

Criminal Law Policy Regarding the Pretrial Filing Process in Cases of Suspect Determination by Investigators

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Abstract. *Pretrial aims to supervise law enforcement officers so that they do not abuse their authority. Regulated in the Criminal Procedure Code, this supervision is important even though it is automatically attached to the institution where the law is based. This ensures that tasks are carried out in accordance with the rules and authority. This study aims to examine in depth the pretrial process in cases of suspect determination. The main focus of this study is to analyze the judge's considerations in deciding pretrial cases, as well as the concept of legal certainty in the context of pretrial suspect determination. This study uses a normative approach with a descriptive-analytical method. The data used include primary and secondary data obtained through interviews and literature studies. Data analysis was conducted qualitatively using the theory of law enforcement and the theory of legal responsibility. The results of the study indicate that the criminal law policy related to pretrial motions in cases of suspect determination is currently still limited to the provisions of the Criminal Procedure Code, especially Article 77. This study found that judges in deciding pretrial motions use certain arguments as the basis for consideration. In addition, this study also discusses the concept of legal certainty in pretrial motions for suspect determination and the possibility of other legal remedies outside the provisions of the Criminal Procedure Code that can be taken by the parties. Finally, this study identifies the problems and criminal law policies related to the pretrial motion process in the future.*

Keywords: *Criminal; Policy; Pretrial; Suspects.*

1. Introduction

Indonesia as a country of law based on Pancasila and the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia requires law enforcement that is able to create security and order in the life of society. As a country of law, every behavior of its citizens cannot be separated from all rules that originate from the law. Law enforcement is one of the important efforts in creating peace in society. To obtain this, appropriate efforts are needed before and after crimes and violations of the law occur. The problem of crime deserves special attention from law enforcement officers and all levels of society. As a developing country, Indonesia is a very potential target as a place to produce and distribute narcotics illegally. The abuse of narcotics that is currently occurring in society is not only carried out by adults, there is even a tendency for the perpetrators to be children. Therefore, various efforts to prevent and overcome juvenile delinquency need to be carried out

immediately.¹

Criminal investigation is an action carried out by an investigator in accordance with the methods regulated by law which aims to seek and collect evidence where the evidence is used to find and determine a suspect in a criminal act. Referring to Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP), an investigation can be stopped if the investigator does not obtain sufficient evidence or the evidence found is inadequate to prove a mistake made by the suspect. Pretrial is an institution that was born to carry out supervisory actions against law enforcement officers so that in carrying out their authority they do not abuse their authority, therefore in its implementation it is regulated in the Criminal Procedure Code (KUHAP). Investigative activities whose implementation can be in the form of, for example, arrest or even detention, then criminal procedure law through provisions that are coercive in nature eliminates the universally recognized principle, namely a person's right to freedom. Criminal procedure law gives certain officials the right to detain suspects or defendants in order to implement material criminal law in order to achieve order in society.²

The importance of having supervision or control over law enforcement officers in carrying out their duties. Actually, supervision or control over each law enforcement officer is automatically attached to the institution where the law enforcement officer is based. However, this supervision is considered not strong enough because it is very dependent on the sincerity and internal will of the institution itself without the possibility of interference from outside parties. It can be interpreted that in every constitution there is always a guarantee of human rights. This is clearly stated in the 1945 Constitution, in Article 28 D paragraph (1). This reflects the need for legal certainty. Recognition of this basic principle, every human being has basic rights called human rights. Awareness of the existence of human rights grows from the recognition of humans themselves that they are the same and equal.

Recognition of human rights has two bases, as follows:³

1. The first and direct basis is human nature. Human nature is equal in degree and dignity. All humans are equal without distinction of race, religion, tribe, language, and so on.
2. The second and deeper foundation: God created man. All men are creatures of the same creator, namely God Almighty. Therefore, before God, men are equal except for their deeds.

The state gives authority to law enforcement officers to uphold justice. Law enforcers often make mistakes and violate the basic rights of perpetrators of criminal acts in carrying out coercive measures. Therefore, the Criminal Procedure Code (KUHAP) guarantees the protection of the rights of perpetrators of criminal acts.

According to Lilik Mulyadi, in principle the meaning of criminal procedural law is:⁴

1. Legal regulations that regulate, organize, and maintain the existence of material criminal law provisions (*materieel strafrecht*) in order to seek, find, and obtain material or actual truth.

¹Nandang Sambas, 2010, *Reform of the Child Criminal Justice System in Indonesia*, Yogyakarta: Graham Ilmu, p. 103.

²Ratna Nurul Alfiah, 1986, *Pretrial and Its Scope*, Akademika Pressindo CV, Jakarta, p.35.

³Winarno, 2009, *Citizenship Education*, Jakarta: PT Bumi Aksara, p.129.

⁴Lilik Mulyadi, *Criminal Procedure Law (A Special Review of Indictments, Exceptions, and Court Decisions)*, Bandung: PT Citra Aditya Bakti, p.4.

2. Legal regulations that govern the method and process of decision-making by judges.

3. Legal regulations that govern the implementation stages of decisions taken.

The establishment of various criminal acts in the law contains the aim of protecting certain legal interests in order to achieve and maintain public order. Criminal procedure law regulates in such a way that its application reaches the intended goal.⁵This is similar to the pre-trial case that occurred in Cirebon City which attracted Notary HS as a suspect who then filed a Pre-trial and was granted. The case was that the determination of our client as a suspect by the Cirebon City Police Criminal Investigation Unit investigators was very wrong, our client carried out his duties and functions as a Notary/PPAT who was neutral and passive, the chronology of Notary/PPAT Heru Susanto being named a suspect and then detained began in June 2021 when he came to Notary Heru, namely Nurul (NP) as the seller, and Suhadi as the buyer of a plot of land.⁶

Based on the Criminal Procedure Code, according to Article 1 number (10) of the Criminal Procedure Code, what is meant by pre-trial is the authority of the district court to examine and decide according to the method regulated in this Law, regarding:

1. Whether or not the arrest and/or detention is valid at the request of the suspect or his/her family or another party with the suspect's authority.

2. Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice.

3. Requests for compensation or rehabilitation by the suspect or his/her family or other parties on behalf of their attorney whose case has not been submitted to court.

The establishment of a pre-trial institution according to the Implementation Guidelines of the Criminal Procedure Code states: considering that in the interests of examining a case, it is necessary to reduce the basic rights of the suspect, but in any case it should always be based on the provisions regulated in the law, then in the interests of supervision of the protection of the basic rights of the suspect/defendant, a pre-trial institution is established.⁷Pretrial indirectly supervises the activities carried out by investigators in the context of investigation and prosecution, considering that investigators' actions are basically attached to the relevant agency. It is time to build a culture of mutual control in the era of the supremacy of law, between all components of law enforcement so that legal certainty can truly be provided for those seeking justice. The essence of the judge's decision itself is the crown and the peak of a criminal case so that judges in giving criminal decisions must consider all aspects. In the judge's considerations there are 3 (three) aspects that the judge considers, namely the legal, philosophical and sociological aspects.

This study aims to examine in depth the criminal law policy related to the pretrial motion submission process in cases of suspect determination by investigators, both in the context of

⁵Adami Chazawi, 2010, Criminal Case Review Institution (PK), Law Enforcement in Deviant Practices and Miscarriage of Justice, Jakarta: Sinar Graha, p. 1

⁶Notary in Cirebon Named Suspect for Alleged Fake Deed, Attorney Files Pretrial Motion", More With Link:<https://Kabarcirebon.Pikiran-Rakyat.Com/Ciyumajakuning/Pr-2936685882/Notaris-Di-Cirebon-Ditetapkan-Tersangka-Atas-Dugaan-Akta-Palsu-Kuasa-Hukum-Ajukan-Praperadilan?Page=All>

⁷Hari Sasangka, 2007, Investigation, Detention, Prosecution, and Pretrial in Theory and Practice, Bandung: Cv. Mandar Maju, p.16.

current positive law and future projections. Specifically, this study will analyze how legal regulations regulate the pretrial motion submission mechanism, as well as identify problems that arise in practice. In addition, this study will also formulate recommendations for more effective and efficient criminal law policies in order to protect the rights of suspects and ensure that the law enforcement process runs fairly.

2. Research Methods

This study uses a normative legal approach method, namely research that examines library materials or secondary data. Normative legal research aims to find legal rules, legal principles, and legal doctrines to answer the legal issues faced.⁸ ⁹The specification of this research is descriptive analytical, aimed at describing legal facts to understand how criminal policy on the pretrial submission process in cases of suspect determination by investigators. This research uses secondary data consisting of:

1. Primary Legal Material: Legal norms that are binding,¹⁰ includes:
 - a) The 1945 Constitution of the Republic of Indonesia.
 - b) Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP).
 - c) Law Number 1 of 2003 concerning the Criminal Code.
 - d) Law Number 2 of 2002 concerning the Republic of Indonesia National Police.
2. Secondary Legal Material: Opinions of legal experts obtained from legal literature, books, journals, articles and other scientific works.¹¹
3. Tertiary Legal Materials: Additional instructions or references such as legal dictionaries and the Great Dictionary of the Indonesian Language.

Data were obtained through document studies and literature studies by collecting library materials related to the legal problems studied. Furthermore, the data were analyzed using qualitative methods with systematic arrangement to provide clarity to the problems studied. Conclusions were drawn deductively, from general to specific.

3. Results and Discussion

3.1. Criminal Law Policy Regarding Pretrial Motion Procedures in Cases of Determination of Suspect by Investigators in Current Positive Law

"In the Indonesian criminal law system, suspects are given protection based on legislation, which regulates the rights of suspects". "Protection of suspect rights is all actions that guarantee and protect suspects and their rights in examinations at the investigation and inquiry levels". "Suspects have the right to provide information freely to the police and may not be forced or pressured into providing information". In order for the examination to achieve results that do not deviate from the truth, "the suspect must be kept away from fear". "Therefore, it is mandatory to prevent any coercion or pressure on the suspect.

⁸Soerjono Soekanto and Sri Mamuji. Normative Legal Research: A Brief Review. Jakarta: Raja Grafindo Persada, 2013, p. 13.

⁹Amiruddin and H Zainal Asikin. Introduction to Legal Research Methods. Jakarta: Raja Grafindo Persada, 2006, p. 118

¹⁰Soerjono Soekanto, 1986, Introduction to Legal Research, Jakarta: University of Indonesia Press, p. 11.

¹¹Ibid, p.36.

Basically, there are no provisions and regulations that clearly describe or require a certain form of a pretrial motion letter, as long as the motion letter can provide clear information and descriptions of what happened and what is the basis for the motion. The implementation is usually the way to compile the letter is almost the same as filing a lawsuit in Civil Procedure Law. However, there are several important things that must be considered in making or filing a pretrial motion, namely: First, Complete information from the parties to the case, namely their name, address, and occupation. Second, The basis for the motion (Fundamentun Patendi) which contains a description of the incident and a description of its law, namely the depth of the rights in the legal relationship that is the legal basis for the motion. Third, What is requested or demanded by the applicant, the efforts decided by the judge (petitum). The pretrial institution is an institution that processes when violations occur in the implementation of the investigation, so that when there is a deviation in the investigation process, someone can complain about it through the pretrial motion. The function of investigation is carried out by investigators, namely the Republic of Indonesia Police and certain Civil Servants who are authorized by law, so that with the existence of pretrial facilities, it is hoped that investigators can carry out their duties as optimally as possible and of course in accordance with their duties and authorities so that violations in the investigation process can be avoided, this of course requires an attitude and awareness of the professionalism of investigators in carrying out their duties.

Pretrial Authority for Determination of Suspects (Constitutional Court Decision Number 21/PUU-XII/2014) In the Constitutional Court Decision, it was decided that the provisions of Article 77 letter A of the Criminal Procedure Code do not have binding legal force as long as they are not interpreted to include the determination of suspects, searches and seizures. One of the legal considerations is that the determination of suspects is part of the investigation process which is a violation of human rights, so the determination of suspects by investigators should be an object that can be requested for protection through the legal efforts of pretrial institutions. This is solely to protect a person from arbitrary actions by investigators that are likely to occur when a person is determined as a suspect, whereas in the process there is an error, then there is no other institution other than the pretrial institution that can examine and decide it. This Constitutional Court Decision provides protection for a person who experiences an erroneous legal process when being determined as a suspect. In the provisions of Article 8 of Law 39/1999 concerning Human Rights, it is stipulated that "Protection, advancement, enforcement, and fulfillment of human rights are primarily the responsibility of the government. This means that the Constitutional Court takes a role in fulfilling human rights through its decisions as part of a constitutionally responsive effort. One element of legal protection emphasized through this decision is legal certainty that investigators must carry out investigative actions in accordance with applicable legal procedures.¹²The authority of pretrial granted by law is only limited to the Criminal Procedure Code Law, then emphasized in Article 77 of the Criminal Procedure Code which clearly regulates the authority of the court to examine and decide on pretrial applications regarding the validity or otherwise of arrest, detention, termination of investigation, or termination of prosecution, and also requests for compensation and/or rehabilitation for someone whose case is terminated at the

¹²<https://Kepaniteraan.Mahkamahagung.Go.Id/Images/Artikel/Praperadilan%20pasca%20%20bangunan%20mk.Pdf> Accessed on August 3, 2024.

investigation or prosecution level. The purpose of this study is to analyze a judge's consideration in the form of arguments or reasons used by the Judge to be used as a basis for deciding something related to the determination of a suspect who is determined as the object of pretrial and to analyze the concept of legal certainty of pretrial determination of suspects in the future and whether there are possible types of legal efforts that can be taken by the parties, both the public prosecutor, the suspect or his family in responding to a pretrial decision outside the limits of authority based on the Criminal Procedure Law.

Pretrial according to the Criminal Procedure Code as stated in Article 1 Paragraph 10 reads "Pretrial is the authority of the district court to examine and decide in accordance with the method regulated in this law regarding the legality or otherwise of an arrest and/or detention at the request of the suspect or family or other party on behalf of the suspect, regarding the legality or otherwise of the termination of the investigation or termination of the prosecution or request for the sake of upholding the law and justice, furthermore, pretrial reviews from the perspective of a request for compensation or rehabilitation of the suspect or family or other party on behalf of their authority whose case has not been submitted to the Court". In this regard, Pra means "preceding" and pretrial is interpreted as a preliminary before the trial examination at the District Court.¹³

Pre-trial is related to the coercive efforts of law enforcement with the reduction and limitation of the freedom of the suspect's human rights with the irresponsible actions of Law Enforcers at the investigation and Prosecution stages with non-compliance with procedures according to legal provisions and the Law (due process of law), when there is a non-compliance of the authorized institution to supervise the coercive efforts carried out on the suspect, the Criminal Procedure Code delegates it to pre-trial. Article 77 of the Criminal Procedure Code regulates the authority of pre-trial, there are several pre-trial authorities granted by the Law;

3.2. Problems and Criminal Law Policies Regarding the Pretrial Filing Process in Cases of Determination of Suspects by Investigators in Future Law

The authority of pretrial granted by law is only limited to the Criminal Procedure Code Law, then emphasized in Article 77 of the Criminal Procedure Code which clearly regulates the authority of the court to examine and decide on pretrial applications regarding the validity or otherwise of arrest, detention, termination of investigation, or termination of prosecution, and also requests for compensation and/or rehabilitation for someone whose case is terminated at the investigation or prosecution level. The purpose of this study is to analyze a judge's consideration in the form of arguments or reasons used by the Judge to be used as a basis for deciding something related to the determination of a suspect who is determined as the object of pretrial and to analyze the concept of legal certainty of pretrial determination of suspects in the future and whether there are possible types of legal efforts that can be taken by the parties, both the public prosecutor, the suspect or his family in responding to a pretrial decision outside the limits of authority based on the Criminal Procedure Law.

According to Article 1 point 10 of the Criminal Procedure Code, Pre-trial is the authority of the District Court to examine and decide in accordance with the methods regulated in the Law, such as:

¹³Andi Hamzah, Indonesian Criminal Procedure Law, (Jakarta: Sinar Grafika, 2008). P.187.

- a) Whether or not the arrest and/or understanding is valid at the request of the suspect or his/her family or another party with the suspect's authority.
- b) Whether or not the termination of prosecution at the request of the suspect/investigator/public prosecutor is valid for the sake of upholding law and justice.
- c) Request for compensation or rehabilitation by the suspect or family or other party on behalf of his/her attorney, whose case has not been submitted to court.

The authority of the Pretrial by the Prosecutor is regulated in the Criminal Procedure Code, especially in Chapter X which regulates the Court's Authority in Adjudicating, especially from Article 77 to Article 83 and Chapter XII regarding Compensation and Rehabilitation. As regulated in Article 77 of the Criminal Procedure Code, it is stated that the Pretrial is only an additional authority given to the District Court to examine and decide on the legality or otherwise of an arrest, detention, termination of investigation or termination of prosecution, Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level. Looking at Article 77 letter a of the Criminal Procedure Code, the pretrial examination is given authority to the district court which has the authority to examine and decide on the legality or otherwise of an arrest and/or detention, as well as the legality or otherwise of the termination of investigation or termination of prosecution. This condition causes the Pretrial Judge to only have the authority to examine and decide on these matters. As stipulated in Article 79 of the Criminal Procedure Code:

- a. Regarding the legality or otherwise of an arrest of a suspect, his family and his attorney.
- b. Regarding the legality or otherwise of the detention, suspects, defendants, their families and their attorneys. Regarding the application for a pretrial motion against the examination of the legality or otherwise of the termination of the investigation or prosecution, the parties authorized to file a pretrial motion as stipulated in Article 80 of the Criminal Procedure Code.

The mechanism for submitting a Pretrial Application by a suspect, based on Article 79 of the Criminal Procedure Code, a pretrial can be submitted by the suspect, his family or his attorney to the District Court where the Pretrial Application is not limited to how many times but only the 3 parties above can submit it. For example, if the suspect as the applicant has already submitted it, then he can no longer submit it again, the party that can submit it is his family who is usually represented by his attorney. for example, corruption cases in the Police and the Prosecutor's Office. The limit for submitting a Pretrial Application is 2 times, the suspect has 1 opportunity and the family 1 time. In this case, the Pretrial in the Police and Prosecutor's Office is only not a corruption crime because the Prosecutor as the investigator and in the prosecution never because in the sequence of the Investigation.

The Supreme Court of the Republic of Indonesia has also provided guidelines regarding pretrial hearings regarding suspect determination as regulated in Article 2 paragraph (2) to paragraph (5) of PERMA Number 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions which states: (2) "Pretrial hearings regarding applications regarding the invalidity of suspect determination only assess formal aspects, namely whether there are at least 2 (two) valid pieces of evidence and do not enter into the case material." (3) "A Pretrial Decision that grants an application regarding the invalidity of suspect determination does not revoke the Investigator's authority to determine the person concerned as a suspect again after fulfilling at least two new valid pieces of evidence, different from the previous pieces of evidence

related to the case material." (4) "The trial of pretrial cases regarding the invalidity of suspect determination, confiscation and searches is led by a Single Judge due to the nature of the examination which is relatively short and the evidence only examines formal aspects." (5) "A pre-trial motion is filed and processed before the main case is tried in the district court. If the main case has already begun to be examined, the pre-trial motion is dropped."

Judges as actors who have the freedom to determine what actions they take, then in fact Judges can play certain political roles that they want to achieve through their decisions or determinations. However, the political role played by Judges is not political judicial restraint which only carries out politics in compliance with the law, but also political judicial activism which means that in making their decisions Judges can make choices from various alternative actions that are appropriate to achieve a sense of justice in society. From the two conditions, it is better for the court to follow political judicial activism activities in the form of a willingness to make decisions that are valuable as desired. However, there are things that are obstacles for the Prosecutor/Police as the Respondent in the pretrial. These obstacles include:

- 1) The duration of the pretrial hearing which only lasts for 7 (seven) days means that the hearing must be held every day, so that there is a separate busyness in the main duties and functions of the Prosecutor.
- 2) The examination of witnesses during pretrial hearings often encounters obstacles in the form of testimony explained by witnesses or questions asked by the parties already touching on the main points of the case, even though the pretrial hearing should only examine the legality or otherwise of an arrest and/or detention at the request of the suspect or his/her family or another party on behalf of the suspect.
- 3) The less conducive trial atmosphere often occurs especially in trials of corruption cases. In this case, the suspect is usually an official who has many supporters so that many of the masses come to attend the pretrial hearing because the masses assume that the suspect did not commit the act charged by the prosecutor. This sometimes causes the trial atmosphere to be less conducive because some of the masses disrupt the course of the trial.

So that the role of the prosecutor in the pretrial of corruption crimes with his authority as an investigator is to receive a request to determine the date of the pretrial hearing from the district court, where the Head of the District Attorney's Office will issue a letter of appointment of the prosecutor for the pretrial hearing, then as the appointed prosecutor and begin to study the pretrial application to be used as a basis when making a response, duplicate, submission of written evidence and witnesses, as well as conclusions and attending as the Respondent at the pretrial hearing.

Therefore, the authority of the Public Prosecutor in the Pretrial Process Filed by the Suspect's Family, namely in this case the Prosecutor conducts a review or title of the application which is attended by Prosecutors in the Special Crimes Section and several Prosecutors from other Criminal Sections. The results of the review of the pretrial application are then reported to the leadership with the suggestion that a letter of appointment of a Prosecutor be issued to carry out the pretrial hearing. The appointed Prosecutor then conducts a review again to make an answer to the pretrial application based on the evidence held by the applicant.

After the answer is completed, a review of the answer is carried out by the Prosecutor appointed for the pretrial hearing together with other Prosecutors, with the aim of asking for

advice on the answers that have been made. On the appointed trial day, the appointed Prosecutor attends the trial with the agenda of reading the answer. During the trial, the Prosecutor on duty does not wear uniform. There is only one judge on duty, and he is accompanied by a clerk. This is different from a regular trial where there are three judges, 3 (people) with the composition of 1 (one) chief judge and 2 (two) member judges. After the reading of the answer is complete, the judge gives the opportunity at the next day's trial to the parties (applicant and respondent) to present written evidence starting from the applicant then the respondent. At the next day's trial after examining the written evidence, the judge gives both parties the opportunity to present witnesses (in the a quo case, the applicant did not present witnesses, while the respondent presented witnesses, namely the Investigating Prosecutor and the Investigating Prosecutor). In the process of taking statements from witnesses from both parties, the applicant and the respondent are prohibited from asking questions or providing information that leads to the main issue to be tried.

When the witness examination has been completed and the witness's statement is deemed sufficient by the Judge, the applicant and the respondent, both parties are given 1 (one) day by the Judge to draw conclusions from the results of the pretrial hearing. Then in the next hearing the judge reads out the pretrial decision. The pretrial decision is final and binding so that no appeal can be made (Article 83 Paragraph (1), except for decisions stating that the termination of the investigation and prosecution is "invalid" (Article 83 Paragraph (2) of the Criminal Procedure Code) or cassation.

When the pretrial motion is rejected by the Panel of Judges, the Prosecutor as the investigator continues the prosecution process to the Trial, but when the pretrial decision is rejected by the Panel of Judges, the Prosecutor as the investigator continues the prosecution process. Then the Investigator or Public Prosecutor has the authority to stop the investigation or prosecution. The reason for stopping the investigation and prosecution is because the results of the investigation or prosecution examination do not provide sufficient evidence to continue the case to the court hearing. Or what is suspected of the suspect is not a crime or violation of a criminal act. Therefore, it is impossible to continue the case to the court hearing. It is also possible that the investigator or public prosecutor stops the investigation or prosecution on the grounds of *ne bis in idem*, because it turns out that what is suspected of the suspect is a crime that has been charged and tried, and the decision has obtained permanent legal force. It is also possible that the investigator or public prosecutor stops the case because in the case suspected of the suspect there is an element of the statute of limitations for prosecution."¹⁴

The birth of the Criminal Procedure Code (KUHAP) is based on 2 (two) reasons, namely to create a provision that can support the implementation of a fair criminal trial and the urgency to replace colonialistic procedural law products as stated in the *Herzien Inlandsch Reglement (HIR)* which has not guaranteed and provided sufficient protection for Human Rights (Meliala, 2012) and the absence of legal regulations related to supervisory institutions that have the authority to test the validity of the actions of law enforcement officers in exercising their authority. The scope of pretrial is limited as determined in Article 77 letters (a) and (b) of the Criminal Procedure Code and Article 95 of the Criminal Procedure Code. Pretrial is a reflection

¹⁴M. Yahya Harahap, Discussion of Problems and Implementation of the Criminal Procedure Code, Court Hearing Examination, Appeal, Cassation, and Judicial Review, XII ed., Sinar Grafika, Jakarta, 2010. P. 5.

of the implementation of the principle of the presumption of innocence, where every person who is presented as a suspect/defendant has gone through a reasonable initial process and received protection of his/her human dignity.

In the context of the upcoming Negative law, there are several problems that need to be faced and policies that need to be implemented related to the pretrial submission process in cases of suspect determination. The following is an analysis of this matter:

1. Lack of Public Understanding, many individuals do not understand their legal rights, including the right to file a pretrial motion.
2. This causes them not to optimize existing mechanisms to protect themselves from arbitrary actions by investigators.
3. There are overlaps between existing regulations, which sometimes complicate the pretrial process. For example, differences in interpretation in the application of the law can cause confusion for the court and investigators.
4. Independence of the Court, in some cases, there is political or social pressure that can affect the independence of the court. This has the potential to reduce public trust in pretrial decisions.
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Criminal law reform cannot be separated from changes in society's views on assessing behavior. This assessment is based on values and norms upheld by society that result in "normal" behavior in society's view. The existence of deviations from "normal" behavior by society can cause damage to welfare, structure, and happiness that have an impact on community and state life. Therefore, a law is needed that is oriented towards the future, not the past. Thus, the law is required to play an active role in order to create renewal in society so that the function of law not only creates order but also encourages change in society.

In this case, the regulations issued by the Supreme Court are distinguished from the regulations drafted by the legislators. The implementation of justice as intended by this Law is only part of the overall procedural law. Thus, the Supreme Court will not interfere and exceed the regulations on the rights and obligations or prohibitions of citizens in general and will not regulate the nature, strength, means of proof and its assessment or the distribution of the burden of proof. The implementation of a fair legal process must reflect the protection of the rights of suspects and defendants, or in other words, in achieving a fair legal process (due process of law), criminal justice must also reflect the protection of the rights of suspects and defendants as a requirement for the implementation of a fair legal process. Referring to the second principle of Pancasila, just and civilized humanity is noble morality reflected in human attitudes and actions that are in accordance with human nature, essence, and dignity. This human potential is possessed by humans, without exception. They must be treated in accordance with human values, in accordance with their nature, as noble creatures of God. Just and civilized humanity is manifested in the implementation of basic human rights and

obligations and a commitment to law enforcement, so a suspect as a human being must be treated in accordance with humanitarian values. In this case, the dignity of a suspect with all his basic rights and obligations must be recognized and respected. In addition, a suspect as a human being must also be treated fairly in the legal field. In relation to the rules on the object of a pretrial lawsuit, it must also reflect the humanitarian values referred to in the second principle of Pancasila. If the rules on the object of a pretrial lawsuit in the Criminal Procedure Code are not in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia, then it is necessary to adjust them in order to create a rule that provides legal protection for everyone involved in the criminal process, especially in the preliminary examination before the examination of the main case in court, as well as the creation of fair legal certainty.

Facing the existing problems, the right criminal law policy related to the pretrial filing process is very important to ensure the protection of human rights and justice in law enforcement. Collaborative efforts between the government, legal institutions, and the community are needed to create a better system in the future. Enforcement of legal principles properly with the use of appropriate interpretation methods in the legal logic of pretrial judges' considerations will guarantee the legal certainty of a decision. In criminal decisions, the application of the principle of legality as adopted in Article 3 of the Criminal Procedure Code is an important prerequisite, in addition it must be noted that the use of analogical interpretation methods in the field of criminal law is not permitted.

4. Conclusion

The criminal law policy regarding the pretrial process in cases of suspect determination by investigators in positive law is currently still limited to the provisions in Article 77 of the Criminal Procedure Code, which aims to provide a legal basis for judges to decide on the validity of suspect determination as an object of pretrial. Although pretrial plays an important role in protecting human rights, several problems arise, such as the short implementation of trials for seven days as regulated in Article 82 Paragraph 1 letter (c) of the Criminal Procedure Code, which often makes it difficult for public prosecutors to meet the demands of the legal process amidst high workloads. In addition, the filing of a pretrial by a suspect or family often causes investigators to review the actions of detention, confiscation, or search, resulting in delays in the investigation process. Therefore, future criminal law policies need to pay more attention to the protection of individual rights by optimizing the concept of habeas corpus in pretrial, strengthening applicable procedures, and collaboration between the government, legal institutions, and the community to ensure justice in law enforcement.

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