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# Analysis Of A Judge's Progressive Decision In The Pretrial Examination On The South Jakarta District Court Decision No.04/Pid.Prap/2015pn.Jkt.Sel

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**ABSTRACT**

**Purpose of the study:** This paper aims to provide an analytical review of the judicial progressive thoughts in the pretrial process in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel.

**Methodology:** This legal research used a normative juridical approach. The writers used the literary approach by studying books and legal regulations related to this research.

**Results:** The judges' basis of thought delivered in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel was part of the judicial authority to make laws (judge-made laws). This is so that the law can provide the value of justice or certainty. But in this context, the method used by the judges was legal interpretation due to "other actions" in Article 95 of the Criminal Code that has an ambiguous meaning. Meanwhile, the stipulations that discussed the authority of indictors have not been regulated in the Criminal Code that is categorized as a pretrial object. The arrival of Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel was a form of a legal update that makes indictors and prosecutors more professional. It makes them increase the quality of their human resources in carrying out indictment and prosecution; thus, no parties experience loss in the examination carried out by the law enforcing apparatus.

**Applications of this study:** This analysis can be used to motivate judges to make more progressive decisions.

**Novelty/Originality of this study:** This writing analyzed the judicial progressive thoughts in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel that has never been done before.

Keywords: pretrial; progressive judges; indictment warrant; the eradication of corruption.

***ABSTRAK***

***Tujuan:*** *Artikel ini bertujuan untuk memberikan tinjauan analitis terhadap pemikiran hukum progresif dalam proses praperadilan dalam Putusan No. 04/Pid.Prap/2015/PN.Jkt.Sel.*

***Metodologi:*** *Penelitian hukum ini menggunakan pendekatan yuridis normative dengan pendekatan studi pustaka dengan mempelajari buku-buku dan peraturan hukum yang berkaitan dengan penelitian ini.*

***Hasil:*** *Dasar pemikiran hakim yang tertuang dalam Putusan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel merupakan bagian dari kekuasaan kehakiman untuk membuat undang-undang. Hal ini dimaksudkan agar hukum dapat memberikan nilai keadilan atau kepastian. Namun dalam konteks ini, metode yang digunakan hakim adalah interpretasi hukum karena "perbuatan lain" dalam Pasal 95 KUHP yang memiliki makna ambigu. Sedangkan ketentuan yang membahas tentang kewenangan penyidik belum diatur dalam KUHP yang dikategorikan sebagai obyek praperadilan . Hadirnya Putusan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel merupakan bentuk pembaharuan hukum yang menjadikan para jaksa dan penuntut lebih profesional. Hal itu membuat mereka meningkatkan kualitas sumber daya manusia dalam melakukan dakwaan dan penuntutan; dengan demikian, tidak ada pihak yang dirugikan dalam pemeriksaan yang dilakukan oleh aparat penegak hukum.*

***Aplikasi penelitian ini :*** *Kajian ini dapat digunakan untuk memotivasi para hakim dalam membuat keputusan yang lebih progresif.*

***Kebaruan/Orisinalitas:*** *Tulisan ini menganalisis pemikiran progresif peradilan dalam Putusan No. 04/Pid.Prap/2015/PN.Jkt.Sel yang belum pernah dilakukan sebelumnya.*

*Kata kunci: praperadilan; hakim progresif; surat dakwaan; pemberantasan korupsi.*

## INTRODUCTION

The pretrial institution is a justice system inspired by the Anglo-Saxon justice system that was sourced from *habeas corpus* rights (Ramdan, 2015, p. 36). This court system provides a fundamental guarantee of human rights, especially in the context of independence. The *habeas corpus* act surely has a great benefit in its application, namely concerning the granting of rights through a warrant issued by the court to law-enforcing officials so that they do not illegally violate laws. It requests the valid application of legal processes. The legal procedures carried out are according to the legal stipulations that apply (The Government of the Republic of Indonesia, n.d.-a).

Pretrials are regulated in Article 77 to Article 83 of the Republic of Indonesia's Criminal Code, which strictly stipulates that a pretrial is a legal institution that examines coercive actions or efforts carried out by indictment and/or general prosecutor institutions in carrying out their tasks and authorities. It aims to test whether or not their actions are according to the law. It aims to enforce the law, uphold justice values, and seek the truth through a supervisory facility with a horizontal line. Thus, in essence, the pretrial exists to monitor whether law enforcers' coercive actions or efforts follow the law, or if there are law-violating actions that harm the defendant.

S. Tanusubroto opines that the pretrial institution's existence is a form of warning, namely ("Praperadilan," n.d.):

1) This warning is delivered to law enforcers, especially indictment and/or general prosecutor institutions to be careful in undergoing their tasks. They must avoid actions that are not based on the applicable constitutional regulations. This is so that law enforcers do not commit neglect by carrying out arbitrary deeds.
2) The next warning is that there are compensation and rehabilitation. They are legal protection given by the state to its citizens that were suspected to commit a crime but are not supported by evidence that proves them as perpetrators of a crime.
3) In determining compensation in the decision, the judge must carefully consider the government's financial capability to compensate for the losses of those who suffered from the allegation that made the person become a suspect.
4) If a person is given the right to rehabilitation, that person's situation that was originally a suspect of criminal action can be recovered.

5) The integrity and dedication of law enforcers require balanced honesty in inspiriting the Criminal Code. This is applied to avoid useless things.

Indriyanto Seno Adji also provided his opinion on pretrial. He said that it is an institution that protects every person in the initial examination from the actions of the law enforcers, i.e., the indictment institution (the police force) and the prosecuting institution (attorney) that violate legal violations, thus bringing loss to other people (*in casu* plaintiff). This pretrial institution functions as a supervisory institution on the coercive efforts carried out by indictment officials up to a certain limit (Adji, 2015).

When reviewing it further, pretrial is a form of monitoring effort to guarantee the human rights written in the preamble of letters (a) and (c) of the Criminal Code that became this Code's spirit or soul. It stipulates that Indonesia is a legal state based on Pancasila and the 1945 Constitution. It upholds the rights and responsibilities of each person. Without exception, every person has the same position in the face of the law. Then, letter (c) states how the function of the Criminal Procedural Code is built to uphold the law, justice, and legal protection of the dignity and honor of humans as creations of God Almighty (Hamzah, 1996, p. 70).

The pretrial may be applied to review whether or not one's arrest, imprisonment, indictment termination, or a lawsuit is valid. Apart from that, it can also be applied for "other actions" as delivered in stipulations of Article 95 of the Criminal Code. In this case, the "other actions" are actions that concern the execution of the indictment and/or prosecution institutions in running their functions that are not based on the applicable legal stipulations. This was based on the decision that was studied by the writer in analyzing the progressive decision of a single judge (The Government of the Republic of Indonesia, n.d.-c) in a BD case in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16$^{th}$, 2015.

The decision that became the source of this research was the case of the Police Force General of the Republic of Indonesia, BD. BD was appointed as the Police Force General in 2015 by President Joko Widodo with the enactment of Presidential Letter No. R-01/Pres/01/2015 on the Termination and Appointment of the Republic of Indonesia's Police Force General. This letter was directed to the Legislative House, which aimed to obtain support for the appointment of BD as the Police Force General, succeeding General Sutarman. But this appointment process was terminated due to an indictment carried out by the Commission for Corruption Eradication on the allegation of the criminal activities carried out

by BD when he was still serving as the Head of the Career Guidance Bureau of Human Resources, the Republic of Indonesia's Police Force Headquarter from 2004 to 2006. But the Commission for Corruption Eradication's allegation was rejected by BD. He sought a pretrial on the Indictment Warrant issued by Commission for Corruption Eradication No. Sprin.Dik-03/01/01/2015 dated January 12th, 2015.

The issue where the Judicial Decision to grant BD's request which stated in his decision that the Indictment Warrant issued by Commission for Corruption Eradication No. Sprin.Dik-03/01/01/2015 dated January 12th, 2015 was invalid and was not based on law is an interesting point to be analyzed. This position regarded the Commission for Corruption Eradication's authority to undergo indictment. This is a point that is not yet regulated in the Criminal Code when seeing the stipulations written in Article 77 of this Code. This Article regulates whether or not an arrest, imprisonment, or indictment termination is deemed valid. But in the case of BD, he suggests that the Commission for Corruption Eradication does not have the authority to undergo that indictment. This decision obtained public attention, seeing that BD was a Police Force official that was appointed as the Police Force General. Thus, this article will analyze the progressive decision given to BD on Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16th, 2015.

This also regards the role of judges in undergoing their obligations that are strictly regulated in Article 5 clause (1) and Article 10 clause (1) of Law No. 48 of 2009 on Judicial Power. It states that the Court cannot reject the examination, adjudication, and decision-making of a case for the reason that the law is non-existent or unclear. This was why the case that involved BD was examined in the pretrial institution. The examining judges gave the best decision according to their capabilities. This was part of their task and function based on the stipulations regulated in Law No. 49 of 2009 on Judicial Power.

When seeing the decision in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16th, 2015, the writers believe that this decision is progressive. So far, society has not been able to accurately understand the progressive decision. Thus, progressive decisions usually catch the public attention, even though their arrival in society is part of fulfilling the values of justice and humanity that are currently enforced in the Indonesian legal system based on the values of Pancasila.

From the background above, this research aims to know the judicial considerations given by the judge in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel dated February 16th, 2015, on

the request submitted by BD as a Plaintiff. Apart from that, it aims to provide an analytical review of the judicial progressive thoughts in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel in the pretrial process still has pros and cons in society.

## RESEARCH METHOD

This research used the normative juridical method (Soekarto, 1984, p. 20). Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel was analyzed using constitutional regulations that were associated with that decision. The writers used the literary approach by studying books and legal regulations related to this research. This research method may provide information to society on the decision given by the judge on the examination of BD in pretrial on whether or not a law-enforcing institution has the authority to undergo an indictment. Thus, in this research, the writers focused on normative research, supported by accurate and valid legal materials.

## RESULTS AND DISCUSSION

### A. Judicial Consideration in the Pretrial Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel.

#### a. Progressive Judges

According to Jamadi, progressive professional judges must certainly have a progressive basis of thought. Etymologically, progressive means developing. Then, terminologically, this type of thought does not only normatively or dogmatically understand the law. But it has a greater orientation towards substantial values of justice (Jamadi, 2018, p. 114). This was in line with Satjipto Raharjo's thought which states that the progressive law is a series of radical actions that changes the legal system, making it more beneficial, especially in increasing the dignity of each human as well as guaranteeing the happiness and welfare (Asnawi, 2014, pp. 136–137). This legal concept was founded by Raharjo, founder of the progressive law as the concept of "the law is for humans". Philosophically, it is a method to serve the greatest level of societal welfare. The characteristics of the progressive law are as follows (Rahardjo, 2007, p. 92):

1) The law exists to serve humans;
2) The progressive law will keep on existing as the law always have the status as the "law in the making". It is never final so long as humans exist. Thus, progressive law will keep on existing in facing human life;

3) In progressive law, humanity's ethics and morals are very strong in responding to humans' needs. They have a role in developing and serving the values of justice, welfare, prosperity, and care among humans.

Concerning the legal perspective delivered by professional judges, judges certainly have a progressive law basis of thought. This is deemed crucial as the written law is rigid. It is difficult to understand the legal issues that happen in the societal environment. It is also difficult to predict the forms of issues in society and the condition of the event as both have certain legal reasons (Mertokusumo, 1996, p. 35).

The arrival of progressive law is the main echo in the legal civilization in Indonesia that can provide solutions towards its legal rigidity. Thus, in its process, society requires judges that have a progressive way of thinking. The implementation of progressive law requires honest and courageous judges to exit the normative legal order by giving some legal considerations to determine the right decisions on anyone who was made a suspect by indictment and prosecuting institutions. This progressive decision is a form of liberation for the rigidity of Indonesia's legal order, as it is only based on written stipulations. Thus, often enough, the occurring legal issues fail to achieve the value of justice and humanity, as the judicial decisions were only based on Criminal Law or written legal stipulations.

According to Sudikno Mertakusumo, legal discovery is the formation of law or the application of legal regulations that were delivered by judges on a concrete legal event. Apart from that, a legal discovery has a general characteristic in the concretization process of legal stipulation. Meanwhile, legal events have a rather concrete character (Mertokusumo, 1996, p. 37).

According to Achmad Ali, there are two theories in legal discovery, i.e., the interpretation method and the construction method. In practice, the interpretation method is used in cases where regulations exist but there the definitions are obscure or ambiguous. Concretely, the meanings of the norms are blurred, creating uncertainty in that stipulation. Thus, this interpretation method is deemed crucial in the legal discovery process. Then, the construction method is used if there are no written legal stipulations that can directly be used for the occurring legal issue. Or, the regulations are non-existent. Thus, there is a legal vacuum (*recht vacuum*) or a stipulation vacuum (*wet vacuum*) (Ali, 1993, p. 167).

Then, there needs to be methods in the legal discovery process of progressive judges. This is to obtain characteristics of the progressive legal discovery method. Ahmad Rifai described this as follows (Rifai, 2010, p. 93):

1. A legal discovery method that has a visionary characteristic in viewing occurring legal issues that happen in the future by, seeing them case-by-case;
2. A legal discovery method that has the courage to make a breakthrough (rule-breaking) in seeing the legal issues in society. But it must still be based on the law, the value of truth, and the value of justice that sides and is sensitive to the fate and situation of the nation and the state;
3. A legal discovery method that creates welfare and prosperity for society, thus bringing the nation and the state to exit downturns due to social instability.

After the judges succeed in organizing their thoughts by stepping on the basis of progressive law through undergoing legal discovery using a progressive method, the decision delivered or given by the judges can certainly be called a progressive decision. A progressive judicial decision must fulfill the following elements (Suteki, 2015, pp. 137–138):

1. The decision delivered by judges does not only have a legalistic character, even though judicial decisions are always legalistic as they are guided by applicable constitutional regulations;
2. The decision delivered by judges must not only be a formality, but it must have a function to encourage improvement in society and develop social harmony in socialization;
3. The decision delivered by judges contains a visionary thought for the future. Thus, there needs to be a legal breakthrough (rule-breaking) on legal stipulations that violate public interest, order, civilization, and humanity in society. In this case, judges have the freedom to make decisions that oppose related laws to achieve truth and justice;
4. The decision delivered by judges must side with the fate of the nation and the state to increase societal welfare and prosperity by bringing people out of downturns.

In giving decisions on anyone who seeks justice, the judicial objective is upholding the law and justice values. Thus, law enforcement applies to cases emanating from legal certainty, just as law enforcement that is applied to cases emanating from justice. Thus, in this context,

judges must have the ability to differentiate which cases emanate from justice and which cases emanate from legal certainty.

**b. Examination in the Pretrial Institution**

Pretrial is a manifestation effort to protect the rights of every human being in undergoing the process to seek the truth to achieve the aim of formal criminal law. The arrival of the pretrial institutions is one of the implementations of Article 28D clause (1) of the 1945 Constitution clause (1) that regulates legal certainty. It states, "Everyone has the right for just legal acknowledgement, legal guarantee, legal protection, and legal certainty as well as the same treatment in the face of the law." Clause 1 specially regulates the enforcement of legal certainty in each society. Then, the definition of pretrial is regulated in Article 1 number 10 of the Criminal Code as follows:

> *"Pretrial is the authority of the District Court to undergo examination and determination based on the methods regulated in the law, regarding (a) whether or not a confiscation of money or an arrest on the request of the suspect or the family or other parties under the authority of the suspect are valid; (b) whether or not the termination of an indictment or a lawsuit based on the request of the enforcement of law and justice is valid; and (c) the request for compensation of rehabilitation by the suspect or the family or other parties under the authority of the suspect whose case was not submitted to the court."*

The coercive efforts implemented in the indictment process are common in pretrials. This is perceived from the aspects of the pretrial structure that is not an independent justice institution. It is not an institution at the justice level that has the authority to give a final decision on each case. This institution is a unit that is attached to the District Court. As a court institution, it can only be found in the first-level court, i.e., the District Court. Therefore, it is not an institution that is outside of or parallel with the District Court, but rather, it is only a division of it. In its evidence process, the pretrial will consider both juridical and material facts.

The examining judge will grant the pretrial for the following points: (a) Whether or not the arrest, imprisonment, or termination of indictment or prosecution are valid; and (b) compensation or rehabilitation for someone whose criminal case was terminated at the indictment or prosecution levels (The Government of the Republic of Indonesia, n.d.-b). Apart from that, there needs to be a further review of the value of justice, whether that issue contained the element of deliberateness or did it originate from outside of the indictment

process. The arrival of the pretrial became the front line in protecting anyone with a status as a suspect from the indictors to not arbitrarily undergo the examination process. Thus, the examination carried out by the indictors must be based on stipulations of the Criminal Code. The existence of the pretrial makes sure that the indictors act neutrally, professionally, and proportionally.

**c. Legal Facts in the Case of BD in Applying for a Pretrial**

The Presidential Letter No. -01/Pres/01/2015 concerning the Termination and Appointment of the Republic of Indonesia's Police Force General was issued on January 9th, 2015. It was directed to BD as the candidate for the Police Force General. This letter required the approval of the legislative house. But the appointment process of BD was terminated due to the legal process carried out by the Commission for Corruption Eradication in examining the case of BD when he was still serving as the Head of the Career Guidance Bureau of Human Resources, the Republic of Indonesia's Police Force Headquarters. BD was suspected of committing corruption during his serving period from 2004 to 2006.

But the Commission for Corruption Eradication's allegation was rejected by BD. He sought a pretrial on the Indictment Warrant issued by Commission for Corruption Eradication No. Sprin.Dik-03/01/01/2015 dated January 12th, 2015. This Commission for Corruption Eradication Indictment Warrant aimed to investigate BD's case when he was still serving as the Head of the Career Guidance Bureau of Human Resources, the Republic of Indonesia's Police Force, who was suspected of committing the crime of corruption during his serving period from 2004 to 2006. This investigation case was delivered by Commission for Corruption Eradication in the press conference on January 13th, 2015, before BD attended the invitation of the Republic of Indonesia's Legislative House the issuing of the Presidential letter that was to appoint BD as a Head of the Police Force candidate. The Press conference by the Commission for Corruption Eradication was carried out before any previous notice. This thus impacted BD's reputation. Worse, it was made in the process of his appointment as a Head of the Police Force candidate. The Commission for Corruption Eradication also stated in the press conference that it had carried out an investigation since July 2014.

On January 26th, 2015, BD requested a pretrial on his objection towards the Indictment Warrant issued by Commission for Corruption Eradication No. Sprin.Dik-03/01/01/2015 dated January 12th, 2015. This request was registered in the Secretary of the South Jakarta

District Court. In this pretrial request, the Commission for Corruption Eradication is deemed as the Defendant. The *posita* (explanation and confirmation of the case material) delivered by BD as the Plaintiff was as follows (The Government of the Republic of Indonesia, 2015, pp. 20–28):

1. The Defendant does not have the authority to undergo indictment or investigation on the crime of corruption;
2. Defendant's decision in determining Plaintiff as a suspect was invalid as it was not carried out according to the stipulations written in Article 21 of the Law on the Commission for Corruption Eradication. Also, it violated the principle of legal certainty that became a fundamental principle in carrying out the Defendant's tasks and authorities;
3. The determination of the status as suspect determined by Defendant to Plaintiff was carried out for other objectives that are outside of the obligation and objective of Defendant's authority. This is a form of abuse of power;
4. The determination of the status as suspect to the Plaintiff was carried out without any formal summons and/or request for information. This was an action that violated the principle of legal certainty that became the foundation for applying the Defendant's authority based on the Law on the Commission for Corruption Eradication.

Basically, the objection delivered by BD in the pretrial process contained the losses he experienced due to the Commission for Corruption Eradication's actions. Thus, he submitted an application in his *petitum* (demand to be decided by the court) to state that the Indictment Warrant issued by Commission for Corruption Eradication No. Sprin.Dik-03/01/01/2015 dated January 12$^{th}$, 2015 as well as the indictment it carried out was invalid and/or not according to the law. Thus, the Indictment Warrant No. Sprin.Dik-03/01/01/2015 cannot have its legal process continued.

**d. The Legal Consideration of Judges on Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel in Commission for Corruption Eradication's Authority in Undergoing Indictment on the Case of BD, General of the Republic of Indonesia's Police Force**

The judicial consideration was delivered in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel. The examining judge stated that there are basically three points that were used as

consideration for granting the exception for the application submitted by BD as the Plaintiff. The judicial considerations delivered in that consideration were as follows:

1. **The object of the pretrial application was not the authority of the pretrial judge.**

In discussing the judicial considerations on the exception delivered by Commission for Corruption Eradication as the Defendant, the examining judges stated that this concerns the stipulations regulated in Article 5 clause (1) of Law No. 48 of 2009. This clause states, “Judges and constitutional judges must discover, follow, and understand legal values and the sense of justice that live in a society". The exception delivered by Defendant violated the stipulations regulated in the Law on Judicial Power, as any lawsuit submitted to the court must obtain truth and justice. Judges cannot reject any lawsuit. They must delve into that issue even if there are no legal stipulations that regulate it, in other words, even in cases where there is a vacuum of law.

In this issue of BD, according to the legal argumentation delivered by the Defendant or Commission for Corruption Eradication, the application submitted by BD was not part of a pretrial object. Thus, the pretrial judge does not have the authority to examine it. This was delivered because it violated the principle of legality regulated in Article 1 number 10 of the Criminal Code. “Courts are prohibited from rejecting to discover, adjudicate, and decide a submitted case for the reason that the law is non-existent or is unclear, but they have the obligation to examine and adjudicate it". This stipulation was made clear by the examining judge that in cases where there is no law, the judges may have a basis of thought that makes the law exist and make what is unclear become clear (The Government of the Republic of Indonesia, 2015, p. 223).

In this process, the judge must think progressively to find a method in solving the case of BD. In consideration, the examining judge stated that the Indonesian positive law has not regulated which institution has the authority to examine the validity in determining a suspect. Thus, in this case, the judge must determine the law, making a non-existent law exist. In making this decision, the judge considered the stipulation written in Article 77 *jo.* Article 82 clause (1) *jo.* Article 95 clause (1) and clause (2) of the Criminal Code, states "other actions”. But it does not concretely state

whether or not it has the authority to undergo indictment. Thus, the examining judges carried out the interpretation method. They stated in the decision that it became an object of pretrial. The legal institution that had the authority to examine the validity of all of the indictor's actions in the indictment process and all actions of the prosecutor in the prosecuting process is the pretrial institution (The Government of the Republic of Indonesia, 2015, pp. 225–226). This was delivered by the examining judge because the application submitted by BD was the determination of the suspect that was part of the series of indicting actions in carrying out the indictment process. Thus, concretely, the pretrial surely has the authority to examine the application delivered by BD.

**2. Premature Pretrial Application**

Concerning the judicial considerations in the exception delivered by the Commission for Corruption Eradication, the judges rejected that exception as the Commission has acknowledged that it has not carried out coercive measures on Plaintiff in the form of arrest, imprisonment, house arrest, or search. But in this case, the Defendant or Commission for Corruption Eradication still issued the indictment warrant before indictors have carried out any processes based on the Criminal Code. Thus, it is clear that Defendant does not understand the meaning of "coercive measures" in the process of enforcing the criminal law.

**3. *Petitum* of the Pretrial Application is unclear (*obscuur libel*) and contradictive**

In the judicial consideration of this decision, it was stated that the exception delivered by the defendant was part of the Civil Procedural Code rather than part of the Criminal Procedural Code. This was based on the legal argumentation delivered by the defendant that it was not part of the pretrial examination. But rather, it was part of the Civil Procedural Code. Thus, the judge regarded this as rejected and there is no need to provide legal consideration.

The three legal considerations delivered by the examining judge were carried out through various progressive methods. Thus, the judge was certain that the most accurate decision based on the argumentation was given. It had the basis of thought with the belief that the decision made was based on the stipulations regulated in the Criminal Code, values contained in Pancasila and the 1945 Constitution, as well as the Law on Judicial Power.

**B. Analytical Review of the Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel on the Commission for Corruption Eradication's Authorities in Undergoing Indictment on the Case of BD as General of the Republic of Indonesia's Police Force**

This analysis studies the suspect determination issued by the Commission for Corruption Eradication to BD, concerning the case of corruption crime during BD's serving period as the Head of the Career Guidance Bureau of Human Resources, the Republic of Indonesia's Police Force from 2003 to 2006. The issue here is, "Does that position in the Republic of Indonesia's Police Force organization function as a law-enforcing apparatus or as a state establisher?" This question was posed in the examining judge's core issue of BD's case where he was deemed a suspect by the Commission for Corruption Eradication. This must normative juridically be proven. But concretely, it was delivered in Appendix D of the Republic of Indonesia's Police Force Decision No. Kep/53/X/2002 dated October 17$^{th}$, 2002 on the Organization and Working Procedure of Organizational Units in the Level of the Republic of Indonesia's Police Force Headquarters, Organization and Working Procedure of Republic of Indonesia's Police Force Deputy Staff, Human Resource Section (HR Deputy Staff). It states that the Head of the Human Resource Department was an executing element of the HR Deputy Staff. Then, according to Article 4 of the Presidential Decision No. 70 of 2002 on the Organization and Working Procedure of the Republic of Indonesia's Police Force, it is a supporting element of the leader and executing staff in the sector of human resource management. Thus, in this case, the position as the Head of the Human Resource Department is not a state establishment administrative position as it was not part of Echelon I. Rather, it was an administrative position under the II A1 Echelon group.

Under that consideration, the determination as a suspect by the Commission for Corruption Eradication did not fulfill the element contained in Article 82 of the Law on the Commission for Corruption Eradication. Then, it was stated in the judicial consideration that people did not know BD during his period as the Head of the Human Resource Department because he did not work as a state establisher, but rather, he was an administrator of the II A1 Echelon group. Then, the Commission for Corruption Eradication cannot prove whether BD's career at that time was as a law enforcing apparatus or was it a position of a state establisher as stipulated in Article 11 letters a and b of the Law on the Commission for Corruption Eradication. This action caused a loss of at least Rp. 1.000.000.000,00 (one bilion rupiahs). But this case was not proven by the Commission for Corruption Eradication as it only

suspected BD of receiving gratification as regulated in Law No. 31 of 1999 on the Change of Law No. 20 on the Eradication of the Corruption Criminal Act. Concerning the whole allegation given by the Commission for Corruption Eradication to BD, the examining judges stated that it was invalid or it was not based on law. Thus, BD was free from all charges and was free from the status of a suspect.

The judicial decision given to BD was based on the applicable laws, i.e., Law on the Eradication of the Corruption Criminal Act and Law on the Commission for Corruption Eradication. As a whole, the judge's basis of thought in giving legal interpretation was correct, where that action was part of the authority of the indictment, thus it was categorized as a pretrial object. The judge's interpretation method delivered was also part of a legal analogy that made it a form of legal discovery given by judges in determining this case. Acknowledgement and protection should not only be given based on legal texts but there needs to be progressive legal protection where cases are contextually viewed. This needs to obtain more attention, considering that the legal practice in Indonesia tends to be directed in the positivistic direction (Wiguna, 2021).

## CONCLUSION

The judges' basis of thought was delivered in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel was part of the judicial authority in making a non-existent law exist because judges have the authority to make laws (judge-made law). This is so that the law can provide the value of justice or certainty. But in this context, the method used by the judges was legal interpretation due to "other actions" in Article 95 of the Criminal Code that has an ambiguous meaning. Meanwhile, the stipulations that discussed the authority of indictors have not been regulated in the Criminal Code which is categorized as a pretrial object. Seeing that this is a form of legal certainty that must be given clear meaning and accurate legal certainty for the future, this decision may benefit anyone who seeks legal certainty on that law.

The arrival of Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel was a form of a legal update that makes indictors and prosecutors more professional. It makes them increase the quality of their human resources in carrying out indictment and prosecution, thus, there are no parties that experience loss in the examination carried out by law enforcing apparatus.

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