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PREFACE

First of all, let’s say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, HilaireTegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.
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Political Form Of Pre-Justice Law In Law Enforcement In Indonesia

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Abstract
Today pretrial has a very important place in criminal procedural law, it can even be said that every person who is suspected of committing a criminal act is then named a suspect. The first legal remedy is pretrial. The demand for pretrial use is getting stronger in the community who are indicated as being accused of a criminal act. Because in various criminal cases that have occurred so far, it has shown that pretrial has shown that there is protection, not only regarding justice, but also for the protection of human rights. Pre-trial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are aims and objectives to be upheld and protected, namely upholding the law and protecting the human rights of suspects at the level of investigation and prosecution. The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that “Determination of Suspects” is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the Criminal Procedure Code are contrary to the 1945 Constitution of the Unitary State of the Republic of Indonesia.

Keywords: Political Law, Pre-trial, Law Enforcement

A. INTRODUCTION

The best efforts to enforce material criminal law always demand and rely on how the regulations of the formal criminal law provisions are able to be a guard in framing the spirit and purpose of material criminal law itself. One of the guardian frames in law enforcement in Indonesia that aims to protect justice in the community's criminal justice system is the pretrial means available in the Criminal Procedure Code (KUHAP).

Pre-trial as a new institution in the world of justice in Indonesia in the life of law enforcement. Pre-trial is not an independent court institution. In essence, it is a system, this is because the criminal justice process in Indonesia consists of stages which form an integral and inseparable part. The stages in the criminal justice process are a series, where one stage affects the other stages.¹

In the criminal justice process in Indonesia, the authority to carry out investigations and investigations lies with the police, while the one who has the authority to carry out prosecutions is the prosecutor's office, while the authority to judge during an examination in court is the judge. The powers of the judge, prosecutor's office, and Although the police are different, in principle, they constitute an integral and inseparable unit.

Efforts can be made to eliminate the implementation of detention that is contrary to the provisions of the applicable law and which is very detrimental to the suspect or defendant or his family. Most of these efforts are contained and regulated in the Criminal

¹ Efa Rodiah Nur, Eksistensi Praperadilan Bagi Penegakan Hukum Dalam Mencapai Keadilan Substansif di Indonesia, UIN Raden Intan Lampung, Jurnal Hukum, Vol.9 No.2, Juli 2017, p. 27
Procedure Code, this fact is quite encouraging, thus it is hoped that it will provide guarantees and protection of human rights, protection of human dignity as is normally owned by a rule of law. One such effort is pretrial.²

Nowadays pretrial has a very important place in criminal procedural law, it can even be said that every person who is suspected of committing a criminal act is then named a suspect. The first legal remedy is pretrial. The demand for pretrial use is getting stronger in the community who are indicated as being accused of a criminal act. Because in various criminal cases that have occurred so far, it has shown that pretrial has shown that there is protection, not only regarding justice, but also for the protection of human rights.

Pretrial as part of the criminal justice system in effect in Indonesia is an effort to tackle crimes that are penal in nature by using criminal law as the main means of both material criminal law and formal criminal law. Pretrial as part of law enforcement, as stated by Barda Nawawi Arief, that law enforcement problems, both in abstracto and in concreto are actual problems which have recently received sharp attention from the public.³ As is the case with the implementation of pretrial which is part of a rule of law principle in which a rule of law state has various criteria and elements.⁴

B. PROBLEM FORMULATION

1) What is the political pretension of pretrial law in Indonesia?
2) What is the form of pretrial law politics in law enforcement in Indonesia?

C. DISCUSSION

1. Pretension of Pre-Trial Law Politics in Indonesia

The scope of State powers is limited by law. The role of the government is to ensure law enforcement in order to achieve justice. In the process of law enforcement, not only a set of laws and regulations are needed. But also the driving instrument, namely state institutions, such as the police, prosecutors, judiciary and correctional institutions.⁵

A country has a legal system that contains common expectations about transactions, relationships, planned events and accidents in everyday life so that they can be faced. Such as matters of court procedure, which begins with the judiciary, which is a process that ends with giving justice in a decision, where this process is regulated in a procedural law. And the judiciary is also the authority of an institution to resolve cases for and in the name of law for the sake of upholding law and justice.

The pretrial institution cannot be separated from the political and legal links. Political law consists of two words, namely politics and law, the term politics is often used in various meanings, namely: polytheic in Dutch means something related to the State and secondly, politics means discussing state matters or those related to the state. Legal politics that will be or have been implemented nationally by the government; also includes an understanding of how politics affects the law by looking at the configuration of forces behind the making and enforcement of the law. Laws cannot only be viewed as articles which are imperative or necessity, but must be viewed as a sub-system which in reality is not impossible to be determined by politics, both in the formulation of the material and its articles, as well as in its implementation and enforcement. This implies that criminal law politics must be carried out with full rational

² Muhamad Solichin, Politik Hukum Praperadilan Dalam Penegakan Hukum, Magister Ilmu Hukum UMS, Tesis, 2018, p. 2
³ Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan, Kencana Prenada Media Group, Jakarta, 2007, p. 18
⁵ Barda Nawawi Arief, Beberapa Aspek Kebijakan Penegak dan Pengembangan Hukum Pidana, Citra Aditya Bakti, Bandung, 2005, p. 40
not emotional considerations because criminal law politics is a process of selecting laws that will be applied in society in achieving the ideals of society so that choices must be justified.

Criminal law politics is part of legal politics, so in the formation of a law one must know the value system that applies in society. According to Soedarto, if criminal law is to be involved in legal politics, then it must see the overall relationship between national policy and legal policy in general. This is done so that there is no imbalance between criminal law policies and national legal policies.

Criminal law policy is an effort to tackle criminal acts, in addition to other efforts, namely prevention by using non-penal policies. The politics of criminal law are repressive after the occurrence of a criminal act. Marc Ancel argues that the politics of criminal law or criminal law policy is both a science and an art that has a practical aim to enable positive legal rules to be better formulated and to provide guidance to legislators and to implementers of court decisions.

When someone feels that they have been wronged in a judicial process such as arrest, detention, or investigation, they have the right to demand and get justice through pretrial, which is one of the institutions to examine a case process up to the stage of proceedings in the District Court. Thus, the pretrial institution is a trial process before the trial of the main issue of the case is tried. Pretrial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are purposes and objectives to be upheld and protected.

2. Forms of Pre-Trial Law Politics in Law Enforcement in Indonesia

The elucidation of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) mandates that the will of the legislators understand and live properly, especially for law enforcers who have been directly involved in the application of the law, because without understanding and living up to the will of the legislators, the provisions that legislators have regulated in the body (substance) of the Criminal Procedure Code will be more perceived as an obstacle to law enforcers, or limiting the space for movement, and for the public it will become an obstacle to access certainty, justice, and protection of human rights.

Pretrial does not always have to be interpreted dogmatically as an order to follow the sound of a law, but more than that it must pay attention to social facts that occur in society, because legal certainty does not always reflect justice, the desired justice is not just conceptual, but must touch feelings for every person seeking justice or justice that is substantive. This has been contradicted by the editor in Satjipto Rahardjo's book in his introduction, which states that legal truth cannot be interpreted solely as the truth of the law, but must be understood as the truth of the principle of justice that underlies the law.

The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that “Determination of Suspects” is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the

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6 Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Jakarta, Kencana Prenada Media Group, 2011, p. 26
8 M. Yahya harahap, Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan, Sinar Grafika, Jakarta, 2006, p. 3
Criminal Procedure Code are contrary to the 1945 Constitution of the Unitary State of the Republic of Indonesia. given by law, because the Constitutional Court Decree cannot make new norms that can change the prevailing legal order. Even though the authority of the Constitutional Court is not a new norm.

The decision of the Constitutional Court above shows a contradiction with Perma Number 4 of 2016, dated April 18, 2016 concerning the Prohibition of Reviewing Prapredilan Decisions. makes every pretrial case cannot be appealed, PK including appeal. The aim is to avoid differences in perceptions, especially after the issuance of a Constitutional Court Decree which establishes norms that expand the object of pretrial. The Supreme Court regulation has placed the object of the pretrial in accordance with the context of procedural law, because pretrial only concerns the formality of the legality of the legal procedure of arrest, detention.

It cannot be denied that law in reality has become a commodity of law enforcement officers not only limited to the abuse of authority which tends to strengthen power, but has become an economic necessity, namely to enrich themselves, certain groups even more broadly to their cronies, starting from the lowest level to the highest level, namely decision makers, both at the level of investigation by the police, at the level of prosecution by prosecutors and at the court level by judges before the court.

This situation has received such sharp attention and criticism from various circles today, especially at the level of investigation which determines whether a person can be arrested, detained and terminated and the investigation is based on two preliminary evidence as stipulated by the prevailing laws and regulations, in this is Law Number 8 of 1981 concerning KUHAP as the basis for the criminal justice process.

Pre-trial is not only limited to law enforcement and protection of human rights, but also as a means of limiting arbitrary powers of law enforcers through a system of horizontal surveillance carried out by the community, as the philosophical will of the principle of equality before law and government. Especially in the act of arresting and detaining a person who is suspected of committing a criminal act based on two unclear preliminary evidence, which evidence meets the elements to determine a person as a suspect.

Based on the description stated above concerning the position of pretrial in the criminal justice system, in the view of the author, pretrial is part of the core characteristics of the Due Process Model (DPM) which emphasizes that a criminal justice process is how legal rules are carried out by finding facts. In addition, pretrial must also emphasize the procedures that are taken in stages in carrying out a case process, especially those concerning the criminal justice system.

D. CONCLUSION

1. Pre-trial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are aims and objectives to be upheld and protected, namely the upholding of the law and protection of the suspect's human rights at the level of investigation and prosecution;

2. The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that “Determination of Suspects” is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the Criminal Procedure Code are contrary to the 1945 Constitution of the Unitary State of the Republic of Indonesia. given by law, because the Constitutional Court Decree cannot make new norms that can change the prevailing legal order. Even though the authority of the Constitutional Court is not a new norm.


REFERENCES


______________, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, 2007

______________, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Jakarta, Kencana Prenada Media Group, 2011


Muhamad Solichin, *Politik Hukum Praperadilan Dalam Penegakan Hukum*, Magister Ilmu Hukum UMS, Tesis, 2018
