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Legal Analysis of the Time Limit for Filing a Pre-Trial Application Against the Object of Termination of Investigation

Dea Okta Savira Nurhidayati[1)] & Umar Ma'ruf[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: deaoktasaviranurhidayati.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: umarmaruf@unissula.ac.id

Abstract. *Filing a pretrial motion is one of the mechanisms to control coercive efforts against law enforcement officers, especially in matters such as arrest, detention, confiscation, and termination of investigation. However, in practice, there is a lack of legal norms regarding the time limit for filing a pretrial motion against the object of termination of investigation as regulated in the Criminal Procedure Code. The absence of this regulation has implications for legal uncertainty that is detrimental to both parties seeking justice and law enforcement officers, because it opens up the opportunity for a pretrial motion to be filed at any time without a clear time limit. Based on this background, this study aims to analyze the urgency of regulating the time limit in filing a pretrial motion against termination of investigation and examine how this regulation can reflect the principle of justice that balances the protection of individual rights and legal certainty. This study uses a normative legal method with a statutory approach and a conceptual approach, and is complemented by a comparative study of the habeas corpus system in countries with Anglo-Saxon legal traditions. This study is descriptive-analytical in nature using data collection techniques through literature studies, document studies, and analysis of primary, secondary, and tertiary legal materials. Data analysis is carried out using a qualitative approach through grammatical and systematic interpretation of relevant laws and regulations, including Constitutional Court decisions and the doctrines of legal experts. The purpose of this approach is to produce an in-depth understanding of the problem of pretrial time limits, as well as to offer appropriate legal solutions that can be applied in the criminal law system in Indonesia.*

Keywords: *Investigation; Legal; Pretrial; Termination.*

1. Introduction

To maintain the security and comfort of the community, efforts must be made to enforce the law. The process of implementing law enforcement should be implemented appropriately and supervised, so that the process is not carried out arbitrarily, because the rights of Indonesian citizens in the process must be protected.[1]Pretrial in Indonesia is a new institution in the world of justice in the life of law enforcement. Pretrial is not a stand-alone court institution, but rather a system, because in the criminal justice process in Indonesia consists of stages that are a whole unit that cannot be separated.[2]

Pretrial allows monitoring of actions taken by law enforcement agencies. Pretrial is a form of mechanism provided by the state, which can be used for every community who feels that their rights have been arbitrarily violated. Because in essence, protection of the community is the goal and not just a tool, where there are limitations to an action that is allowed to interfere with fundamental human rights. In other words, pretrial is a legal effort provided by law to control coercive efforts carried out at the investigation and prosecution stages. Obtaining a fair and open mechanism, then testing of state apparatus actions in the form of deprivation of freedom rights or confiscation of goods, such as acts of arrest, detention, determination of suspects, and confiscation are placed in the concept of pretrial which is carried out in an open trial. With an open trial, the implementation of the trial, in addition to being built on the basis of mutual supervision accountability carried out by the parties, there will also be supervision by those who are present at the trial which takes place openly, for example the public or the mass media.[3]

Pretrial is regulated in Law (UU) No. 8 of 1981 concerning Criminal Procedure Law (KUHAP) State Gazette of the Republic of Indonesia 1981 Number 76, and Supplement to the State Gazette of the Republic of Indonesia Number 3209, specifically in Article 1 number 10, Articles 77 to Article 83, Article 95 paragraph (2) and paragraph (5), Article 97 paragraph (3), and Article 124. The Criminal Procedure Code itself comprehensively regulates the scope of pretrial authority, procedural law, and also includes the period of lapse of pretrial applications, but here it is unfortunate that the duties and authorities of pretrial are very limited considering the new pretrial system, and the conditions at that time were very repressive, resulting in broader guarantees of human rights. Article 1 number 10 of the Criminal Procedure Code states that pretrial has the authority to examine and decide on:

[1]Maskur Hidayat, Legal Updates on Pretrial Institutions through Court Decisions. Yuridika, Vol 30 No.3. 2015, p 505
[2]Abi Hikmoro, Thesis: The Role and Function of Pre-Trial in Criminal Law Enforcement in Indonesia (Yogyakarta: Atma Jaya, 2013)
[3]Loc.cit., p 505

1) The legality or illegality of an arrest and/or detention 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 the 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.

Not all coercive measures can be requested for examination to be tested and assessed for their accuracy and truth by the pretrial institution. For example, the actions of searching, confiscating and opening and examining documents are not explained in the Criminal Procedure Code, thus causing ambiguity as to who is authorized to examine them if a violation has occurred. The pretrial institution pays little attention to the interests of protecting the human rights of suspects or defendants in terms of confiscation and searches, whereas arbitrary searches constitute a violation of the peace of the home, and unlawful confiscation constitutes a serious violation of a person's property rights;

The principle in the habeas corpus act system of Anglo Saxon countries, America for example, the role of the judge, is not only limited to supervision of the arrest and detention that has occurred, but also at an earlier time, namely before the detention is carried out, even before the indictment is issued. The judge has the authority to examine and assess whether there are strong reasons and legal grounds for the occurrence of a criminal event and sufficient initial evidence to accuse the suspect of being the perpetrator, although the examination of guilt or not based on the existing evidence is only carried out later in the trial of the case.[4]

The fundamental problem that arises is the absence of explicit regulations regarding the time limit for filing a pretrial motion. This legal vacuum results in uncertainty that has broad implications, not only for justice seekers but also for the criminal justice system as a whole. On the one hand, the absence of a time limit can provide flexibility for suspects or interested parties to file a pretrial motion. However, on the other hand, the absence of a time limit has the potential to cause abuse that can disrupt the effectiveness of the investigation and prosecution process. In fact, problems often arise when the investigation of this case has been stopped, of course if we depend on the norm, then at any time some parties can feel disadvantaged by the termination of this prosecution to file a pretrial motion. This will actually be very disturbing to law enforcement officers who are on duty, because it is still ambiguous whether there will be a pretrial motion or not.

[4]Eka Kurniawan Putra, Time Period for Filing a Pretrial Motion for Objects of Termination of Investigation. Scientific Journal of History Education Students, Vol 8 No. 3. 2023, p 2970

2. Research Methods

Research methods are steps used to solve legal problems, both for academic purposes and for legal practice. This method involves a systematic, logical, and organized approach to extracting relevant legal information. [5] Meanwhile, research is a method based on certain systematic methods and thinking that aims to solve a scientific problem. The approach used in this legal research is a normative legal approach by taking a statute approach and a conceptual approach. The statutory approach is carried out by examining laws and regulations related to the legal issue to be answered. The conceptual approach is an approach carried out by tracing the laws and doctrines that have developed in legal science that are sourced from expert opinions or legislation. In turn, ideas will be found that give birth to legal understandings, legal concepts and legal principles that are relevant to the legal issue at hand.

3. Results and Discussion

3.1. Deadline for Submitting a Pretrial Application for Objects of Termination of Investigation

The law provides guarantees and certainty about the rights and obligations of citizens. The law also cannot distinguish whether citizens are rich or poor, powerful or not, but in the eyes of the law all citizens have the same rights.[6]The purpose of the Criminal Procedure Code itself as a means of legal reform that intends to eliminate past misery. The emergence of new legal discoveries and the formation of new laws and regulations, especially since the New Order Government, is quite encouraging and is a bright spot in legal life in Indonesia, including the drafting of the Criminal Procedure Code. If we examine several considerations that are the reasons for the drafting of the Criminal Procedure Code, then in short the Criminal Procedure Code has five objectives as follows:[7]

1) Protection of human dignity (suspect or accused);

2) Protection of legal and governmental interests;

3) Codification and unification of Criminal Procedure Law;

[5] Willa Wahyuni, Three Types of Methodology for Law Department Thesis Research, https://www.hukumonline.com/berita/a/tiga-jenis-metodologi-untuk-penelitian-skripsi-jurusan-hukum-lt6458efc23524f/ , accessed on November 22, 2024.
[6]Suharto & Jonaedi Efendi. 2013. Practical Guide if You Face a Criminal Case: From Investigation to Trial. Jakarta: Kencana, p. 40.
[7]Dr. Riadi Asra Rahmad, SH, MH, 2019, Criminal Procedure Law, Depok: PT Raja Grafindo Persada, p.3

4) Achieving unity of attitude and action among law enforcement officers;

5) Realizing Criminal Procedure Law in accordance with Pancasila and the Constitution 1945.

In the Criminal Procedure Code, it is regulated that the implementation of Pretrial is an institution that was created to carry out supervisory actions against law enforcement officers so that in carrying out their authority they do not abuse their authority. Pretrial is the authority of the District Court to examine and decide on:

a) Whether or not an arrest and/or detention is valid at the request of the suspect or his/her family or at the request of an interested party for the sake of upholding law and justice;

b) Whether or not the Termination of Investigation or Termination of Prosecution is valid at the request of interested parties for the sake of upholding law and justice; and

c) Requests for compensation or rehabilitation by the suspect or his/her family or other parties or their attorneys whose cases have not been submitted to the Court.

The role of pre-trial is in the framework of enforcing existing regulations to provide protection for human dignity and honor so that law enforcement officers do not act arbitrarily in carrying out their duties.[8]

The matter of the Pretrial is generally limited to Article 77 to Article 83 of Law No. 8 of 1981 concerning the Criminal Procedure Code. In fact, pretrial efforts are not limited to that, because legally the provisions governing pretrial also concern claims for compensation, including compensation due to "other actions" which in the explanation of Article 95 paragraph (1) of the Criminal Procedure Code emphasizes that losses arising from other actions are losses arising from illegal entry into a house, searches and seizures.[9]So in this context, the complete pre-trial is regulated in Article 1 point 10 of the Criminal Procedure Code in conjunction with Articles 77 to 83 and Articles 95 to 97 of the Criminal Procedure Code, Article 1 point 16 in conjunction with Articles 38 to 46, Articles 47 to 49 and Articles 128 to 132 of the Criminal Procedure Code.

In this context, pre-trial motions do not only concern the legality of an arrest or

[8]Moch. Adimas P, Lathifah Hanim, Anis Mashdurohatun, Criminal Investigation Activities in the Framework of Preventing Pretrial Lawsuits at the Semarang Police Criminal Investigation Unit, Khaira Ummah Law, Vol 17 no. 2, 2022, p 86
[9]Klaten District Court, Klaten District Court Pretrial in the Criminal Procedure Code ,https://pn-klaten.go.id/main/49-artikel/artikel-hukum/613-praperadilan-dalam-kuhap/ , accessed on May 19, 2025

detention, or the legality of a termination of an investigation or prosecution, or a request for compensation or rehabilitation, but pre-trial motions can also be made in the event of an error in confiscation that does not include evidence, or a person who is subject to other actions without a reason based on law, due to an error regarding the person or the law applied or due to other actions that cause losses as a result of illegal entry into a house, search and confiscation.

In terms of the structure and composition of the court, pretrial is not a stand-alone court institution, nor is it a judicial institution that has the authority to provide a final decision on a criminal case. Pretrial is only a granting of new authority and functions delegated by the Criminal Procedure Code to every district court that has existed so far, as additional authority and function for the district court. Therefore, all judicial procedures, judicial administration, personnel, equipment and finances are united with the District Court and are under the leadership and supervision and guidance of the Chief Justice of the District Court.

Article 82 paragraph (2) of the Criminal Procedure Code explains that the judge's decision in the pretrial hearing regarding matters as referred to in Article 79, Article 80 and Article 81 of the Criminal Procedure Code must clearly contain the basis and reasons. In addition, Article 77 of the Criminal Procedure Code states that "The district court has the authority to examine and decide, in accordance with the provisions stipulated in this law...". The word "this" in this article indicates that all provisions that are not specifically regulated in relation to pretrial hearings are subject to the provisions stipulated in the Criminal Procedure Code. Therefore, the basis for the judge examining the pretrial hearing to dismiss the pretrial motion can be described as follows:

a. Applicant's Statement

This is based on Article 82 paragraph (1) letter b of the Criminal Procedure Code which states that "... the judge hears statements from both the suspect or applicant and from authorized officials". According to Yahya Harahap, this provision is not imperative. Absence. However, the applicant's absence can be used as a basis for consideration of the applicant's loss. Thus, the applicant's absence from the pretrial hearing is considered a waiver of his right to defend and maintain his interests.[10]

b. Information from the authorized official

This is based on Article 82 paragraph (1) letter b of the Criminal Procedure Code as mentioned above. Generally, the nature of the statement submitted by the authorized official is in the form of a rebuttal to the reasons for the application submitted by the applicant. In this context, the statement of the authorized

[10]Loc.cit., p 16.

official is heard by the judge in the trial as a consideration in making a decision so that the judge's decision is not only based on the application and the applicant's statement, but also based on the data submitted by the authorized official. The authorized official in this pretrial if in the investigation process then by the Police and if in the prosecution process then the Public Prosecutor.

In addition to Article 82 paragraph (1) letter b of the Criminal Procedure Code, the Constitutional Court also laid the basis for evidence in pretrial hearings through Court Decision Number 21/PUU-XII/2014 which declared the phrases "initial evidence", "sufficient initial evidence", and "sufficient evidence" in Article 1 number 14, Article 17, and Article 21 paragraph (1) of the Criminal Procedure Code as long as they are interpreted as a minimum of two pieces of evidence in accordance with Article 184 of the Criminal Procedure Code. The legal consequence of this decision is that the evidence regulated in Article 184 of the Criminal Procedure Code is also binding on pretrial hearings which are in fact examinations of matters as referred to in Article 1 number 10 in conjunction with Article 77 of the Criminal Procedure Code. Therefore, the basis for the judge examining the pretrial to dismiss the pretrial petition can also be obtained from the letter which will be explained later.[11]

c. Letter

Based on Article 187 letter b, one of the means of evidence of a letter as referred to in Article 184 paragraph (1) letter c is a letter made according to the provisions of laws and regulations or a letter made by an official regarding matters included in the procedures that are his responsibility and which are intended for proving something or a condition. In this context, the written evidence that can be used is a summons for trial. Based on Article 145 paragraph (1) in conjunction with Article 227 paragraph (1) of the Criminal Procedure Code, the defendant must be legally summoned within three days before the trial date. This summons can be used as a basis for the judge to dismiss a pretrial motion. In addition to the summons, letters that are related to the contents of other means of evidence as referred to in Article 187 letter d of the Criminal Procedure Code, such as printouts of photos of the Case Tracking Information System (SIPP) and printouts of photos regarding the implementation of the main case trial, can also be used as evidence if the letter shows that the first trial of the main case for which the pretrial motion was requested has begun.

a. Instruction

The indicative evidence as referred to in Article 184 paragraph (1) letter d of the Criminal Procedure Code can be used as a basis for the judge to dismiss a pretrial motion. This indicative evidence is obtained from witness statements, letters and

[11]Loc.cit., p 98.

statements from the defendant. Witness statements can be obtained from statements from the public prosecutor who indicts the applicant or visitor, letters can be obtained from the letters explained in the previous subsection and statements from the defendant can be obtained from the applicant himself who at the time of the first trial had changed status from suspect to defendant.

Based on the description above, it can be seen that the basis for the Judge to be able to dismiss a pretrial motion is from the evidence as regulated in Article 82 paragraph (1) letter b in conjunction with Article 184 paragraph (1) of the Criminal Procedure Code. The evidence submitted at the trial during the pretrial motion is evidence that can show that the first trial of the main case for which the pretrial motion was requested has begun as regulated in Constitutional Court Decision No. 102/PUU-XIII/2015 that the pretrial motion is declared dismissed when the first trial of the main case for which the pretrial motion was requested has begun.

Based on Article 82 paragraph (1) of the Criminal Procedure Code, the Praperadilan process is described. After a request for a Praperadilan examination is submitted, on that day the Head of the District Court will immediately appoint a Single Judge and his Clerk who will examine the Praperadilan case. Based on Article 82 paragraph (1) letter a of the Criminal Procedure Code, the judge appointed to handle the praperadilan case must have set a trial date three days after the case was registered. Within a maximum of seven days is calculated from the start of the examination. If there is an official who has not been able to be brought to trial, this means that the examination can wait until the official can be brought to trial.[12]Furthermore, Article 82 paragraph (1) letter d of the Criminal Procedure Code stipulates that in the event that a case has begun to be examined by the District Court while the examination regarding the request for a pretrial motion has not been completed, then the request is dropped. If the main case has begun to be tried, while the case for which a pretrial motion was requested has not yet been decided, then the pretrial hearing is automatically dropped.

Termination of investigation is the authority of the investigator as regulated in Article 7 paragraph (1) sub i, Criminal Procedure Code. Article 7 paragraph (1) of the Criminal Procedure Code, stipulates: Investigators as referred to in Article 6 paragraph (1) letter a, due to their obligations have the authority:[13]

a. Receive a report or complaint from someone about a criminal act.

b. Take first action at the scene.

[12]Loc, citt p. 72

[13]R. Soenarto Soerodibroto, 1979, Criminal Code and Criminal Procedure Code, Jakarta: PT. Raja Grafindo Persada, pp. 361-366.

c. Ordering a suspect to stop and checking the suspect's identification.

d. Conducting arrests, detentions, searches and seizures. e. Conducting examinations and seizures of letters.

e. Taking fingerprints and photographing a person.

f. Summoning someone to be heard and to be examined as a suspect or witness.

g. Bring in the necessary experts in connection with the case examination.

h. Conducting a cessation of investigation.

i. Carry out other legally responsible actions.

The reasons investigators give for stopping an investigation are: 1. There is insufficient evidence.

2. The incident turned out not to be a criminal act.

3. The investigation was stopped by law

The function of termination of investigation is to protect the suspect from reports that are not based on statutory provisions, for legal certainty, sometimes the law is seen as a subject. The law as a subject must be respected, so in terminating the investigation in the interests of the law, namely not fulfilling the elements, or not including criminal and the second termination in the interests of the law, the difference lies in, termination in the interests of the law can still be reopened with the discovery of new evidence while termination of the investigation by law cannot be reopened (expired, complaint withdrawn, died. Fulfilling the general principles of the Criminal Procedure Code, namely a fast, simple, low-cost, free and honest pretrial, with the termination of the investigation, the resolution of the case will be fast, low-cost and simple.

The scope of Pretrial has been expanded through the Constitutional Court Decision Number: 21/PUU-XII/2014, namely concerning the Determination of Suspects, Confiscation and Search, which had become a polemic in society, but it turns out that in the Decision there is no regulation that includes in detail and clearly the time limit for investigation and the definition of termination of investigation as one of the objects of Pretrial, which is also the authority of the investigator and part of the investigation process to terminate the investigation, so that the Constitutional Court decision that expands the object of pretrial has also not been able to provide legal protection for Reporters or Victims of Crime and Suspects whose criminal cases are deliberately not followed up at the investigation level. In the process of investigating criminal cases, there are several problems that become obstacles for investigators to improve

professionalism in conducting investigations.[14]

There isalso the Constitutional Court Decision Number: 65/PUUIX/2011, which has removed Article 83 paragraph 2 of the Criminal Procedure Code and the Supreme Court Decision Number: 401 K/PID/1983, dated April 19, 1984 concerning the examination efforts at the appeal level against the Pretrial Decision which determined the invalidity of a termination of investigation, whereas, when viewed from the purpose of establishing the Pretrial Institution, it is as a control mechanism against the possibility of arbitrary actions by Investigators or Public Prosecutors in carrying out the criminal case examination process, including in the case of deliberately not following up or deliberately stopping the investigation process of a criminal case.

Based on the above facts, the absence of clear regulations regarding the time limit for investigations and the definition of termination of investigations which are part of the investigation process, and are the scope of Pretrial, has created a legal vacuum and legal ambiguity, especially in the Criminal Procedure Law applicable in Indonesia, so that it is feared that in the implementation of the criminal law enforcement process in the formal legal realm in the future it will not be able to provide justice, benefits and legal certainty to realize legal protection, both for Reporters or Victims of Crimes and Suspects as members of the public seeking justice from arbitrary actions by investigators.[15]

The Investigation Termination Order is not simply issued by the Investigator, but rather for a criminal case that already has a Police Report/Complaint, which then becomes the basis for the Investigator to conduct an investigation process for a crime. In addition, as regulated in PerKap Number 14 of 2012 concerning the Management of Criminal Investigations, that when the Investigator begins an investigation, the basis for the investigation is the SPDP, so that he is burdened with the obligation to notify the Public Prosecutor of the commencement of the investigation, however, the obligation to provide notification is not only at the start of the investigation, but also at the termination of the investigation carried out by the Investigator, therefore, every termination of the investigation carried out by the Investigator must officially issue an Investigation Termination Order (SP3).[16]

In its implementation, there are often notifications of the commencement of investigations that are prolonged without resolution, resulting in uncertainty, related to whether the investigation process of a criminal case is stopped or in fact, the files have been submitted to the public prosecutor, but returned to the

[14]Ahmad Masdar Tohari, Jawade Hafidz, Police Investigation in the Criminal Justice System in Indonesia (Research Study of Kendal Police), Khaira Ummah Law, Vol 12 no. 3, 2022, p 120
[15]Loc, citt p. 73
[16]Lilik Mulyadi. 2007. Normative, Theoretical, Practical Criminal Procedure Law and its Problems, Bandung: Alumni, p. 54.

Investigator due to insufficient evidence (P-19). The existence of an investigation process of a criminal case that is prolonged and unclear, of course does not provide legal certainty and violates the provisions of the Criminal Procedure Code related to the rights of the protected Suspect.

As is known, the Criminal Procedure Code does not yet contain provisions that contain the definition of termination of investigation. The Criminal Procedure Code only regulates that the termination of investigation can be carried out by the Investigator, for reasons as determined in the Law, namely if it turns out that there is insufficient evidence, or the incident is not a criminal act or the investigation is terminated by law, because the suspect has died (Article 77 of the Criminal Code), the case has expired (Article 78 of the Criminal Code), the complaint regarding the criminal incident is withdrawn (specifically for complaint offenses) (Article 75 of the Criminal Code) and the criminal act has obtained a judge's decision that has permanent legal force (Article 76 of the Criminal Code).

Seeing such legal issues, especially the legal ambiguity in the Criminal Procedure Code, several doctrines, academics and criminal law experts have defined the termination of investigation not limited to the actions of the Investigator carried out based on the reasons as stipulated in Article 109 paragraph 2 of the Criminal Procedure Code, but rather describe what actions of the investigator can be categorized as termination of investigation. Termination of investigation is not merely limited to the formality of the Investigation Termination Order (SP3), but is an action by the Investigator who does not follow up on a criminal case for an indeterminate period of time, even to the point of protracted absence of clarity regarding a criminal case that has been reported by the Reporter or Victim of the Crime.[17]

According to the author, reviewed with the Pancasila Justice theory, the absence of a time limit provision regarding the submission of pretrial motions has the potential to create an imbalance between the protection of individual rights and the effectiveness of the legal system. Justice in the Pancasila perspective demands a balance between individual rights and social order. When an individual can file a pretrial motion without a time limit, it will create an inequality that has a negative impact on the performance of law enforcement and procedural justice. Therefore, the need for a time limit regulation is a manifestation of efforts to create social justice, so that legal certainty remains in line with the protection of human rights.

According to the author, reviewed with the theory of Legal Certainty, as stated by Gustav Radbruch, the law must provide clarity, be unambiguous, and be enforceable. The absence of a time limit in the Criminal Procedure Code causes

[17]Husein Harun M. 1991. Investigation and Prosecution in Criminal Process. Jakarta: Rineka Cipta, p 29.

multiple interpretations that contradict the definite legal principles. With a clear and written time limit, all parties, both law enforcement officers and the public, will have a clear legal reference in acting. Therefore, updating criminal procedure law is a must to guarantee legal certainty.

3.2. Justice in the Pretrial Application for Time Limits for Objects of Termination of Investigation

In its development, because the Criminal Code was born from the WvSNI, which was a duplicate of the Dutch Criminal Code with the principle of concordantie, various efforts were made to realize a Criminal Code that was purely based on the philosophy of the Indonesian people and inspired by the "spirit of Indonesian independence".[18]Therefore, various efforts have been made to create a new criminal law system.

In this regard, Eddy OS Hiariej stated that the massive development of criminal law has forced countries, especially countries that were once colonized by other countries, to adjust their Criminal Code to the needs of their respective countries. This can be done by creating a new Criminal Code that is in accordance with the "philosophy of the independent country" or by carrying out "decodification". Decodification can be interpreted as removing "crimes" that were originally regulated by the Criminal Code into "independent laws" or what is known as "special laws" or "sectoral laws". In the Indonesian context, for example, "several crimes of office were removed from the Criminal Code, then the Corruption Crime Law was passed".[19]Also the Election Crimes Act was issued, then the Election Law was passed.

Furthermore, according to Sudarto, there are at least three reasons why it is necessary to update criminal law, as follows:[20]

1. Political reasons Indonesia has been independent from colonialism, so it should have its own Criminal Code. If using another country's Criminal Code is a symbol of colonialism from the country that made the Criminal Code.

2. Sociological reasons The creation of the Criminal Code itself is a reflection of the identity of the nation where the law is located. The social and cultural values of the nation are very important in creating the Criminal Code. The benchmark

[18]Rina Rohayu Harun, Mualimin Mochammad Sahid, and Bahri Yamin, Problems of Criminal Applications Law on The Life of Indonesian Communities and Cultures, IUS: Kajian Hukum dan Keadilan, Vol 11 no. 1, 2023, p 140

[19]BPHN Public Relations, Deputy Minister of Law and Human Rights: Recodification of the Criminal Code Bill Contains Hundreds of Sectoral Laws,https://bphn.go.id/pubs/news/read/2021032204134155/wamenkumham-rekodifikasiruu-kuhp-berisikan-ratusan-uu-sektoral, accessed on May 10, 2025

[20]Reski Anwar, The Existence of the Meaning of Black Magic in the Reform of Criminal Law (Review of the Draft Indonesian Criminal Code, Islamitsch Familierecht, Vol 2 no. 1 2021, p. 6.

for criminalizing an act must be in accordance with the values and collective views in the relevant society that are good, correct and beneficial in creating the Criminal Code.

3. The practical reason is that the current Criminal Code uses Dutch, there is no official translation into Indonesian, so we have to understand Dutch if we want to know the original text, but that is not possible because Indonesia is already independent, so we have to make our own Criminal Code.

This effort has continued since 1958 with the establishment of the "National Legal Development Institute", as an effort to form a new National Criminal Code. In 1963, the First National Law Seminar was held which had produced "various resolutions", including the emergence of "strong pressure" to complete the National Criminal Code in a short time. Historically, there have been several improvements to the Criminal Code with the creation of the Draft Criminal Code.

DPR members resumed discussions on the RKUHP in April 2020. In general, there were no substantive changes in the draft R-KUHP that had been approved in 2019. The DPR then targeted the RKUHP to be ratified in July 2022. However, the R-KUHP was not ratified because the government was still making a number of improvements. In addition, rejection of a number of problematic RKUHP articles is still occurring to this day.[21]It was only on January 2, 2023 that the R-KUHP was ratified with the issuance of Law Number 1 of 2023 concerning the Criminal Code. It was stated that the ratification of this law was in order to realize the national criminal law of the Republic of Indonesia based on Pancasila and the 1945 Constitution. This is a form of adjustment to legal politics, conditions, and developments in community, national, and state life that upholds human rights.[22]

The pretrial institution is present as a form of "balance" between the interests of individuals (suspects or defendants) against the authority given to investigators and public prosecutors to use coercive measures in examining criminal acts, namely arrest and/or detention, including confiscation and searches. The pretrial institution in Indonesia is similar to the Pretrial institution in the United States, the Rechter Commisaris institution in the Netherlands or the Judge Instruction institution in France. However, the scope of the 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.

One of all protections or guarantees of human rights lies in the realization of the implementation of Pretrial, Compensation, and Rehabilitation as regulated in

[21]Loc, citt, p. 14
[22]Naf'I Mubarok, History of the Development of Criminal Law in Indonesia: Welcoming the Presence of the 2023 Criminal Code by Understanding it from the Aspects of History, Thought and Islamic Legal Reform, Vol 7 No.1 2024, p.25

Articles 30, 68, 77-83, 95-96, and 97 of the Criminal Procedure Code. The three legal efforts are the implementation of interests that lead to an arbitrator and administrative nature, with a decision in the form of a determination.

The District Court has the authority to examine and decide, in accordance with the provisions set out in this Law regarding:

a. Whether or not an arrest, detention, termination of investigation or prosecution is legal;

b. Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution stage.

Then after the issuance of the Constitutional Court Decision No. 21/XII-PUU/2014, the provisions regarding the requirements for pretrial motions were added to the determination of suspects, searches and seizures as objects of pretrial motions. In addition, the Constitutional Court changed Article 1 numbers 14, 17, and Article 21 paragraph (1) by adding the phrase "minimum two pieces of evidence" in the process of determining suspects and investigations. However, such regulations do not reflect sufficient justice. Because based on the provisions of the Criminal Procedure Code, pretrial motions can only be submitted through a petition so that the opportunity to submit them is not equal for every member of society but only for those who know the law.

The Criminal Procedure Code regulates in a limited manner regarding Pretrial. Normatively based on Article 5 paragraph (1) and Article 10 of Law No. 48 of 2009 concerning Judicial Power also based on MPR Decree No: II/MPR1993 concerning GBHN and in the attachment to Presidential Decree No. 17 of 1994 which gives a greater role to the judicial institution in determining the direction of legal development for the realization of social justice in society through judge's decisions or jurisprudence, so that through legal interpretation for the sake of justice, Pretrial has the authority to examine and try applications for termination of investigations submitted by suspects as applicants because the series of investigations not only involve the interests of investigators, public prosecutors and interested third parties, but there are suspects/defendants who are included in the elements of the series of investigations. Pre-trial authority is also based on Article 28D paragraph (1) of the 1945 Constitution that people have the right to recognition, guarantees, protection and certainty of fair law as well as equal treatment before the law and Article 28I paragraph (2) of the 1945 Constitution. Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection against discriminatory treatment.[23]

In order to discuss the aspects of justice and legal certainty of the quo case, the

[23]Loc, citt., p.81

judge's logic in forming legal considerations is an essence that must be considered. Each point of the pretrial judge's legal considerations on the a quo case can be analyzed using two methods of legal discovery, namely the legal interpretation method and the legal construction method, including related to the method of legal interpretation in the a quo case, one type of interpretation used by the pretrial judge is extensive interpretation, namely the judge expands the meaning of special provisions into general provisions according to the rules of grammar because the intent and purpose are unclear or too abstract to be clear and concrete, the meaning needs to be expanded. Starting from the two available legal discovery methods, the pretrial judge chooses the interpretation or interpretation method, with the reason to determine the law that was originally unclear to be clear. The reason for choosing this interpretation or interpretation method indicates that the pretrial judge in his legal considerations is of the view that the regulation of the issue of the validity or otherwise of the determination of a suspect in the Criminal Procedure Code and other criminal laws and regulations does not yet exist or is unclear, so that an interpretation or interpretation of the existing provisions is needed to clarify whether the validity of the determination of a suspect is included in the pretrial authority regulated in positive Indonesian law.[24]

Therefore, in order to anticipate the impact of the Pretrial Decision, the Supreme Court of the Republic of Indonesia needs to use its supervisory function to ensure that every judge complies with criminal procedure law in order to guarantee the principles of justice and legal certainty in the decisions issued. And for lawmakers (Government and DPR) to immediately revise the provisions on pretrial as regulated in the Criminal Procedure Code.

The policy of implementing the Pretrial institution is linked to human rights, although the authority of the pretrial as regulated in positive law is limited, but in its implementation the authority is expanded to other coercive measures carried out by investigators (in this case confiscation and searches) because these coercive measures are related to violations of human rights, if not carried out responsibly. The expansion of this authority aims to create and provide a sense of justice and legal certainty for someone who experiences coercive measures from law enforcement officers. However, even though it has been regulated in positive law, in reality there are still weaknesses in these control measures.

The authority of Pretrial is also based on Article 28D paragraph (1) of the 1945 Constitution that people have the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law and Article 28I paragraph (2) of the 1945 Constitution Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection

[24]Ibid., p.83

against discriminatory treatment. The series of investigations not only involve the interests of investigators, public prosecutors and interested third parties, but there are suspects/defendants who are included in the elements of the series of investigations, the author is of the opinion that suspects have the right to file a Pretrial motion regarding the termination of the Investigation because in the series of investigation actions there could be arbitrary actions by investigators that harm the rights of the suspect. The regulation regarding legal subjects who can submit a request to examine the validity or otherwise of a termination of investigation can only be submitted by investigators or public prosecutors or interested third parties, namely witnesses, victims or reporters, non-governmental organizations or community organizations. This is something that is discriminatory and violates human rights and is not in accordance with the principle of "equality before the law" which means equal treatment of every person before the law without making any distinction in treatment.

According to the author, studied with the theory of Pancasila Justice, justice is not only limited to granting individual rights to sue a legal action, but also paying attention to the balance of rights and obligations in a legal society. If pretrial motions can be filed at any time without limits, then this can be misused by parties who do not have good intentions and actually harm law enforcement institutions and the community who demand a quick and complete resolution of cases. Therefore, time limits are a form of implementing the values of justice that are in accordance with the values of social justice according to Pancasila.

According to the author, studied with the theory of Legal Certainty, justice that is not balanced with legal certainty will give rise to instability in the enforcement of criminal law. If the pretrial motion does not have a clear time limit, then the legal process becomes unbound and continues to be suspended. This violates the principle of legal certainty which requires that every legal action must have limits, procedures, and a time period that can be accounted for. Therefore, to ensure the effectiveness of the law, there must be clear legal regulations regarding the time limit for filing a pretrial motion.

4. Conclusion

The time limit for filing a pretrial motion against the object of termination of investigation is necessary because it creates legal uncertainty and opens up loopholes for abuse. This can disrupt the effectiveness of the law enforcement process and cause concern among law enforcement officers. Therefore, the establishment of a time limit for filing is very important to ensure legal certainty, efficiency of the legal process, fair protection of the suspect's rights, and accelerate the completion of law enforcement.

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