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Arbitrary Suspect Designation In Corruption Cases The Legal And Human Rights Implications

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ABSTRACT

The determination of a suspect constitutes a legal act by investigators that alters a person's status from not being linked to a criminal offense into someone who is reasonably alleged to have committed one. This study arises from the Attorney General's Office's decision to designate Thomas Trikasih Lembong as a suspect, which was not in accordance with the provisions of the Indonesian Criminal Procedure Code (KUHAP). The research adopts a normative legal method complemented by empirical analysis, relying on secondary sources (literature) and interviews with relevant parties. The theoretical framework employed is based on the Theory of Legal Protection and Progressive Law Theory, which underpin the analytical approach in achieving the research objectives. The findings reveal that the suspect designation against Thomas Trikasih Lembong lacked sufficient preliminary evidence, as the prosecutors failed to prove any actual state financial loss attributable to him. Moreover, the legal provision invoked by the Attorney General's Office did not meet the required elements of a corruption offense. The study concludes that law enforcement authorities must exercise their powers in compliance with existing legal rules to guarantee both legal certainty and a fair sense of justice for all individuals.

Keywords: Corruption, Suspect Designation, Attorney General's Office, Legal Certainty, Pretrial.

A. Introduction

Indonesia's judicial system is designed to provide justice, legal certainty and benefits and to protect the rights of every individual. In terms of realizing the ideals of national law, the Criminal Procedure Code (KUHAP) was born, where the Criminal Procedure Code (KUHAP) aims to protect the rights of suspects or defendants who were previously ignored.

According to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it is interpreted that, "Corruption is an act committed by every person who is against the law, his actions enrich himself that benefit himself, others, or the corporation,

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abuse his authority or existing opportunities or means because of his position that is detrimental to the state finances or the country's economy"[1].

Based on Law No. 31 of 1999 jo Law No. 20 of 2001 concerning the crime of corruption, there are several acts that can be said to be criminal acts of corruption, including:[2]

1. There are state losses
   State losses are losses suffered by the state caused by unlawful acts, whether intentional or negligent to cause a decrease in state wealth.
2. Bribe
   Bribery is the act of giving or promising something to another person with the aim of influencing the recipient to do or not to do an act that is contrary to his duties and obligations so as to benefit the giver.
3. Position abuse
   Abuse of position is related to actions that use office for personal or other personal gain.
4. Cheating
   Cheating here refers to actions that are done intentionally for one's own interests and to the detriment of others.
5. Procurement of goods and services
   This law regulates and provides a basis for punishment for perpetrators of corruption crimes in the process of procurement of government goods and services.
6. Extortion
   Extortion is a form of corruption by threatening violence or persuading someone with the aim of being able to cooperate in committing corruption.
7. Gratuities
   In general, gratuity is defined as a gift in a broad sense, either in the form of money or other goods, to a state administrator or civil servant who is related to his position and contrary to his duties.
8. Trials, malicious conspiracies, and assistance in corruption crimes
   An attempt to commit a crime of corruption is someone who commits an act that aims to harm the state's finances by agreeing to make plans or provide assistance to commit crimes.

Determining the status of suspects is a very important stage in the investigation, especially in corruption cases. However, in recent years, it has been found that there have been violations committed by investigators since the process, especially in terms of

[1] Noviantama, Doni; Muhammad Hanif Mahsabihul Ardhi; and Wahyu Priyanka Nata Permana. Legal Analysis of the Determination of Suspects Based on Investigative Evidence by the Corruption Eradication Commission (KPK). *Lex Renaissance* 9(2), 2024: 256–281

[2] Gusti Kadek Sintia Dewi, Preventing and Eradicating the Potential for Corruption through the Provision of Anti-Corruption Education in Educational Institutions, *Journal of Sui Generis Law*, (Vol. 2 No. 4 of 2022), p. 125.

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determining suspects, so that it harms someone who is designated as a suspect.[3] One of the cases of alleged corruption is based on the decision Number: 113/Pid.Pra/2024 PN Jkt.Sel with Suspect Thomas Trikasih Lembong on suspicion of having committed the Crime of Corruption in Sugar Imports so as to cause losses to the state.[4]

In this case, the Attorney General's Office does not have sufficient preliminary evidence, but Thomas Trikasih Lembong has been designated as a suspect, and the Attorney General's Office as an investigator conducted the detention without showing objective or subjective reasons as stipulated in the law.[5] Sufficient preliminary evidence is intended as a basis for investigators to arrest suspects in a criminal case. Therefore, the main function of sufficient preliminary evidence is to provide protection of the rights of the suspect from the arbitrariness that may be committed by the investigator.[6]

For this reason, a person being declared a suspect means that there is sufficient preliminary evidence so that it should be suspected as a criminal act, but the status of suspect is given during the investigation process where preliminary evidence has been presented.[7] Evidence is any act where with these evidence, it can be used as evidence to raise the judge's confidence in the truth of a criminal act that has been committed by the defendant.[8]

Thus, the legal remedy that can be taken to remove the status of the suspect is to submit a pretrial application as part of law enforcement efforts because the pretrial itself is placed in the criminal procedure law to realize the implementation of guarantees for Human Rights (HAM).[9] The obligation to protect human rights also requires active action from the state.[10]

According to the provisions of Article 1 point (10) of the Criminal Code, what is meant by pretrial is: "Pretrial is the authority of the district court to examine and decide in the manner regulated in this law". The formulation in Article 1 point (10) of the Criminal Code is emphasized in Article 78 which is related to Article 77, it is stated that

[3] Pratiwi, Ayu Nur. The Determination of Corruption Suspects by KPK without Sufficient Preliminary Evidence as the Basis for Filing a Pretrial Review in the Perspective of the *Due Process* Principle. *Verstek* 5(3), 2017: 165–175.

[4] Setiyono, Setiyono, Judicial Review of Sufficient Preliminary Evidence in the Determination of Suspects through Pretrial Proceedings, *Lex Jurnalica* 21(2), 2024.

[5] Baseri, Bahran; and Bahran Buseri, The Determination of Suspects under Criminal Procedure Law in the Perspective of Human Rights, *Syariah: Journal of Law and Thought* 17(2), 2018: 220–234.

[6] Chandra M. Hamzah, *Legal Explanation of Sufficient Preliminary Evidence*, (Jakarta: Indonesian Center for Legal and Policy Studies, 2014), p. 19.

[7] Nurbaiti Syarif et al, Protection of Suspects' Rights through the *Presumption of Innocent* Principle in the Criminal Justice System, *Journal of Legal Research,* (Vol. 3 No. 02 of 2024): 114.

[8] Valentine Masinambow, Michael Barama, Noldy Mohede, Determination of Suspects in Corruption Cases in the Provision of Investment Credit and Working Capital Facilities by PT. Bank Sulutgo Limboto Branch (Case Study of Court Decision Number: 13/PID. PRA/2020/PN/LBO), *Lex Administratum,* (Vol. 11 No. 2 of 2023): 5.

[9] Arios Valentino et al., Pretrial Problems in the Context of Fulfilling the Rights of Suspects, *Pattimura Masters Law Review Journal*, published by the Faculty of Law, Pattimura Pamali University, (Vol. 2 No. 2 of 2022): 98.

[10] Eko Riyadi, *Human Rights Law from an International, Regional and National Perspective*, (Depok: Rajawali Pers, 2019), p. 70.

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those who exercise the authority of the District Court examine and decide on the following:

1. **Whether or not arrest, detention, termination of investigation or termination of prosecution is legal;**
2. **Compensation and/or rehabilitation for a person whose criminal case is stopped at the investigation or prosecution level. Prior to the Constitutional Court Decision Number 21/PUU-XII/2014.**[11]

That as such, some of the procedures in the implementation of the determination of suspects carried out by the Attorney General's Office are not in accordance with what has been determined by the Criminal Code, and through pretrial efforts, it is hoped that the suspect status can be removed against Thomas Trikasih Lembong and the suspect's good name restored.[12]

B. Research Methods

The legal materials that have been collected in both primary and secondary data are analyzed qualitatively, then presented descriptively, namely by explaining, describing and describing the problems and their solutions that are closely related to this writing in sentences that can be understood and accounted for.

C. Research and Discussion Results

1. The basis for the Attorney General's consideration was to designate Thomas Trikasih Lembong as a suspect for corruption in sugar imports.

The term criminal act is a translation from the Dutch language called *strafbaarfeit* or deli, where the term *strafbaarfeit* is interpreted as an event that can be punished or an act that can be criminalized. However, besides the term criminal act or criminal event, there are several other terms used by several legal experts. According to Moeljanto, a criminal act is an act that is prohibited by a rule of law which is accompanied by a threat (sanction) in the form of a certain crime.[13]

The word corruption comes from the Latin *word corruption* or *corruptus* which comes from the word *corrumpere*, an older Latin word.[14] *Corrumpere* which means rotten, damaged, wobbly, twisted, or bribed. In the legal context, corruption refers to behavior in which a person gains personal advantage by harming others, especially when this is done by lawbreaking government officials.[15]

That Thomas Trikasih Lembong (Tom Lembong) is the former Minister of Trade for the 2015-2016 period, has been designated as a suspect by the Attorney General's

[11] Andi Hamzah, *Hukum Acara Pidana Indonesia,* (Jakarta: Sinar Grafika, 2017), hlm. 189.
[12] Effendi, Erdianto. The Relevance of Examining Potential Suspects before the Determination of Suspect Status. *Undang: Journal of Law* 3 (2), 2020: 267–288.
[13] C.S.T Kansil and Cristine S.T Kansil, *Principles of Criminal Law*, (Jakarta: Pradnya Paramitha, 2004), p. 54.
[14] Angel Ibrahim, Nelson P. Purba, *Some Forms of Perpetrators in Corruption Crimes (According to the Corruption Crime Law),* (Jakarta: Alumgadan Mandiri, 2020), p. 15.
[15] Amalia Syauket, Dwi Seno Wijanarko, *Textbook of Corruption Crimes*, (Malang: PT. Literasi Nusantara Abadi Group), p. 2.

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Office in the case of alleged corruption in sugar imports at the Ministry of Trade (Kemendag).[16]

That in 2015 based on a coordination meeting between ministries it was concluded that Indonesia had a surplus of sugar so that it did not need to import sugar. However, in the same year, Tom Lembong, who at that time served as the Minister of Trade, gave permission to import raw crystal sugar.[17]

The Ministry of Trade gave permission to PT *Angels Product* (PT *AP)* to import 105,000 tons of Raw Crystal Sugar (GKM) processed into White Crystal Sugar (GKP), but the granting of the permit was not carried out at a coordination meeting first or without a recommendation from the Ministry of Industry. The Deputy Attorney General for Special Crimes explained that Tom Lembong committed the act together with the Director of Business Development of PT Perusahaan Perdagangan Indonesia (PT PPI). At that time, the Director of PT PPI discussed business development with Tom Lembong, then the Director of PT PPI gave an order to the Senior Manager Staff of PT PPI to meet with eight private companies to import GKM into GKP, the eight private PTs are PT *Angels Product*, PT Makassar Tane, PT Senta Usahatama Jaya, PT Medan *Sugar Industry*, PT Permata Dunia Sukses Utama, PT Andalan Furnindo, PT Duta Sugar *International,* PT Berkah Manis Makmur.[18]

While serving as Minister of Trade, Tom Lembong established Regulation of the Minister of Trade No. 117/M-DAG/12/2015 concerning Provisions on Sugar Imports, which replaced the Decree of the Minister of Industry and Trade No. 527/MPP/Kep/9/2004. One of the main points in the regulation is that sugar imports are only allowed in the form of White Crystal Sugar (GKP) and can only be recognized by State-Owned Enterprises (SOEs).[19] This provision is in line with the results of the coordination meeting between ministries which aims to regulate the availability and maintain GKP price stability. In addition, this policy also refers to the discussion at the coordination meeting of the economic sector in December 2015 which indicated that Indonesia will experience a shortage of GKP supply in 2016, so imports are needed to maintain the stability of sugar prices in the market.[20]

In accordance with the regulations that have been signed by Tom Lembong, the import of White Crystal Sugar (GKP) should only be carried out by State-Owned

[16] Legal Certainty in the Determination of Suspects (A Comparative Study of Pretrial Decisions), *Jurnal Ilmiah Magister Hukum*, 2023.

[17] The Problems of Determining Suspects Based on Preliminary Evidence in the Criminal Justice System, *Galuh Justisi* 8 (2), 2020.

[18] Imaduddin Kautsar, Najwa Aslami, "Alleged Cases of Sugar Import Corruption: Analysis of Loopholes in Violations of Authority of the Minister of Trade", available at: *https://lk2fhui.law.ui.ac.id/portfolio/dugaan-kasus-tindak-pidana-korupsi-impor-gula-analisis-celah-pelanggaran-wewenang-menteri-perdagangan/,* accessed June 16, 2025.

[19] The Regulation of Sufficient Evidence in Determining Suspects of Corruption Crimes under the Indonesian Criminal Procedure Code (KUHAP), *Kertha Desa*, 2024.

[20] Savitri, Winny; and Frans Situmorang, The Procedure for Determining Suspect Status after the Expansion of Pretrial Objects (Study of Decision 01/Pid.Pra/2022/PN.Jbg), *Bureaucracy Journal* 3 (1), 2023: 95–105.

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Enterprises (SOEs) and only in the form of Raw Crystal Sugar (GKM) is not allowed.[21] However, Tom Lembong instead issued a Letter of Assignment to PT Perusahaan Perdagangan Indonesia (PPI), which granted permission to meet national sugar needs and maintain price stability through cooperation with the private sector in processing GKM into GKP.[22] In fact, to ensure the availability of supply and price stability, the authorized imports are GKP by SOEs, in this case PT PPI, so that the state is suspected of suffering losses of up to Rp. 578.1 billion.[23]

Based on the description above, the Attorney General's Office then designated Thomas Trikasih Lembong as a suspect. The reason why Tom Lembong, his lawyer, filed this case through the pretrial institution is not without reason, but the pretrial was filed for the following reasons:

1. Regarding the illegality of the determination of the applicant's suspect based on the suspect determination letter directed by the Deputy Attorney General for Special Crimes Number TAP-60/F-2/FD.2/102/2-24 dated October 29, 2024.
2. The applicant's detention is not based on a valid legal reason (not meeting the objective and subjective conditions of detention).

Berdasarkan uraian tersebut diatas, penulis berkeyakinan bahwa penahanan Suspect is a deprivation of individual rights and freedoms, and is a coercive act carried out by law enforcement officers. With the determination of a suspect, it means that the honor and freedom of the individual has been restricted.[24]

The basis for the Attorney General's consideration of determining Thomas Trikasih Lembong aka Tom Lembong is that Tom Lembong has violated the rules he made during Tom Lembong's tenure as Minister of Trade (2015-2016). There are two reasons that the author highlights which are the basis for the designation of Tom Lembong as a suspect.[25]

The first problem, at a press conference at the Attorney General's Office on October 29, 2024, Abdul Qohar as the Director of Investigation of the Deputy Attorney General for Special Crimes said that Tom Lembong issued a letter of Import Recognition/Approval for Import of Raw Crystal Sugar (GKM) amounting to 105,000 tons without the basis of the relevant agency coordination meeting and without the

[21] The Effectiveness of Pretrial Proceedings in Annulment of the Determination of Suspects, *TERANG: Journal of Law* 2 (2), 2025: 297–311.

[22] Juridical Analysis of the Pretrial Decision in the Corruption Case of Former Deputy Minister of Law and Human Rights Edward O. S. Hiariej, *JASS: Journal of Administration and Social Science* 6 (2), 2025.

[23] The Process of Determining Suspects and the Obstacles in Handling Corruption Crimes in the Anti-Corruption Unit, *CAUSA: Journal of Law and Citizenship* 1(3), 2024.

[24] Juridical Consequences of the Determination of Suspects by Pretrial Judges (Case Study: Bank Century), *Verstek* 7 (1), 2019.

[25] Judicial Considerations in Examining the Legality of the Determination of Suspects, *Journal of Legal Studies (Pasca UMI)*, 2024.

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approval of the Ministry of Industry and at that time Indonesia was experiencing a sugar surplus.[26]

According to the data obtained by the author, on May 12, 2015, there was a Coordination Meeting between the Coordinating Minister for the Economy, the Minister of Trade and the Minister of State-Owned Enterprises whose conclusion was that the sugar stock was still sufficient, imports were prohibited for up to 3 months (until August 12, 2015).[27] If the import is still carried out, it must be carried out by PPI; December 7, 2015 : The Economic Coordination Committee stated that there was a shortage of 200,000 tons of sugar at the beginning of 2016 and it was decided to be fulfilled through imports; December 28, 2015: The Economic Coordination Meeting discussed the plan to import 200,000 tons of sugar to maintain the stability of national sugar prices in 2016; January 20, 2015 : Import permits issued for 8 sugar producers. This means that Indonesia as a net-importer country has never not imported sugar.[28]

According to the Sugarcane Statistics report issued by the Central Statistics Agency (BPS), the country imported 3.3 million tons of sugar, then the volume continued to increase until around 5-6 million tons during the era of the Minister of Trade after Tom Lembong took office, namely in 2016-2023. Not only that, based on data *from the National Sugar Summit*, it shows that throughout 2015 and 2016 Indonesia has never experienced a sugar surplus. Sugar consumption in the community is at 2.86 tons while domestic sugar production is only around 2.49 tons.[29] The meaning of Tom Lembong's tenure can be said that Indonesia does not experience a surplus of sugar, this can be seen from the dependence on imports to meet domestic consumption needs.

In its allegations, the Attorney General's Office did not explain in detail related to the surplus data in question, whether the surplus occurred in May 2015 or the following month, or the surplus in question was calculated in a span of one year.[30]

The next problem is that Tom Lembong stipulated the Regulation of the Minister of Trade Number 117/M-DAG/PER/12/2015 concerning Provisions on Sugar Imports (Permendag 117/2015) which replaced the Decree of the Minister of

[26] Rumondang Naibaho, Affirmation of the Attorney General's No Politicization Regarding the Determination of Suspect Tom Lembong", available at: *https://share.google/JZng8UYZUzcYC2kWq*, accessed June 26, 2025.

[27] Caunang, Meyland Iwan, A Juridical Review of the Determination of Suspects in the Investigation Process from the Perspective of Human Rights, *Lex Administratum* 5 (3), 2017.

[28] Metro Tv, "Tom Tangled in Sugar", accessed from: *https://youtu.be/GO4HyOpJ71A?si=3BBTPgxhpMwrktea*, accessed on June 29, 2025.

[29] Imaduddin Kautsar, Najwa Aslami, Alleged Cases of Corruption in Sugar Imports: An Analysis of Loopholes in Violations of the Authority of the Minister of Trade, available at: *https://lk2fhui.law.ui.ac.id/portfolio/dugaan-kasus-tindak-pidana-korupsi-impor-gula-analisis-celahpelanggaran-wewenang-menteri-perdagangan/,* retrieved June 27, 2025.

[30] Pretrial Review of the Determination of Suspects, *Criminal Justice in Indonesia and Human Rights (CJIH)*, 2023.

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Industry and Trade Number 527/MPP/Kep/9/2004.[31] One of the main points in the regulation is the restriction on sugar imports only in the form of White Crystal Sugar (GKP) and can only be done by State-Owned Enterprises (SOEs). This provision is in line with the results of the cross-ministerial coordination meeting which aims to control the availability and maintain the stability of GKP prices.

On December 23, 2015, Minister of Trade Regulation No. 117/2015 was issued which replaced Ministerial Decree No. 527/2004 and this regulation took effect from January 1, 2016 with the aim of restricting sugar imports.[32]

When referring to Article 4 of Permendag 117/2015, it is said that GKP imports can only be carried out to control the availability and price stability of GKP, where the import of GKP can only be carried out by SOEs as stated in Article 5 paragraph (2), stating that "the import of White Crystal Sugar as referred to in Article 2 paragraph (2) letter c can only be carried out by SOEs that own API-U (General Importer Identification Number) after obtaining Import Approval from the Minister."[33]

The eight private companies that signed the GKM import approval with the knowledge and approval of Tom Lembong have industrial licenses as producers of Refined Crystal Sugar (GKR) intended for the food, beverage and pharmaceutical industries and import permits for PT *AP* WERE PUBLISHED ON OCTOBER 12, 2015, two months before the issuance of new regulations that stipulate that GKP can only be imported by SOEs.

When looking at criminal law, the application of criminal law must be seen based on the time and place where the act was committed. The enactment of criminal law based on "time" is that, according to Hazewinkel-Suringa, if an act matches the formulation of the crime committed before the enactment of the relevant provision, then not only can the right be prosecuted but for the person concerned it cannot be punished at all. In this case, it is related to the principle of legality which reads "*nullum delictum nulla poena sine praevia legi poenali*" which means that no act can be criminalized without a criminal provision that precedes it.[34]

The connection with this case is that there is a permit issued by Tom Lembong which was used as a reference by the Prosecutor in his accusation, even though the permit issued was in effect before the enactment of Permendag 117/2015, so the author thinks that Tom Lembong cannot be convicted for this reason for the issuance of a sugar import permit to PT *AP* because the criminal rules do not apply retroactively.

[31] Pretrial Proceedings against the Determination of Suspect Status in Corruption Crimes, (Case Study of BG Decision), *PAMPAS Journal of Criminal Law* 1 (3), 2016.

[32] The Determination of Suspect Status in Corruption Cases (Study on KPK), *Lex Privatum*, 2016.

[33] Indonesia, Regulation of the Minister of Trade Number 117/M-DAG/PER/12/2015 of 2015 concerning Provisions on Sugar Imports.

[34] Andi Hamzah, *Op Cit.*, pp. 39-40.

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Responding to this issue, in criminal law, according to the author, if the determination of the suspect Tom Lembong violates the provisions of Article 2 paragraph (1) or Article 3 *in conjunction with* Article 18 of Law Number 20 of 2001 concerning the Eradication of Corruption in *conjunction with* Article 55 paragraph (1) 1 of the Criminal Code, then before that the Attorney General's Office must be able to prove that Tom Lembong's actions violated the elements of the article. As in Article 2 paragraph (1) and Article 3 of Law on Corruption, there are several crucial elements that must be considered, namely: committing unlawful acts; enrich yourself, others, or the corporation; and cause state losses. If it is related to the cases that ensnared Thomas Trikasih Lembong, here it is necessary to prove which part of the Prosecutor considered to designate Tom Lembong as a suspect.

The Constitutional Court Decision Number 003/PUU-IV/2006 states that the word unlawful both formally and materially contradicts the provisions of the 1945 Constitution because it does not reflect justice and legal certainty. For this reason, the Constitutional Court's decision canceled the explanation of Article 2 paragraph (1) of the Corruption Law regarding unlawful conduct in a formal and material sense.

Against the law means that it is contrary to the applicable regulations, but in this case Tom Lembong issued an import permit known and approved by the relevant minister and the president, so according to the author the unlawful basis for this case is unfounded because all policies issued by Tom Lembong who at that time served as the Minister of Trade are valid and cannot be said to be against the law and do not make Tom Lembong a corrupt perpetrator.

Another element that is still vague and needs to be explained by the Attorney General's Office is allegations related to efforts to enrich themselves, others, or corporations that are claimed to cause state losses. The Attorney General's Office only suspects that the act or import permit approved by Tom Lembong has provided profits of Rp 578.1 billion to eight private companies, even though these profits should belong to SOEs that have exclusive rights to import. In the application of Articles 2 and 3 of the Corruption Law based on the decision of the Constitutional Court Number 25/PUU-XIV/2016 interpreting that the phrase "may harm the state finances or the state economy" in Article 2 paragraph (1) and Article 3 of the Corruption Law must be proven by actual state financial losses (*actual losses*) not potential or estimated state financial losses (*potential losses*).[35]

To be able to see who can determine the state's financial losses, you can refer to the Supreme Court Circular Letter Number 4 of 2016 stating that the authorized agency to declare whether or not there is a state financial loss is the Financial Audit Agency which has constitutional authority while other agencies such as BPKP/inspectorate/Village Apparatus Work Unit remain authorized to conduct inspections and audits. So the one who can declare the State's financial losses

[35] Indonesia, Constitutional Court Decision No. 25/PUU-XIV/2016 concerning the Word Can and the Phrase or Another Person or a Corporation, in the Crime of Corruption.

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definitively is the BPK and in accordance with Law Number 15 of 2006 concerning the Financial Audit Board Article 1 paragraph (1) *jo* Article 10 paragraph (1) which essentially states that the only institution that can declare the existence or not of State losses is the Financial Audit Agency (BPK).

On the basis mentioned above, the Attorney General's Office then designated Thomas Trikasih Lembong as a suspect. However, according to the author, the determination of suspects made by the Attorney General's Office against Thomas Trikasih Lembong seemed forced, because the basis for the determination could not be proven, besides that several ministers after Tom Lembong, namely Enggartiasto Lukita, Agus Suparmanto, Muhammad Luthfi, and Zulkifli Hasan, carried out similar policies and the number was greater than Tom Lembong, but the Attorney General's Office did not investigate ministers after Tom Lembong at all.

From a progressive legal perspective, the actions of the Attorney General must be measured not only on legal-formal aspects, but on substantive justice and protection of individual human rights. However, the author thinks that the process of determining suspects carried out by the Attorney General's Office is so hasty that it forgets important procedures in the context of law enforcement, which results in no legal certainty.

Progressive law theoretically aims to absorb the aspirations and views of society as a basis for realizing substantive justice. However, in practice, the implementation of progressive legal principles has not been fully reflected. This can be seen in the case of the determination of the suspect against Thomas Trikasih Lembong as stated in the Pretrial Decision Number 113/Pid.Pra/2024/PN Jkt.Sel.

The relevance of progressive legal theory in the context of pretrial practice in Indonesia can be seen through the debate that has arisen around the determination of suspect status in the criminal justice system. The determination of suspects is often a central issue that causes controversy, especially related to the procedural aspects and legitimacy of the actions of law enforcement officials which highlight problems in the implementation of the mechanism for determining suspects from both procedural and substantial perspectives. In progressive law, the determination of the accused is seen as a gateway to the judicial process that requires alignment with the protection of human rights.

From a progressive legal perspective, the actions of the Attorney General must be measured not only on legal-formal aspects, but on substantive justice and protection of individual human rights. However, the author thinks that the process of determining suspects carried out by the Attorney General's Office is so hasty that it forgets important procedures in the context of law enforcement, which results in no legal certainty.

One of the grounds for considering the Panel of Judges in rejecting the Applicant's pretrial application is that the Panel considers that a number of objections submitted by the Applicant through his legal representative have touched

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on the substance of the case, which legally should be proven and examined in the trial process in the Court at the stage of examining the main case. That in principle, pretrial does not enter the subject matter of the case. This is based on the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions:[36]

That in principle, pretrial does not enter the subject matter of the case. This is based on the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions:[37]

> Article 2 paragraph (2) :
> "The Pretrial examination of the application for the invalidity of the determination of the suspect only assesses the formal aspect, namely whether there are at least 2 (two) valid evidence and does not include the material of the case".
> Article 2 paragraph (4) :
> "The pretrial trial of the case on the illegality of suspect determination, confiscation, and search was led by the Single Judge because of the relatively short nature of the examination and the evidence that only examined the formal aspects"

Based on the description of the facts that have been submitted, the incompleteness of the initial evidence submitted by the investigator should be the main basis for the judge's consideration to cancel the determination of suspect status. This emphasizes the importance of the element of legal certainty in every stage of the criminal justice process. In addition, the judge's consideration should not only focus on the formal procedural aspect, but also consider the protection of the basic rights of the suspect as part of the principle *of due process of law*.

Legal consequences that arise on the status of the determination of the suspect before there is sufficient preliminary evidence

Suspect status is a legal status that shows that there is sufficient preliminary evidence to suspect a person's involvement in a criminal act. However, in the perception of the general public, the determination of a person as a suspect is often mistakenly interpreted as a form of certainty for his or her mistake or mistake, even though juridically the status has not shown proof of the alleged criminal act.

According to the Criminal Procedure Law, the determination of a suspect must be based on two valid pieces of evidence in accordance with the provisions of Article 184 of the Criminal Code before investigators determine a suspect against a person suspected of committing a criminal act. Thus, the determination of suspects becomes

[36] Indonesia, *Supreme Court Regulation on the Prohibition of Review of Pretrial Decisions,* Perma Number 4 of 2016.
[37] *Ibid*

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the object of pretrial because Article 77 letter a of the Criminal Procedure Code places the determination of suspects as an action that can be tested in pretrial.

Hasty determination of suspect status has the potential to cause significant losses to individuals subject to that status. One of the main impacts is the violation of the constitutional rights of suspects, such as the loss of opportunities to work, limited space to move in carrying out daily activities, and the emergence of negative stigmas from the community. In fact, juridically, the status of a suspect cannot be used as a basis to declare someone guilty before a court decision with permanent legal force.

It is better to conduct investigations and investigations so as not to contradict human rights and avoid interests or deviations from the provisions of the Procedural Law, the Prosecutor should prioritize *due process law.* Each due *process law procedure* tests 2 (two) things, namely (a) whether the state has deprived the suspect of life, liberty and property rights without procedure; (b) if using a procedure, whether the procedure taken is in accordance with *due process.* In essence, every enforcement and application of criminal law must be in accordance with "constitutional requirements" and must "obey the law".

Thus, the author does not agree with the Attorney General's Office on the determination of the suspect to Thomas Trikasih Lembong. Because, based on the Criminal Code, a person who is designated as a suspect must have at least two sufficient pieces of evidence where this evidence must be seen based on quality that supports the existence of a criminal act, not just quantity, then the criminal act that the Prosecutor is suspected of committing by Thomas Trikasih Lembong does not fully meet the elements in Article 2 paragraph (1) and Article 3 of the Corruption Law, where from the data obtained by the author, it is proven that he committed the act in Article 2 paragraph (1) and Article 3 of the Corruption Law which refers to enriching himself, other people or legal entities, this is proven in the audit of the Financial Audit Agency and is not proven to have committed unlawful acts in his position.

The elements in Article 2 or Article 3 of the Corruption Law are cumulative, meaning that the Prosecutor must be able to prove that all elements of the article must not be proven only partially. If one of the elements cannot be proved, then Thomas Trikasih Lembong cannot be criminally charged based on this article. Therefore, according to the author, the determination of suspects carried out by the Attorney General's Office is unfounded and inappropriate based on the provisions of the Criminal Procedure Code.

To support the author's opinion, Article 51 paragraph (1) of the Criminal Code (KUHP) states "Whoever commits an act to carry out the order of office given by the authorized authority, shall not be punished". According to the author of this case, Thomas Trikasih Lembong should have been sentenced to an acquittal because in the judicial process it was not proven to have done what was alleged by the Attorney General's Office.

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As a legal result, if it is true that the Panel of Judges gives a free verdict against Thomas Trikasih Lembong, the Attorney General's Office must be able to restore the good name of Thomas Trikasih Lembong again.

D. Conclusions and Recommendations

Based on the description of the discussion and case analysis that has been presented in the previous chapters, the author can draw conclusions from the problem and give the following suggestions:

The determination of the suspect in the arrest of Thomas Trikasih Lembong was carried out by the Attorney General's Office without sufficient preliminary evidence, with the element of preliminary evidence interpreted that this evidence is in the form of two valid evidence as mentioned in Article 184 of the Criminal Code, namely witness statements, expert statements, letters, instructions, or the defendant's statement. Normatively, this is a violation of *due process law* which is an important part of the protection of human rights in the criminal justice process. In the sense that sufficient preliminary evidence is not only limited to the quantity of evidence, but the quality of the preliminary evidence is very important to be considered whether a person is fit and valid to be designated as a suspect under the applicable law. In this case, the determination of suspects in the corruption case should be accompanied by concrete evidence of audit results from the Audit Board (BPK), including the calculation of verified state losses. Therefore, the Prosecutor's action in designating suspects without a strong evidentiary basis has the potential to harm constitutional principles, especially related to the protection of the basic rights of suspects in legal proceedings.

The author's juridical analysis of Decision Number 113/Pid.Pra/PN Jkt.sel in which the judge rejected the applicant's pretrial application in its entirety. According to the author, if the judge in his consideration refers to Article 1 number 14 of the Criminal Code *jo* Decision of the Constitutional Court Number: 21/PUU-XII/2014 which in the construction of the article a person is designated as a suspect if due to his actions or circumstances, based on preliminary evidence should be suspected as the perpetrator of a criminal act, the judge should also consider the construction of the Constitutional Court Decision Number 25/PUU-XIV/2016 interpreting that state financial losses must be It is evidenced by the actual state financial loss, not the potential or estimated state financial loss. The author argues that the judge's consideration of rejecting all of the applicant's application, including the removal of the applicant's suspect designation status, is unfounded in law, contains formal weaknesses and aspects of the considerations presented.

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