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The Function of Pretrial Institution in the Decision of Limitation on the Duration of Investigation to Enforce Law in Indonesia According to the Perspective of Human Rights

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Abstract
Indonesia as a country that embraced the system of due process model demands its citizens to put forward the rights possessed by the suspect in the criminal proceedings process.In the process of examination before the trial to the stage of prosecution is very vulnerable to violations. In order to provide protection against the enforcement of the rights of the suspect, Criminal Procedure Code gave birth to Pretrial institutions. Pretrial prejudices in the Criminal Procedure Code are new and are used to protect the rights of suspects in the investigation process. Due to the nature of Pretrial that put forward the knowledge of law, to protect the rights possessed by suspect, it requires the role of legal counsel. However, not everyone can present legal counsel in the litigation process,due to the high cost of services. Based on this issue, it can be said that Pretrial Institution in the criminal procedure law is essentially not only to adjudicate in relation to the harmful actions of society, but also the arbitrariness of government apparatus, law enforcers, and others. Normatively there is no regulation regarding the time limit (limitation) of investigation in Criminal Procedure Code, but only set the limit of detention's duration. While the suspect's status will only cease or has been completed in the event of termination of the investigation by the issuance of an Inquiry Letter on Termination or the file has been declared as complete and then submitted to the prosecutor to be tried in court. This indefinite investigation resulted in uncertainty on the duration of a person should bear the suspect's status, and causing harm to the suspect.
Keywords: *Due Process Model*, Suspect, Pretrial, Criminal, Investigation, Limitation.

A. Introduction

In essence the quality of law enforcement can not be separated from the objective of improving the quality of community life and the quality of sustainable development ("sustainable development/sustainable society").[1] Pretrial is a new thing in the Indonesian judicial world. Pretrial is one of the new institutions introduced by the Criminal Procedure Code in the midst of law enforcement. The birth of Pretrial in KUHAP is an adaptation of*habeas corpus* institution of the Anglo-Saxon criminal justice system. However, the authority given to judges in the judicial process is much more limited than the authority of commissioner judges in countries with civil law traditions in mainland Europe (rechter-commissari, juged'instruction, juez de intrución, juizintrução, and so on).[2] The court provides benefits to the suspects from the arbitrariness of law enforcement officers in conducting the investigation process. The protection of the rights of suspects can be defended in the pretrial process, so that the process runs more transparently and does not harm any parties,even more the suspect. However, in the implementation there are still some weaknesses both in its formulation and in its application in the court, so that there is no human rights protection for the suspect. Related to the determination of suspect in Indonesia still have problems such as about the time limit or limitation of duration to someone. A person under the provisions of Article 109 paragraph (2) of the new Criminal Procedure Code can only cease to have his status as a suspect if his case is terminated. The absence of limitation related to the status of suspect, is a loss to a person who has been designated as a suspect.The status of suspect (without deadline) one of which can be seen from the case handled by KPK (*KomisiPemberantasanKorupsi* / Commission of Corruption Eradication)on the arrest ofAndiZulkarnaenMallarangeng aka ChoelMallarangeng as suspected alleged corruption on the construction project of National Training, Education, and Sports School Center, in Hambalang, West Java, fiscal year 2010-2012. The KPK named Cloel as a suspect on December 16, 2015 and was detained at KPK's detention house branchPomdam Jaya Guntur for the following 20 days until 25 February 2017.[3] The status of suspect onChoelMallarangeng due to alleged corruption on the construction project of National Training, Education, and Sports School Centeris one of the weaknesses of Indonesian criminal law system. It has been more than 22 months since ChoelMallarangeng did not receive legal certainty. As explained, ChoelMallarangeng has the rights

[1]Barda Nawawi Arief, *Kapita Selekta Hukum Pidana,* Cet, 3, (Bandung: Citra Aditya Bakti 2013), pg. 249.
[2]Andi Hamzah dan RM Surachman,*Pre-Trial Justice Discretionary Justice dalam KUHAP Berbagai Negara*, (Jakarta: Sinar Grafika, 2015), pg. 106.
[3]http: www. Covesia.com. terkatung-katung selama lima tahun, akhirnya Choel Mallarangeng Ditahan KPK. Accessed on 29 May 2017.

as set forth in Criminal Procedure Code Article 50 Paragraphs 1 and 2. The rights of suspects concerned are on the rights to be entitled to a prompt examination by the investigator so that they can proceed to public prosecutor and the case is entitled to be immediately forwarded to court by the prosecutor. The process is an effort in providing legal certainty to the suspect in performing legal measure or defense in an effort to seek justice. The rights of suspects such as those contained in the Criminal Procedure Code Article 50 have not been effective. The cause of the ineffectiveness of the article is the absence of a clear rule in determining the limitations or deadline of suspect status. In terms of human rights, pretrial institutions nowadays still do not reflect a solid human rights protection for the suspects. As long as there is no pre-trial application there is no protection from pretrial institutions for the abuse of the investigators. Determination of a protracted suspect in the absence of term definite time, has ridiculed the concept of legal certainty for the individual, in addition to the protracted determination of the suspect without a period of time (limitation) is contrary to the principle of Presumption of Innocence. Underlying the above issue, the researcher felt the formulation of regulation regarding the determination of the suspect by the investigator or through the pretrial institution in Indonesia needs to be changed because it is not in accordance with the development of the community who desire a supervision on the enforcement of suspect's examination from the beginning of the investigation to the prosecution, in order to provide human rights protection to suspects. Therefore, the researcher examines this issue with a knife of analysis from the Theory of Justice, Human Rights Theory, Authority and Institutional Theory, Criminal Law Policy Theory, and Theory of Criminal Justice System.

B. Research Method

This method of legal research is done by examining the legal materials so that it can be said as: library based, focusing on reading and analysis of the primary based, focusing on reading and analysis of the primary and secondary material.[1] Legal materialsarethe basic material that will be used as a reference or a foothold in writing this research. The legal materials in the writing of this research consists of 3 (three) parts, namely primary, secondary, and tertiary legal materials. Primary legal material is a legal material consisting of legislation, official records, or minutes in the formation of legislation and verdicts of judges. Secondary legal material is a legal material that gives explanation about primary law material which come from some literatures, textbook, journal of law, scientific essay, and other books that directly related to the issue of writing in this research. Tertiary legal material is any legalmaterialsthat gives guide or explanation of primary and secondary legal materials, which can be in form oflaw dictionaries that are directly related to this research. The analysis of legal entities was conducted by using the method of deductive analysis, that is a method of analysis by conducting an analysis to the legislations relating to the issues (research questions) contained in this study to then be correlated with some of the principles and theories that become the basis or blade for analysis in writing this research as a step to find conclusion, solution and ideal conception of matters into the discussion. While the applied research approach is the approach of legislations (statute approach) which was done by reviewing all laws and regulations related to the legal issues that being investigated, and the second is comparative approach which was done by conducting a comparative study.

C. Result And Discussion

The existence of pretrial is very important in providing certainty in the process of investigation and determination of suspect, as contained in the criminal procedure law. Meanwhile the purpose ofCriminal Procedure Code is to seek and obtain, or at least approach, the material fact, namely the complete truth of a criminal case by applying criminal law provisions honestly and appropriately to find out the perpetrator of a criminal offense and subsequently conducting examinations in court to determine whether the suspect is proven guilty or innocuous, also regulate the principal means of execution and oversight of the judgments that have been imposed. The existence of pretrial can be regarded as a medium for suspects in the investigation related to the examination process conducted by investigators, either the police or the prosecutor's office or by the authorized institution. The judicial pretrial process of judges in deciding a dispute must be fair and not be impartial to either party. The process is conducted in the hearing by the procedures of presenting the parties of the caseto propose contra arguments. The judge must examine and establish which are the true arguments and the wrong arguments. In conducting this examination, the judge must heed the rules of proofing which is the law of proofing. The essence which must be proven is the event and not the law. Therefore, those who must prove the event or propose the evidence is the parties, while the judge must determine the law against the events that have been proven. Therefore, the judge in the proceedings of the case must establish and discover the truth of the event or its legal relationship to the event that has been established.[2] So in deciding a case, the judge should see the legal events that have occurred,so that the given decision can be fair and does not harm one party. Pretrial Institution

[1]Johny Ibrahim,*Teori dan Metodologi Hukum Normatif,* (Malang: Bayu Media Publising 2007), pg. 46.
[2]Sudikno Mertokusumo. *Hukum Acara Perdata Indonesia*,(Yogyakarta, Liberti, 2002), pg. 106.

is intended to get a sense of justice and law enforcement, and to ensure the legal actions performed by the law enforcement officer do not arbitrary to the weak society, so there for the actions of law enforcement officers in regions, in order that his actions will be based on the applicable law and not merely on the basis of authority while taking office or as apparatus. The pretrial institutions are introduced by the Criminal Procedure Code in law enforcement and not as a stand-alone court. And also not as a judicial level institution that has the authority to give final decision on a criminal case. Thus, the existence and presence of pretrial is only a delegation of new authority and new functions which are assured by Criminal Procedure Code to every district court, as authority and additional function of authority and the functions of existing district courts. For this time so far, the authority and function of district court is to try and settle criminal and civil cases as its main tasks, then the main task was added by a side task to assess the legality of detention, seizure, or cessation of investigation, or cessation of prosecution,that conducted by investigator or public prosecutor, which authority of examination is given to the pretrial. The Pretrial Institution (Court of Justice) who is authorized to exercise control over the act of forced effort, actually not all acts of enforced effort are controlled. Article 77 of Criminal Procedural Code limits the Court's authority, limited to the validity of the arrest, or cessation of prosecution; as well as a request for compensation and / or rehabilitation for the Suspect whose criminal matters are terminated at the level of investigation or prosecution. As for the search, seizure, and inspection of letters are not described in the Criminal Procedure Code, who is authorized to examine if there is a violation in such actions. As mentioned above, the purpose of this pretrial institution is control/supervision to the proceedings of criminal procedure in order to protect the rights of suspects/defendants. The control can be done in the following ways:[1]

a. VerticalControl, that is a control from the top to bottom.
b. Horizontal Control, that is a lateral control, between investigator, public prosecutor, vice versa, as well as with the accused, its family, or even third parties.

Arrest and seizure is concerned with the elimination of independence. Searches relate to privacy, is a confiscation of property rights. The right to freedom, privacy, and property is a fundamental rights to be protected and respected. Therefore, any action including legal action that removes these rights should be set in detail to prevent arbitrariness. But the problem arising here is the extent to which this Pretrial Institution determines whether a detention is valid or not, whether it is within the legal limits or not, whether it is formal or not,even up to whether it is legally valid or not. It needs to be emphasized, because if the right to verify and decide whether a material imprisonment will cause a problem or not in the practice of implementation later. Therefore, Pretrial Institution should be understood that the District Court in performing its duties as a Pretrial Institution is within the boundaries of formal manner.[2] Enforcement of human rights protection can be regarded as the foundation in the effort to build and give good law to society. The existence of pretrial is not only as a place for suspect in fighting for justice and clarity about his certainty, but also to protect and uphold human rights values. Pretrial is very important in providing the role to protect the rights of suspects in accordance with the rule of law to prevent a suspect of being the victim of arbitrariness. Therefore, the principle contained in pretrial intends and aims to conduct horizontal oversight action to prevent opposing involuntary remedies by law. Such specific, unique, and characteristic of pre-trial'snature and / or functions will serve to bridge the prevention of forced-action measures before someone is judged by the court, the prevention of actions that deprive citizens of every nation's freedom of citizenship, the prevention of acts that violate the rights of the accused/defendant to assure that every process goes or runs according to the regulating laws and legislations, and in accordance with the rules of the game. The control function will be more visible and effective when any action / event deviating from the provisions of the law can be immediately prevented or taken into legal action to rectify them in accordance with the provisions of legislation applicable for the sake of law, justice, and legal certainty. Also, the control function under the jurisdiction of the Court towards pretrial shall review whether the legal actions/events taken by law enforcement officer have been appropriate and proportionate, in relation to the legal action / events that have been taken by investigator or public prosecutor or judge in accordance with the procedure according to the provisions of the legislation or not.

In Kamus Besar Bahasa Indonesia (KBBI), limitation means *pembatasan*. [3]While the notion of 'Duration' or Time according to Kamus Besar bahasa Indonesia (1997) is the whole set of moments when the process, deeds, or circumstances are on or exist. In this case, the time scale is an interval between two states / events, or it could be the length of an event.[4] Therefore, time limitation can be defined as a limitation of a process or duration of a particular thing. Regarding how long a person becomes a suspect, this depends on how long the investigation process. As long as the investigation proceed, the person is still a suspect. Whereas, if the investigation has been completed and the file of the case has been heard in court, then the status of the person becomes a defendant.Defendant is a suspect that being charged, examined, and tried in court (Article 1 number

[1]Moch. Faisal Salam, Hukum Acara Pidana Dalam Teori Dan Praktek, (Bandung: Mandar Maju, 2001), page 322.
[2]*Id.*, pg. 56.
[3]http://kbbi.co.id/arti-kata/limitasi, accessed on 17 June 2017 at 16.30
[4]https://id.wikipedia.org/wiki/Waktu, accessed on 17 June 2017 at 16.45

15 Criminal Procedure Code). According to Article 78 of the Criminal Code, a person may terminate his status as a Suspect if it surpasses a specified time. A problem that arises later is that the suspect must wait for the expiration date to end his status. Suspects of corruption case, for example, the criminal threats is more than 3 years. With an expiry period of 12 years,it would be very detrimental to the suspect without certainty. The absence of sanctions for investigators in slowing the investigation process becomes a serious problem in law enforcement, not least the status of a person who has been declared as suspect, that lasts even up to several years and still holds the status of suspect, and in some cases,become a suspect till death. Sanctions for investigators are considered to be very important to put pressure on the Investigator to speed up and be serious in conducting an investigation so that no more suspension in cases and suspects to be declared whether they will be free or changed to the status of to the Defendant because the rights of suspects should always be upheld.

When a person is designated as a suspect by investigator then there are two things to note about the suspect's status. First is the status of a suspect in the process of investigation that conducted into detention. The detained suspectsobtain legal certainty when the suspect's status ends because it is limitatively regulated in Criminal Procedure Code. If the period of detention has expired but the investigation has not been completed then the suspect may be removed from the detention. Second is the case of investigation stage to a suspect where no detention attempt was made. This second issue is the one that creates legal uncertainty when the suspect's status ends, whether further apprehended to the court or released. The absence of limitation in the statusof suspect is the implication of legal vacuum of investigation deadline by the investigator in the Criminal Procedure Code which is a guide for law enforcement officers in carrying out its duty to enforce the law material penalty, especially for investigators. There is no limitation on the duration of investigationfor specific or rather the duration of investigation after the enactment of the suspect status, would have the potential to raise an authority that can violate human rights, especially inan investigation, it is possible to perform an action of force. Whether, for example, a person who has been designated as a suspect and then the case file is not immediately prosecuted by being handed over to the court can file a pretrial lawsuit by reason of termination of the investigation. The court is also not easy to determine, because indeed the time limit for it is not specified in the procedural law (both Criminal Procedure Code and KPK's Law).

One of the most important principles in the Criminal Procedure Code is the principle of presumption of innocence. Based on this principle, it is clear and normal that suspect/defendant in the criminal justice process shall be entitled to his/her rights. This means that any person who is being suspected, arrested, detained, prosecuted and/or presented before the Court shall be presumed as innocent before a Court decision that declare his verdict and obtain a permanent legal effect.

InCriminal Procedure Code, the principle of Presumption of Innocence is stated in General Commentary of Criminal Procedure Code point number 3 paragraph c, that is:

> *"Setiap orang yang disangka, ditangkap, ditahan, dituntut dan atau dihadapkan di muka sidang pengadilan, wajib dianggap tidak bersalah sampai adanya putusan pengadilan yang menyatakan kesalahannya dan memperoleh kekuatan hukum tetap."* (Any person suspected, arrested, detained, prosecuted, and or presented before a court of law, shall be deemed innocent until a court decision declaring his guilty and obtaining a permanent legal force)

While in the Law of Judicial, the principle of Presumption of Innocence is set in Article 8 paragraph (1), that states:

> *"Setiap orang yang disangka, ditangkap, ditahan, dituntut, atau dihadapkan di depan pengadilan wajib dianggap tidak bersalah sebelum ada putusan pengadilan yang menyatakan kesalahannya dan telah memperoleh kekuatan hukum tetap."* (Any person suspected, arrested, detained, prosecuted, or presented before a court shall be presumed innocent before any court decision which declares his/her guilt and has obtained a permanent legal force)

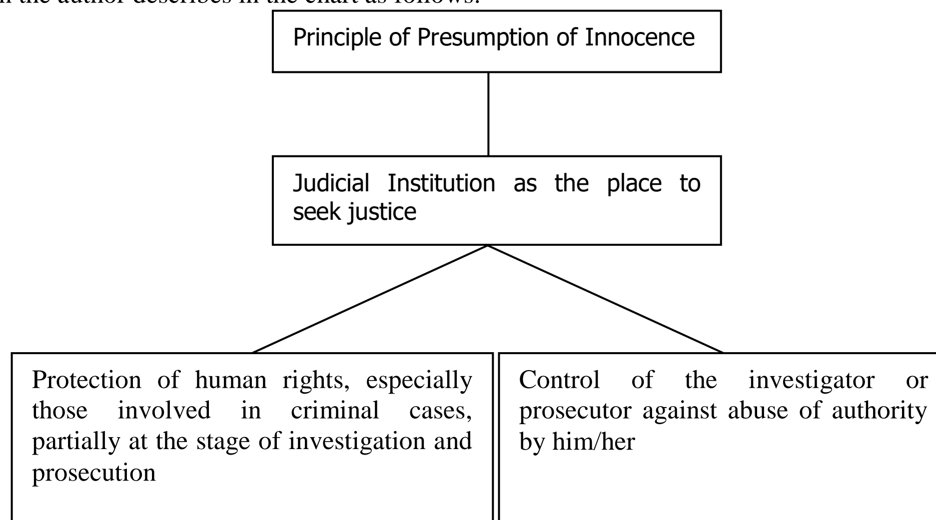
Herbert L. Packer in his famous book *The Limits of the Criminal Sanction*, suggests that there are two models in the Criminal Justice System; the Crime Control Model (CCM), and the Due Process Model (DPM). In practice, firstly, the Crime Control Model prefers professionalism to law enforcement officers to expose, seek, and find perpetrators of criminal acts. While, the second model, the Due Process Model,has a characteristic that is always assumes the importance of the repressive of the crime, namely the adjudicative stage (the hearing in the court hearing must determine whether the suspect is guilty or not), on a *legal guilty* basis, and always holds a *check and recheck* (obstacle course) and this should be tested according to the rules. The next feature is to respect the law. Then put an equal standing for everyone before the law (quality control). So this model is said to be more humane and respectful of Human Rights.[1] It can be argued from here that these models of judicial system, the Due Process Model andDue Process of Law,contains an implementation of Human Rights element in Criminal Procedure Code.

In the present era, it can be seen that many cases of corruption have no certainty in the process of

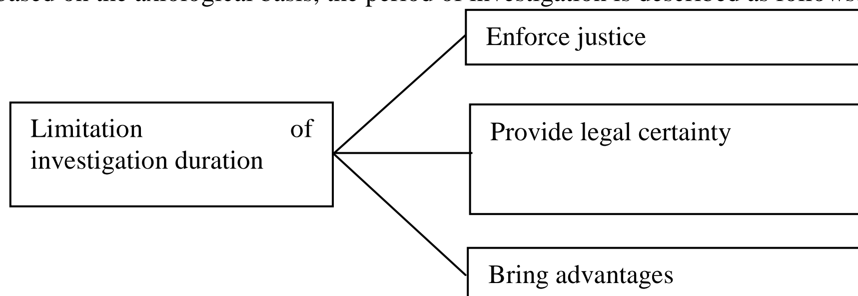
[1]Id.

investigating the case. KPK (Commission of Corruption Eradication) is an institution established to eradicate corruption. The KPK's authority in performing its obligations, authority and duties is still guided by the Criminal Procedure Code and Law No. 31 Year 1999 on the Eradication of Corruption as added in Law No. 20 Year 2001 on the Eradication of Corruption. The mechanism of inquiry and investigation still rely on Criminal Procedure Code. According to Criminal Procedure Code, all attempts of force committed during investigation and prosecution by authorized institutions can be controlled through pretrial institutions. This matter is regulated in Article 77 up to Article 83 Criminal Procedure Code. Under the aforementioned provision, the suspect has the right to file a pre-trial for a particular offense perpetrated by the investigating party in the investigation process, which includes arrest and detention. If the provision in question does not have a clear formula then it becomes a matter of norm, no longer just a matter of violation in the implementation of the norm. Based on the aforementioned matter, according to the Court, Article 18 Paragraph (3) of the Criminal Procedure Code does not meet the principle of fair legal certainty because in the implementation raises different interpretations. Different interpretations by law enforcers may further discriminate against the suspect, so according to the Court, the arguments of the Petitioners' petition are legally grounded, however, if the provisions of Article 18 paragraph (3) of the Criminal Procedure Code are not legally binding, the investigator must convey a copy of arrest warrant, thus precisely resulting in violation of the principle of legal protection and legal certainty.

Based on the ontological basis in granting authority to the Pretrial Institution in deciding the period of investigation the author describes in the chart as follows:



Whereas, based on the axiological basis, the period of investigation is described as follows:



KPK[1] as long as it gives freedom to the suspect in order to continue to enjoy the accompanyof family, colleagues, and perform activities like any other person who is not problematic with the law. Note that establishing suspect status without custody actually implies negative public perceptions. Public perception can kill the "confidence" of the suspects, especially in corruption case, in their daily activities. Where and whatever the activities of the suspect of corruption, especially if it requires for him to meet face to face with the public, always has a sense of sensitivity that overshadow his mind that surely will be pouted or defamed by public. From the resultof this research, it can be said that the limitation period of investigation of corruption cases is post pretrial decision. These circumstances would make the suspect of corruption case that has been established as a suspect, based on the decision of Pretrial to be uncertain and unclear,hence will implicate in the violation of the principle of presumption of innocence and the rights of suspects to be immediately tried In order to solve this problem must be taken a real step to overcome the absence of rules in the limitation of investigation duration.If

[1]https://www.kpk.go.id/id

so, the status of a suspect without detention can torture the soul and mind of a person when seeing or meeting with public. It would certainly be better and comfortable if held in prison because it has been spared from public phobia. It seems that the maxim of "presumption of innocence" law is incapable of fending off negative perceptions of society with the status of suspect. This is certainly ineffective to the suspects of corruption casewho has no shame and "social deafness" for they have often deceive the public. For the sake of stating the fate of suspect in the corruption case, KPK always argues that the file of the case is currently in the process of completion. KPK may declare the status of suspect even though the completion process is only 50% to 60%. Supposedly, If KPK has not completed the administrative process and documentation of evidence up to 80%, it should not assign a person to be a suspect. In the future, it should clarify the meaning of "immediately" by the KPK or other law enforcement in the form of Standard Operating Procedures (SOP) in handling cases. For the long term, the draft of Criminal Procedure Code must answer the interpretation of this "immediate" phrase. In addition to Article 50 of Criminal Procedure Code, there are some issues that should be emphasized by limitation of duration such as in the process of investigation and the submission of court files to the prosecution and to the court.

Related to that, there are also some advantages if the Commission did not hang the suspects of corruption casesfor a long term. First, the attack of the suspects through the pretrial can be dammed if the suspects are immediately submitted to court, because the submission will abort the pretrial. Second, socially, the immediate transfer of a suspect’s case to the court after being stated as a suspect will negate public assumption that the stipulation is a "request" or hasa political scent. Third, as a part of fulfillment to suspect’s rights to be immediately tried.

It must be admitted indeed, that the legislation (law) is relatively far behind with the development of society (law in action). However, this does not mean that we have to replace the Criminal Procedure Code with an update through the legal draft of Criminal Procedures Code as a whole. The implementation of Criminal Procedure Code, indeed, has many positive aspects to be picked. Yet, on the other hand, it must be admitted that Criminal Procedure Code in its application has a lot of shortcomings in several points. Therefore, with the dimension that the replacement of Criminal Procedure Code, that has been in practice for approximately 28 years, with the legal draft ofCriminal Procedure Code,cannot be gradual and comprehensive, but should be partial, in which the formulation policies and applications that occur in practice are considered to be less applicable and accommodative to its maximum, and should be renewed and redefined to become more aspirational.

From the above description based, on the results of research, it can be drawn a conclusion, that in the future, it requires an institution that can make efforts to control the actions of law enforcement officers, especially in the preliminary examination stage. The control effort emphasizes the principle of human rights protection balance between the defendant and the victim. To create such institution, it is necessary to conduct a reform / policy in the field of criminal law covering:

1. Renewal of substance, can be seen from the formulation policy of pretrial institution in this case becomes Judge Commissioner[1] which expand or increase the authority of the institution than before in the form of authority to determine or decide:
    a. Whether or not to be examined at the stage of investigation and prosecution without being accompanied by Legal Counsel;
    b. Suspend detention; and
    c. Whether a case is suitable on not suitable to be tried in the court;
2. The structural renewal, can be seen by replacing the Pretrial Institution as a stand-alone Judge Commissioner and separate it from the District Court Office;
3. Renewal in the field of legal culture can provide legal understanding or education to the public (justice seeker) on the role of pretrial as a means of control to the law enforcement officers (Investigators and Public Prosecutors) to ensure legal protection. Pretrial in the futurewill be linked to Human Rights; alongwith the stream of time, the Criminal Procedure Code which has been imposed for approximately 36 years still lacks in its application, especially in the case of pretrial institutions that still ignore the basic rights of victims, reporters, and witnesses.

As explained above in the legal draft of Criminal Procedure Code, new provisions relating to Pretrial have not authorized pretrial Institution to decide the deadline for investigation, but as a separated subject, investigation is limited. The legal or illegal status of limitation to investigation is one of the examination objects of pretrial, which order of submission is limited to the extent only by Investigator, public prosecutor, or a third party, who in this case is the victim/reporting witness itself. There is no room for theaccused to request or file an interruption if the investigation process is protracted,even up to 5 years and more, and this is detrimental to the rights of the accused.

[1]http://www.dilmilbanjarmasin.go.id/index.php?content=mod_berita&id=54

For legal reforms in the future, the author proposes that Suspects have the rights to file a pretrial relating to the limitation of investigation if the process of investigation is prolonged. This is based on the time limit of investigation that should be done, given by the Judge of Pretrial because pre-trial institution, post the decision of the Constitutional Court,is allowed to cancel the decision of suspect status on a person. The new concept from author is to revise the Criminal Procedure Code by adding a permission for the Suspect to file a pretrial petition that request to stop the investigation, whether for general or special criminal cases (eg Corruption). the formula of the article is as follows:

Article x
A person designated by the investigator as a Suspect in a criminal charge and not immediately being tried, has the right to apply for a pre-trial request to wish for terminationon his/her investigation.
Article xx
The suspect requesting termination of investigation referred to in Article x is only for a case that has been lasted for a minimum of 5 years since the stipulation of the Suspect status.

D. Conclusion

Pretrial has an important role in conducting supervision and control over the investigation process conducted by investigator. The concept of pretrial was enacted after the decision of Constitutional Court no. 21 / PUU-XII / 2014 where the initial construction is only authorized to examine and decide the legality of an arrest or detention, the legality of termination to an investigation and termination to a prosecution, and the demand for compensation or rehabilitation, which by the a quo decision, its authority is expanded by adding a valid test on the legality of a search, legality of a seizure, and legality of a suspect status. With the decision of the Constitutional Court, pretrial has a new role in providing protection to the community especially given the status of suspect.

For this time,the Limitation of investigation durationaccording toCriminal Procedure Codeis unclear, but only set the time limit of detention. This indefinite investigation resulted in uncertainty to the extent that the person must bear the status of suspect, thus causing harm to the suspect. The implications of the harm resulting from the perspective Human Rights, the circumstances harm the principles of Human Rights, especially in the aspect of the system of legal certainty and justice that should beimmediate, simple, and low cost.

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