The Implementation of Article 77 KUHAP Regarding Status of Suspects in Pre-Trial Criminal Justice System in Indonesia

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ABSTRACT
Pretrial is a new institution in the world of justice in Indonesia in law enforcement life. The pretrial court is not an independent institution. The circuits in the criminal justice process in Indonesia including research, investigations, prosecutions, and trial examinations carried out by law enforcement officers. The criminal justice system in Indonesia, it is the public prosecutor who has the authority to prosecute, while the judge has the authority to adjudicate in an examination in court. In the enforcement of criminal law, it must comply with the principles stated in the Criminal Procedure Code. One of the most important principles in criminal law is the principle of presumption of innocence, based on the principle of presumption of innocence, everyone who is suspected, arrested, detained, prosecuted and/or examined in a district court must be presumed innocent until a court decision has no permanent legal force.

Keywords*: Legal Effort, Pretrial, determination of suspect, investigation, trial*

1. INTRODUCTION

The State of Indonesia is a legal state as contained in the Constitution of the Republic of Indonesia (UUD 1945) Article 1 paragraph (3). In all aspects of the life of the state and society, it is regulated based on the applicable legal rules. This implies that the Indonesian state adheres to the rule of law, meaning that the law is used as the basis and foundation for every act of the community or citizens, including law enforcement officers. Guided by the rule of law, the State of Indonesia has implemented laws and regulations in the law enforcement process known as the Criminal Procedure Code. "After the Criminal Procedure Code (abbreviated KUHAP) was promulgated on December 31, 1981 as Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), then gave birth to a new institution, namely pretrial, which had never been previously regulated in procedural law (IR or HIR).

After the Criminal Procedure Code (abbreviated KUHAP) was promulgated on December 31, 1981 as Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), it has given birth to a new institution, namely pretrial, which has never been previously regulated in procedural law (IR or HIR).

However, this pretrial institution can be compared to or as an imitation with the commissioner judge institution (rechter commissaris) in the Netherlands and the juge d' Instruction in France, but the task of pretrial in Indonesia is different from that of commissioner judges in Europe, which is wider than pretrial in Indonesia. In the Criminal Procedure Code (KUHAP) this pretrial issue is specifically regulated in articles 77 and 81. In pretrial, the principle of non-comparability applies. (Article 83 paragraph 1).

There is a pretrial decision that can be requested for a final decision to the High Court, namely concerning a pretrial decision that determines whether or not the termination of an investigation or prosecution is legal at the request of the investigator or public prosecutor.

The implementation of the pretrial trial is regulated in Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which provides the following pretrial understanding:

Whether the arrest, detention, termination of investigation or termination of prosecution is legal or not;

Compensation and / or rehabilitation for a person whose criminal case is stopped at the level of investigation or prosecution.

The parties that can file a pretrial are as follows:

A request for examination regarding the legality of an arrest or detention shall be submitted by the suspect, the family or the proxies to the head of the district court by stating the reasons (Article 79 of the Criminal Procedure Code).

A request to examine the validity of a termination of an investigation or prosecution may be submitted by an investigator or public prosecutor or a third party with an interest to the head of the district court stating the reasons (Article 80 of the Criminal Procedure Code).

Requests for compensation and/or rehabilitation due to illegal arrest or detention or due to the legal termination of an investigation or prosecution are submitted by a suspect or a third party with an interest to the head of the district court stating the reasons (Article 81 of the Criminal Procedure Code).

The Constitutional Court made this decision by considering Article 1 paragraph 3 of the 1945 Constitution which states that Indonesia is a state of law, so that the principle of "due process of law must be upheld by all law enforcement agencies in order to respect one's human rights," which was then reaffirmed through The Constitutional Court's decision Number: 65/PUU-IX/2011, which on page 30 states "The philosophy of holding a pretrial institution which in fact guarantees the rights of the suspect/defendant in accordance with his dignity as a human being" What is examined in a pretrial hearing is only a formal matter of an action carried out by investigators or public prosecutors.

Investigators/Public Prosecutors may put themselves on trial to request a determination regarding whether or not the termination of an investigation/prosecutor, arrest/detention is legal.

The Investigator may pre-trial the Public Prosecutor, or the Public Prosecutor may pre-trial the Investigator as to the legality or otherwise of the action taken

Therefore, Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code) includes a pretrial institution, which is based on Article 1 point 10 in conjunction with Article 77 of the Criminal Procedure Code.

Prior to the Constitutional Court (MK) No. 21/PUU-XII/2014 is the authority of the District Court to examine and decide on:

Whether or not an arrest and or detention is legal at the request of the suspect or his family or other parties on the suspect's power;

Whether or not the termination of the investigation or the termination of the prosecution is legal at the request of upholding law and justice;

Requests for compensation or rehabilitation by the suspect or his family or other parties on their behalf whose cases have not been brought to court.

First of all, it is necessary to know what is the meaning of the suspect. According to Article 1 number 14 of the Criminal Procedure Code (KUHAP), a suspect is a person who because of his actions or circumstances based on preliminary evidence should be suspected as a criminal act.

The question of the requirements for determining a suspect is regulated in the Criminal Procedure Code which been refined by the Constitutional Court (MK). Decision Number 21/PUU-XII/2014 dated April 28, 2015, explained in the decision that the determination of a suspect must be based on (1) a minimum of 2 (two) evidence as contained in Article 184 of the Criminal Procedure Code and (2) accompanied by examination of the suspect candidate.

According to Article 184 (1) of the Criminal Code, the valid instruments of evidence are:

1. Testimony of witnesses;
2. Testimoy of the Expert
3. Letter;
4. Instructions;
5. Defendant’s testimony.

Furthermore, the Constitutional Court's Decision Number 21/PUU-XII/2014 dated 28 April 2015, provides an understanding of "sufficient evidence" which is based on two pieces of evidence plus the investigator's belief that objectively (objectivity can be tested) based on the two pieces of evidence that has occurred crime and a person as a suspect in a criminal act. With the decision of the Constitutional Court dated April 28, 2014 No.21/PUU-XII/2014, it has expanded the pretrial authority to be able to examine and decide whether or not the determination of a suspect is legal.

There are 3 examples of different cases where the petition from each applicant was granted by the Pretrial and the Pretrial revoked the status of the determination as a suspect and declared the investigation warrant issued by the respondent to be invalid and had no binding legal force, then the three cases did not continue or did not. a re-investigation or follow-up is carried out but is null and void due to the non-fulfillment of the criminal elements and the non-fulfillment of the existing evidence.

The first example of a case found in the Pasir Pengaraian District Court, Pekanbaru, the alleged corruption crime committed in the training activities for Village Government officials in Yogyakarta and Bimtek for BPDs throughout Rokan Hulu Regency in Batam for Fiscal Year 2015 amounting to Rp.215,870,294 is not true and unproven so that the pretrial decided to grant the petitioner's pretrial request by stating the determination of the suspect against the applicant made by the respondent was invalid and null and void, ordered the applicant to stop the investigation process and charged the case to the State in the amount of Nil.

Then the second case example found in the pretrial Makassar District Court also granted the pretrial request from the applicant and declared the determination of the suspect against the applicant Ir. Muhammad Syarif, MT and stated that the respondent's action was an act of gross human rights violation for the applicant because the pretrial applicant was not proven to have committed a criminal act of corruption and had nothing to do with the problem at hand.

Then the last example of the case found in the Simalungun District Court, granted the applicant's pretrial application in its entirety and stated the determination of the suspect made by the respondent against the applicant as a suspect in a criminal act jointly committing violence against people or goods in public as referred to in Article 170 Subs 406 of the Criminal Code by the Head of the Tanah Java City Sector Police is invalid and not based on law and therefore the determination of the suspect against the Petitioner in the a quo case does not have binding legal force.

Based on the facts and opinions above, the authors are interested in discussing and conducting research with the title Application of Article 77 of the Criminal Procedure Code Regarding Determination of the Status of Suspects in the Pretrial Criminal Justice System in Indonesia (Case Study: Supreme Court Decision No. 5/Pid.Prap/2018/

Pn.Prp,Decision/20/Pid.pra/2019/Pn.Mks,Decision/No.4/Pid.pra/2019/Pn.Sim).

2. RESEARCH METHOD

Legal Research Method is a process to find a rule of law, legal principles, and legal doctrines to answer the legal problems faced. The following are the research methods used in this study:

2.1. Type of Research

The type of research in this legal research is normative-juridical legal research, normative legal research is research conducted by obtaining data from library materials, usually called secondary data. The library materials used in normative juridical research are in the form of legal norms, basic rules and existing laws and regulations 27 and Court Decisions. The literature study carried out is by reading, analyzing existing library materials to develop the data obtained.
The nature of the research used is descriptive, namely the author tries to provide a complete, detailed, and clear picture of a reality regarding law enforcement against Pre-Trial in the Court.

2.2. Type of Data

The types of data used in this study are as follows:
1. Primary Legal Material
   Primary legal materials are authoritative legal materials, which means they have authority. Primary legal materials are in the form of statutory regulations and judges' decisions. The legal materials used in this research are the Criminal Procedure Code (KUHAP), the Constitutional Court Decision.
2. Secondary Law Material
   Secondary Legal Materials, which consist of materials that provide an explanation of primary legal materials, such as books, journals, articles, and electronic media. For secondary legal materials, the author takes sources from books related to Criminal Law.

2.3. Legal Materials Collection Techniques

In collecting data the author uses the method of collection of library materials. Primary data includes official documents, books, research results in the form of reports, diaries and so on. Also conducted data collection through virtual interviews.
Primary data is data taken from the Court's Decision Letter regarding Pretrial and respondents in the field with the aim that this research can get actual results from the object being studied.
Secondary data is data that supports and supports primary data, this data is obtained from library materials and laws and regulations, books, literature and expert opinions related to this research problem.
Primary legal materials include legislation and official regulations, namely the Book of Criminal Law (Law No. 1 of 1946) and the Book of Criminal Procedure Law (Law No. 2 of 2002) as well as law No. 28 of 1997 on the State Police of the Republic of Indonesia.
Secondary Legal Materials, which consist of materials that provide an explanation of primary legal materials, such as books, journals, articles, and electronic media. For secondary legal materials, the author takes sources from books related to Pretrial Institutions.
The approach used in this research is a statutory approach and a case approach. The case is studied to obtain an overview of the impact of the dimension of normalization in a rule of law in legal practice.

2.4. Data Analysis Technique

The analytical technique used in this research is inductive logic. Logic The inductive method consists of the scientific method in which a series of conclusions or responses are obtained, from a certain or specific set of premises. Its components include observation, study, classification and recording so that it can be correct or useful. The method with this inductive technique is an instrument that seeks to obtain broad conclusions through certain cases. It goes from the particular to the universal. Inductive is the most widely used method in scientific research, because it seeks to draw general conclusions from the individual or concrete phenomena being studied.

3. DISCUSSION

Issue Based on the description that has been stated in the background, the problems that will be studied by the autor in this writing proposal/journal is:
How is the application of Article 77 of the Criminal Procedure Code regarding the determination of the status of a suspect in the pretrial criminal justice system in Indonesia?

3.1. Pretrial System of The Criminal Law in Indonesia

The expansion of the scope of pretrial authority, especially regarding "determination of suspects" had begun before the issuance of the Constitutional Court's Decision No. 21/PUU-XII/2014. With the presence and formation of the Constitutional Court Decision No. 21/PUU-XII/2014 states that the provisions of Article 77 of the Criminal Procedure Code have no binding legal force as long as it is not interpreted including the determination of suspects, searches and seizures. As for one of the legal considerations, the determination of a suspect is part of the investigative process which constitutes the confiscation of human rights, so the determination of a suspect by investigators is an object that can be requested for protection through pretrial legal endeavors. This is solely to

protect a person from arbitrary actions by investigators which are likely to occur when someone is named a suspect, even though in the process it turns out that there was an error, there is no other institution other than the pretrial institution that can examine and decide. The Constitutional Court's decision provides protection for a person who experiences an incorrect legal process when he is named a suspect. In criminal justice, there are several principles that uphold human rights, that everything must have strong evidence before it can be followed up. Some of these principles include:

3.2. Presumption of Innocence

The essence of this principle is quite fundamental in criminal procedural law. The provisions of the principle of "presumption of innocence" can be seen in Article 8 paragraph (1) of Law Number 48 of 2009 and the general explanation is number 3 letter c of the Criminal Procedure Code which stipulates that:
"Every person who is suspected, arrested, detained, prosecuted, and or brought before a court must be presumed innocent before a court decision declares his guilt and has obtained permanent legal force.

3.3. Equality Before the Law

In criminal procedural law, there is no priviligiatum forum or special treatment, because the state of Indonesia as a state of law recognizes that humans are equal before the law (equality before the law).
As stipulated in Article 4 paragraph (1) of Law number 48 of 2009 and the general explanation number 3 letter a of the Criminal Procedure Code, namely "the court judges according to the law by not discriminating between people". Departing from the fundamental principles in criminal law, there are cases that prove that criminal law in Indonesia is still overlapping, and there are many arbitrary actions carried out by law enforcement officers without paying attention to that everyone has human rights guaranteed by the state, which should be It is law enforcement officers who must uphold this for the sake of creating justice and security for everyone.
The case belongs to the Petitioner on behalf of:
Name of Petitioner: Faisal Umar Respondent: Attorney General of the Republic of Indonesia Cq. Head of the Riau High Court Cq. Head of the Rokan Hulu District Attorney's Office as Investigator.
chronology: On March 13, 2017 the applicant was determined as a suspect by the Rokan Hulu District Attorney's investigator, the applicant felt very objectionable because the applicant believes that his stipulation as a suspect is not based on the provisions as stipulated in the Criminal Procedure Code (KUHAP); Based on these objections, the applicant on this occasion submits a pretrial application to the Rokan Hulu District Court in order to examine whether or not the Defendant's investigation and determination of a suspect is valid.
Whereas the legal basis for the submission of this pretrial petition by the APPLICANT is article 77 of the Criminal Procedure Code which states that:
The district court has the authority to examine and decide, in accordance with the provisions stipulated in this law regarding:
Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal or not.Compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.
Whereas the object of the pretrial as referred to in Article 77 of the Criminal Procedure Code is further elaborated by the Malikamah of the Constitution of the Republic of Indonesia through its decision number: 21/PUU-X11/2014, dated 28 April 2015 which, in its ruling, stated that there must be sufficient preliminary evidence that two evidence contained in Article 184 of Law No. 8 of 1981 concerning the Criminal Procedure Code.
Pretrial which was originally projected as a means of monitoring to test the validity of a coercive measure, for example regarding the arrest and detention of suspects, is now considered to be merely an administrative oversight. This is because whether or not arrests and detentions are legal can be proven enough by law enforcement, by showing the presence or absence of a formal arrest warrant/detention warrant. In addition, the Suspension of Detention which is the right of the Suspect/Defendant, is often ignored by law enforcers, who actually prioritize the subjective conditions of detention, as referred to in Article 21 paragraph (1) of the Criminal Procedure Code, namely the existence of "Worries" from Law Enforcers that the suspect / the defendant will run away, destroy/eliminate evidence and/or repeat the act."
Several similar cases that occurred due to the authority of law enforcement officers in determining the status of suspects without regard to human rights and the principle of presumption of innocence include:
1. Supreme Court Decision No.5/Pid.Prap/2018/Pn.Prp
2. Decision/20/Pid.pra/2019/Pn.Mks
3. Decision/No.4/Pid.pra/2019/Pn.Sim

The addition of the object of pretrial authority regarding the validity of the determination of suspects, searches and confiscations as described in its development through the Constitutional Court Decision Number 21/PUUXII/2014 makes the object included in the object of pretrial authority. The basis for adding these objects is as a form of supervision of the arbitrary actions of investigators in determining the status of suspects who are not in accordance with the procedures as stated in the Criminal Procedure Code.
The decision to determine the suspect as an object of pretrial is to protect every individual citizen against abuse of power by state institutions, especially law enforcement agencies, thereby harming the fundamental rights of individual citizens from state arbitrariness in the context of realizing protection and promotion as well as respect for HAM. Determination of the suspect as an object of pretrial as a form of supervision and control mechanism for the law

enforcement process which is closely related to the guarantee of the protection of human rights by affirming that the system adopted by the Criminal Procedure Code is an accusatur, i.e. the suspect is positioned as a human subject who has the same dignity, dignity and status before the law , with the principle of due process of law as a manifestation of the recognition of human rights.

With the expansion of the investigation as a pretrial object, it is not possible to achieve an integrated criminal justice system because the institution which is the entry point for the integrated criminal justice system will work more carefully to enforce the law. Law enforcement officers in carrying out their duties and authorities must be more prudent in preventing the occurrence and arbitrary actions in the process of determining suspects in the judicial process by viewing and positioning suspects as human subjects who have the same dignity, status and position in the eyes of the law. As evidence of the legal process as a manifestation of the recognition of human rights in the criminal law enforcement process that must be upheld by all parties, especially law enforcement agencies.

In its development, many events that became important events in this trial, including the most basic one was the examination which reversed the procedure in the Criminal Procedure Code, especially in terms of investigations as described in the three cases above, where in the investigation process should be collecting evidence to find suspects in the case. some pre-determined events to find evidence. This is what is used as the basis by the Constitutional Court to establish norms that have the authority to pretrial, including whether or not to test the determination of a suspect.

4. CONCLUSION

The absence of stipulation of the suspect as an object of pretrial in Article 77 letter a of the Criminal Procedure Code does not make the provision unconstitutional. If the determination of a suspect is deemed to be able to respect and protect the suspect's human rights, then such an idea may be included in the provisions of the law by the legislators in accordance with the authority attached to it.

According to the Petitioner, the investigation is not a criminal process that requires the birth of a suspect in the final process. The investigation expressly stipulates that the determination of the suspect is an advanced stage whose conditions can only be carried out after the investigator has succeeded in gathering sufficient evidence.

The provisions in Article 77 which are considered not to cover the protection of the suspect's human rights are then expanded by the provisions in the process of determining suspects based on the Jurisprudence of the Constitutional Court Decision Number: 21/PUU-X11/2014.

Considering that so far the determination of the suspect status given by the investigator to a person has been attached without a clear time limit. As a result, the person is forced to accept his status without having the opportunity to test the validity of the determination. In relation to this decision, the Constitutional Court decided that "...Article 77 letter a of the Criminal Procedure Code has no binding legal force as long as it is not interpreted including the determination of suspects, searches and seizures...". In other words, the determination of the suspect becomes the object of pretrial through this Constitutional Court Decision. According to the author, the Constitutional Court's decision is an advancement for the protection of human rights in Indonesia.

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