



Application of The Dispute Referred for A Preliminary Ruling in Handling Criminal Cases Which Contains Civil Elements by Police Investigators

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ABSTRACT

The application of *Prejudice Geschill*, or prejudicial disputes, in criminal cases with civil elements in Indonesia remains a significant legal challenge. This concept allows the suspension of criminal cases when civil disputes must be resolved first, yet the Indonesian legal framework provides insufficient guidance on how investigators should manage such cases. This research examines the application of *Prejudice Geschill* during criminal investigations involving civil issues and explores the legal gaps in existing regulations, particularly Perma No. 1 of 1956 and SEMA No. 4 of 1980. The study uses an empirical juridical research approach, combining a statute approach, conceptual approach, and case study method to analyze Police Report Number: LP/B/15/III/2024/SPKT/POLRES GIANYAR as a case study. The findings reveal that while the law allows the suspension of investigations, the lack of clear procedural guidelines causes inefficiencies, leading to delays in both criminal and civil proceedings. The study suggests reforming the legal framework to provide more precise guidelines for investigators and the judiciary in handling cases with civil elements. Legal reforms could streamline investigations, reduce delays, and ensure more effective legal outcomes.

Keywords: Criminal Case, Civil, Investigation, *Prejudice Geschill*

INTRODUCTION

In the practice of law enforcement in Indonesia, there is often a dispute that is basically included in the realm of civil law and then brought into the realm of criminal law (Astriani et al., 2023; Hakim et al., 2023; Rahayu et al., 2020; Zulfa et al., 2023). This results in a mixture of criminal and civil cases in one object of the case, so that an appropriate settlement is needed to avoid ambiguity in law enforcement. Therefore, it is important for investigators to ensure whether the criminal case being examined has a case object that contains elements of dispute in the civil realm.

According to R. Soesilo, if the criminal prosecution is temporarily suspended because before the prosecution can be continued there is still a legal dispute that must be decided first by another power, then during the period of suspension the expiry period does not continue (stop), such legal disputes are commonly called prayudial disputes. This has also been regulated in Article 81 of the Criminal Code which reads: "*Postponement of criminal prosecution is related to the existence of a dispute of privilege, postponing the expiry*" (Soesilo, 1994).

Based on the provisions of Article 1 of the Supreme Court Regulation Number 1 of 1956, which determines that if in the examination of a criminal case it must be decided that there is a civil matter for an item or about a legal relationship between two certain parties, then the examination of the criminal case can be postponed to wait for a court decision in the examination of a civil case about the existence or absence of the civil right. Furthermore, article 2 stipulates that the postponement of the examination of criminal cases can be stopped at any

time, if it is deemed no longer necessary. Then article 3 stipulates that the Court in the examination of criminal cases is not bound by a decision of the Court in the examination of civil cases regarding the existence or absence of a civil right (Supreme Court Regulation No. 1, 1956).

The provisions of *Prejudice Geschill* are also explained in the Supreme Court Circular Letter (SEMA) Number 4 of 1980, where "*Prejudice Geschill*" is mentioned:

- 1) '*The preliminary ruling dispute*' Ini exist that is a '*Question referred for a preliminary ruling*' and some are a '*question preliminary to the judgment*'.
- 2) "*Question prejudicielle a l' action*" is about certain criminal acts mentioned in the Criminal Code (including Article 284 of the Criminal Code).
- 3) In this case, the civil provisions are decided first before considering criminal prosecution.
- 4) "*Question prejudicielle au jugement*" concerns problems regulated in Article 81 of the Criminal Code. The article gives the authority, not an obligation, to the Criminal Judge to suspend the examination, pending the decision of the Civil Judge regarding the dispute.
- 5) That if the Judge wants to use this legal institution, the Criminal Judge is not bound by the decision of the Civil Judge concerned as stated in the Supreme Court Regulation Number 1 of 1956.

Some of the jurisprudence related to Pre-Judicial Disputes are as follows:

- 1) Supreme Court Decision No. 628 K/Pid/1984b dated July 22, 1985 "The High Court before deciding the subject matter of this case should first wait for a court decision that will determine the status of land ownership and the house has definite power.

In the memorandum of the decision, it is stated: "Ordering the Bandung High Court to reopen the trial and examine and decide the subject matter of this case after the court decision in a civil case that will determine the status of land ownership HGB No. 197/Penaragan located on Jalan Merdeka No. 11A Bogor has definite force".

- 2) Supreme Court Decision No. 129K/Kr/1979 dated April 16, 1980 whose legal abstract states: Because the examination in the District Court has continued and is based on *the prejudice of* the right to ownership of land, it cannot be given a decision in the form of unacceptable claims or a decision in the form of being released from all lawsuits and what should be pursued is:
 - a. Postpone the hearing until the civil judge determines who is entitled to the land by giving the Defendant a certain time to file a civil lawsuit; or
 - b. The case is immediately decided by the criminal judge based on the evidence in the criminal investigation;

In the criminal justice system, it is essentially identical to the criminal law enforcement system which is basically a system of power or authority to enforce the law. This power or authority to enforce the law can be identified with the judicial power system in the field of criminal law which is manifested in 4 (four) sub-systems, namely:

- a) Investigative powers by investigative agencies;
- b) Power of prosecution by the public prosecutor's board;
- c) The power to adjudicate/render judgments by the judiciary;
- d) The power to carry out criminal punishments by the execution apparatus.

In the scope of criminal law cases, proof is very important in the criminal case trial process because what is sought in criminal law is the truth that is true (Hiariej, 2012). In general, the evidentiary process will be carried out immediately in the investigation process of a criminal case. Investigators are carried out by state police officials or certain civil servants who are authorized to conduct investigations, while investigators who carry out investigations are the State Police of the Republic. Therefore, before the investigator carries out an investigative action, the investigator will conduct an investigation process to the scene of the case, the

investigator when coming to the scene of the case will look for evidence at the scene, then the evidence is adjusted to the victim at the time of the incident whether the incident is a criminal act or the event is an ordinary event.

The investigation stage is a series of actions by investigators in terms of and in accordance with the manner regulated in the law to seek and collect evidence that sheds light on the criminal act that occurred and to find the suspect (Ding et al., 2021; Hu et al., 2020; Reddy & Sharon, 2017). At this stage of the investigation, investigators will collect evidence based on Article 184 paragraph (1) of the Criminal Code. Basically, investigators are the leading gateway to the criminal law enforcement process in Indonesia before continuing or determining alleged criminal cases in which there are civil factors or elements, it is natural to first examine in depth all matters related to the reported legal facts so as to provide justice for all parties. In the investigation process, the authorized investigator can stop the investigation at any time because there is not enough evidence or the incident turns out not to be a criminal act or the investigation is stopped for the sake of the law.

The handling of criminal cases with civil elements in Indonesia poses significant challenges for law enforcement, particularly with regard to the application of *Prejudice Geschill*, or prejudicial disputes, where the resolution of a civil case must precede the criminal case. In many criminal investigations, there is a need to establish civil status or property rights before proceeding with criminal charges. However, the current legal framework, as outlined in Perma No. 1 of 1956 and SEMA No. 4 of 1980, allows criminal proceedings to be suspended pending the outcome of the civil case but fails to provide clear guidelines for how investigators should manage such cases. This gap has led to delays and confusion in the legal process, particularly when the civil and criminal components of a case are closely intertwined.

Moreover, the lack of clarity in applying *Prejudice Geschill* at the investigative stage creates further legal ambiguity. Investigators may suspend the investigation based on the civil court's ruling, yet the authority to stop or delay an investigation due to a civil matter is not explicitly defined in Indonesian law. This lack of clear procedural guidance creates difficulties for both investigators and the judiciary, leading to inconsistencies in handling criminal cases that involve civil disputes, and resulting in inefficiencies in the overall judicial process.

The urgency of addressing the application of *Prejudice Geschill* in handling criminal cases with civil elements is paramount, as it directly impacts the efficiency and fairness of the legal process in Indonesia. Without a standardized and clear mechanism to address the interrelation between civil and criminal matters, the judicial system faces significant delays and inefficiencies, causing prolonged legal battles and potential miscarriages of justice. The ambiguity surrounding the suspension of criminal investigations based on civil cases also leads to inconsistent case handling, which could undermine public trust in the legal system. Thus, it is essential to reform the procedural guidelines to ensure that criminal cases involving civil disputes are addressed in a more streamlined and legally coherent manner.

Previous studies on criminal law enforcement in Indonesia have largely focused on procedural inefficiencies and inconsistencies in handling criminal cases involving civil elements. Research by Abdul Rahum et al. (2022) critically examines the application of *Prejudice Geschill* in Indonesian criminal cases and highlights the challenges of suspending criminal investigations pending civil case resolutions. However, their study primarily discusses the procedural limitations without proposing concrete solutions for reform. Furthermore, R. Soesilo's (1980) work emphasizes the complexities of legal interpretation in criminal law but lacks an in-depth focus on the procedural aspects of prejudicial disputes.

Additionally, Sidharta (2006) and Kholiq (2019) have written about the broader implications of criminal law and its intersection with civil law, discussing the delays and complexities involved when civil issues must be settled before criminal proceedings. While they acknowledge the existence of these legal challenges, they do not fully explore the potential

procedural reforms that could resolve such conflicts. Their research often treats these issues as secondary, rather than addressing them as central problems requiring immediate legal reform.

Most importantly, Perma No. 1 of 1956 and SEMA No. 4 of 1980, the primary regulations that govern prejudicial disputes, are outdated and have not been revisited in over three decades. As the landscape of criminal and civil law in Indonesia has evolved, these regulatory frameworks have failed to keep pace, leaving significant gaps in the enforcement of justice. There is a lack of empirical research that directly addresses these gaps or provides insights into how the legal system can better handle such cases.

Despite the extensive body of research on Indonesian criminal law, there is a clear gap in the literature regarding how the application of *Prejudice Geschill* is managed in criminal investigations. Previous research has discussed the theoretical underpinnings and broad principles of *Prejudice Geschill*, but there is limited exploration into the practical application of these principles within the Indonesian judicial system. Moreover, no studies have thoroughly investigated the challenges faced by investigators when dealing with criminal cases that require the resolution of civil disputes first, nor has there been a comprehensive proposal for reforming procedural guidelines. This research aims to fill this gap by providing a detailed examination of how these cases are handled and proposing recommendations for improving the system.

This study introduces a novel approach by focusing on the *Prejudice Geschill* application in the context of criminal investigations involving civil disputes in Indonesia. While previous research has mainly examined the issue from a theoretical or general procedural perspective, this study provides a practical and detailed analysis of how *Prejudice Geschill* is applied in actual case investigations, using real-life case studies to highlight the challenges faced by law enforcement. By proposing concrete reforms to the legal framework, this study offers new insights into the application of *Prejudice Geschill* and presents actionable recommendations for the judiciary and law enforcement agencies to address the complexities of these cases.

The objective of this study is to investigate the practical application of *Prejudice Geschill* in the handling of criminal cases with civil elements within the Indonesian legal system. Through a detailed review of regulations such as Perma No. 1 of 1956 and SEMA No. 4 of 1980, and case studies from the Gianyar Police Investigation Unit, this research aims to identify the challenges investigators face and to evaluate the effectiveness of the current legal framework. The study will also propose legal reforms and procedural adjustments to ensure a more effective and efficient resolution of criminal cases involving civil disputes.

This research provides significant benefits for both legal scholars and practitioners by offering a comprehensive understanding of the *Prejudice Geschill* concept and its practical implications in the Indonesian criminal justice system. By identifying the gaps in the current legal framework, this study contributes to the development of more effective procedural guidelines that can improve the handling of criminal cases involving civil disputes. The proposed reforms will help reduce delays in legal proceedings, enhance legal certainty, and ensure that justice is served more efficiently, ultimately benefiting the broader Indonesian legal system and its stakeholders.

RESEARCH METHOD

The research method employed in this study is empirical juridical research, also known as field research, which focuses on observing and analyzing real-world legal issues in practice. The study uses a Statute Approach, which involves examining all laws and regulations related to the legal matters being studied. This method enables the researcher to gather relevant legal provisions and evaluate their application in actual cases. The research also applies a Conceptual Approach, referring to legal views and doctrines that have developed over time. By referencing established legal principles, this approach helps in understanding the theoretical framework that underpins the legal issues. Additionally, the Case Approach is used, focusing on real-life cases

to examine how laws are applied and interpreted in practical situations. For this study, an example from the Gianyar Police Investigation Unit is utilized, specifically examining Police Report Number: LP/B/15/III/2024/SPKT/POLRES GIANYAR/POLDA BALI dated March 27, 2024, as a case study to explore how legal norms are implemented.

The data for this study was collected from two primary sources: primary data and secondary data. Primary data was gathered through interviews with investigators from the Investigation and Crime Unit of the Gianyar Resort Police, providing firsthand insights into the legal processes and challenges faced by law enforcement in handling criminal cases with civil elements. These interviews offered valuable information about the practical application of legal norms, procedural challenges, and the nuances involved in case handling.

In addition, secondary data was obtained from various literature materials, including books, legal texts, and regulations such as the Criminal Code (KUHP) and other relevant laws. Secondary data helped to contextualize the findings from the primary sources and provided a solid theoretical foundation for analyzing the research questions. By combining both primary and secondary data, this study aims to provide a comprehensive understanding of the legal challenges surrounding criminal cases involving civil disputes, specifically in the Indonesian context.

RESULTS AND DISCUSSION

This research is a case study on Case File Number: BP/15/VRES.1.9/2024/SATRESKRIM on the case of alleged criminal acts of letter forgery committed by I WAYAN SUR by the suspect I WAYAN SUR making a Genealogy of I WAYAN SAR, Hamlet/Banjar Babakan, Sukawati Village, Sukawati District, Gianyar Regency, Bali Province dated April 28, 2022 which explains that the status of I KETUT PAR is pekidi, and this is not in line with the Gianyar District Court Decision Number: 28/Pdt.G/1994/PN. Gin who explained that I MADE WID and I KETUT PAR are the legal heirs of I WAYAN SAR. The genealogy was then attached as a requirement for the application file for certification of a land plot of SPPT PBB Number: 51.04.010.005.042.0054.0 on behalf of taxpayer I SAR with a land area of 1700 m², located in SB Cengcengan, Sukawati Village which was then requested for the issuance of a certificate to the Gianyar Regency Land Office.

Based on the discussion of the facts/evidence in the case analysis and juridical analysis, the suspect I WAYAN SUR, has sufficient evidence of committing a criminal act if anyone makes a false letter or forges a letter, who can issue a right, an agreement (obligation) or a debt exemption, or who can be used as evidence for an act, with the intention of using or instructing others to use the letters as if it were a genuine letter and not forged, then if it is used it can cause a loss or anyone who deliberately uses a fake or forged letter as if the letter is genuine and not forged, if the use can cause a loss that is known to occur on Wednesday, July 19, 2023 at around 20.00 WITA at Jalan Raya Sukawati, Banjar Dlodtangluk, Sukawati Village, Sukawati District, Gianyar Regency, Bali Province, deserves to be tried at the Gianyar District Court because he is suspected of having committed a criminal act as referred to in Article 263 paragraph (1) or 263 paragraph (2) of Law Number 1 of 1946 concerning the Criminal Code.

Based on Law Number 8 of 1981 concerning the Criminal Procedure Code article 110 which reads:

- (1) In the event that the investigator has completed the investigation, the investigator is obliged to immediately submit the case file to the public prosecutor;
- (2) In the event that the public prosecutor is of the opinion that the results of the investigation are still incomplete, the public prosecutor shall immediately return the former case to the investigator accompanied by instructions to be completed;

- (3) In the event that the public prosecutor returns the results of the investigation to be completed, the investigator is obliged to immediately conduct additional investigations in accordance with the instructions of the public prosecutor.

After the Investigator submits the public prosecutor's case file and in accordance with Letter Number B-1562/N.1.15/Eoh.1/05/2024 regarding the return of the case file (P-19) on May 23, 2024, then the coordination minutes issued on June 24, 2024, related to the Public Prosecutor discuss four legal aspects that need to be resolved first, including:

- 1) Regarding the status of I KETUT PAR as a pekidih in the genealogy letter of I WAYAN SAR'S descendants dated April 28, 2022, it mentions I KETUT PAR his status as a Pekidih
- 2) Furthermore, it is necessary to settle first regarding the law of property, especially related to inheritance, in Balinese customary law a person who inherits must fulfill three obligations, namely the obligation of parahyangan where the heir must continue to care for and carry out ceremonies for the sacred place based on the purusa line, the obligation of the palemah of the heir party must take care of or preserve the object of inheritance entrusted to him, and the obligation of the heir must comply with the gotong royong ceremony or based on the place of residence of purusa, with the existence of a Civil Court Decision in 1995, namely Gianyar State Decision Number 28/Pdt.G/1994/PN Gin Jo. Denpasar High Court Decision No. 101/PDT/1995/PT. DPS Jo. Decision of the Supreme Court of the Republic of Indonesia No. 2826K/Pdt/1995 which decided that I KETUT PAR is the Heir, but whether the status as the decision that was almost 30 (ten) years ago still describes the same situation as today, then all of this must be resolved through a civil mechanism
- 3) Regarding Agrarian Law on SHM objects with SHM number 05979/Sukawati Village
The aspect of agrarian law, related to the lawsuit was then decided to the Supreme Court in the consideration of the decision explaining that at that time the object of inheritance was still based on the parcel and had not been converted in the form of new rights based on the order of Law No. 5 of 1960 on agrarian principles and Government Regulation No. 24 of 1997 concerning land registration, which in the case file the object of inheritance had been in the form of a certificate of property rights, which therefore causes uncertainty about the similarity of land identity as mentioned in the court decision in the form of persil number 43 class II area of 0.170 hectares or SPPT number 51.04.010.005.042-0054.0 with SHM number SHM 05979/Sukawati Village, therefore it is necessary to have a civil decision that can confirm this
- 4) Because some legal aspects have not been resolved civilly, it must be resolved first through the civil court mechanism so that the investigator takes a stand.
- 5) In addition, there is still a Civil Lawsuit Case Registration Number: 108/Pdt/2024/PN. The GIN dated April 22, 2024 submitted by the suspect is in the process of being trial, so the Public Prosecutor provides instructions for investigators to follow the Supreme Court Regulations.
- 6) Based on the instructions from the Public Prosecutor above, the Investigator carried out the Case Title, with the conclusion that the investigator stopped the investigation into the case of the crime of forgery of sura on behalf of the reported person I WAYAN SUR through Decree Number: S.TAP/22/IX/RES.1.9/2024/Satreskrim dated September 17, 2024 concerning the Termination of the Investigation

Until now, Indonesia has not had a special policy or provision that regulates *Prejudicial Geschill* in the Police and Prosecutor's Office, even though the position of the case whose object is clearly necessary in the initial examination before the case is delegated to the court. However, specifically related to the handling of harda/land cases, there is a Telegram Letter of the National Police Chief Number ST/2540/XII/RES.7.5/2021 dated December 1, 2021 which contains instructions to take the following steps:

1. Number five: in the case of price/land related to the right of ownership of the object in question, if there is no clarity of the legal owner based on the basis of rights, then the parties must first ensure the ownership rights based on the court decision;
2. Number six: if at the time of the investigation of the harda/land case it turns out that the parties are in a civil process, so that the investigation process against the object of the case is suspended first until there is a civil decision as stipulated in Perma No. 1 of 1956 and the Jurisprudence of the Supreme Court Reg Decision No. 628.K/PID/1984 dated October 17, 1983, then the investigator shall guide and comply with the results of the civil decision (Telegram Letter of the National Police Chief, 2021).

At the investigation stage, if there is a pre-judicial dispute where there is a civil case related to an ongoing criminal case or there is a fact that in order to prove a criminal case, it is necessary to prove in advance the civil status of a property right or legal relationship between two or more parties, through a civil decision, then the investigator can apply *prejudice* by stopping the investigation process while waiting for the civil process. Although *prejudice* is not included as a reason for the termination of the investigation, it is the same as the termination of the investigation because there is not enough evidence. Because the evidence is still unclear, it must be proven first through a civil decision. When the civil decision has obtained permanent legal force and provides certainty to the status of the unclear evidence, if the evidence can prove the suspect's guilt, the investigation can be reopened (Abdul Rahum et al., 2022).

Regarding Police Report Number: LP/B/15/III/2024/SPKT/POLRES GIANYAR POLDA BALI, dated March 27, 2024 regarding Letter Forgery, as referred to in article 263 Paragraph (1) or article 263 Paragraph (2) of Law Number 1 of 1946 concerning the Criminal Code which is known to have occurred on Wednesday, July 19, 2023 at Jalan Raya Sukawati, Banjar Dlodtangluk, Sukawati Village, Sukawati District, Gianyar Regency, Bali Province, within a period of approximately 20.00 WITA the investigation process was stopped because there was not enough evidence (Report on the Results, 2024).

The existence of a fundamental dispute results in a mixture of criminal and civil cases in one object of the case, so that an appropriate resolution is needed to avoid ambiguity in law enforcement. Therefore, it is important for investigators and public prosecutors to ensure whether the criminal case being investigated has a case object that contains elements of dispute in the civil realm. Therefore, there are several consequences that can arise if the Police Investigator does not apply *Prejudice Geschill* in examining criminal cases in which there is a civil element, including:

1. The obstruction of the process of a trial, both criminal and civil, caused by the validity of the evidence so that the indictment submitted by the public prosecutor at trial cannot be accepted by the judge or prematurely due to the inaccuracy of law enforcers in conducting an examination whose final object of the case is purely criminal or it turns out that there is a civil element;
2. In accordance with Perma Number 1 of 1956 and Sema Number 4 of 1980, it is allowed to suspend the examination of criminal cases pending the decision of the case. The suspension of criminal cases by the Judge, although legally valid, is contrary to the theory of legal certainty in Article 81 of the Criminal Code and creates a legal void that must be filled to provide guidelines for law enforcement in dealing with similar cases in the future.

CONCLUSION

Based on the discussion and analysis of the *Prejudice Geschill* in handling criminal cases with civil elements, several conclusions can be drawn. The Indonesian legal system has significant gaps in the application of *Prejudice Geschill*, particularly in cases where civil disputes must be resolved before criminal cases can proceed. While the laws such as Perma No. 1 of 1956 and SEMA No. 4 of 1980 provide a procedural basis for suspending criminal investigations in the event of civil disputes, the lack of clear guidelines on how investigators should apply these provisions has led to inconsistencies and delays. The case study from the Gianyar Police Investigation Unit illustrates the challenges investigators face when civil elements are present in a criminal case, showing the need for more robust legal procedures and clearer authority for investigators to suspend criminal investigations in such cases.

Given the ongoing challenges highlighted in this study, future research should focus on revisiting and updating the legal framework surrounding *Prejudice Geschill*. A detailed study should explore how this doctrine can be more effectively integrated into the Indonesian criminal justice system, including providing clear guidelines for law enforcement on the suspension of investigations and the handling of civil disputes within the criminal process. Moreover, comparative studies with other legal systems that have addressed similar issues may provide valuable insights into improving Indonesia's legal approach. Lastly, research should investigate the impact of such legal reforms on improving the efficiency and effectiveness of criminal law enforcement in Indonesia.

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