gifts or promises referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law 31 of 1999 concerning Eradication of Corruption Jo. Law 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The aforementioned criminal offense was carried out by the Petitioner in the period 2004 - 2006 when BG served as Head of the Police Headquarters Career Development Bureau. This was announced on January 13, 2015. The Respondent announced to the public at a press conference (press conference / presentation of information in front of the mass media).

Therefore determined as a suspect, the BG then submitted a pretrial petition in writing with a letter dated January 26, 2015 which was registered at the Registrar's Office of the South Jakarta District Court on January 26, 2015 under the Case Register Number: 04 / Pid.Prap / 2015 / PN. Jkt.Sel.,

The pretrial petition is as follows:

1. Declare accepting and granting the Petitioner's request for all;
2. Declare Investigation Order Number: Sprin.Dik-03/01/01/2015 dated 12 January 2015 which stipulates the Applicant as a Suspect by the Respondent in relation to the criminal event as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law 31 of 1999 concerning Eradication of Corruption Crimes Jo. Law 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph (1) of the Criminal Code is illegal and has no legal basis, and therefore the determination of aquo has no binding power;
3. Declare the Investigation carried out by the Respondent in relation to the criminal event as referred to in Determination of the Suspect against the Applicant himself as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law 31 of 1999 concerning Eradication of Corruption Crimes Jo Law 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Jo. Article 55 paragraph 1-1 of the Criminal Code is UNAUTHORAL and is not based on law, and therefore the Inquiry quo has no binding power;
4. Ordered the Respondent to submit all case files and all Reports on the Results of Analysis (LHA) of financial transactions between 2003 and 2003. 2009 related to Polri officers to origin investigators, in this case Polri investigators;

5. Stating that the actions of the Respondent who determined the Petitioner as the suspect without procedure is a legal defect / contrary to the law, resulting in a loss of Rp. 1,000,000 (one million rupiah);

6. To declare invalid all decisions or stipulations issued further by the Respondent relating to the Determination of the Suspect against the Applicant himself by the Respondent;

7. Punish the Respondent to pay the court fees incurred in the *Aquo* case.

This means that the thing requested in pretrial by BG (through its attorney) is related to the determination of BG as a suspect by the KPK for corruption cases of suspected suspicious / unnatural transactions and / or alleged receipt of gifts or promises made by the Applicant in the period 2004 - 2006 when BG served as Head of the Police Headquarters Career Development Bureau. Whereas in Article 77 of the Criminal Procedure Code it is regulated that what can be requested in a pretrial is whether or not arrest, detention, cessation of investigations or prosecution as well as compensation and rehabilitation. Article 77 of the Criminal Procedure Code determines as follows:

#### Article 77

The district court has the authority to examine and decide, in accordance with the provisions stipulated in this law concerning:

a. the legitimacy of arrest, detention, cessation of investigation or cessation of prosecution;

b. compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

A pretrial application for determining the status of a BG suspect is not included in the pretrial duties and authorities. However, BG even filed this matter through pretrial. If you see the provisions in article 77 of the Criminal Procedure Code, the BG pretrial petition should not be accepted or the BG cannot be won because it is not included in the pretrial jurisdiction.

#### 3.1.2 Judges' Decisions and Considerations in Budi Gunawan's Pretrial Decision

Although not included in the pretrial area, but the pretrial petition for the determination of the suspect in the BG case was actually received by the South Jakarta District Court judge, Sarpin Rizaldi. Not only that, Sarpin Rizaldi also won BG in the pretrial. The following is the decision of judge Sarpin Rizaldi on the pretrial:

1. To grant the Petition for Pre-trial Petitioners in part;

2. Declare Investigation Order Number: Sprin.Dik-03/01/01/2015 dated 12 January 2015 which stipulates the Applicant as a Suspect by the Respondent in relation to the criminal event as referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Article 55 paragraph (1) of the Criminal Code is illegal and has no legal basis, and therefore the determination of *aquo* has no binding power;

3. Declare the Investigation carried out by the Respondent in relation to the criminal event as referred to in Determination of the Suspect against the Applicant himself as

referred to in Article 12 letter a or b, Article 5 paragraph (2), Article 11 or 12 B of Law Number 20 of 2001 concerning Amendment Law Number 31 of 1999 concerning Eradication of Corruption Crimes jo. Article 55 paragraph 1 of the Criminal Code is illegal and has no legal basis, and therefore the Aquo Investigation has no binding power;

4. Stating that the Determination of the Suspect of the Applicant carried out by the Respondent is invalid;

5. To declare invalid all decisions or stipulations issued further by the Respondent relating to the Determination of the Suspect against the Applicant himself by the Respondent;

6. Charging the cost of cases to the state in the amount of nothing;

7. Refusing Pre-trial Petitioners in addition to the rest.

Judge Sarpin Rizaldi in giving the decision was based on the following considerations:

1. BG is not a law enforcement apparatus or a state organizer.

Judge Sarpin Rizaldi stated that the position of Karo Binkar (Head of Career Development Bureau) which was occupied by BG when allegedly committing corruption was an administrative position, and was not included in the understanding of the state administrators. So that it cannot be determined as a suspect by the KPK and the KPK cannot conduct an investigation or an inquiry into BG. based on article 11 letter a of Law Number 30 of 2002, which stipulates that:

In carrying out the tasks referred to in Article 6 letter c, the Corruption Eradication Commission is authorized to conduct investigations, investigations and prosecutions of corrupt acts that:

a. involving law enforcement officials, state administrators, and other people who are related to corruption acts committed by law enforcement officials or state administrators;

b. get disturbing attention from the community; and / or

c. concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah) ";

2. Corruption by BG does not harm the country

3.1.3 Analysis of Judge Sarpin Rizaldi's Decision in Budi Gunawan's Pretrial Decision

Judge Sarpin Rizaldi's decision reaped many irregularities. The irregularity lies in the decision that does not pay attention to the existence of pretrial as stipulated in the Criminal Procedure Code and legislation relating to corruption. As already mentioned in the previous sub-chapter, the decision of judge Sarpin Rizaldi is not in accordance with the provisions in article 77 of the Criminal Procedure Code that provides limits relating to pretrial authority, namely only on the validity of arrest, detention, cessation of investigation or prosecution as well as compensation and rehabilitation. Article 77 of the Criminal Procedure Code does not stipulate that pretrial authority is to overturn suspect status over legal subjects. The verdict taken by judge Sarpin Rizaldi was entirely an extension of the authority carried out without a clear basis. Whereas in article 4 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (UUKK) it is determined that

"the Court shall judge according to law without discriminating against people". Judge Sarpin Rizaldi in deciding should be based on law (article 77 of the Criminal Procedure Code), not just hit it.

This was also stated by the Anti-Corruption Civil Society Coalition who considered Sarpin Rizaldi's decision to exceed the authority limit, because the determination of the suspect was not a pretrial object. Former Chief Justice of the Supreme Court, Agung Harifin Tumpa stated that the judgment of judge Sarpin Rizaldi was absurd and not based on law. Sarpin Rizaldi has stepped out of his authority from a pretrial judge.

If all suspects' statuses can be tried, all cases in Indonesia will be in chaos. Imagine, if all suspects file a pretrial, then all can be ruled innocent. This is because the status of the suspect still requires further trial to prove the suspect is guilty or not. Former Chief of the Supreme Court's Special Criminal Chamber, Djoko Sarwoko stated that Judge Sarpin Rizaldi could not decide on the examination and legal facts to come. This is because it is not yet known and requires further examination.

In addition, the decision of judge Sarpin Rizaldi which stated that the BG case did not harm the state was also a step backward in eradicating corruption in Indonesia. Several legal practitioners considered the irregularities in the decision because Judge Sarpin Rizaldi was considered to have ignored Law No. 28/2009 concerning the eradication of Corruption, Collusion and Nepotism and the Criminal Procedure Code, which had also detailed forms of gratification.

Judge Sarpin Rizaldi's decision violated many statutory provisions. Therefore, the decision is invalid. Whereas the basis of the laws and regulations which are used as the basis for making decisions is unclear and irrelevant. This is a step that directly violates the provisions of the laws and regulations and repels the steps to eradicate corruption that are being actively carried out in Indonesia by the KPK whose existence is always reduced by other parties.

#### **4. Conclusion**

Budi Gunawan (BG) is news that enlivens Indonesia. Not only because BG was designated as a suspect when he was nominated to be the Chief of the Indonesian National Police (Kapolri). BG has also become a central theme in various media in Indonesia due to its controversy pretrial. A pretrial application for determining the status of a BG suspect is not included in the pretrial duties and authorities. However, BG even filed this matter through pretrial. Judge Sarpin Rizaldi's decision in the BG case reaped many irregularities. The irregularity lies in the decision that does not pay attention to the existence of pretrial as stipulated in the Criminal Procedure Code and legislation relating to corruption. As mentioned in the previous sub-chapter, the decision of judge Sarpin Rizaldi is not in accordance with the provisions in article 77 of the Criminal Procedure Code.

#### **Reference**

- Adji, O. S. (1966). *Indonesia Negara Hukum*. Jakarta: Seruling Masa.
- All, S. et. (2014). *Praperadilan di Indonesia : Teori, Sejarah dan Praktiknya*. Jakarta: ICJR.
- Duisterwinkel, G. en L, M. A. ed. (1972). *Hot Wetbook van Strafvordering*. Arnhem.
- Hamzah, A. (1984). *Pengantar Hukum Acara Pidana Indonesia*. Jakarta.
- Hatta, M. (2008). *Sistem Peradilan Pidana Terpadu*. Yogyakarta: Galangpress.

Maebun, R. (2010). *Cerdik dan Taktis Menghadapi Kasus Hukum*. Jakarta: VisiMedia.

Ramelan. (2006). *Hukum Acara Pidana Teori dan Implementasinya*. Jakarta: Sumber Ilmu Jaya.

Sitompul, D. (1953). *Polisi dan Penangkapan*. Bandung: Tarsito.

Undang-Undang Dasar Negara Republik Indonesia (UUD NRI) 1945

Kitab Undang Undang Hukum Pidana.

Undang-Undang No. 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP).

Undang-Undang Nomor 48 Tahun 2009 tentang kekuasaan kehakiman.

Keputusan Menteri Kehakiman tentang Pedoman Pelaksanaan KUHAP, Kepmen Kehakiman Nomor: M.01.PW.07.03 Tahun 1962