

# Justice is Done?

BY EDDY LEKS



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*At his best, man is the noblest of all animals; separated from law and justice he is the worst.*

—Aristotle

Recently, the District Court of South Jakarta, through Sarpin Rizaldi as the sole judge, made a “legal breakthrough” by declaring that the Corruption Eradication Commission (KPK) declaration of Budi Gunawan as a suspect in a graft case was legally invalid. This decision created a polemic in the legal society and in Indonesia.

The case itself started with a disagreement over the suspect status of the prospective chief of police in Indonesia. To understand this issue, it is important to be familiar with the concept of pretrial. Under criminal procedural law, pretrial (*praperadilan*) means the authority of the district court to examine and decide according to the law, on (a) the

validity over the arrest and or detention by the request of a suspect, his family or other party through their attorney; (b) the validity of the investigation or prosecution through a request for the supremacy of law and justice, and (c) the request of indemnification or rehabilitation by a suspect, his family or other party through his attorney where his case is submitted to the court.

Please read (a) carefully. Anyone can see that there is no provision giving the opportunity to examine and decide on the invalidity over the determination of suspect status. Nevertheless, the district court has now decided that the KPK’s declaration of someone to be a suspect in a case was invalid. The debate over legal certainty and justice is never finished. On one hand, legal certainty is essential. If one violates the law, then one has to be held responsible. On the other hand, justice cannot be left behind. If the law is too certain and cannot be construed broadly, then a justice-seeker may be unable to see that justice is done.

Despite a debate over the case, it is a fact that since district court has decided over the pretrial case, many suspects may now want to try their luck to obtain the same decision. With this precedence, the courts may be swamped with pretrial cases. Assuming that the determination of suspects was wrong, since inves-

tigators may also err, this “legal breakthrough” is a wind of change. One should not forget, however, that the determination of a suspect is an initial stage before a trial, and a suspect is presumed innocent. In the trial, that is where justice should be done. This presumption of innocence is however not applicable to the investigators, who should be certain that the suspect is guilty.

Going back to the concept of legal certainty and justice, justice should be regulated under laws and regulations. If it is not the case, then the law can be reviewed by the Constitutional Court or Supreme Court. The pretrial concept itself, in essence, is a means to obtain justice in a criminal case. The provision of pretrial mentioned above is already well defined and does not require any broader interpretation that is out of context. There may be no perfect laws and regulations. However, it is important not to deviate from the provisions of laws, especially if they are already crystal clear. That said, judges should cultivate, understand, and adhere to the legal and justice values in a society, but its implementation should not harm the legal system. Notwithstanding various debate and objections over the court’s decision on pretrial, it is everyone’s obligation to honor it, as long as it is not rectified or nullified by the higher court. **F**

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