Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.132, 2023

LEGAL RECONSTRUCTION OF PRETRIAL PROCEDURE ON THE RIGHTS OF THE APPLICANT OR THE APPLICANT ASSOCIATED WITH JUSTICE VALUE-BASED REMEDY

Amir Giri Muryawan[1], Anis Mashdurohatun[2], & Sri Endah Wahyuningsih[3]
[123]Sultan Agung Islamic University, Semarang, Indonesia.
Email: anism@unissula.ac.id

ABSTRACT
Pretrial is expected to be the foundation for justice seekers to protect their rights from the actions of law enforcers who abuse their authority (abuse of power). However, in its development, pretrial still found weaknesses which actually harm justice seekers both formally and materially. The purpose of this research is to analyze and find related to pretrial procedural law regulations on the rights of the applicant or respondent in relation to legal remedies that are not based on the value of justice, to analyze and find weaknesses in pretrial procedural law regulations on the rights of the plaintiff or respondent in relation to current legal remedies. , as well as finding the reconstruction of pretrial procedural law regulations on the rights of the Petitioner or Respondent Associated with Legal Measures Based on the Value of Justice. The paradigm in this study is the paradigm of constructivism (legal constructivism) which is a paradigm that sees truth as a legal reality that is relative and applies according to specific contexts that are considered relevant by social actors. This type of research is qualitative research. The approach method in this research is socio-legal-research research. The legal theory used as an analytical knife includes the grand theory of justice theory, middle theory of legal system theory and Applied Theory of legal protection theory. The results of the study found that (1) the Regulation of Pretrial Procedure Law Against the Rights of the Petitioner or Respondent Associated with Legal Remedies has not been based on the value of justice, namely that there is no opportunity provided in the Law for the applicant and the respondent when declared defeated in a pretrial hearing to take legal action . (2) Weaknesses in pretrial procedural law regulations regarding the rights of the Petitioner or Respondent in relation to current legal remedies are weaknesses in legal substance, weaknesses in legal structure and weaknesses in legal culture. single pretrial judge is very risky to examine pretrial, especially regarding the object of determination of the suspect, because the nuances of subjectivity are very strong. The trial period of only 7 (seven working days) results in examining and deciding pretrial cases with the object of determining the suspect being felt to be a weakness in pretrial procedural law. Because the material examined by the pretrial judge is actually not only about administration but has entered the realm of substance. (3) Reconstruction of pretrial procedural law regulations on the rights of the applicant or respondent is linked to legal remedies based on the values of justice, namely by the reconstruction of the values of justice and legal norms in Article 78 paragraph 2, Article 82 letter c, and Article 83 paragraph (1) of the Criminal Procedure Code.
Keywords: Pretrial; Procedural Law; Reconstruction; Justice;
DOI: 10.7176/JLPG/132-06
Publication date: May 31st 2023

A. Introduction

The acts of coercion in Article 32 of the Criminal Procedure Code and confiscation in Article 38 of the Criminal Procedure Code require the permission of the Head of the District Court. In this regard, even though Article 77 paragraph (1) letter a of the Criminal Procedure Code does not explicitly mention confiscation and search, but only mentions arrest, detention and termination of investigations or prosecutions, these details are not "limitative". Article 83 paragraph (3) letter d of the Criminal Procedure Code incorporates forced confiscation into pretrial substantive jurisdiction. Other reasons that support confiscation include pretrial jurisdiction, namely with regard to confiscation of third party goods, and those items are not included as tools or evidence. In cases like this, the owner of the goods must be given the right to submit an invalid confiscation to the pretrial.

Article 78 paragraph (2) of the Criminal Procedure Code explains that the examination of a pretrial hearing is led by a single judge appointed by the Head of the District Court and assisted by an alternate clerk. The Criminal Procedure Code itself does not explain why this pretrial hearing is only sufficient to be led by a judge and an alternate clerk. However, according to the author, this is due to the principle contained in Article 82 paragraph (1) letter c of the Criminal Procedure Code which states that the pretrial examination is carried out quickly and at the latest, and within 7 (seven) days the judge must have made his decision. In addition, the form of the pretrial decision must also be simple but must not reduce the basis for consideration of a complete and comprehensive basis.

If the proceedings in the pretrial process are not completed within 7 (seven) days, the pretrial case is considered dismissed and/or the trial of examining the main case has been started by the District Court. The judge's decision is not in accordance with the decision of the Constitutional Court Number 21/PUU-XII/2014 which has expanded the provisions in Article 77 of the Criminal Procedure Code regarding the authority of pretrial judges to become:

1. Whether or not the arrest, detention, termination of the investigation and termination of the prosecution are legal;
2. Compensation or rehabilitation for suspects whose cases are not submitted to court.

Attempts for cassation are also prohibited in the Supreme Court Law Number 5 of 2004 Article 45A which explains that:

1. At the cassation level, the Supreme Court adjudicates cases that meet the requirements for cassation, except for cases which are restricted by this Law;
2. Cases that are excluded as referred to in paragraph (1) consist of:
   a. decision regarding pretrial;
   b. a criminal case that is punishable by a maximum imprisonment of 1 (one) year and/or is punishable by a fine;
   c. state administrative cases whose object of lawsuit is in the form of decisions of regional officials whose scope of decisions applies to the area of the region concerned.
3. The request for cassation against the case as referred to in paragraph (2) or the request for cassation which does not meet the formal requirements, is declared inadmissible by the stipulation of the chairman of the court of first instance and the case file is not sent to the Supreme Court;
4. Determination of the chairman of the court as referred to in paragraph (3) cannot be filed for legal action.
5. Implementation of the provisions referred to in paragraph (3) and paragraph (4) shall be further regulated by the Supreme Court."

Meanwhile, judicial review also cannot be carried out, because the Supreme Court Justices and the Substitute Registrar of the Criminal Chamber in the agreement set forth in SEMA Number 4 of 2014 have regulated that a Pretrial Review is not permitted except in cases where indications of law smuggling are found, further prohibition of efforts This judicial review law is regulated in PERMA Number 4 of 2016 concerning Prohibition of Reviewing Pretrial Decisions. Article 3 of this regulation explains that: Paragraph (1) explains that a pretrial decision cannot be submitted for review. Paragraph (2) A request for a pretrial review is declared unacceptable by the stipulation of the Chairperson of the District Court and the case files are not sent to the Supreme Court. Paragraph (3)) Determination of the Head of the District Court as referred to in paragraph (1) cannot be filed for legal action.

Based on these prohibitions, the legal efforts for Appeal, Cassation and Judicial Review in this pretrial case have been closed. In this case, with regard to pretrial decisions that deviate fundamentally, based on Article 4 PERMA Number 4 of 2016, the Supreme Court can give instructions, reprimands, or warnings to judges who pass such deviant decisions. In this case, the Supreme Court has carried out a demotion because the decision handed down by judge Effendi Mukhtar deviated fundamentally. This can be seen from the testimony of the Chief Justice of the Supreme Court, Hatta Ali, in online news which stated that the demotion was carried out because Effendi was deemed unprofessional because he issued a decision to name the former Vice President Boediono as a suspect in Century Bank's bailout.[1]

Judges in examining pretrial cases are different from examining criminal cases in general, judges in examining criminal cases try to find and prove material truth based on the facts revealed in the trial and adhere to the indictment formulated by the Public Prosecutor, while judges in examining pretrial cases can only examine the formal requirements of a coercive measure carried out by investigators and public prosecutors without paying attention to material requirements.

According to current pretrial practice, pretrial judges only examine the formal conditions of a coercive measure, even though the material requirements of the coercive measure must also be considered. For example, if a person is detained based on a fraud case (Article 378 of the Criminal Code) and demands that the detention is illegal, then the judge will see whether Article 378 of the Criminal Code is valid for detaining the suspect or defendant based on Article 21 of the Criminal Procedure Code, but because Article 378 is contained in Article 21 paragraph (4) point b, the pretrial judge can declare the claim rejected. The judge does not assess whether the suspect or defendant who is "allegedly suspected" really has concrete and real reasons which raises concern.

[1] Denita Matondang. 'Chief Supreme Court: Pretrial Judge Boediono demoted because he is guilty', (Detik News, 2018). accessed 17/02/2021.

from investigators or public prosecutors. As a result, there are still frequent abuses of authority and power by law enforcement officials.

Supervision by the Pretrial based on its authority in Article 77 of the Criminal Procedure Code to test and assess the truth of coercive measures is also limited, for example for acts of search, confiscation and opening and examination of documents not explained in the Criminal Procedure Code, resulting in unclear who has the authority to examine them in the event of a violation. In addition, pretrial institutions are not bodies that can stand alone because pretrial institutions are still attached to the District Court. Therefore, if there is a pretrial case, the head of the district court appoints a district court judge to decide on a case filed. The judge is not independent so that in deciding a case, an objective assessment can turn into a subjective one. Likewise with Pretrial where there is no trial if there are no demands from the parties entitled to request a Pretrial examination. So, even though there is a real and clear deviation in the attempt to force the arrest or detention, but there are no parties who filed the request, the pretrial judge cannot test and assess the truth of the forced effort because the pretrial judge does not have the authority to take his own initiative in make decisions. These things make supervision of the Pre-Trial institution unable to run as it should.

Pretrial is often the focus of justice seekers to resolve problems that befall in the realm of investigations of forced efforts by law enforcers. Pretrial is assumed to be an antibiotic drug that can kill disease germs instantly. However, this assumption is not always true, because actually pretrial is designed for simple things, namely to control administratively whether or not the forced efforts of law enforcers are legal, nothing more than that. This can be seen from the simplicity of the pretrial concept in Article 77 of the Criminal Procedure Code. The demand for justice for suspects is part of the "rechtssidee" legal ideals of a "rechtsstaats" legal state.[1]

However, the development of law is so rapid and sometimes it seems to go too far, resulting in attempts to modify old provisions that are already right in such a way as to fulfill sociological interests, which are not necessarily in line with its philosophical and juridical aspects. The most visible impact is that the submission of a Judicial Review of Article 77 of the Criminal Procedure Code results in the object of determining the suspect being tested valid or not in pretrial and this of course has serious implications for the procedural law. The decision of the Constitutional Court of the Republic of Indonesia raises new hope especially for justice seekers to be able to test the legitimacy of law enforcers.[2]

As happened at the Pulang Pisau District Court in 2019 based on the Pretrial Decision Number 1/PID.PRA/2019/PN PPS, which in its ruling granted the pretrial request for a portion of the object of determining the suspect, when viewed in general the judge had gone too far into into the main case (substance) and is considered to reduce the essence of the pretrial itself. Based on the background of the problems described above, the formulation of the problem in this study is: Why are pretrial procedural law regulations regarding the rights of the applicant or respondent associated with legal remedies not based on the value of justice, What are the weaknesses in the pretrial procedural law regulations regarding the rights of the applicant or respondent in relation to the current legal remedies, How is the reconstruction of the pretrial procedural law regarding the rights of the applicant or respondent linked to legal remedies based on the value of justice.

B. Research method

Paradigm is an 'umbrella' philosophical system which includes certain ontologies, epistemologies, and methodologies. Each consists of a series of "basic beliefs" or world views that cannot be easily exchanged (with "basic beliefs" or world views from ontology, epistemology, and other paradigm methodologies). Paradigm among others, serves to outline benchmarks, define standards of accuracy required, determine which methodology will be chosen to be applied, or how the research results will be interpreted.[3]

The constructivism paradigm is a paradigm that sees truth as a legal reality that is relative and applies according to specific contexts that are considered relevant by social actors. The legal reality in question is a multiple reality that varies based on individual social experiences. Basically, existing social reality is developed from individual reality in society. This reality is a human mental construction so that this research provides empathy and dialectical interaction between the researcher and those being studied to reconstruct legal reality through qualitative methods. Therefore, subjective interaction is needed between the two. This is where constructivism uses hermeneutic and dialectical methods in the process of achieving truth. Hermeneutics [4]is carried out through the identification of truth or the construction of individual opinions. Dialectics is carried out

[1] Muntaka, "Pretrial Arrangements in the Criminal Justice System in Indonesia", Law Platform, Volume 29, Number 3, October 2017, p. 463.
[2]Fachrizal Afandi, "Comparison of Pretrial Practices and Formation of Preliminary Examination Judges in Indonesian Criminal Courts", Law Platform, Volume 28, Number 1, February 2016, p. 94
[3] Erlyn Indarti, Discretion and Paradigm of a Study of Legal Philosophy, Speech to Inaugurate the Position of Professor in Legal Philosophy at the Faculty of Law, Diponegoro University, Semarang, 2010, p. 4.
[4] Irwansyah, Ahsan Yunus, Selected Legal Research Article Writing Methods & Practice, Mirra Buana Media, Yogyakarta. 2020.

by comparing the opinions of several individuals to obtain a consensus.[1] according to E. G. Guba and Y.S Lincoln,[2] the constructivism paradigm is ontologically interpreted as relativism. Methodologically, the paradigm uses a hermeneutic or dialectical method, which means that construction is traced through the interaction between the researcher and the object of investigation using hermeneutic techniques.[3] In this study, the Constructivism paradigm was used because apart from using library and statutory data, it also used data in the form of hermeneutic interview results.

The type of legal research used is non-doctrinal. In this non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in their interactions. That the real reality of life does not exist in the empirical realm which is also the observed realm, does not appear in the form of behavior that is patterned and structured objectively (let alone normative) and therefore can be measured to produce quantitative data. The reality of life actually only exists in the realm of meaning which appears in the form of symbols which can only be understood after being interpreted. Such a reality cannot be easily "captured" by outside observations and measurements. These realities can only be "captured" through experience and internal insights that produce a complete picture of understanding.[4]

Because reality (law) is part of the realm of meaning/symbol which can only be understood through the internal experiences of the subject actors, what will be caught and identified as a problem is none other than what the subject actors encounter through their participation, experience and appreciation in life. being lived. So, the problems that will be seen by non-participating observer subjects (not actors), no matter how high their expertise and no matter how great their authority in terms of controlling the system, the results they get through these observations will not (always) be the same as what is perceived and identified by the subject actors participating in local actions and interactions.[5]

The approach method used in this qualitative legal research [6]is the social legal research approach, socio legal is a legal science research approach that uses the assistance of social sciences. Because it comes from an interdisciplinary science, socio-legal studies are now a trend among legal students. The data obtained in this study were then selected and arranged systematically for further analysis and presentation using qualitative analysis methods. [7]The logic of thinking used in this study is deductive logic, in which this research departs from general matters (rules/norms/theories/rules of law) to particular matters. The basic principle is: everything that is considered true for all events in one class/type also applies as true for all events that occur in particular cases, as long as this particular thing is really part/element of that general thing. ". This research is written using deductive logic which always places legal principles in various laws and regulations, legal principles, and legal teachings and doctrines as the major premise (general), and legal facts or legal events as the minor (special) premise.

The process of data analysis in this study was carried out qualitatively by carrying out the following procedures, namely: a) Making records of the results of data collection, coding, so that the source of the data can still be traced. b) Collecting, dividing in detail, classifying data according to research problems, interpreting, searching for meaning and finding patterns and relationships between each category of data so that new models can be found as research objectives.

Furthermore, after managing the data, the next thing to do is to validate the data. The data validation is used to determine the validity of the data. The necessary step is to carry out inspection techniques based on the degree of trust (credibility), transferability, dependability and certainty (confirmability). The validity of the data in this study rests on the degree of trust through the technique of checking the validity of observation persistence and triangulation. Through observation persistence checking techniques, characteristics and elements relevant to the subject matter of the research will be obtained and then detailed and observed in depth. After being analyzed,

[1] The constructivism paradigm can be called a denial of the positivism paradigm. If in the positivism paradigm it is believed that reality can be observed repeatedly and the results are the same and can be generalized. So the constructivism paradigm denies it. Constructivism understands that the truth of reality is relative, applies according to the specific context that is relevant to social behavior. Constructivism, thus rejects generalizations in order to produce unique descriptions. See, Guba and Lincoln, in Erlyn Indarti, Ibid., p. 30-34.

[2] E. G. Guba dan Y. S. Lincoln, Kontroversi Paradigmatik, Kontradiksi dan Arus Perpaduan Baru, dalam Norman K. Denzin dan Y. S. Lincoln, Tha Sage Handbook Of Qualitative Research Edisi Ketiga, dialihbahasakan oleh Dariyatno, Pustaka Pelajar, Yogyakarta ,2011, p. 205.

[3] Ibid., p. 207.

[4] Soetandyo Wignjosoebroto, Law, Paradigm, Method, and Problem Dynamics, HUMA, Jakarta, 2002, p.198.

[5] *Loc. Cit.*

[6] Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017.

[7] Bambang S and Eman Suparman Anis Mashdurohatun, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Scinces, Volume 14 , Issue 12 , 2019. pp. 4176-4182

evaluated and checked for validity through examination and discussion, the data obtained will be presented in a certain style.

C. Discussion

1. Pretrial Rule of Procedure is not based on the value of justice

After the KUHAP was promulgated on December 31, 1981 as Law Number 8 of 1981 concerning the Criminal Procedure Code, a new "pretrial" institution was created which had never been previously regulated in procedural law (IR or HIR). However, this pretrial institution can be equated or imitated with the commissioner judge institution (rechter commisaris) in the Netherlands and also d'instruction in France. However, pretrial duties in Indonesia are different from commissioner judges in Europe, which are broader than pretrial in Indonesia. 89 Pretrial in the Criminal Procedure Code is regulated in Chapter X Part One, starting from Article 77 to Article 83.

According to Article 1 point 10 of the Criminal Procedure Code, pretrial is the authority of the district court to examine and decide according to the method stipulated in the law regarding:

a. Whether or not an arrest and/or detention is legal at the request of the suspect or his family or another party on the suspect's behalf;
b. Whether or not the termination of the investigation or the termination of the prosecution is valid at the request for the sake of upholding law and justice;
c. Requests for compensation or rehabilitation by the suspect or his family or other parties on his proxies whose case was not submitted to the court.

According to Oemar Seno Adji, Pretrial is a new institution in the Criminal Procedure Code which is close to the notion of a commissioner judge or rechter commissioner in the Netherlands and a Judge d'Instruction in France, both of which are a preliminary examination institution. The Rechter Commissariat in the Netherlands has an important position having the authority to handle forced measures (dwang middelen), detention, confiscation, body searches, and inspection of documents. Thus the institution has broader authority than the judiciary. As for the Judge d'instruction in France, it turns out that his authority is even wider. This institution examines the accused, witnesses, and other evidence. He can make minutes, search the house, certain places.[1] Pretrial is a control over the actions of investigators and public prosecutors in carrying out their duties of authority in the criminal justice process whether they have been carried out correctly or not. It can also be said whether the authority possessed by the police and the public prosecutor has violated the rights of the suspect/defendant or not. This institution is provided as a means of supervision with the intention of upholding law, justice and truth horizontally. As for vertical supervision, of course it is carried out by each of the superiors of the agency. It can also be explained that pretrial is a term or terminology used in a law enforcement process, in terminology pretrial is a process before trial, pretrial consists of two syllables, namely pre and judicial, the word pre in linguistics is known as prior understanding, while justice is a process trial to seek justice, so the notion of pretrial is the trial process before the trial of the main issue of the case is tried. The definition of the main case is the material case, whereas in pretrial the trial process only examines the process of investigation and prosecution procedures, not the subject matter. As for what is meant by the main material is the material of the case, for example the case of theft.

Pretrial as one of the new institutions in the world of Indonesian justice, which has characteristics and existence, namely:

a. Pretrial exists and is an integral part of the district court, and as a judicial institution, pretrial can only be found at the district court level as a task force that is not separate from the district court;
b. Pretrial is not outside or beside or equal to the district court, but only a part or division of the district court;
c. Judicial administration, personnel, equipment and financial affairs are united with the district court, and are under the leadership and supervision and guidance of the chairman of the district court;
d. The problem of administering the judicial function is part of the judicial function of the district court itself.

So in principle a pretrial institution is not a pretrial institution that stands alone, but only a new authority and function conferred by the Criminal Procedure Code to each district court that has existed so far, namely to try and decide on criminal and civil cases as the main task, and as the additional task of assessing whether a confiscation is legal or not, whether or not the termination of an investigation or prosecution by an investigator or public prosecutor is legal.

Yudi Krismen explained that the pretrial institution has the aims and objectives of enforcing the law and protecting the human rights of suspects at the level of investigation, investigation and prosecution. And the main purpose of pretrial institutionalization in the Criminal Procedure Code is to carry out "horizontal supervision" of

[1] Oemar Seno Adji, Criminal Laws, Erlangga, Jakarta 1980, p.88.

all acts of coercion carried out by investigators or public prosecutors against suspects during investigations or prosecutions, so that these actions do not conflict with legal provisions. and applicable laws.

The current Pretrial Procedure Code still does not maximally accommodate the value of justice. This was found from the fact that there was an opportunity provided in the law for the applicant and the respondent when they were declared defeated in the pretrial hearing to make an appeal. The next weakness is that a single pretrial judge is very risky to examine pretrial, especially regarding the object of determining the suspect, because it is very strong with the nuances of subjectivity.

2. Current Weaknesses in Pretrial Law Regulations

Pretrial is similar to the Habeas Corpus concept. Habeas corpus is an effort to provide fundamental guarantees for human rights, especially regarding the right to freedom, and in this context the habeas corpus act also gives a person the right to carry out procedures through warrants demanding, challenging, office orders for detaining him, the police or the prosecutor must prove that the arrest does not violate the law and is truly legal in accordance with the provisions of the applicable law. So in this context also that in terms of depriving or limiting the independence of suspects or defendants it really fulfills the provisions of the applicable law as well as guarantees of human rights. If a warrant for habeas corpus is issued from the court on the party who is detaining, either the police or the prosecutor's office, only through a simple direct and open procedure so that it can be used by anyone.

Pretrial has aims and objectives to be upheld and protected, namely to uphold the law and protect the rights of suspects at the level of investigation, prosecution and determination of the suspect's status. Every coercive attempt made by police officials, the Attorney General's Office and the Corruption Eradication Committee against a suspect, is essentially a treatment that is:

a. Forced action justified by law in the interest of examining the alleged criminal act against the suspect;
b. As a coercive action justified by law and law, any coercive action which in itself is a deprivation of liberty and freedom as well as a limitation on the suspect's human rights.

Forced measures imposed by law enforcement agencies constitute a reduction and limitation of the suspect's freedom and human rights, such action must be carried out according to the provisions of law and applicable law (due process of law). The act of coercion that was carried out was contrary to the applicable laws and regulations and was a violation of the suspect's human rights. Therefore, it is necessary to set up an institution that is authorized to determine whether or not coercive actions carried out by investigators, public prosecutors and the Corruption Eradication Committee have been delegated authority in this case to pretrial. The purpose of pretrial is to account for the actions of law enforcement officers who are arrogant, exceed their authority, are not in accordance with procedures, are contrary to human rights and conflict with the law. As is known, the object of pretrial which has been regulated in Article 77 of the Criminal Procedure Code, explains that:

The court has the authority to examine and decide, in accordance with the provisions stipulated in this law, regarding:

a. Whether or not the arrest, detention, termination of the investigation or termination of the prosecution are legal;
b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution

It is as if the purpose of forming a pretrial institution itself is unknown to ordinary people and people who do not understand the law and investigators often do not disclose the rights that a suspect really has. Often a suspect just accepts any treatment from investigators, especially from the police. Because of this ignorance, many suspects of a crime do not know about their rights, so often a suspect becomes a party that can be treated arbitrarily by investigators. Therefore, according to Hari Sasangka, the pretrial institution is often cynically responded to as a paper tiger, living reluctantly or unwillingly or a crisis of authority. In fact, many people often think that between the police, prosecutors and judges there is already a kind of bond that will state that a person who has been made a suspect and a defendant who is brought to court is definitely guilty and must be punished.

The main purpose of pretrial institutionalization in the Criminal Procedure Code is to carry out horizontal monitoring of acts of coercion imposed on suspects while he is under investigation or prosecution so that these actions do not conflict with legal provisions and laws.

The trial period of only 7 (seven working days) results in examining and deciding pretrial cases with the object of determining the suspect being felt to be a weakness in pretrial procedural law. Because the material examined by the pretrial judge is actually not only about administration but has entered the realm of substance.

3. Reconstruction of Pretrial Law Based on Justice Values

Pretrial is an institution in controlling the powers exercised by the police and prosecutors, where the implementation is based on the Criminal Procedure Code, provided that the judge who examines and decides is a single judge. The single judge has the power to conduct examinations and make decisions regarding the lawfulness of the arrest, detention, termination of the investigation/prosecution, compensation and/or rehabilitation proposed by the suspect, family or attorney of the suspect by giving the reasons.

The judge must carry out the examination and make a decision on the pretrial case quickly, within 7 (seven) days after being appointed by the Chief Justice. In a short time, the judge must hear information from both the suspect and the investigator. The decision made by the Judge is independent. Because the judge has the right to decide without pressure from any party.

Regulations regarding pretrial also experienced an expansion in the Constitutional Court Decision No. 21/PUU-XII/2014 where the pretrial authority increases, namely regarding the legality of the determination of the suspect, search and confiscation. In practice, the Indonesian government is also trying to ensure that its citizens get their respective rights, so that the Draft Criminal Procedure Code (RUU KUHAP) which is still being processed contains pretrial. Where this Pretrial will be examined and decided by the Preliminary Examining Judge, whose authority to carry out examinations and make decisions is increasingly being expanded, namely cases a. Legal/not wiretapping; b. cancellation or suspension of detention; c. that the statement of the suspect or defendant violates the right to incriminate himself; d. Evidence; e. Compensation and/or rehabilitation for someone who has been illegally arrested or detained; f. The suspect/defendant has the right to be accompanied by a lawyer g. The investigation/prosecution has been carried out illegally; h. Termination of investigation/termination of inappropriate prosecutions; i. Whether or not a case of prosecution is appropriate to court. j. Violation of the suspect's rights during the investigation stage. Application of Pretrial to control police authority Courts are general courts under the Supreme Court of the Republic of Indonesia which is at the forefront of judicial power in carrying out trials to achieve justice and law enforcement. Duties and powers of the Court to receive, examine and decide on every case that falls within the jurisdiction of that court;

Courts in Indonesia carry out the function of integration represented by judges. Judges bear the responsibility to bring justice (bringing justice to the people) and truth (searching for the truth) to create social integration, not the other way around creating social disintegration. In the pretrial application at the Binjai District Court, the single judge has carried out a thorough examination, namely by hearing all the statements given by the applicant and witnesses accompanied by evidence to support the applicant's reasons in the pretrial. The single judge also heard the information and evidence provided by the investigator in every process he had carried out. So that the judge can decide the pretrial case in a fair manner without injuring the Human Rights of the Petitioner or the authority of the investigator.

Within a period of seven working days, after being appointed by the Head of Court, the Single Judge has endeavored to quickly and accurately make a decision based on evidence and information at trial. The efforts of the Single Judge to control the authority of the police in carrying out the judicial process found that several investigators had abused their authority, so that the Single Judge granted the request in pretrial. This is a bad image for the police agency in upholding justice, because as a result of the unprofessionalism of investigators so that people can feel injustice and deprived of their human rights. Thus, investigators who are legal actors in the jurisdiction of Indonesia must act according to applicable regulations, while maintaining the rights of suspects/defendants. So that the community does not become a victim of an error in the judicial process of an investigator.

In upholding justice and prioritizing human rights in the Indonesian judiciary, the actions and powers of law enforcers play an important role. Because investigators are at the forefront of the judicial process, where evidence and witnesses are used to solve a crime. However, if an investigator, who is supposed to be fair and neutral, instead abuses his authority and responsibility haphazardly, it will result in a bad and broken law. Because our country is an independent country, all people should also be able to feel that independence. If the Indonesian people commit a crime, it is good for investigators to be fair and professional in resolving the criminal case. So that people do not feel persecuted or feel their rights stolen.

In controlling investigators handling criminal cases, there are factors that become obstacles, namely: there are no sanctions for investigators who ignore pretrial decisions, very short pretrial time, negative interpretations of the rule of law, the behavior of individual judges, and different interpretations of judges. In the absence of sanctions for ignoring pretrial decisions, it will be difficult for pretrial investigators to enforce decisions. The short pretrial process also causes many parties to doubt the decision of the pretrial procedure. Meanwhile, the tendency of investigators and prosecutors to speed up the submission of files to court also has the effect of aborting the pretrial.

1. Pretrial efforts to control horizontally against investigators. The legal rules regarding pretrial are regulated in the Criminal Procedure Code, that the district court has the power to carry out examinations and make decisions regarding the legitimacy of arrests, detentions, termination of investigations/prosecution as well

as compensation/rehabilitation for cases terminated. Then the pretrial authority has been expanded through the Constitutional Court's decision in which the determination of the suspect, search and confiscation.

2. The pretrial process at the Binjai Court has attempted to exercise control over the investigative process by holding an effective pretrial, covering the interests of the suspect's Human Rights (HAM), the interests of justice seekers, and the interests of investigators as law enforcers. In law enforcement practice, courts in Indonesia carry out the function of integration represented by judges, who bear the responsibility for bringing justice (bringing justice to the people) and truth (searching for the truth) to create social integration rather than create social disintegration. Therefore it is hoped that judges can become independent judges, have integrity, honesty, accountability, responsibility, openness, impartiality, equal treatment before the law in accordance with the eight Main Values of MA - RI. Control over investigators is also increasingly being expanded with the addition of pretrial objects, especially regarding the determination of suspects as per the Constitutional Court Decision, so it is hoped that investigators will become more professional, modern and reliable, in line with the promoter Police slogan.
3. Obstacles faced by pretrial in controlling investigators are: there are no sanctions for investigators who ignore pretrial decisions, very short pretrial time, negative interpretations of the rule of law, the behavior of individual judges, and different interpretations of judges. In the absence of sanctions for ignoring pretrial decisions, it will be difficult for pretrial investigators to enforce decisions. the short pretrial process also causes many parties to doubt the decision of the pretrial procedure.

Meanwhile, the tendency of investigators and prosecutors to speed up the submission of files to the court resulted in the collapse of the pretrial. Obstacles in the existence of differences in interpretation between judges and the presence of unscrupulous judges who take personal benefits are also a source of obstacles in the implementation of pretrial control over investigators.

1. Establish clear sanctions for parties, including investigators who ignore the implementation of pretrial decisions, so that pretrial decisions can actually act as control for investigators.
2. It is necessary to give more time to a single judge at pretrial to decide on the case filed by the applicant. In addition, the rules regarding the dismissal of the pretrial if the principal trial has started examining the case need to be revised, so that it is not interpreted negatively by law enforcers to abort the pretrial.
3. There needs to be special training for judges on pretrial. So that judges can conduct examinations and make decisions fairly, precisely and professionally. Besides that, in appointing a single judge in pretrial cases, the leadership at the court needs to pay attention to the judge's track record so as not to choose a judge whose moral integrity is not good, especially because the judge in pretrial cases is a single judge. So the decision is only taken by the individual judge.

Law enforcement is an effort that is deliberately made to realize legal ideals in the context of creating justice and peace in the life of society, nation and state[1]. This is in accordance with Indonesia's national development goals, namely to achieve a just and prosperous Indonesian society that is equally material and spiritual based on Pancasila and the 1945 Constitution[2]. Therefore, Indonesia as a legal state has guaranteed all its citizens together position before law and government and is obliged to uphold that law and government without exception[3].

Indonesia as a rule of law country that adheres to the existence of a national legal system, is expected to guarantee legal certainty for all its citizens, so it must carry out legal codification and unification. As for one of the results that have been achieved in improving and perfecting national law is to carry out the renewal of the codification and unification of criminal procedural law, namely the formation of Law no. 8 of 1981 concerning the Criminal Procedure Code. Suspects or defendants who are also legal subjects are entitled to guaranteed legal protection. Based on the principle of the presumption of innocence, the criminal procedure law no longer views suspects or defendants as legal objects but as legal subjects. This is also to monitor the existence of acts of

[1] Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]. pp.32-49.

[2] Anis Mashdurohatun, Yuris Tri Naili, Teguh Prasetyo, Amin Purnawan, Regulating The Management Of Private Higher Education Based On The Values Of Justice, Journal Of Legal, Ethical And Regulatory Issues, Volume 24, Issue 5. 2021.pp.1-9.

[3] IG Ayu KRH, Anis Mashdurohatun, Kartina Pakpahan, Efforts to Reduce Crime Of Processed Food Without Circular License In Indonesia, International Journal of Advanced Science and Technology, Volume 28. Issue 15, 2019, pp. 839-844.

coercion carried out by law enforcement officials, the Criminal Procedure Code has created a pretrial institution. The existence of this pretrial institution aims to supervise the acts of coercion imposed on suspects by law enforcement officials so that the rights of suspects can be protected.

With the existence of pretrial as an institution that protects the rights of suspects or defendants, detention or other acts of coercion that are carried out illegally and violate the law, can be requested for an examination and a decision from a court judge to examine the illegality of detention or other forced measures. the. A suspect can even submit a request for compensation or rehabilitation if it is correctly proven that the detention was carried out illegally.

Philosophically, the work and movement of law enforcement officials is due to reports and statements from victims, reporters and witnesses regarding the occurrence of criminal acts, even more extreme that law enforcement officials work because of victims, reporters, witnesses and suspects/defendants. But why do law enforcement officials always close themselves and are not transparent to victims, reporters and witnesses who have sacrificed a lot of material, time and psychology in an effort to provide information. The sacrifices of victims, reporters and witnesses are not matched by access to obtain derivative police reports, minutes of examination of witnesses, information on the progress of investigations/prosecution from law enforcement officials. On the grounds that victims, complainants and witnesses do not have the right to access this in the provisions of the Criminal Procedure Code, only suspects/defendants have access according to the Criminal Procedure Code. Law enforcement officials should provide such access to victims, reporters and witnesses to be more courageous in providing information and evidence about the occurrence of criminal acts and informing the identity of suspects/defendants who have committed criminal acts, in accordance with the norms in Law Number 31 of 2014 concerning witness and victim protection. Law enforcement officials must provide legal protection and the right to obtain information, both verbally and in writing, regarding the developments being handled. For this reason, victims, reporters and witnesses must be given wider access to obtain all demands on police reports and minutes of examinations as well as obtain information on the development of investigations, both requested and unsolicited, both written and unwritten, which are regulated normatively in the Draft Criminal Procedure Code for victims. reporters and witnesses are guaranteed legal certainty and justice.

At every stage of the examination in the criminal justice process the suspect is given the legal right to defend himself. The granting of this legal right is a guarantee of the suspect's constitutional rights as a form of respect and protection provided by the state for citizens suspected of having committed a crime. On the other hand, the state also has an obligation to uphold the law through law enforcement officials to ensure the upholding of the law which is also intended to protect the interests and human rights of citizens in general who can be harmed by criminal acts, either directly or indirectly.

Thus there must be a balance between the protection of individual rights which are the rights of citizens and the interests of law enforcement which are the obligations of the state, both of which are animating the provisions of criminal procedural law. Apart from that, making the determination of a suspect as one of the pretrial objects that was not previously included in the Criminal Procedure Code is to create a new norm which is not the authority of the Constitutional Court but the authority of legislators. The absence of regulation on the designation of a suspect as an object of pretrial in Article 77 letter a of the Criminal Procedure Code does not make this provision unconstitutional. Whereas if the determination of the suspect is seen as being able to respect and protect the suspect's human rights, then such ideas may be included in the provisions of the law by the legislators in accordance with the authority attached to them.

The essence of the criminal justice system that uses the due process model approach, which means that the application of the law must be in accordance with "statutory requirements" and must "obey the law", where in the process of law enforcement there must be no violation of certain legal provisions under the pretext of upholding parts of the law. another. To support the implementation of this model in the criminal justice system, at least two main components are needed, namely law enforcement officials and good and correct laws and regulations, where the components are interrelated and cannot be separated. Therefore the Constitutional Court Decision number 21/PUU-XII/2014 is a way out to ensure that there is unprofessional law enforcement and weak laws and regulations so as to ensure the protection of human rights owned by suspects, but keep in mind that not everyone who is named a suspect human rights are disturbed, such as for example the determination of suspects by law enforcement officials which will result in the loss of the right to exercise the authority of his position. So this is what the Judge should pay special attention to rejecting or accepting the pretrial request itself and of course the loss of the right in question is a real and direct legal consequence of the determination of the suspect, not a right withdrawn by the broad concept of human rights.

The Pretrial Institution was first introduced in Indonesia since the birth of the Criminal Procedure Code. According to M. Yahya Harahap[1], the aim of Pretrial is "horizontal monitoring" of coercive measures imposed

[1] Yahya Harahap. Discussion of Problems and Implementation of the Criminal Procedure Code. Sinar Graphics, Jakarta. 2002.p. 2-4.

on suspects while he is under investigation or prosecution, so that these actions do not conflict with legal and statutory provisions. Forced effort (dwang meddelen) in this case is arrest, detention, search, confiscation, or examination of documents carried out by investigators or public prosecutors. These control (supervision) efforts are carried out in the context of law enforcement, so as to create fair legal certainty.

Article 1 point 10 of Law Number 8 of 1981 concerning Criminal Procedure Law states that "Pretrial is the authority of the district court to examine and decide according to the manner stipulated by this law regarding (a) whether an arrest and or detention is legal at the request of the suspect or his family or other party on behalf of the suspect; (b) whether or not it is legal to stop an investigation or stop a prosecution at a request for the sake of upholding law and justice; (c) a request for compensation or rehabilitation by a suspect or his family or another party on his behalf whose case has not been brought to court. Thus the Pretrial only examines and evaluates the truth or correctness of coercive measures carried out by investigators or public prosecutors in matters relating to arrest and detention, termination of investigations and prosecutions, as well as matters of compensation and rehabilitation". However, even though this institution has been regulated in positive law (UU No. 18 of 1981), in its application there are still weaknesses both in its formulation and in its application in court so that there is still little protection of human rights for suspects.

If the contents of the provisions contained in the Criminal Procedure Code are carefully examined, then the Indonesian criminal justice system which consists of components from the Police, Prosecutors' Office, Courts and Correctional Institutions as law enforcement officers, each component of the system should consistently maintain so that the system can run in an integrated manner.

In terms of the quality of the professionalism of judges who examine pretrial requests, serious attention must also be paid, bearing in mind that not all judges have an equal educational level. By providing a requirement that the judge who examines the pretrial petition must be at least strata-2 (S 2) it is hoped that the value of justice desired by the litigants in the pretrial, both the applicant and the respondent will be achieved. If this is not implemented immediately, it will have an impact on not realizing good judicial governance so that a clear and clean judiciary is realized.

TABLE
RECONSTRUCTION OF PRETRIAL PROCEDURE LEGAL REGULATIONS ON THE RIGHTS OF THE APPLICANT OR THE APPLICANT ASSOCIATED WITH JUSTICE VALUE-BASED MEANS IN THE CRIMINAL PROCEDURE BOOK (KUHAP)

NO	Construction	Weaknesses	Reconstruction
1	Article 78 paragraph 2 of the Pretrial Criminal Procedure Code is led by a single judge appointed by the chairman of the district court and assisted by a clerk.	There is potential for judge subjectivity in examining and deciding pretrial	Article 78 paragraph 2 of the Pretrial Criminal Procedure Code is chaired by a panel of judges who are appointed by the chairman of the district court and assisted by a clerk.
2	Article 82 letter c of the Criminal Procedure Code, the examination is carried out quickly and no later than seven days the judge must have made his decision;	Too short to examine the object of determining the suspect	Article 82 letter c of the Criminal Procedure Code, the examination is carried out quickly and no later than fourteen days the judge must have made his decision;
3	Article 83 paragraph 1 of the Criminal Procedure Code, Against pretrial decisions in matters referred to in Article 79, Article 80 and Article 81 cannot be appealed.	Does not accommodate justice for the applicant and the respondent	Article 83 paragraph 1 of the Criminal Procedure Code, Against pretrial decisions in matters referred to in Article 79, Article 80 and Article 81 can be appealed.

D. Conclusion

The regulation of the Pretrial Procedure Law on the Rights of the Petitioner or Respondent Associated with Legal Remedies is not based on the value of justice, currently it still does not accommodate the value of justice optimally. This was found from the fact that there was an opportunity provided in the law for the applicant and the respondent when they were declared defeated in the pretrial hearing to make an appeal. The next weakness is that a single pretrial judge is very risky to examine pretrial, especially regarding the object of determining the suspect, because it is very strong with the nuances of subjectivity. Weaknesses in pretrial procedural law

regulations regarding the rights of the applicant or respondent are linked to current legal remedies, namely the weakness in legal substance is that it is still unable to accommodate the protection of both the applicant and the respondent in pretrial, the weakness in the legal structure is that the pretrial proceeding time is too short, which is only 7 days and the weakness legal culture is that what justice seekers want has not been fully realized. The trial period of only 7 (seven working days) results in examining and deciding pretrial cases with the object of determining the suspect being felt to be a weakness in pretrial procedural law. Because the material examined by the pretrial judge is actually not only about administration but has entered the realm of substance. Reconstruction of pretrial procedural law regulations on the rights of the applicant or respondent is linked to legal remedies based on the value of justice, namely by reconstructing the value of justice and legal norms in Article 78 paragraph 2, Article 82 letter c, and Article 83 paragraph (1) of the Criminal Procedure Code.

Bibliography

Anis Mashdurohatun, Adhi Budi Susilo, Bambang Tri Bawono, Copyright Protection towards the Society 5.0, Journal of Southwest Jiaotong University, Volume 56, Issue 2, 2021.

Anis Mashdurohatun, Yuris Tri Naili, Teguh Prasetyo, Amin Purnawan, Regulating The Management Of Private Higher Education Based On The Values Of Justice, Journal Of Legal, Ethical And Regulatory Issues, Value 24, Issue 5. 2021.

Anis Mashdurohatun, Zaenal Arifin, The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia, International Journal of Applied Business and Economic Research, Vol.15 Issue.20. 2017,

Bambang S and Eman Suparman Anis Mashdurohatun, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Sciences, Volume 14 , Issue 12 , 2019.

Denita Matondang. 'Chief Supreme Court: Pretrial Judge Boediono demoted because he is guilty', (Detik News, 2018). accessed 17/02/2021.

Erlyn Indarti, Discretion and Paradigm of a Study of Legal Philosophy, Speech to Inaugurate the Position of Professor in Legal Philosophy at the Faculty of Law, Diponegoro University, Semarang, 2010.

Fachrizal Afandi, "Comparison of Pretrial Practices and Formation of Preliminary Examination Judges in Indonesian Criminal Courts", Law Platform, Volume 28, Number 1, February 2016.

IG Ayu KRH, Anis Mashdurohatun, Kartina Pakpahan, Efforts to Reduce Crime Of Processed Food Without Circular License In Indonesia, International Journal of Advanced Science and Technology, Value 28. Issue 15, 2019.

Muntaka, "Pretrial Arrangements in the Criminal Justice System in Indonesia", Law Platform, Volume 29, Number 3, October 2017.

Norman K. Denzin and Y. S. Lincoln, Tha Sage Handbook Of Qualitative Research Third Edition, translated by Dariyatno, Student Library, Yogyakarta, 2011.

Oemar Seno Adji, Criminal Laws,: Erlangga, Jakarta. 1980.

Soetandyo Wignjosoebroto, Law, Paradigm, Method, and Problem Dynamics, HUMA, Jakarta, 2002.

Yahya Harahap. Discussion of Problems and Implementation of the Criminal Procedure Code. Sinar Graphics, Jakarta. 2002

Yeltriana, Ideal Reconstruction Of Protection For Layoff Victim At The Industrial Relations Court Based On Justice, International Journal of Law, Government and Communication, Volume: 4 Issues: 14 [March, 2019]