

Restatement regarding “*Pihak Ketiga yang Berkepentingan*” in Criminal Procedure Law in Indonesia

Nurhana

Independent Researcher

Correspondence: nurhananeon@gmail.com

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Abstract

Article 79 of the *Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Hukum Acara Pidana* (Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, hereinafter referred to as “*KUHAP*”), Article 80 of the *KUHAP*, and Article 81 of the *KUHAP* mention “*pihak ketiga yang berkepentingan* (interested third parties)” as one of the subjects who can file a pretrial. However, the *KUHAP* does not explain in detail who the “*pihak ketiga yang berkepentingan*” are in connection with the pretrial application. Legal experts interpret that “*pihak ketiga yang berkepentingan*” are not only witnesses, victims of criminal acts and/or reporters, but also the general public. In Mahkamah Konstitusi Republik Indonesia (Constitutional Court of the Republic of Indonesia, hereinafter referred to as “*MKRI*”) Decision No. 76/PUU-X/2012, dated January 8, 2012, the legal interpretation of “*pihak ketiga yang berkepentingan*” requires a broad interpretation. The “*pihak ketiga yang berkepentingan*” are not just witnesses or victims, but the wider community who can be represented by institutions that fight for the public interest, such as non-governmental organizations, or other community organizations.

Keywords:

Restatement; Pihak Ketiga yang Berkepentingan; Criminal Procedure Law.

Introduction

Article 1 number 10 of *KUHAP* provides the definition of pretrial as the authority of the District Court to examine and decide: (a) whether or not an arrest or detention is legal; (b) whether or not the termination of the investigation or prosecution is valid; and/or (c) requests for compensation or rehabilitation by the suspect or his family or other parties or their attorneys whose cases have not been submitted to court. This authority

is then further regulated in Chapter X Part One of the Criminal Procedure Code concerning Pretrial.

In the *KUHAP*, pretrial is a new institution. Tolib Effendi explained that the use of the word agency does not refer to an institution or structure in law enforcement, but refers to an agency or form that has clear objectives as stated in Article 1 point 10 of the *KUHAP*.¹

The explanation of Article 80 of the *KUHAP* also explains that the existence of pretrial is aimed at upholding law, justice and truth through horizontal supervision. Within the framework of the criminal justice system, horizontal supervision is supervision between institutions where each component of the institution has the authority to supervise the functions of each component in question. This supervision is intended to prevent arbitrary actions by officials in carrying out their duties.²

Article 79 of the *KUHAP*, Article 80 of the *KUHAP*, and Article 81 of the *KUHAP* regulate who has the right to submit a petition in pretrial. However, among several subjects specified in the 3 (three) articles, "*pihak ketiga yang berkepentingan*" have not been provided with legal explanations. M. Yahya Harahap³ stated that, in general, third parties with an interest in investigating criminal cases are witnesses who were victims of the criminal incident in question. Victim witnesses are the most interested in investigating criminal acts. If this is the case, then what is meant by an "*pihak ketiga yang berkepentingan*" in the action of terminating an investigation is a witness who is directly a victim in a criminal incident.

Based on this, the author wants to prepare a brief legal explanation regarding "*pihak ketiga yang berkepentingan*" in criminal procedural law in Indonesia. The legal explanation in this article was prepared using the restatement writing method which is sourced from statutory regulations, doctrine and judge's decisions.

Discussion

¹ Tolib Effendi, *Dasar-Dasar Hukum Acara Pidana: Perkembangan Dan Pembaruannya Di Indonesia* (Malang: Setara Press, 2014), 154.

² Ibid., 156.

³ M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali* (Jakarta: Sinar Grafika, 2019), 9.

The *KUHAP* does not provide a legal explanation regarding who is called an “*pihak ketiga yang berkepentingan*” in connection with a pretrial application. Thus, it is necessary to look at other laws and regulations which may contain regulations regarding this concept. It is also possible that there will be interpretations from legal experts to interpret the legal concept in question.

In other laws and regulations, for example, *Undang-Undang Republik Indonesia Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi* (Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Corruption Crimes), there are regulations regarding community participation⁴. The existence of this regulation can be interpreted to mean that the general public is the party who can submit a pretrial petition, both in cases of general crimes and specific crimes. According to Rihal Amel Aulia Haqi⁵, The general public is placed as indirect victims as well as Indonesian citizens who have the rights and obligations to seek law enforcement.

In doctrine, M. Yahya Harahap⁶ explains, if the aim of pretrial termination of an investigation or prosecution is to correct or monitor possible errors or arbitrariness in the termination horizontally, there is sufficient reason to believe that the will of the legislator and the will of the public regarding the implementation of the interested third party includes the wider community represented by NGOs or social organizations. Interpreting and applying third parties with a broad interest is very useful for monitoring the termination of investigations and prosecutions carried out by public prosecutors, for example in criminal acts of corruption.

⁴ Articles regarding community participation in eradicating criminal acts of corruption can be seen, for example, in Moch Choirul Rizal, “Kebijakan Hukum Pidana Untuk Penguatan Partisipasi Masyarakat Dalam Pemberantasan Judicial Corruption Di Indonesia,” in *Kumpulan Tulisan Pilihan Pembaruan Peradilan*, ed. Indonesian Judicial Reform Forum (Jakarta: Indonesian Judicial Reform Forum, 2018), 101–121.

⁵ Rihal Amel Aulia Haqi, “Legal Standing Pihak Ketiga Yang Berkepentingan Dalam Permohonan Praperadilan Tindak Pidana Korupsi (Studi Kasus Putusan Praperadilan Perkara Texmaco, Perkara H. M. Soeharto, Dan Perkara BLBI BDNI Sjamsul Nursalim)” (Fakultas Hukum Universitas Indonesia, 2008), 82.

⁶ Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*, 11.

M. Yahya Harahap defines “*pihak ketiga yang berkepentingan*” in a broad sense, namely all parties other than investigators and public prosecutors, and have an interest in upholding law and justice. Basically, resolving criminal acts concerns the public interest. If the weight of the public interest in the crime in question is such, then it is very appropriate and proportional to give the general public, represented by NGOs or community organizations, the right to submit a pre-trial hearing.

This broad understanding includes the role of the community or representatives of the general public (NGOs) to participate as parties who supervise the course of the judicial process, both in general crimes and special crimes, the losses of which are indirectly received by the community. The general public or representatives of the general public (NGOs) have the right to oversee the legal process and participate in rectifying things that appear to be wrong, namely by pre-trialing cases that should and should not be.

In the judge's decision, the phrase “*pihak ketiga yang berkepentingan*” was mentioned in the request for a review of the constitutionality of Article 80 of the *KUHAP* against Article 1 paragraph (3) of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945 Constitution of the Republic of Indonesia, hereinafter referred to as “*UUD NRI Tahun 1945*”), Article 28D paragraph (1) of the *UUD NRI Tahun 1945*, and Article 28I paragraph (2) *UUD NRI Tahun 1945*. The application in question has been decided by the *MKRI*'s through Decision Number 76/PUU-X/2012, dated January 8, 2013.

The applicant (Dr. Ir. Fadel Muhammad) in this case felt that his constitutional rights had been violated as a result of a pre-trial lawsuit carried out by an NGO called Gorontalo Corruption Watch⁷ against SP3 Number PRINT-182/R.5/Fd.1/08/2009, dated August 21, 2009, on behalf of the applicant. The pretrial lawsuit was submitted to the Gorontalo District Court and was granted as stated in Decision Number

⁷ Gorontalo Corruption Watch is an NGO concerned with eradicating corruption in Gorontalo Province. In the Gorontalo District Court Decision Number 04/Pid.Praperadilan/2011/PN.Gtlo, Gorontalo Corruption Watch acted as an “*pihak ketiga yang berkepentingan*” who filed the SP3 pretrial lawsuit Number PRINT-182/R.5/Fd.1/08/2009, dated August 21, 2009, on behalf of the applicant.

04/Pid.Praperadilan/2011/PN.Gtlo, dated December 13, 2011, so that the applicant was again declared a suspect.⁸

The *MKRI's* is of the opinion that the *KUHAP* does not provide a clear interpretation regarding who can be categorized as an “*pihak ketiga yang berkepentingan*”, so a broad interpretation is needed. Therefore, what is meant by “*pihak ketiga yang berkepentingan*” is not only a witness, a victim of a crime or a reporter. Thus, the interpretation regarding third parties in article a qou is not only limited to witnesses, victims or reporters, but must also include the wider community, which in this case can be represented by associations of people who have the same interests and goals, namely to fight for the public interest (public interests advocacy), such as NGOs or other community organizations. This is because in essence the *KUHAP* is a legal instrument to enforce criminal law which is aimed at protecting the public interest.⁹

Supervision of law enforcement in Indonesia is a necessity. Therefore, the participation of citizens and/or community organizations who have the same vision and mission to fight for public interests (public interests advocacy) is very necessary.¹⁰ In several of its decisions, the *MKRI's* has also outlined the legal standing in submitting requests for judicial review not only to individual Indonesian citizens, but also to groups of people who have the same interests and goals to fight for public interests (public interests advocacy), namely various associations, Non-Governmental Organizations (NGOs), or NGOs that are concerned about a law in the public interest.¹¹

Based on doctrine and the judge's decision, interested third parties who can submit pretrial applications are victims who are directly or indirectly affected. Direct victims, for example, are parties who suffer losses, whether property, body or life. Meanwhile, indirect victims, for example in corruption cases, are the wider community

⁸ Mahkamah Konstitusi Republik Indonesia, “Putusan Nomor 76/PUU-X/2012, Tanggal 8 Januari 2013,” n.d., 35.

⁹ *Ibid.*, 41.

¹⁰ See, for example, in Moch Choirul Rizal, “Kebijakan Hukum Tentang Bantuan Hukum Untuk Pemberantasan Korupsi Di Indonesia,” *Al-Jinayah: Jurnal Hukum Pidana Islam* 4, no. 1 (2018): 147–171.

¹¹ Mahkamah Konstitusi Republik Indonesia, “Putusan Nomor 76/PUU-X/2012, Tanggal 8 Januari 2013,” 41.

who are harmed by the use of money that is not in accordance with existing regulations.

Moreover, the purpose of making laws is to ensure justice for all levels of society. Also, because Indonesia is a legal country, all citizens should have the right to apply for their legal rights, including NGOs as representatives of the general public.

Conclusion

The law does not provide a legal explanation for the phrase "*pihak ketiga yang berkepentingan*" as stated in Article 79 of the *KUHAP*, Article 80 of the *KUHAP*, and Article 81 of the *KUHAP*. For this reason, it is necessary to explore further the doctrine and judge's decisions.

In the doctrine, "*pihak ketiga yang berkepentingan*" must be interpreted broadly. Therefore, the definition of "interested third party" is not only a witness, a victim of a crime and/or a reporter, but also the general public.

Meanwhile, in the judge's decision, the phrase "*pihak ketiga yang berkepentingan*" was mentioned in *MKR*'s Decision Number 76/PUU-X/2012, dated 8 January 2013. The *MKR*'s is of the opinion that "interested third party" is not only a witness, a victim of a crime or a reporter, but it must also be interpreted broadly, namely the general public who can be represented by NGOs or other community organizations.

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