

# The Application Of Civil Procedural Law In Pretrial Lawsuit Disputes Against The Position Of Suspects In Indonesia

*by* Hendri Jayadi

---

**Submission date:** 15-Dec-2023 04:59PM (UTC+0700)

**Submission ID:** 2259767147

**File name:** 6729\_final\_Baltic\_44\_577-581.pdf (232.69K)

**Word count:** 2848

**Character count:** 15726



sciendo

Cit.: *Baltic Journal of Law & Politics* 16:2 (2023):577-581  
DOI: 10.2478/bjlp-2023-0000044

## The Application Of Civil Procedural Law In Pretrial Lawsuit Disputes Against The Position Of Suspects In Indonesia

**Hendri Jayadi\***

\*Faculty of Law, Universitas Kristen Indonesia, Indonesia, hendrijayadi79@gmail.com

\*Corresponding Author: Hendri Jayadi

\*Faculty of Law, Universitas Kristen Indonesia, Indonesia, hendrijayadi79@gmail.com

### Abstract

Based on Article 1 number 10 Article 77 paragraph (2) of KUHAP does not clearly and unequivocally regulate the validity or not of the determination of a suspect as an object of pretrial lawsuit so that in pretrial lawsuit disputes the application of civil procedural law is used because in the settlement of civil disputes it is easily accessible and effective to defend legal rights. This study aims to determine the application of civil procedural law in pretrial lawsuit disputes against the position of suspects in Indonesia. This research uses normative juridical methods because it aims to answer problems as an effort to find new concepts, principles and ideas in the field of legal science, then the library method is also used to obtain supporting data by collecting, analyzing, organizing, sources derived from, articles, books, reports, and other research related to the research conducted. The results showed that the importance of applying civil procedural law in pretrial lawsuit disputes against the position of suspects because it helps guarantee the rights of suspects fairly.

**Keywords:** Civil Procedural Law, Pretrial, Suspect's Position

### INTRODUCTION

Civil procedural law is a mechanism for resolving disputes between legal subjects in civil matters (Rumawi et al., 2021). Civil procedural law has a public nature due to its formal nature, which is the law governing the process of resolving disputes through the courts. This type of legislation is also binding on all parties and cannot be changed. The court does not only examine cases containing disputes or so-called contentiosa lawsuits, but is also authorized to examine voluntary cases that are unilateral (ex- parte) which are solely for the benefit of the applicant (Mantili & Susanto, 2019).

The KUHAP's Article 1 Point 10 Jo. Article 77 Paragraph (2) does not expressly and specifically address whether or not a suspect's determination is admissible as the subject of a pretrial action. Pretrial is an examination of cases in the court of criminal law conducted by a single judge. The examination is not on the subject matter, but only on the actions taken by law enforcement officials prior to the court file being submitted (Ramiyanto, 2015). Pretrial is a forum for the public to seek justice for arbitrary actions, especially when it comes to policing and legal action. Pretrial in KUHAP is primarily intended to test all acts of coercion (violating human rights) committed by investigators or public prosecutors against suspects during investigations or prosecutions to ensure that these actions do not actually conflict with the provisions of the relevant laws and regulations. This is based on the decision of the Constitutional Court Number 21/PUU-XII/2014 (Kafara, 2020). However, the dispute resolution of one of the aggrieved parties is a civil case, so it is resolved through the District Court (Prasetyo et al., 2021).

The Supreme Court views that the public needs an alternative mechanism in resolving civil disputes that is easily accessible and effective to defend their legal rights. The reason for the need for a special mechanism is because of the need to resolve disputes quickly, at low cost and fairly. The introduction and regulation of the small claim court as a method of dispute resolution

for simple lawsuits is one of the concrete steps in realizing the concepts of quick, easy, and affordable justice (Harviyani, 2021).

Previous research conducted by Totok (2020) stated that the application of Supreme Court Regulation (PERMA) Number 2 of 2015 regarding Procedures for Settling Simple Lawsuits in the context of Settling Civil Cases in court found that the simple lawsuit procedure is very effective and according to the guiding principles of ease, speed, and economy, the survey index for the effectiveness of the application of PERMA No. 2 of 2015 regarding Simple Lawsuits is in the "GOOD" category with factors that influence the application of the procedure for resolving simple lawsuits:

1. Legislation factor
2. Community Legal Culture Factor
3. Law Enforcement Officials Factor
4. Community Knowledge Factor about PERMA No.2 of 2015.

In contrast to previous studies, this research examines pretrial proceedings with civil procedural law principles that provide justice by ensuring the rights of suspects are protected. In this case, the application of Civil Procedure Law can help regulate the pretrial process, including the procedure for filing a lawsuit, determining evidence, trial, and overall dispute resolution.

Based on the above background, the Civil Procedure Law needs to maintain the principles of law and the protection of the rights of suspects in a fair manner even though it is still a pretrial process. Thus, this research aims to find out the application of civil procedural law in pretrial lawsuit disputes against the position of suspects in Indonesia.

3

### METHOD

A normative legal methodology is employed in this study. The study of how rules or norms are applied in positive law is the goal of the normative juridical technique (Rahmatdi & Faiz, 2021). *Yuridis normatif* (normative legal research) aims to answer problems as an effort to find new concepts, principles and ideas in the field of legal science (Adhiprabowo, 2020). In addition, library research was also conducted. Mahanum (2021) states that in literature studies to obtain data, researchers collect, analyze, organize, sources derived from, articles, books, reports, and other research on the application of civil procedural law in pretrial lawsuit disputes against the position of suspects in Indonesia. According to Zed in Fadli, (2021) there are four steps that must be completed: setting up stationery, creating a bibliography, managing your time, and reading and noting down sources.

### DISCUSSION

Many suspects file a pretrial lawsuit after being identified as a pretrial target (Azzikra, 2022). Pretrial is one of the institutions formally regulated in Articles 77 to 83 of the Criminal Procedure Code. In practice, it is used by parties or institutions that file an effort for dissatisfaction with the application of the law or the decision of the legal apparatus that is considered to have harmed their sense of justice and interests. Based on Article 78 Paragraphs (1) and (2) of KUHP, The district court has jurisdiction over the pretrial phase, which is run by a single judge selected by the district court chief with a clerk's assistance. The district court has the authority to review and rule on pretrial cases involving the legality of an individual's arrest, detention, termination of an investigation or prosecution, compensation and/or rehabilitation, and the termination of a criminal case at the investigation or prosecution stage (Blora District Court, 2023).

Decision Number: 38/Pid.Prap/2012/PN.Jkt.Sel contains the initial pretrial procedure pertaining to the identification of suspects. In order for the determination of a suspect to be included as a pretrial object and be taken into account, the legal consideration is to link the validity of the determination of a suspect with detention as a forced effort and then interpret what is meant by sufficient evidence in the provisions of Article 21 paragraph (1) of the Criminal Procedure Code against the provisions of Article 184 paragraph (1) (Waruwu, 2018).

The emergence of pretrial lawsuits as a result of allegations that investigators (police and prosecutors) have committed acts that are contrary to the law, including Law No. 8 of 1981

regarding Criminal Procedure Code, Law No. 2 of 2002 concerning Police and Law No. 16 of 2004 concerning Prosecutors. A person who is accused of committing a crime has the right to file a pretrial litigation, so that if in the process of investigation or prosecution there are indications of violations of the rights of suspects committed by investigators, then the suspect can file a lawsuit in defense of his rights through pretrial. The validity of the arrest, detention, end of the investigation, and end of the prosecution constitute the substance of the pretrial (Ratmara, 2008).

The fairness and transparency of the pretrial process are significantly influenced by how civil procedural legislation is applied. The Civil Procedure Code's implementation can assist in regulating the preliminary hearings, including the procedure for filing a lawsuit, determining evidence, trial, and overall dispute resolution, which is detailed as follows:

### Procedure for filing a lawsuit

1. A pretrial motion can only be filed by a suspect, which asks if the detention ordered for him violates the terms of Article 21 of the Criminal Procedure Code or whether it has lasted longer than allowed under Article 24 of the same code. Public prosecutors or other interested parties to review whether the termination of the investigation or the termination of the prosecution is valid, which includes investigators to determine if the termination of prosecution is valid. (Rambe, 2017).

### 2. Determination of Evidence

Evidence in pretrial proceedings may be documentary evidence, witness evidence, or other relevant and valid evidence. The determination of evidence must be based on criteria of evidence validity, such as authenticity, integrity, authenticity, and reliability. In addition, the party submitting the request must also be able to show a link between the evidence presented and the alleged violation or violation of rights committed by law enforcement officials.

### 3. Trial

Pretrial proceedings are presided over by a single judge appointed by the President of the District Court and assisted by a court clerk (Article 78 paragraph (2) KUHAP). The determination of the day of the hearing also includes the summoning of the pretrial petitioner and respondent. Within 7 (seven) days from the date the pretrial petition is heard, the petition must be decided. The petitioner may withdraw the petition before the District Court renders its decision if the respondent agrees. If the respondent agrees to the proposed revocation, the District Court shall make a decision on the revocation. In the event that a case has begun to be examined by the court while the pretrial examination has not been completed, the petition is dismissed. This is stated in the form of a determination (Tarigan & Suranta, 2013).

### 4. Dispute Resolution

Dispute resolution in pretrial is a process carried out to resolve disputes or conflicts that arise between the party who filed the pretrial request and the defendant, namely law enforcement officials or related agencies. The purpose of dispute resolution in pretrial is to achieve justice and protect the rights of the suspect before the formal court process is carried out. There are several dispute resolution mechanisms that can be carried out in pretrial, including mediation, negotiation, arbitration, and conciliation.

The district court has the authority to review and determine, in accordance with the Law's provisions, whether or not an arrest or detention is valid whether or not the investigation or prosecution was properly terminated, and whether or not the suspect, his family, another party, or his attorney had a right to compensation or rehabilitation even though their case had not been brought before the court (Article 1 Point 10 to Article 77 KUHAP), and the legitimacy of the evidence seizure (Article 82, paragraph 1, letter b, KUHAP).

Pre-trial decisions cannot be appealed (Article 83 paragraph (1), except for decisions declaring the "illegality" of the termination of investigation and prosecution (Article 83 paragraph (2) KUHAP). In the event that there is an appeal against a pretrial decision as referred to in Article 83 paragraph (1) of the Criminal Procedure Code, the appeal must be declared inadmissible. The

Court of Appeal shall decide the appeal on the illegality of the termination of investigation and prosecution at the final level. No cassation appeal can be filed against a pretrial decision (Rahim, 2012).

The application of civil procedural law in pretrial proceedings helps to ensure that the legal process proceeds with fundamental principles of justice. These principles include the principle of equality before the law, the principle of contradiction, the right to fair and impartial justice, and the right to defense and submission of evidence. Then, the application of civil procedural law in pretrial provides legal protection to the suspect. This includes the suspect's right to obtain clear notification of the reasons for arrest, release, and legal action against him. In addition, suspects are also entitled to legal assistance and to obtain adequate information about their rights.

The application of civil procedural law also helps to prevent abuse of the legal process against suspects, with the pretrial mechanism, suspects can file a lawsuit if they feel their rights have been violated or there are legal actions that are not in accordance with applicable procedures. This provides a guarantee that the legal process applied to the suspect is carried out with integrity and justice. The application of civil procedural law in pretrial helps create legal certainty in court proceedings, with clear rules and procedures, both suspects and accusers can know their rights and obligations, this also helps prevent uncertainty or injustice in legal proceedings.

### CONCLUSION

The application of civil procedural law in pretrial disputes over the position of suspects has great importance in guaranteeing the rights of suspects fairly. Civil procedural law provides a clear and structured framework for dispute resolution, including in pretrial proceedings. One important aspect of the application of civil procedure law is the protection of the rights of individuals, including suspects in pretrial cases. At pretrial, suspects have the right to file a lawsuit against actions deemed to violate their rights, such as arrests that are not in accordance with procedures or unlawful searches. By applying civil procedure law, suspects have a clear mechanism to protect their rights through the process of filing a lawsuit and a fair trial. In addition, the application of civil procedural law in pretrial proceedings requires certain adaptations. The principles of civil procedural law must be adapted to the characteristics and objectives of pretrial to ensure an effective and efficient process. The purpose of pretrial is to examine the legality and validity of a legal action against a suspect, so the principles of civil procedural law must be applied with this context in mind. The dispute resolution process can be conducted in a structured and objective manner with the application of civil procedural law in pretrial disputes. The parties involved can submit arguments, evidence and defenses in accordance with established rules. Decisions made by the court can be based on the principles of civil procedural law that provide guarantees of justice and legal certainty.

### BIBLIOGRAPHY

- Adhiprabowo, I. (2020). *Analisis Yuridis Terhadap Penetapan Tersangka Sebagai Objek Gugatan Praperadilan. Tadulako Master Law Journal*. 4(3), 431-448.
- Azzikra, G. (2022). *Analisis Yuridis Tentang Pengajuan Gugatan Praperadilan Lebih Dari Satu Kali (Doctoral dissertation)*.
- Fadli, M. R. (2021). *Memahami Desain Metode Penelitian Kualitatif*. Humanika, 21(1), 33-54.
- Harviyani, S. (2021). *Penyelesaian Gugatan Sederhana Sebagai Pelaksanaan Asas Peradilan Sederhana, Cepat, dan Biaya Ringan Untuk Mewujudkan Access To Justice*. Jurnal Verstek. 9(3), 650-657.
- Kafara, S. (2020). *Analisis Hukum Pelaksanaan Putusan Praperadilan terhadap Perkara Setya Novanto oleh Komisi Pemberantasan Korupsi (Nomor 97/Pid.Prap/2017/PN.Jkt-Sel tanggal 29 September 2017)*. Jurnal Penegakan Hukum Dan Keadilan. 1(1), 81-94.
- Mahanum. (2021). *Tinjauan Kepustakaan. ALCRITY: Journal Of Education*, 1(2), 1-12.
- Mantili, A., & Susanto. (2019). *Kumulasi Gugatan Perbuatan Melawan Hukum dan Gugatan Wanprestasi Dalam Kajian Hukum Acara Perdata di Indonesia*. Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi. 10(2), 1-18.
- Pengadilan Negeri Blora. (2023). *Upaya Hukum Pidana*. <http://pn-blora.go.id/main/index.php/tentang-pengadilan/kepaniteraan/kepaniteraan-pidana/715-upaya-hukum-pidana#:~:text=UPAYA%20HUKUM%20PRAPERADILAN&text=adalah%20sebagai%20berikut%3A-.1..pada%20tingkat%20penyidikan%20atau%20penuntutan>. Accessed on July 12, 2023.
- Prasetyo, M., dkk. (2021). *Reposisi Pelaksanaan Penyelesaian Sengketa Perdata Dengan Gugatan Sederhana (Small Claim Court)*. Jurnal USM Law Review. 4(2), 905-918.

- Rahim, A. (2012). *Praperadilan Sebagai Control Profesionalisme Kinerja Penyidik*. Jurnal Pelangi Ilmu, 5(01).
- Rahmatdi, A., & Faiz, P. (2021). *Gugatan Perdata Perbuatan Melawan Hukum Dalam Perselisihan Partai Golongan Karya*. Jurnal Yudisial, 14(1), 79-98.
- Rambe, M. I. I. (2017). *Upaya Hukum Terhadap Praperadilan*. Jurnal Pionir, 2(3).
- Ramiyanto. (2015). *Sah Atau Tidaknya Penetapan Tersangka Sebagai Objek Gugatan Praperadilan Kajian Putusan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel*. Jurnal Yudisial, 8(2), 167-184.
- Ratmara, E. S. A. (2008). *Karakter Yuridis Gugatan Pra-peradilan (Doctoral dissertation, Universitas Airlangga)*.
- Rumawi, dkk. (2021). *Hukum Acara Perdata*. Bandung: Penerbit Widina Bhakti Persada.
- Tarigan, E., & Suranta, F. A. (2013). *Analisa Hukum Praperadilan di Pengadilan Negeri Tebing Tinggi Deli (Studi Putusan di Pengadilan Negeri Tebing Tinggi Deli)*. Jurnal Mercatoria, 6(1), 22-43.
- Waruwu, R. P. R. (2018). *Praperadilan Pasca 4 Putusan MK*. <https://kepaniteraan.mahkamahagung.go.id/images/artikel/Praperadilan%20Pasca%204%20Putusan%20MK.pdf>. Accessed on July 12, 2023.

# The Application Of Civil Procedural Law In Pretrial Lawsuit Disputes Against The Position Of Suspects In Indonesia

## ORIGINALITY REPORT

23%

SIMILARITY INDEX

21%

INTERNET SOURCES

12%

PUBLICATIONS

8%

STUDENT PAPERS

## PRIMARY SOURCES

1	<a href="https://ti.or.id">ti.or.id</a> Internet Source	4%
2	<a href="https://www.iiste.org">www.iiste.org</a> Internet Source	3%
3	<a href="https://versita.com">versita.com</a> Internet Source	3%
4	Submitted to American University in the Emirates Student Paper	2%
5	Famda Egga Prasnada, Sunardi Sunardi, Moh. Muhibbin. "Status Of Pretrial Institutions In Indonesian Criminal Law", International Journal of Law, Environment, and Natural Resources, 2023 Publication	2%
6	<a href="https://www.atlantis-press.com">www.atlantis-press.com</a> Internet Source	2%
7	<a href="https://jws.rivierapublishing.id">jws.rivierapublishing.id</a> Internet Source	1%

8	<a href="http://jurnal.komisiyudisial.go.id">jurnal.komisiyudisial.go.id</a> Internet Source	1 %
9	<a href="http://ijmmu.com">ijmmu.com</a> Internet Source	1 %
10	<a href="http://ejournal.undip.ac.id">ejournal.undip.ac.id</a> Internet Source	1 %
11	<a href="http://ejournal.unmus.ac.id">ejournal.unmus.ac.id</a> Internet Source	1 %
12	Submitted to St. Mary Catholic High School Student Paper	<1 %
13	<a href="http://journal.stihtb.ac.id">journal.stihtb.ac.id</a> Internet Source	<1 %
14	<a href="http://repository.ubaya.ac.id">repository.ubaya.ac.id</a> Internet Source	<1 %
15	<a href="http://scholarhub.ui.ac.id">scholarhub.ui.ac.id</a> Internet Source	<1 %
16	<a href="http://www.researchgate.net">www.researchgate.net</a> Internet Source	<1 %
17	"Amended proposal for a European Parliament and Council Regulation on Community Design. COM (99) 310 final, 21 June 1999", , 2012. Publication	<1 %
18	Abroryan Nur. "Kajian Hukum Pidana Terhadap Penetapan Tersangka Dengan Alat	<1 %



Bukti Yang Sudah Digunakan Dalam Perkara  
Orang Lain (Analisis Putusan Nomor  
97/PID.PRAP/2017/PN.JKT.SEL)", Jurnal  
SOMASI (Sosial Humaniora Komunikasi), 2020  
Publication

---

19 [jurnal.ensiklopediaku.org](http://jurnal.ensiklopediaku.org) <1 %  
Internet Source

---

20 [seminar.uad.ac.id](http://seminar.uad.ac.id) <1 %  
Internet Source

---

21 [www.scilit.net](http://www.scilit.net) <1 %  
Internet Source

---

22 Lily Bauw, Erni Dwita Silambi, Ibrahim Kama,  
Nurwita Ismail. "Pre-Trial As Investigation  
Process Control System", SASI, 2022  
Publication

---

Exclude quotes On

Exclude matches Off

Exclude bibliography On