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Expansion of Interpretation of the Indonesian Criminal Procedure Code in Pre-Trial Authority

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***Abstract*—Pre-trial is an effort to correct citizens for the use of coercive measures by law enforcement officers. The law has determined several powers that can be examined by pre-trial judges. In practice, there is also an expansion of this authority on the grounds of legal discovery. This paper concludes that expansion in some cases is unjustified, and it is not a legal discovery.**

Keywords—pre-trial, legal discovery

I. INTRODUCTION

There is no definition of coercion in the law nor in the literature. However, grammatically it can be interpreted that coercion is an attempt to coerce. Normatively, everyone should cooperate with law enforcement officials to comply with every summons to be examined in a criminal case.

The state through law gives authority to law enforcers to impose their will on those who are not cooperative in the law enforcement process. It should be understood that this institution is an authority, not the right of law enforcement. Rights and powers are two different things.

Within their authority, law enforcers may choose to use or not use their authority. Even if you have to use it, it must always be remembered that this authority is used solely in the context of seeking material truth and protecting victims. In this case of coercion, it appears that law enforcement is so mighty and strong, so that it is very vulnerable to violations of human rights, even though it is not certain that someone is guilty anymore.

The law then provides a means of correction for the use of such coercive measures, which is called pre-trial. Pretrial is an institution that was born on the basis of thinking to carry out a supervisory action against law enforcement officers so that in carrying out their authority they do not abuse their authority, because it is not enough for an internal control within the institution of the legal apparatus itself, but also cross supervision is needed between fellow law enforcement officers [1].

The pre-trial institution is actually a "correction" room for the actions that have been carried out by law enforcers. At the pre-adjudication stage, it is possible for law enforcement to act inconsistently with the provisions of the applicable law, resulting in harm to the suspect, the suspect's family, or interested third parties. Acts committed by law enforcers may violate human rights to freedom, such as arrests and detentions. For suspects, their families, or their proxies who object to the arrest and detention, they can test the matter through the pre-trial afternoon [2].

II. IDENTIFICATION OF PROBLEMS

- What is the expansion of pre-trial authority in criminal procedural law in Indonesia and in current practice?
- Is expansion outside the law normatively justifiable from the perspective of legal discovery?

III. RESEARCH METHODS

The approach method used is juridical-normative, with the type of dogmatic research, the form of legal relationship research. The specification of this research is descriptive-analytical. The data collection method used is library research method (library method) by testing document materials and library materials used in this study. The data were analyzed qualitatively-normatively, researched by interpreting and constructing statements contained in the legislation. Qualitative analysis method, built based on secondary data in the form of theory, meaning and substance from various literatures, laws and regulations, court decisions, then analyzed with normative laws, theories and related expert opinions, so that conclusions are obtained about the expansion of pre-trial authority according to several court decisions.

IV. RESEARCH RESULTS AND DISCUSSION

A. Expansion of Pre-Trial Authority in Practice

Based on this understanding as further regulated in Article 77 of the Criminal Procedure Code, the pre-trial authority is to examine:

- Whether or not the arrest is legal;
- Whether or not the detention is legal;

- Whether or not the termination of the investigation is legal;
- Whether or not the termination of prosecution is legal;
- Compensation or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

This pretrial authority was later expanded by the Constitutional Court, through Decision Number 21/PUU-XII/2014 to include the authority to adjudicate on:

- Whether or not the determination of the suspect is valid;
- Whether the search is legal or not;
- Whether the confiscation is legal or not;

Although normatively based on the Criminal Procedure Code and several decisions of the Constitutional Court, in practice there has also been another expansion of pre-trial authority.

Some of these expansions include:

- Examine and declare that the investigation is no longer valid because the time for the investigation process has passed. The judge was of the opinion that the investigation period should have ended because of the order of Law no. 18 of 2013 states that the investigation period is 60 days and can be added 30 days. Investigations that have exceeded the 90-day period are considered contrary to justice and must be declared no longer viable.
- To declare the validity of the pre-trial application for the third party applicant who owns the confiscated goods. There have been quite a number of pre-trial decisions that have granted the application of the owner of the goods used by other people as perpetrators of criminal acts as an interested third party other than what has been confirmed by the Constitutional Court's Decision.
- Declaring the invalidity of the determination of a suspect is not simply the absence of evidence, but because the evidence is distorted. The judge assessed that the evidence held by investigators had been distorted which was equated with no evidence. The sole pretrial judge, Taufik Nainggolan, in his decision assessed the quality of the evidence in determining the Petitioner as a suspect was distorted or no longer complete [3].
- Assessing the strength of the evidence as it should be examined in the main case.
- Declaring that the determination of the suspect is invalid and the investigation is invalid because it considers the case to have expired, as stated in the Tanjung Pinang District Court Decision No. 3/Pid.Pra/2021/PN Tpg who assessed that the case examined by the Kepri Kejati had expired. In fact, according to the author, the assessment of expiration or ne bis in idem is the reason for the investigator to stop the investigation is a reason that can be assessed on the subject of the case.
- To declare a case whose investigation has been terminated because it is considered not a criminal act as a criminal act and to assess the elements of a criminal act as it should be examined in the main case, as stated in the Pre-trial Decision of the Jambi District Court Number 9/Pid.Pra /2021/PN Jmb with the applicant Mujianto facing the Jambi Police. Sole judge Romi Sinatra considered the termination of the investigation conducted by the Jambi Police to be invalid, because the judge was of the view that the events examined by the Jambi Police had fulfilled the elements of a criminal act of fraud. The judge described one by one the elements of the criminal act of fraud and assessed that in this case all the elements had been fulfilled.

B. Expansion of interpretation outside the law is not a legal discovery

In accordance with Perma No. 4 of 2016 concerning the Prohibition of Reviewing Pretrial Decisions. The provisions of Article 2 paragraph (2) stipulate that the pretrial examination of the application regarding the invalidity of the determination of the suspect only assesses the formal aspect, namely whether there are at least 2 (two) valid evidences and do not enter the matter of the case. Therefore, there is no authority for pretrial judges to assess the subject matter of cases, considering that pretrial institutions are a means of horizontal supervision that are limited to conducting formal examinations. This is in accordance with the Jurisprudence of the Supreme Court's Decision No. 227/K/Kr/1982 concerning Pretrial, which states as follows: That the authority of the District Court is the authority of horizontal supervision.

In line with this, Indriyanto Seno Adji [4], is of the opinion that this Pre-Trial only has the authority to examine (examination judge) the implementation of several coercive measures, so that the Judge is not given a broader authority and includes an investigating judge. With this understanding, the authority of examining pretrial judges must mean that the examination is formally administrative, and not at all in the understanding of the broad investigating authority of the validity of evidence from allegations of elements of offense, which of course is the authority of the judge.

If the pre-trial hearing decides that a case that is being handled by an investigator must be stopped, then it is clear that the decision exceeds its authority, except on the grounds that the determination of the suspect is insufficient, and not for other reasons. This has been limitedly regulated both in the Criminal Procedure Code, the Constitutional Court Decision and the Supreme Court Regulation.

If there are deviations or actions by law enforcement that exceed their authority, then this is clearly a violation of the

principles of criminal procedural law which are lex certa, lex stricta and lex scripta and the principle of due process of law so as to injure people's sense of justice. Judges according to the Indonesian legal system are not as free as in the freerechtbewegung school but are bound to the rechtvinding (legal discovery) school. What is meant by Rechtvinding is the process of establishing law by judges/other law enforcement officers in the application of general regulations to concrete legal events and the results of legal findings being the basis for making decisions. In this regard, Sudikno Mertokusumo [5] stated: "In contrast to the Legislature and Freie Rechtslehre schools, Rechtsvinding adheres to the law but is not as strict as the Legislature and is not as free as the Freie Rechtslehre school. In other words, bound but free (gebonden vrijheid) and free but bound (vrijegebondenheid). The task of the judge in Rechtsvinding is to harmonize the law with the real social conditions of society (sociale). werkelijheid) and if necessary add laws adapted to the principle of community conditions. Bound freedom and free attachment are reflected in the interpretation of the law, and filling the legal vacuum with analogy, rechtsverfijning and argumentum a contrario. For judges (in Rechtsvinding), jurisprudence has an important meaning in addition to the law, because in jurisprudence there is a concrete legal meaning that is not contained in the law. The difference with the Legislature and Freie Rechtslehre schools is that in Legism jurisprudence is secondary, while for the Freie Rechtslehre school it is the same primary. What is meant by legal discovery is usually the process of establishing law by judges or other legal apparatus assigned to apply general law regulations to concrete legal events. Or in short, it can be defined as the process of concretization or individualization of general legal regulations (das sollen) by remembering certain concrete events (das sein).

According to Sudikno Mertokusumo [6], there are two types of legal discoveries:

- The discovery of heteronomous law is that if in the discovery of the law the judge is fully subject to the law, the judge only confirms that the law can be applied to concrete events, then the judge applies it according to the sound of the law.
- The discovery of Autonomous Law is if the judge in making his decision is guided by his own views, understandings, experiences and observations or thoughts. So the judge decides a case before him according to personal appreciation, without being absolutely bound to the provisions of the law.

Judging from the flow in legal discovery, there are three forms of flow, namely Legism (Legal Positivism), Freirechbewegung and Rechtvinding (Law Discovery by Judges) which consists of Begriffsjurisprudenz, Interessenjurisprudenz, Soziologische Rechtschule schools. If in the flow of legism judges are fully subject to the law, in the flow of Freirechtbewegung, judges are free and do not depend on the law because judges are the legislators. Rechtvinding paradigm is a middle ground between the two, and it is this school that is embraced in Indonesia.

Based on the study of the discovery of the law, it can be concluded that the discovery of the law can only be done in the event that there is a legal vacuum against a concrete legal event. This is where judges are required to play their role in finding the law, either by interpreting the law or constructing it.

Rudolf van Jering reminded that in carrying out legal construction the judge must be able to cover all fields of positive law concerned, there should be no logical contradiction in it or should not contradict himself, must reflect the beauty factor (not something made up and must be able to give a clear picture of something, so that it is possible to combine various regulations, create new meanings).

Judging from the definition, legal interpretation is a form of legal discovery, so actually the law already exists, it just needs to be explored again, looking for other sources that are used as the basis for deciding a case, other sources are from the community in the form of life values or norms and habits. which is called interpretation. Who digs is a judge who has the authority and right to decide and settle a case [7].

The reason why the legal interpretation process is carried out is because the laws / regulations contain ambiguous meanings, multiple interpretations, vaguely unclear, do not exist in jurisprudence or doctrine (opinions of experts), There is an obligation for judges to decide a case that is submitted, and the judge may not reject a case (UU/48/2009 article 10) because the judge is considered to know even though he does not know. While legal construction is a process or step of discovery or creation of law, the law does not exist / there is a legal vacuum called a wet vacuum. If there is no legal vacuum or no interpretation, then according to the KUHAP principle that criminal procedural law must be lex stricta, les scripta and lex certa, in principle there should be no interpretation of criminal procedural law other than what has been explicitly regulated in the law.

V. CONCLUSION

Based on the above discussion, it is concluded:

- The expansion of pre-trial authority in criminal procedural law in Indonesia has been limited by Article 77 of the Criminal Procedure Code and added to the decision of the Constitutional Court, but in current practice there has also been an expansion that adds to the authority of pre-trial judges.
- Expansion outside the law can normatively be justified from the perspective of legal discovery because legal discovery in the sense of legal interpretation and construction can only be justified if there is a legal vacuum or ambiguity in the meaning of the law. In criminal procedural law, the law has been made firm, concrete and written so that in principle nothing else needs to be interpreted.

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