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Reconstruction of the Pretrial Regulation in Code of Criminal Procedure in the Framework of Law Enforcement Reflecting Inclusive Law

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***Abstract*-This study aims to examine the urgency of reconstructing pre-trial arrangements in the draft Criminal Procedure Code. The research is categorized as normative legal research. The sources of legal materials used are in the form of primary and secondary legal materials. Primary legal materials are in the form of laws and regulations related to the research theme. While the secondary legal materials are books, articles in national and international journals that are in accordance with the research topic. The results of the study indicate that the implementation of pre-trial so far has not been in accordance with what was expected. The existence of a pre-trial institution is expected to be used as an effort to protect the human rights of the suspect/defendant. The non-optimal existence of pre-trial in practice cannot be separated from the existence of various weaknesses in pre-trial arrangements in the Criminal Procedure Code. Research shows that pre-trial has not been able to realize the principle of coordination as expected by the Criminal Procedure Code. With these various weaknesses, the thought emerged to replace it with a new system that was felt to be better. This is manifested by the introduction of a new system in the Draft Criminal Procedure Code called the Preliminary Examining Judge. The existence of this Preliminary Examination is expected to overcome various pre-trial weaknesses so far. In addition, Preliminary Examination Judges can also realize inclusive law enforcement, namely emphasizing moral and justice aspects.**

***Keywords*- Reconstruction, Pretrial, Law Enforcement, Inclusive Law.**

I. INTRODUCTION

Code of Criminal Procedure have to achive its obyective such as the establishment of law and justice in the national community life. One of the most important focal points of the law enforcement task is none other than the enforcement of law and justice. Thus the central and dominant position and role of the value of justice for law. The law is an instrument for upholding justice and creating social welfare. Without justice as the ultimate goal, the law will become a means to justify the arbitrariness of the majority or ruling party against the minority or controlled party. Ultimately, the primary function of the law is to maintain justice. justice is the main goal of the law, some even argue that justice is the only legal goal. It needs attention regarding that, the implication of the non-linear approach is that jurisprudence has a mission, a just cause. As the highest value of human hope, justice is at the core of the ethics of philosophy, which is also inseparable from the relationship between law and moral values. Either because of community consent or customs, or because it is based on universal principles based on religion. [1]

As a realiazation of the law goal, The Code of Criminal Procedurethere introduce a new institution, which has not been known previously called the Pre-Trial Institution. The heated discussion about the need to strengthen supervision on the validity of actions by judicial institutions that have emerged lately was one of which was triggered by the abuse of authority in carrying out forced efforts that led to the alleged criminalization (malicious presecution) carried out by law enforcement officials [2]. The structure and composition of the judiciary, pretrial is not an independent judiciary. Nor is it a judicial-level agency that has the authority to give a final decision on a criminal act.

Pretrial is only a new institution whose characteristics and existence, it is a unit inherent in the District Court, and as a court institution, it is only found at the District Court level as a task force that is not separate from the District Court, therefore, pretrial is not outside or beside or equal to the District Court, but only a division and a District Court and Judicial, personnel, equipment and financial administration is united with the District Court, and is under the leadership and supervision and guidance of the Chair of the District Court.[3]

The purpose of pre trial is to uphold the law, justice, truth through horizontal means of supervision. The essence of pretrial, to oversee the act of forced efforts carried out by investigators or public prosecutors against the suspect, so that the action was actually carried out in accordance with the provisions of the Act, truly proportional to the provisions of the law, is not an action that is contrary to the law.

The objects of pretrial according to the Code of Criminal Procedure are: District Court has the authority to examine and decide, in accordance with the provisions stipulated in this law concerning, the legitimacy of arrest, detention, termination of investigation or termination of prosecution, compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

The scope of pretrial turns out that the legal development of the last 5 (five) years has broken through these limits and even preceded the discussion of the Draft of Criminal Procedure Code. The development of law is a tangible manifestation of the implementation of a resposive theory that describes the law as a means of responding to social conditions and the aspirations of the people. Expansion of the scope of pretrial especially regarding the determination of suspects has begun before the issuance of the Constitutional Court Decision Number 21/PUU-XII/2014.[4]

In fact by ponting data collected by Institute of Criminal Justice Reform (ICJR), show that eventhough the The Code of Criminal Procedure has provided a pretrial mechanism as an institution to test the illegality of arrest and / or detention, unfortunetely this mechanism is rarely utilized. ICJR research in 2010 showed the lack of use of pretrial. In the city of Medan, for example, the number of pretrial detention recorded in Medan District Court in 2009 was 34, in 2010 was 19, and 2011 was 17. Total pretrial, only one decision was granted, namely on behalf of the applicant Philip Jong, with the decision number 13 / Prapid / 2011 / PN-Mdn. This case became the only pretrial petition granted by the Medan District Court within ten years between 2000 and 2010.133 ICJR research that year also found facts, the pretrial petition submitted to the South Jakarta District Court only totaled 211 in the period 2005 to 2010. Seventy five of them are pretrial petitions regarding detention. Interestingly, from the number of requests for detention in South Jakarta District Court, only one request was granted by a judge, namely the 2006 request in decision No. 19 / Pid.Prap / 2006 / PN.Jak.Sel. While in Kupang, ICJR found that Kupang district Court only handled 12 pretrial petition cases during 2005-2010. Even in 2007 none of the applications were submitted. In detail, in 2005 there were 2 cases, in 2006 there were 3 cases, in 2008 there were 2 cases, in 2009 there were 3 cases and in 2010 there were 2 cases.

II. RESEARCH METHOD

This is research is categorized as a normative legal research, which focuses on studying library materials. [5]. Legal research sources consist of primary and secondary legal materials. Primary legal material in the form of constitutions, statutes passed by legislation, exececutives decree and judicial decisions. While the secondary legal material in the form of textbooks, journals and law dictionaries.[6].

III. FINDINGS AND DISCUSSION

The introduction of the idea of pretrial in the Criminal Procedure Code, must be recognized is a significant development in criminal law procedures in Indonesia, primarily to protect civil liberties from the accused. The reason is, when criminal procedural law in Indonesia still refers to the HIR, there is no known oversight of the authority of investigator's forced efforts, such as the authority to make arrests and detention, including supervision from the court. Pretrial institution has specific aims and objectives, while the aims and objectives to be upheld and protected are the establishment of the law and protection of the rights of suspects at the level of investigation and prosecution.

Departing from the basic needs of the rule of law in a democratic society, both common law and civil law traditions, the criminal process is part of a broader criminal justice system that can be described in three related assumptions – to achieve a balanced balance between individual rights and interests and collective interests. The first is that criminal justice provides security in two senses: by allowing public authorities to lawfully deal with (threatened) crimes through law enforcement and by preventing unwarranted interference in our freedom and well-being by public authorities in the conduct of their business. to investigate crimes and catch and punish criminals. The second assumption is that this can only be achieved by carrying out criminal proceedings that will produce the truth, and doing so fairly and without undue interference in the rights and freedoms of individuals. Third, that this process requires a complex and interrelated system of checks and balances that ensures fairness, and will, as far as humanly possible, prevent wrongdoing: legitimate truth requires justice in prescribed ways, procedural justice itself. assurance, though not absolute, that the truth will be found. [7]

Regarding of criminal procedural law, most talk that it treats the law as an independent universe. The picture goes something like this: The Supreme Court says that suspects and defendants have the right to be free from certain police or prosecutorial behavior. Police and prosecutors, for the most part, then did as they were told. When it doesn't, and when the guilt is linked to a criminal sentence, the court reverses the sentence, thereby sending a message to ill-behaved officials. In contrast to the history of Western countries, including the United States, where the roots of the various protections for the human rights of suspects and criminal defendants lie generations or centuries in the past, formal recognition in Japan of the concept of "rights" for accused persons is almost universal. exclusiveness is a consequence of the adoption of this 1947 Constitution. [8]

The implementation of pre-trial authority is not an easy duty, considering that the activities of one of the state law enforcement tools to evaluate and test the work patterns of other state law enforcement tools must be a job that must be done carefully and master all aspects of legal system enforcement mechanism. The main attention on the pretrial hearing begins to determine "whether the officer has committed/not committed a legal act or whether the officer has an authorized position or not or other things that cause errors, even though according to experience or jurisprudence this work is not always easy. [9].

Eventhough the The Code of Criminal Procedure has stipulated pre-trial system which is supposed as a control

mean for law enforcement officers in performing their duties, but both theoretically and empirically the provision still has weaknesses. The weaknesses concerning the recent Pre-trial arrangement, theoretically are:

a. Victims, complainants and witnesses have no opportunity to submit pre-trial, if the investigator / public prosecutor does not arrest and detain the suspect / accused. It is very dangerous if the suspect / accused is not arrested /detained especially to the security, safety of life, body, property and terror threats to the victim, witness and their families in order suspect / accused is free from lawsuits by eliminating material evidence.
b. The victim, the reporter and witness are not given the right to appeal in stopping the investigation / prosecution, if the Judge's verdict imposes that the termination of the investigation / termination of the prosecution is lawful, so the victim, reporter and witness have closed legal efforts to seek justice.
c. In criminal cases, the judge cannot apply formal proof. As victims, whistleblowers and witnesses do not have the authority to investigate and prosecute, the results of the investigation both from the investigator / public prosecutor are in the hands of the investigator / public prosecutor not on the victim, whistleblower and witnesses who are asked for evidence of the results of the investigation to victims, reporters and witnesses by the judge. While the investigator / public prosecutor can easily obtain original formal evidence requested by the Judge, because indeed the investigator / public prosecutor is given the authority to carry out investigations and prosecutions and it is very easy to make original formal evidence even though the results of the investigation / prosecution are engineered unilaterally which is not in accordance with the reality of material evidence. Whereas victims, reporters and witnesses do not produce formal evidence, especially to fabricate original formal evidence requested by the Judge.[10]

The weakness of pre trial also confirmed by OC Kaligis, a famous lawyer, based on the pre-trial practice that I have done, its weaknesses include the level of investigators. For example, if we file a pre-trial hearing, the investigator immediately submits the case to the prosecutor. A lawyer still often record cases of unlawful arrested and detained and then answered by issuing a warrant for arrest and detention whose date is postponed. [11].

Meanwhile several pre-trial provisions in the The Code of Criminal Procedure are regarded not reflecting justice for the suspect, for example the provisions of Article 82 paragraph (1) letter d of the The Code of Criminal Procedure'a case has begun to be examined' does not mean 'a pretrial request is dropped when the case has been stated' in the case a case has begun examined by the district court, while the examination of the pre-trial request has not yet been completed, the request has been dropped ". The Constitutional Court in decision number 102 / PUU-XIII / 2015 has corrected Article 82 paragraph (1) letter d, but it does not substantially reflect justice for suspects and accused.

Another weakness of the provision is in Article 82 paragraph (1) letter c related to the limitation of the trial period which is explicitly regulated which reads: "The court session is doned quickly and no later than seven days the judge must have made his decision. ICJR research shows that it turns out in practice about 80% of pretrial hearings are overdue, around 60% reach almost one month, and the rest reaches around 2 weeks. [12]. Kediri District Court, Kurnia Yani Darmono's experience, describes that the Pretrial Institution is indeed full of weaknesses. Legal system is the main weakness , as Code of Criminal Procedure is not clearly regulate procedural law in the pretrial hearing, so the principles of civil law are used in practice [13].

The draft of the Code of Criminal Procedure tries to correct various weaknesses in pre-trial arrangements in recent Code of Criminal Procedure. The draft of Code of Criminal Procedure introduces a new concept to change pre trial instituin, namely Preliminary Examining Judges. Pretrial is regarded be less effective as according to the recent Code of Criminal Procedure as pretrial is passive waiting for a lawsuit by the parties. Pre trial also is not an independent institution but is attached to a district court. If an application of pre trial suit is entered, the head of District Court appoints a judge to be a single pretrial judge. The Preliminary Examining Judge idea's is quite different from the pretrial, but it is not the same both as rechtercommissaris in the Netherlands and juge d 'insruction in France. According to the draft Code of Criminal Procedure, Preliminary Examining Judge is not lead the investigation at all. So it can be concluded The Code of Criminal Procedure has make a pretrial reconstruction. (14).

According to the United States criminal justice, the preliminary judge (Magistrate) has been involved in pretrial since the criminal investigation process was carried out or since someone complained about a crime. The function of the magistrate is to provide an assurance of regularity on the record, not to protect any special right of the defendant. [15]. The existence of the Preliminary Examining Judge in the draft of Codee of Criminal Procedure to replace the pre-trial institution, it is hoped to realize the goal of criminal procedural law, including realizing fair law enforcement. In efforts to reform the criminal procedure law in Indonesia, justice is the main variable that must be considered. Reconstruction must be interpreted with a more advanced desire, especially in order to create a sense of justice in society along with the aspirations of the people who are developing in accordance with their demands. For such reason, the reconstruction to the The Code of Criminal Procedure that are desired, has to reflect these demands.

All aspects of life need the idea of justice, so when it comes down to legal justice should be in the triangle legal

justice approach. The legal justice idea that contains substantive justice and procedural justice, which is divided into three types (1) legislative justice is a rule of law as a product of legislative institutions formulated in legal norms; (2) executive justice, namely the role of government officials to apply regulations rules correctly by applying equality and without discrimination and providing specific policies for certain conditions of society because national law unification is unable to serve fairly and (3) Judicial justice, an implementation of settlement Judges in court and outside the court are played by judges and law enforcement officers in applying the law to cases based on the correct material legal rules and using mechanisms and procedures according to the correct procedural law.

For making it possible to harmonize law and justice in the midst of society needs three conditions or three elements or three components. First, legal regulations are needed in accordance with the aspirations of the community, Second, the existence of law enforcement officials who are professional and mentally tough or have commendable moral integrity, Third, the existence of community legal awareness that enables the implementation of law enforcement. This third elemnent seems to be the most urgent, as both the regulations and law enforcers themselves are also highly depend to the awareness and obideince of law. [16].

The public really hopes that the law enforcement process can run in accordance with the concept of the rule of law. Court decisions that contrary to a sense of community justice will seriously worsen people's trust in law enforcement institutions. Law enforcers: police, lawyers, prosecutors and even judges, can no longer just play themselves as "trumpet of the law". They should play themselves more as a "living interpreter", who always interprets the law in accordance with the demands and needs of the people. If law enforcers are reflected as public servants, it should not be a servant in ancient families in the old times, but modern plant operators full of initiative, creativity and energy. [17].

Law enforcement offficer play dominant role in determining the quality of the implementation of the Code of Criminal Procedure. The law in the hands of wise men will produce justice, propriety and legal certainty. On the contrary, the law in the hands of the authoritarians will cause damage for the public. But it is really realize, finding people who are wise is not quite easy. Who thought Suharto was considered a hero in 1966 eventually used the law as a means to maintain her power. [18].

We should appreciate the effort to improve Pre-trial system by reconstructing arrangements by introducing Preliminary Examining Judges. It is must be seen as the seriousness of the drafters of the The Code of Criminal ProcedureBill to create balanced law enforcement. Enforcement must pay attention to aspects of the public interest and protection of the human rights of suspects and defendants. The rights of suspects and defendants remain upheld without ignoring the protection aspects of society, nation and state. Human dignity and must be respected and placed in the highest place. If we ignore such things, we will return to the dark era in the law enforcement process, as was practiced in the era of criminal procedural law inherited from the Dutch colonial era.

The birth of the Criminal Procedure Code in 1981 was greeted with hope from various parties that law enforcement would be carried out according to the principle of the rule of law. The Criminal Procedure Code which replaces the old Criminal Procedure Code, namely HIR, regulates in detail the rights of suspects and defendants. The human rights of suspects and defendants are fully guaranteed in order to create a balance in the implementation of law enforcement. In addition, the Criminal Procedure Code also tries to create a synergistic relationship between law enforcement institutions. This is reflected in the known principle of horizontal coordination between law enforcement agencies. The principle of horizontal coordination is a new thing in the Criminal Procedure Code, which was not known in the previous criminal procedure law.

Pre-trial institutions are one manifestation of the principle of horizontal coordination. The pre-trial authorizes the district court to examine whether the use of force in the form of arrest and detention by law enforcement officers is in accordance with the provisions or not. The use of coercive measures must indeed be monitored so that there is no abuse that has implications for the human rights violation of the suspect/defendant. Theoretically, it is normative that the existence of pre-trial is very promising for the creation of law enforcement that upholds the human rights of the suspect/defendant. At the empirical level, it turns out that the pre-trial has not met the expectations of the justice seekers. There are still weaknesses here and there which result in the implementation of the pre-trial not being able to optimally achieve its objectives.

Efforts to overcome various pre-trial weaknesses are carried out by introducing a new system in the draft KUHAP, which is called the Preliminary Examination Judge. The drafters of the new KUHAP previously used the term commissioner judge, but later replaced it with the term Preliminary Examining Judge. Preliminary Examination Judges have various powers, including testing the legitimacy of using investigators' efforts. The existence of the Preliminary Examining Judge is expected to overcome various pre-trial weaknesses so far. The reconstruction of a statutory provision, especially the criminal procedure law, is always colored by optimism from various parties. In addition, it is necessary to pay attention to whether the results of the reconstruction at the empirical level produce law enforcement outcomes in accordance with what is aspired to. This is very dependent on the work ethic of the implementers, especially the competence of law enforcement officers in carrying out criminal procedural law.

IV. CONCLUSION

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