

Expansion of Legal Measures Beyond Article 77 of The Criminal Code Concerning Pretrial and Constitutional Court Decision No. 76/PUU-XII/2014: Case Study No. 16/PDT. G/2022/PN. CBD

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ABSTRACT

This research discusses the expansion of legal remedies beyond Article 77 of the Indonesian Criminal Procedure Code (KUHAP) concerning pretrial mechanisms, focusing on the application of Constitutional Court Decision No. 76/PUU-XII/2014 in the context of civil tort claims (Perbuatan Melawan Hukum). The case study involves Case No. 16/Pdt.G/2022/PN.Cbd at the Cibadak District Court. Using a normative juridical and case study approach, the study analyzes primary legal documents, statutory regulations, and judicial decisions. Findings indicate that the investigator's summons without gubernatorial approval violated procedural legality and constitutional protection principles. Furthermore, premature media exposure of the plaintiff's identity contravened the presumption of innocence and caused immaterial harm not remediable through pretrial mechanisms. Thus, the tort lawsuit serves as a complementary alternative to pretrial review, reinforcing comprehensive legal protection for constitutional rights and personal reputation.

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1. INTRODUCTION

Indonesia, as a *state based on law* (*rechtsstaat*), guarantees the protection of human rights and ensures legal certainty through judicial mechanisms grounded in the Constitution. The 1945 Constitution of the Republic of Indonesia mandates that every action by the government and law enforcement authorities must be based on law, ensuring that individual rights are not arbitrarily violated. In this context, criminal law enforcement operates as a key instrument for maintaining justice and public order while upholding the principles of due process and equality before the law (Asshiddiqie, 2013).

The Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) serves as the formal procedural law that regulates all stages of criminal justice—from investigation and prosecution to the execution of final court decisions. According to Hamzah (2015), KUHAP provides a detailed framework for how state authorities may exercise their powers while balancing the need to protect

individual freedoms. As part of this legal framework, the *pretrial* (*praperadilan*) institution was established as a mechanism for judicial control over coercive measures (*dwangmiddelen*) such as arrest, detention, seizure, and prosecution. It functions as a vital safeguard against potential abuses of authority by law enforcement officers (Harahap, 2016).

Initially, the scope of pretrial was limited as stipulated in Article 77 of KUHAP. This article restricted pretrial examination to questions regarding the legality of arrest, detention, termination of investigation, and termination of prosecution. However, Indonesian constitutional dynamics continue to evolve alongside societal expectations for justice. In response to growing demands for greater judicial oversight, the Constitutional Court (*Mahkamah Konstitusi*) has significantly expanded the scope of pretrial through a series of landmark decisions.

One of the most significant judicial milestones is the Constitutional Court Decision Number 21/PUU-XII/2014, which broadened the object of pretrial review to include the validity of the determination of a suspect. This decision represents a major paradigm shift by recognizing that the designation of a person as a suspect can have profound legal and social consequences, including reputational damage and loss of freedom. Therefore, it must also be subject to judicial scrutiny. By doing so, the Court reaffirmed that constitutional justice requires procedural fairness not only during trial but also at the earliest stages of criminal proceedings.

Another critical development emerged from the Constitutional Court Decision Number 76/PUU-XII/2014. This decision reinterpreted provisions within the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives (Law No. 17 of 2014 on MD3). The Court emphasized that the summoning of a Regional House of Representatives (*DPRD*) member for investigative purposes must obtain written approval from the Governor. The decision rests on the constitutional principle of protecting the dignity and independence of legislative institutions while preventing potential misuse of executive or judicial power. In essence, it strengthens the procedural guarantees associated with the *due process of law* principle, ensuring that elected officials are not subjected to arbitrary actions under the guise of criminal investigation (Asshiddiqie, 2013).

However, in practice, the implementation of this Constitutional Court ruling has faced considerable challenges. One illustrative example is found in Case Number 16/Pdt.G/2022/PN.Cbd, adjudicated by the Cibadak District Court. This case reveals the complexity and tension between criminal procedure, civil remedies, and media ethics. The case involved a member of the Sukabumi Regency *DPRD* who filed a lawsuit against the Sukabumi Police investigator and two media outlets for committing *unlawful acts* (*perbuatan melawan hukum* or PMH).

Two central legal issues emerged in this dispute. First, the plaintiff alleged that the investigator unlawfully summoned him as a witness without obtaining prior written approval from the Governor, as required by the Constitutional Court Decision No. 76/PUU-XII/2014. Second, the plaintiff claimed that the media had violated his right to presumption of innocence by publishing his name and photograph while labeling him a "land mafia" before any legal verdict was issued. The publication was argued to have caused serious immaterial damage, including reputational harm and social stigma.

The plaintiff's decision to file a PMH lawsuit in civil court instead of relying solely on criminal procedural remedies demonstrates an evolving trend in legal strategy. It reflects a recognition that the pretrial mechanism—although constitutionally significant—remains procedurally limited. Pretrial only reviews procedural legality, not substantive justice or moral damages. Furthermore, the right of reply mechanism under the Press Council is often seen as inadequate in restoring the reputational losses caused by widespread media coverage. Consequently, civil lawsuits based on PMH principles have become an alternative path to seek broader forms of justice, including moral, psychological, and social recovery (Rahardjo, 2006).

This phenomenon illustrates a broader jurisprudential shift toward *substantive justice*—a concept emphasizing fairness and moral equity over rigid procedural compliance. Rahardjo (2006) argues that law should serve as a tool for social justice rather than a mere technical instrument. Therefore, when

formal mechanisms fail to address the moral dimensions of a legal problem, citizens may resort to alternative legal remedies, including civil lawsuits or constitutional petitions, to assert their rights.

Several previous studies have explored aspects of this issue, though often from a narrow disciplinary perspective. Siregar (2019), for instance, analyzed the expansion of pretrial objects following the Constitutional Court Decision No. 21/PUU-XII/2014. However, his research focused primarily on procedural dimensions of criminal law and did not extend to the interaction between criminal procedure and civil remedies. Meanwhile, Wijaya (2020) examined the implications of Decision No. 76/PUU-XII/2014 for investigations involving DPRD members, but his study did not consider how violations of this decision could trigger civil liability. On the other hand, Pratiwi (2021) focused on the use of PMH lawsuits to restore a damaged reputation, yet she did not relate this civil approach to the procedural violations of criminal law or media ethics.

From the synthesis of these previous studies, a research gap becomes evident. There has been no comprehensive analysis that integrates the three critical elements—expanded pretrial mechanisms, the Constitutional Court Decision No. 76/PUU-XII/2014, and the application of PMH lawsuits—within a single analytical framework. The absence of such integrated studies leaves open important questions about how these mechanisms interact in actual legal disputes. Specifically, there is a need to understand how a constitutional decision intended to protect public officials' procedural rights can lead to the expansion of legal remedies beyond the scope of KUHAP and into the civil domain.

The case at the Cibadak District Court offers a concrete example of how normative conflicts arise when different branches of law—criminal, civil, and press—intersect. From a criminal law perspective, investigators are bound by procedural obligations under KUHAP and constitutional court rulings. From a civil law standpoint, individuals have the right to seek compensation for unlawful acts that cause harm. Meanwhile, under press law, media institutions are granted certain privileges to inform the public but are simultaneously required to respect journalistic ethics and avoid violating the presumption of innocence.

This intersection of legal domains underscores the complexity of law enforcement in democratic societies, where multiple legal norms coexist and sometimes clash. The situation becomes even more intricate when the actors involved hold public office, as in the case of DPRD members. Their dual status as both public servants and private citizens makes them subject to unique legal considerations. On one hand, their actions must be transparent and accountable to the public; on the other hand, they deserve protection from unlawful treatment or premature judgment.

The expansion of legal remedies through the PMH framework thus represents a form of *judicial creativity* that seeks to fill gaps left by formal procedural law. This evolution aligns with the broader movement in Indonesian law toward *integrative justice*, which harmonizes various legal regimes to achieve a fair outcome. Yet, such developments also raise important normative questions: To what extent should civil courts intervene in matters that originate from criminal procedure? How should the balance between freedom of the press and individual rights be maintained? And how can consistency be ensured between constitutional jurisprudence and ordinary court practice?

Addressing these questions requires a deeper understanding of the normative and practical implications of Constitutional Court decisions. The Court's rulings have *erga omnes* effect, meaning they bind all parties and reshape the legal order. However, their implementation often depends on the interpretation and willingness of law enforcement institutions to adapt. As such, this study positions itself at the intersection of constitutional interpretation and judicial practice, examining how legal actors operationalize constitutional norms in concrete cases.

Therefore, the objectives of this research are twofold. First, to analyze how the Constitutional Court Decision No. 76/PUU-XII/2014 serves as a juridical basis for expanding legal remedies beyond the scope of Article 77 KUHAP through PMH lawsuits. Second, to explore the normative conflicts and harmonization efforts among criminal, civil, and press law in resolving disputes involving DPRD members' constitutional rights. By integrating constitutional jurisprudence, procedural law, and civil liability, this study aims to contribute to a more holistic understanding of Indonesia's evolving legal

system—one that aspires to reconcile formal legality with substantive justice in the pursuit of rule of law.

2. METHOD

This study employs a normative juridical method combined with a case study approach, focusing specifically on *Case Number 16/Pdt.G/2022/PN.Cbd* decided by the Cibadak District Court. The normative juridical method is used to examine legal principles, statutory regulations, and judicial decisions that govern the relationship between criminal, civil, and press law. The case study approach enables a deeper understanding of how legal norms are applied and interpreted in concrete judicial practice, particularly when constitutional principles interact with procedural and civil law mechanisms.

The research utilizes several analytical approaches. First, the statute approach is applied to examine relevant legal instruments, including the *Criminal Procedure Code (KUHP)*, the *MD3 Law*, the *Press Law*, and the *Constitutional Court Decision No. 76/PUU-XII/2014*. These legal sources are analyzed to determine their normative hierarchy, legal force, and interrelation in governing the protection of DPRD members during criminal investigations. Second, the conceptual approach is used to explore key legal concepts such as pretrial (*praperadilan*), unlawful acts (*perbuatan melawan hukum* or PMH), and progressive law (*hukum progresif*). This approach allows the researcher to connect doctrinal understanding with the evolving interpretation of justice in Indonesian legal thought.

The data sources in this study are categorized into three types. Primary legal materials consist of binding legal sources, including laws and regulations such as KUHP, the MD3 Law, the Press Law, and the Constitutional Court Decision No. 76/PUU-XII/2014, as well as the Cibadak District Court Decision No. 16/Pdt.G/2022/PN.Cbd, which serves as the main object of analysis. Secondary legal materials include textbooks, scholarly articles, legal journals, and opinions from legal experts that provide interpretations and critical evaluations of these laws. Tertiary legal materials comprise supporting references such as legal dictionaries, legal encyclopedias, and other auxiliary materials that clarify terminology and contextual understanding within the study.

The data collection technique relies on library research by examining written legal documents and scholarly sources relevant to the topic. All collected data are then analyzed qualitatively. The qualitative analysis involves interpreting the meaning of legal norms, identifying their consistency with constitutional principles, and correlating them with judicial reasoning in the examined case. The results are then systematically presented to answer the research questions and to formulate conclusions regarding the juridical implications of the Constitutional Court Decision No. 76/PUU-XII/2014 on the expansion of legal remedies beyond Article 77 of the Criminal Procedure Code.

3. FINDINGS AND DISCUSSION

Constitutional Court Decision No. 76/PUU-XII/2014 and Changes in Legal Construction

The Constitutional Court Decision No. 76/PUU-XII/2014 has fundamentally changed the legal paradigm in Article 245 of the MD3 Law. According to Asshiddiqie (2013), this ruling represents a shift from the internal legislative supervision model to a more proportionate check and balance model between the executive and the legislature. Prior to this decision, the approval of the summoning of members of the House of Representatives/DPRD was in the hands of the Honorary Court of the Council (MKD) which is an internal organ of the legislative institution.

This Constitutional Court decision has imperative legal force. As affirmed in Article 24C Paragraph (1) of the 1945 Constitution, the Constitutional Court's decision is final and binding, so it has binding legal force for all state institutions without exception. In this context, the Constitutional Court Decision No. 76/PUU-XII/2014 has created a new legal norm that changes the construction of Article 245 of the MD3 Law. The phrase "written approval from the MKD" must be interpreted as "written approval from the President" for members of the House of Representatives and "written approval from the Governor" for members of the House of Representatives.

This change in legal construction has a deep philosophical meaning. As stated by Rahardjo (2006), the Constitutional Court's decision reflects the character of progressive law that is able to respond to the development of community needs. In the context of power, this ruling affirms the principle that relations between state institutions must be based on a sound mechanism of checks and balances, not on the dominance of one institution over another.

Juridical Analysis of Violations in Cibadak Cases

In the a quo case, Sukabumi Police investigators were proven to have committed systematic procedural violations. Based on the analysis of trial documents, investigators called members of the Sukabumi Regency DPRD (plaintiffs) as witnesses without first obtaining written approval from the Governor of West Java. This action clearly violates the mandate of the Constitutional Court Decision No. 76/PUU-XII/2014 which already has permanent legal force.

According to Harahap (2016), violations of procedures that have been established by law are a form of violation of the principle of legality in the criminal procedure law (principle of procedural legality). This violation is a strong basis for postulating that the investigator's actions have fulfilled the elements of formal unlawful acts as referred to in Article 1365 of the Civil Code.

Furthermore, the press conference conducted by the Sukabumi Police and the news carried out by the online media Detik.com and Kompas TV have created a trial by the press situation that is very detrimental to the plaintiff. The news that mentions the identity and provides a negative framing of the "land mafia" against the plaintiff, even though his legal status is still as a witness, blatantly violates the principle of the presumption of innocence guaranteed in the Explanation of Article 8 of the Criminal Code and Article 18 of the Judicial Power Law.

PMH Lawsuit as an Alternative and Complementary Legal Instrument

In the context of the limitations of the pretrial mechanism, the lawsuit for unlawful acts (PMH) is present as a complementary and alternative instrument. According to Mertokusumo (2009), the limitations of pretrial are declaratory and cannot provide comprehensive compensation, especially for immaterial losses, creating a gap in legal protection (justice gap).

PMH's lawsuit based on Article 1365 of the Civil Code serves as the ultimum remedium or last resort to fill this void. The legal choice taken by the plaintiff in this case reflects the progressive legal theory put forward by Satjipto Rahardjo (2006), where the law must be able to adapt and provide substantive justice, not only fixated on formal procedures.

PMH's lawsuit is a manifestation of a legitimate and legitimate "expansion of legal measures", because it is based on violations of material legal norms (Constitutional Court Decisions) and real immaterial losses. Although the Cibadak District Court ultimately declared the plaintiff's lawsuit inadmissible on the grounds of obscur libel, the substance of the issues raised in this case has opened up an important discourse on the need for a more holistic and integrative legal approach.

In-Depth Analysis of the Cibadak District Court Decision and Juridical Consequences

The decision of the Cibadak District Court stating that the obscur libel lawsuit deserves to be critically examined. Legally, a lawsuit is declared vague if it does not contain a clear posita and measurable petitum specifications (Mertokusumo, 2009). In this case, although the lawsuit is formally stated to be unclear, the lawsuit has substantively contained two clear fundamental points: first, the violation of the Constitutional Court Decision No. 76/PUU-XII/2014, and second, the violation of the principle of presumption of innocence through media reporting.

This ruling has far-reaching juridical consequences. On the one hand, this ruling closes access to justice for the plaintiff through civil channels for this dispute. On the other hand, this ruling actually strengthens the argument that there is a legal vacuum when victims of violations of criminal procedures as well as media reports want to obtain comprehensive reputational restoration.

This ruling also indicates that the judge's paradigm in examining this kind of lawsuit is still very fixated on legal formalism, and has not fully implemented a progressive legal approach that defends

the substantive justice of victims. As stated by Rahardjo (2006), the law must be present for humans, not the other way around.

Convergence of Criminal and Civil Law in the Protection of Constitutional Rights

The phenomenon that occurred in this case is a clear example of legal convergence, where the boundary between criminal law and civil law is increasingly blurred in an effort to provide complete legal protection. Pretrial, as a criminal procedure law institution, has intrinsic limitations due to its focus on the validity of the formal actions of the apparatus. Meanwhile, PMH lawsuits from the civil realm come with their flexibility that is able to reach immaterial losses and provide compensation.

This convergence is not an aberration, but a necessity in a responsive modern legal system. The theory of the integrated justice system requires that the various branches of law must complement each other to cover the gaps in injustice. In this context, the Constitutional Court Decision No. 76/PUU-XII/2014 functions as a bridge that connects the interests of criminal law (investigation procedures) with the consequences of civil law (PMH lawsuits due to procedural violations).

Therefore, the plaintiff's move cannot be seen as a misguided attempt, but rather as a bold legal experiment in responding to systemic failures. This kind of convergence approach is in line with global legal developments that are increasingly blurring the traditional boundaries between different branches of law.

Implications for Criminal Procedure Law Policy and Reform

The findings of this case study have significant implications for criminal procedure law policy and reform in Indonesia. First, there is a need to revise the Criminal Code to expand the authority and scope of pretrial. In addition to adding to the object of the lawsuit, it is necessary to consider giving the pretrial judge the authority to provide compensation or rehabilitation for immaterial losses arising directly from the unlawful actions of the investigator, such as in the case of a premature press conference.

Second, clear and detailed Implementation Guidelines (juklak) are needed from the National Police Chief regarding the implementation of the Constitutional Court Decision No. 76/PUU-XII/2014, so that there is no disparity in understanding and execution at the investigator level. Intensive socialization needs to be carried out to ensure that every investigator understands and implements the provisions regarding the written approval of the Governor in summoning members of the DPRD.

Third, in the realm of press law, the Press Council needs to strengthen the journalistic code of ethics, especially regarding the coverage of cases that are still in the investigation stage, by providing stricter sanctions to the media that clearly violate the principle of presumption of innocence and cause a damaging impact. Protection of an individual's reputation and good name should be a key consideration in reporting legal cases.

These reform measures are expected to create a law enforcement ecosystem that not only pursues material truth, but also upholds and restores citizens' constitutional rights, including the right to reputation and good name. As emphasized by Asshiddiqie (2013), the modern state of law requires a comprehensive protection mechanism against any potential abuse of authority by state apparatus.

4. CONCLUSION

Based on the above discussion, it can be concluded that the Constitutional Court (MK) Decision No. 76/PUU-XII/2014 has created a new legal norm that is binding and becomes a strong basis in assessing the validity of the investigator's actions when summoning members of the DPRD, so that violations of this decision can be categorized as unlawful acts. In addition, the limitations of the pretrial mechanism in reaching immaterial losses and its declarative nature open up space for unlawful action lawsuits (PMH) as alternative legal remedies that are complementary and reflect progressive legal principles that focus on substantive justice. The conflict of norms between the Criminal Code of Criminal Procedure, the MD3 Law (which has been amended through the Constitutional Court's decision), and the Press Law also emphasizes the importance of harmonization of regulations and

contextual legal interpretations by judges. Therefore, it is recommended that harmonization be carried out between the Criminal Code, the Perkap, the MD3 Law, and the Press Law to prevent overlapping norms and ensure the protection of constitutional rights, followed by increased socialization to law enforcement officials regarding the implementation of the Constitutional Court's final and binding decisions. In addition, legal practitioners are advised to consider the use of PMH lawsuits as a legitimate and effective legal strategy, especially in cases involving procedural violations as well as immaterial losses that cannot be accommodated by other legal mechanisms.

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