The Formal Criminal Law Renewal: Due Process of Law in Pre-trial for Legal Assurance

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Abstract. Law No. 8 of 1981 concerning the Criminal Procedure Code regulates criminal procedural law nationally based on the nation's philosophy of life and the State's basis to protect human rights. Pre-trial institutions are a form of codified horizontal supervision regulated in Articles 77 to 83 of the Criminal Procedure Code. In practice, the development of pre-trial authority has been expanded based on the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015. Substantive reform of formal criminal law on Article 77 a of the Criminal Procedure Code provides optimal human rights protection. The formulation of this research is what is the principle of due process of law on the determination of suspects in reforming the pre-trial criminal law? The method used is juridical empirical. The results of the study can be concluded that the pre-trial criminal law reform places investigators' actions in making efforts to force the determination of suspects based on the principle of due process of law in the implementation of law enforcement originating from the ideals of the rule of law (rechtstaat). The principle of due process of law emphasizes to investigators, investigators, obligations, and obligations to be carried out in determining the suspect fulfills a minimum of 2 (two) pieces of evidence in quantity and quality to realize legal certainty for the whole community, respect human dignity in the law enforcement process.

Keywords: Due process of law · Formal criminal law reform · Pre-trial

1 Introduction

Pre-trial institutions as an effort to monitor horizontally guarantee the protection of human rights. The investigator's actions within his authority for any errors carried out in the ongoing law enforcement process can be corrected by the Pre-trial Judge. Every individual dealing with the legal process is protected for their dignity as a human being.

Horizontal supervision protects the actions of investigators, especially determining someone as a suspect, which must be carried out with the correct procedure as specified in the Criminal Procedure Code and the provisions of the legislation. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms, "Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." The validity of the suspect's judgment is also guaranteed in Article 17 of Law Number 39 of 1999 concerning Human Rights, which states that "everyone without

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discrimination has the right to obtain justice by submitting applications, complaints, and lawsuits, both in criminal, civil and administrative cases and tried through a judicial process that is free and impartial, following the procedural law which guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision."

Determination of suspects becomes one of the authorities of the judges to examine and try at the District Court. It is the judge's authority to find the law with the judge's freedom to examine and explore the legal values that live in society at the request of the pre-trial case examination (Law No. 48 of 2009 on Judiciary, Article 5, Paragraph 1). Is it true that someone has fulfilled sufficient initial evidence, at least 2 (two) valid evidence in quantity and quality of strong suspicion as the perpetrator of a crime?

According to the decision of the Constitutional Court No. 21/PUU-XII/2014 of 28 April, the investigation and monitoring of the validity of the identification of suspects by pre-trial bodies in legal affairs becomes a power to hear in district courts. death by judicial conviction in 2015. The decision of the Constitutional Court stated that "Article 77 letter a of Law Number 8 of 1981 concerning the Law of Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981, Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) has no binding legal force as long as it is not interpreted including the determination of a suspect, search and confiscation".

Previously, the Criminal Procedure Code did not provide for a system to check and balance the investigation of suspects because there was no mechanism to check the validity of evidence collection.. "The Indonesian Criminal Procedure Code has not fully implemented the due process of law principle because the actions of law enforcement officers in seeking and finding evidence cannot be tested for the validity of the acquisition." The supervisory function of the Pre-trial Institution is only *post facto*, and the examination is only formal, which prioritizes the objective element, while the court cannot supervise the subjective factor. The request for preliminary examination if the identification of the suspect is limited by the provisions of Clause 10, Article 77 and Article 77 of the Criminal Procedure Code. In fact, identifying suspects is part of the investigation process. There may be arbitrary actions from the investigators, which are included in depriving a person's human rights [1].

The validity of the identification of a suspect under the pre-trial authority's jurisdiction on the basis of the meanings of the terms "preliminary evidence", "sufficient preliminary evidence" and "adequate evidence", as indicated in Article 1 No. 14, Article. Article 17 and Article 21, Clause (1) of the Criminal Procedure Code must be understood as "having at least two specimens of evidence" specified in Article 184 of the Criminal Procedure Code. The provisions of the Criminal Procedure Code do not explain the limit on the number of terms "initial proof", "sufficient preliminary evidence" and "sufficient evidence". Only Article 183 of the Code of Criminal Procedure stipulates the minimum evidence.:

"Judges can only sentence a person if they have at least two pieces of evidence and so on." Therefore, the meaning of "at least two evidences" is specified in Article 184 of the Criminal Procedure Code, which is the testimony of the witness, the expert's statement, the letter, the instruction and the testimony of the accused, represents the procedural principle. protection of human rights in the criminal justice process.

The juridical consequences of the Constitutional Court's Decision Number 21/PUU-XII/2014 dated 28 April 2015, substantively the pre-trial authority has been expanded. According to the Big Indonesian Dictionary (KBBI), the phrase "expansion" has the meaning of "expanding." Another definition of expansion namely the addition of [2]. The meaning of expansion as a special meaning that turns into a general word with a "wider" meaning.

Expansion of the authority to adjudicate Pre-trial Institutions Article 77 a of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in judicial practice by implementing 2 (two) legal provisions, namely: First, Article 77a of the Criminal Procedure Code regulates the pre-trial authority to adjudicate on (i) the legality of an arrest, (ii) detention, (iii) termination of investigation or (iv) termination of prosecution. Second, the decision of the Constitutional Court Number 21/PUU-XII/2014, dated 28 April 2015, determines the expansion of the pre-trial authority to examine (v) the determination of suspects; (vi) search; and (vii) confiscation.

Based on Article 77 letter a of Law Number 8 of 1981 concerning the Criminal Procedure Code, the authority of the Pre-trial Institution, which was previously limited to the authority of coercive measures, has changed the formation of a new norm according to the decision of the Constitutional Court to amend the formulation of the provisions of Article 77 letter a of the Criminal Procedure Code on the authority to adjudicate pre-trial. The establishment of new norms through the decision of the Constitutional Court is aimed at safeguarding the constitution and ensuring that there are no coercive measures that contradict the law from investigators.

The principle of due process should generally be respected in all actions of law enforcement officers seeking and seeking evidence. The previous due process principle cannot be tested for the validity of an acquisition. Current developments give the public the opportunity to consider changes to the official criminal law provisions in Article 77 a of the Criminal Procedure Code.

Submission of a valid examination of the determination of suspects in Pretrial Institutions based on a description of the number of cases entered in the last five years (2016-2021) Pre-trial applications for invalidation of the determination of suspects at the Special Class IA Central Jakarta District Court recorded 56 (fifty-six) cases, 13 (thirteen) cases were granted, 25 (twenty-five) were rejected, 2 (two) cases were not accepted, 8 (eight) cases were denied, and 8 (eight) cases were withdrawn [3]. At the South Jakarta Special Class IA District Court, there were 327 (three hundred and twenty-seven) cases, 41 (forty-one) cases were granted, 143 (one hundred and forty-three) were denied, 23 (twenty-three) cases were not accepted, 28 (twenty-eight) cases fall, and 92 (ninety-two) cases are withdrawn [4]. Furthermore, in the Special Class IA Semarang District Court, as many as 49 (forty-nine), 11 (eleven) cases were granted, 32 (thirty-two) were denied, 3 (three) cases were not accepted, 1 (one) case was rejected, and 2 (one) cases were withdrawn [5].

From the case data above, it shows the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015, the principle of due process of law was applied for the determination of suspects who were deemed not to meet legal certainty and a sense of justice, and solutions to provide optimal protection of human rights.

The ability to check to identify the suspect as one of the authorities lies at the base of the investigation. As a participant in the criminal process, the suspect has been identified as a human being with equal dignity, status and status before the law and is protected by law and optimal security. In addition, in handling cases as part of the evidence-gathering process that is the starting point for a suspect of a crime, investigators apply the principle of precaution for law enforcement purposes. legislation to obtain legal certainty.

To learn more about the existence of due process practices to protect human rights in law enforcement on suspect identification, research should be conducted. The formulation of the problem raised in this study is, how is the principle of due process of law on the determination of suspects in the reform of formal pre-trial criminal law?

2 Research Method

The method used in this is a descriptive-analytical approach using the empirical juridical approach, meaning that the data obtained are based on the juridical aspects and the empirical aspects used as a tool. Analytical descriptive means describing something as an object of critical research through qualitative analysis within the scope of legal science, so the normative approach includes legal principles, synchronization of laws and regulations, and *inconcreto* legal discovery efforts.

This study describes the principle of due process of law concerning the authority of investigators, especially in determining suspects who are strongly suspected of committing criminal acts and pre-trial judges as regulated in Article 77 a of the Criminal Procedure Code and the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015.

3 Findings and Discussion

3.1 Horizontal Supervision Pre-trial Institutions

Law Number 8 of 1981 concerning the Criminal Procedure Code, from now on known as the Criminal Procedure Code, regulates the national criminal procedure law based on the nation's philosophy of life and the basis of the State to protect human rights.

The pre-trial institution was born from an inspiration that came from the rights of *Harbeas Corpus* in the *Anglo-Saxon* judicial system, which provided fundamental guarantees for human rights, especially the right to independence. The *Harbeas Corpus* Act entitles a person through a subpoena to sue the arresting officer. This guarantees protection against deprivation or limitation of freedom for suspects following applicable legal provisions and guarantees of human rights [6].

The pre-trial body under the provisions of Article 77 of Law No. 8 of 1981 on the Code of Criminal Procedure (KUHAP) gives the district court powers of review and decision:

a) The legality of the arrest, detention, termination of the investigation, or termination of prosecution;

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

The expansion of pre-trial authority is certainly not limited to those regulated in Article 77a of the Criminal Procedure Code based on the Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015. By decision of the Constitutional Court No. 21/PUU-XII/2014 of 28 April 2015, district courts have been given additional powers for pretrial investigation. The decision of the Constitutional Court is final and binding. First and last, whose decision is final, has permanent legal force since it was pronounced, and no legal remedies can be taken. The decision as a legal act by a State official causes the parties in the case to be bound by the decision in question, which has determined what becomes law, either by changing the old legal situation or at the same time creating a new legal status. The parties bound by the award must comply with the changes in legal circumstances created by the recognition and implement them.

Judicial practice that is developing now, juridically the pre-trial authority is carried out based on Article 77a of the Criminal Procedure Code, and the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015. 2 (two) legal provisions regulate, namely: First, the provisions of Article 77 a of the Criminal Procedure Code regulates the pre-trial authority to adjudicate on (i) the legality of an arrest, (ii) detention, (iii) termination of investigation or (iv) termination of prosecution. Second, the decision of the Constitutional Court Number 21/PUU-XII/2014, dated 28 April 2015, determines the expansion of the pre-trial authority to examine (v) the determination of suspects; (vi) search, and (vii) confiscation.

The expansion of pre-trial authority after the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015, which has changed the pre-trial authority as regulated in Article 77 a of the Criminal Procedure Code, was previously limited to 4 (four) legal norms, has been expanded with the addition of 3 (three) legal norms so that the forced efforts that can be requested for pre-trial examination become 7 (seven) legal norms resulting in the expansion of the performance of law enforcers following their authority to carry out coercive measures at the preliminary examination stage. The Investigator should prioritize procedures in stages in carrying out a case process concerning the principle of equality before the law in the criminal justice system.

The judgment of the Constitutional Court No. 21/PUU-XII/2014 of 28 April 2015, initiating a compulsory review of the identification of one of the investigative authorities, is essential in legal practice. It is believed that It is undeniable that other actions in the form of arrests, detentions, searches and seizures will emerge. It is necessary to be careful that investigators who make arrests meet material requirements or not. Investigators ensure that the determination the suspect with a "strong suspicion" has committed a crime based on "sufficient preliminary evidence" that meets the minimum requirements of proof as stated in Article 183 of the Criminal Procedure Code and Article 184 of the Criminal Procedure Code. Determining someone to be a suspect is the same as giving a label that continues to be attached as a suspect, which results in the reduction of human rights, such as prevention of travel, and visits, and loss of certain rights such as the right to become a public official and the right to be promoted for civil servants and soldiers/police. Moreover, the determination of the suspect within a protracted period of

time is not immediately delegated to a judicial examination. Constitutionally, the right to fight for legal certainty and justice is fulfilled through pre-trial.

The opening of the examination of coercive measures against the determination of suspects who are one of the pre-trial authorities in the decision of the Constitutional Court Number 21/PUU-XII/2014 dated 28 April 2015, it is necessary to be careful that investigators who make arrests actually meet the material requirements or not. Investigators ensure that the determination that a suspect with a "strong suspicion" has committed a crime based on "sufficient preliminary evidence" that meets the minimum requirements of proof as stated in Article 183 of the Criminal Procedure Code and Article 184 of the Criminal Procedure Code is completed in quantity and quality. Constitutionally, the right to fight for legal certainty and justice is fulfilled through pre-trial examination.

3.2 The Principle of Due Process of Law in Pre-trial

The concept of due process of law cannot be separated from the history of the human rights struggle. In England, it was known as the Magna Charta (1215), followed by the Bill of Rights (1689), the Declaration Des Droit De L'Home et du Citoyen (1789), the Declaration of Independence (1876), and the Declaration of Human Rights (1948). For human rights protection to be implemented effectively and universally, The principles of human rights protection must be formally enshrined in the Code of Criminal Procedure so that everyone can follow and respect human rights and understand their rights and obligations. Law and human rights are binding on everyone. They pay attention to the balance between individual rights and freedoms and the responsibility to respect the human rights of others in the social order.

As a starting point, Article 24 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that one of the powers of the Constitutional Court is to examine laws against the 1945 Constitution of the Republic of Indonesia as part of efforts to realize checks and balances mechanism between the branch of state power based on democratic principles. In their position related to implementing the criminal justice system, pre-judicial institutions are part of the essence of the Due Process Model (DPM), which emphasizes that a criminal justice process is to carry out the rules of criminal law and its sanctions by prioritizing morality.

The orderly rule of law principle upholds the rule of law. No one is above the law when dealing with criminal activity, and the law must apply to everyone on the basis of the principle of fair and just treatment. Therefore, the criminal procedural law must not only be based on the written law in the Criminal Procedure Code, but it must also pay attention to the principles of protecting human rights and according to the constitution. Due process of law emphasizes that the enforcement and application of criminal law must comply with constitutional requirements and follow the law. Due process of law does not permit breaking one part of the law in order to enforce another part of the law.

For the achievement of the due process of law to be guaranteed in its implementation, law enforcers must guide and recognize (recognized), respect (to respect for), and protect (to protect) as well as guarantee the doctrine of incorporation (incorporation doctrine), which contains various rights, including others, some of which have been formulated in Chapter IV of the Criminal Procedure Code concerning investigators and public prosecutors [7]:

a. No one can be forced to be a witness against himself in a criminal act (the right of self-incrimination).
b. May not revoke or eliminate the right to life, independence, or property without being followed by the provisions of the procedural law (without due process of law).
c. Everyone must be guaranteed a person's rights, residence, examination papers, and unreasonable confiscation.
d. The right to confront in the form of cross-examination with the person who accuses (reports).
e. The right to a speedy trial.
f. Equal protection and equal treatment of the law. In handling the same case, the principle of protection and the same treatment must be enforced. Providing different protection and treatment is a discriminatory act.
g. The right to have the assistance of counsel in self-defense. This right is a principle regulated in Article 56 paragraph (1) of the Criminal Procedure Code.

The application of the principle of presumption of innocence and related to the development of the Miranda Rule, which has also been adopted in the Criminal Procedure Code, such as: prohibiting investigators from carrying out cruel coercion practices to obtain confessions (brutality to coerce confession), and prohibiting investigators from conducting psychological intimidation as an integral part of Article 56 paragraph (1) of the Criminal Procedure Code stipulates that if a suspect or defendant is suspected or charged with committing a criminal act punishable by death or punishable by a sentence of fifteen years or more who does not have his legal counsel, the officials concerned at all levels of examination in the judicial process are obliged to appoint legal counsel for them. In other words, in line with the principle of due process of law, law enforcement officers should remind and explain to suspects what their constitutional rights are (warning of their constitutional rights). Article 56 of the Criminal Procedure Code is imperative (ordering). Neglecting this provision will result in the examination of the suspect being unacceptable. In most cases that fall under Article 56 of the Criminal Procedure Code, the suspects are investigated without being accompanied by legal counsel. Examination of the suspect at the investigation stage without being accompanied by legal counsel follows the principle of within sight and hearing. It is contrary to Article 115 of the Criminal Procedure Code.

3.3 Renewal of the Pre-trial Formal Criminal Law

The decision of the Constitutional Court Number 21/PUU-XII/2014, dated 28 April 2015, has expanded the authority to examine and adjudicate the pre-trial authority. The decision of the Constitutional Court stated that "Article 77 letter a of Law Number 8 of 1981 concerning the Law of Criminal Procedure (State Gazette of the Republic of Indonesia Year 1981, Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209) has no binding legal force as long as it is not interpreted including the determination of a suspect, search, and confiscation".

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The decision of the Constitutional Court Number 21/PUU-XII/2014, dated 28 April 2015, as one type of decision of the Constitutional Court that is considered a Conditionally Constitutional Decision. This decision of the Constitutional Court still maintains the constitutionality of the pre-trial system as stipulated in Article 77 a of the Criminal Procedure Code while still binding on the specified conditions. Conditional constitutional decisions are legally binding on expanding pre-trial authority based on the interest of filling the legal vacuum.

The court's view is that the Criminal Procedure Code is a formal penal code in the criminal justice process in Indonesia, there are still some judgments that need to be interpreted to comply with the lex certa principle and principle. strict lex rules to protect a person from arbitrary actions by investigators and investigators. Investigators, when determining "preliminary evidence", "sufficient preliminary evidence" and "sufficient evidence" mentioned in Article 1, point 14, Article 17 and Article 21, paragraph (1), of the Code criminal proceedings, arbitrary actions can be avoided. Legal certainty by affirming article 1, no. 14 of the Criminal Procedure Code, does not explain the limited number of terms "initial evidence", "sufficient preliminary evidence" and "sufficient evidence". The minimum limit of evidence is provided for in Article 183 of the Criminal Procedure Code, which states: "A judge can pronounce a sentence against a person only if that person has at least two pieces of evidence ... and so on now". At least two pieces of valid evidence are the primary requirement to identify a person as a suspect. The role of the Constitutional Court as defender of human rights is to respond to the constitutional/constitutional authority granted by the 1945 Constitution of the Republic of Indonesia to provide legal certainty under the law current.

The determination of the suspect's status is the starting point for a series of other actions in the law enforcement process. Law enforcers in the law enforcement process, if they strongly suspect that he is the suspect based on the evidence already possessed by the investigator, the investigator in assigning a suspect to a person has sufficient evidence following Article 183 of the Criminal Procedure Code, namely at least two pieces of evidence. In the coercive effort that started at the investigation stage, no one was and put themselves above the law. The law must be applied to anyone based on the principle of honest and objective treatment towards justice and legal certainty with the principles of protecting human rights and according to the constitution (due process of law).

Article 1 point 14 of the Criminal Procedure Code stipulates the existence of preliminary evidence but does not mention that the initial evidence meets the minimum requirements of proof (sufficient). Article 1, number 14 of the Criminal Procedure Code only mentions that it is appropriate to suspect a criminal act based on preliminary evidence, not with sufficient evidence. Preliminary evidence is sufficiently decisive to legally suspect someone as a suspect, as stated in Article 183 of the Criminal Procedure Code and Article 184 of the Criminal Procedure Code. Investigators are required to have preliminary evidence that meets the minimum requirements; at least the investigator must have two preliminary pieces of evidence, then the case can be submitted to the prosecution

stage and court trial. This refers to the Regulation of the Chief of the National Police of the Republic of Indonesia Number 6 of 2019 concerning the Investigation of Crimes Part Five, Article 25 states that in the case of determining a suspect:

(1) Determination of a suspect based on at least 2 (two) pieces of evidence supported by evidence;
(2) The determination of the suspect, as referred to in paragraph (1), is carried out through a case title mechanism unless caught red-handed.

Pre-trial examination in the case of determining the status of a suspect is limited in a limited manner as referred to in Article 1 number 10 junto Article 77 letter a of the Criminal Procedure Code. The legal norm for the legitimacy of determining a suspect as a pre-trial authority is that the treatment of a person places a human being who has dignity and worth. The authority of investigators is in carrying out investigations by summoning, examining, arresting, detaining, searching, confiscating, and others against a person suspected of being a suspect and evidence considered to be related to a criminal act. Implementing these rights and authorities must remain obedient and subject to the right of due process principles. Every suspect has the right to be investigated and investigated according to the applicable criminal procedure law.

The due process of law in the implementation of law enforcement stems from the ideals of a state of law (*rechtstaat*) which upholds the rule of law (the law is supreme) and emphasizes that in law enforcement, "we are ruled by law" and "not ruled by people" or "boss." Starting from the principle of due process of law, it is emphasized to investigators, investigators, and public prosecutors to adhere to the provisions of the applicable criminal procedure law (criminal procedure), which in this case is the Criminal Procedure Code.

Reform of formal criminal offenses is in line with the ideals of national law by replacing the criminal procedural law, which has conductive and unified characteristics based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The development of national law through the field of criminal procedural law is aimed at enabling the public to live up to their rights and obligations and to achieve and improve the attitude development of law enforcement officers following their respective functions and authorities towards the establishment of law, justice, and protection which is a protection against overall human dignity, order, and legal certainty. Pre-judicial institutions are part of the essence of the Due Process Model (DPM), which emphasizes that a criminal justice process carries out criminal law rules and sanctions by prioritizing decency. Agree with Barda Nawawi Arief's view that criminal law reform is essentially part of a rational effort to streamline law enforcement through improving legal substance, rational efforts to tackle crime (evil acts both by law and by the community), rational efforts to overcome social problems that can be resolved through law [8]. Furthermore, the renewal of criminal law as legal politics in *post-factum* or legal politics is carried out when concrete situations have occurred in society [9]. Expansion of pre-trial authority to create legal certainty.

Criminal procedural law is carried out in the manner prescribed by law. According to Sudikno Mertokusumo, procedural law is strict, fixed, correct, definite, cannot be deviated, and must be imperative (force) [10]. A check and balance system for the act of determining suspects by investigators on the validity of obtaining legal evidence is

required. Suddenly someone feels that there has never been a summons for examination as a witness or a potential suspect and is immediately designated as a suspect by the investigator. The investigator has evidence that strongly suspects that he is the suspect based on the evidence that has been owned/and obtained by the investigator. Still, because the acquisition of the evidence did not go through procedures and procedures that were not legal, for example, the evidence was obtained from the case on behalf of another person, the competent authority does not issue the evidence. In fact, there may not even be sufficient initial evidence. Still, sufficient evidence is used for other criminal acts of the suspect, then equated to be the basis for determining a person's suspect.

KUHAP as formal law is very important for material law. The existence of formal law to implement material law. Referring to the views of Prof. H.A.S. Natabaya, Constitutional Justice argued that "procedural law (formal law/*formele recht*) is the lifeblood of material law (*material recht*) which provides guidance or guidance in implementing material law to provide legal certainty to all parties involved in enforcing the law and justice. Otherwise, there will be *eigenrichting*" [10].

3.4 The Principle of Due Process of Law in the Reform of Pre-trial Formal Crimes

The reform of the formal criminal law of pre-trial institutions does not only have an impact on legal certainty in the horizontal supervision concept but also has an impact on the legal certainty of applicable legal provisions in realizing the development of national law, namely the need for revision of Law Number 8 of 1981 concerning the Criminal Procedure Code.

Gustav Radbruch gives the view that legal certainty is legal certainty itself. Legal certainty is the application of law or, more specifically, of legislation. The purpose of the law, according to Gustav Radbruch, is that the law must contain three primary values, namely: the value of justice (philosophical aspect), the value of certainty (juridical aspect), and the value of the benefit (sociological aspect) [11]. Every legal regulation must be able to return its validity to these three primary values [12]. Jan Michiel Otto's view shows that legal certainty can be achieved if the legal substance follows the community's needs. The rule of law can create legal certainty that is born from and reflects the culture of the community. Legal certainty like this is called true legal certainty, which requires harmony between the State and the people in orienting and understanding the legal system [13].

In judicial practice, after the expansion of pre-trial authority, at the first level judicial body at the District Court, the Supreme Court issued Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Judicial Review. Likewise, the Police, who play an essential role, have the authority to carry out investigations, investigations, arrests, detentions, searches, confiscations, and issue the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations. Regulations on the judiciary and the police are binding internally within the court and police institutions as procedures and mechanisms that must be carried out to fulfill their functions to realize the objectives of the pre-trial.

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Pursuant to the Regulation of the National Police Chief of the Republic of Indonesia No. 6 of 2019 on criminal investigation, in carrying out a series of investigative processes and investigating criminal acts, directives are given to there is no arbitrariness. as law enforcemen. Investigations and investigations are carried out fairly and objectively. In addition, justice seekers are increasingly open to finding law enforcement actions that carry out their duties and authorities unprocedural, making the basis and reasons for submitting pre-trial efforts. Investigators conduct investigations and inquiries to summon, examine, arrest, detain, search, confiscate, etc., against a person suspected of being a suspect and evidence deemed related to a criminal act. There are already existing parameters for the law enforcement process against the police. Criminal Investigations regulate more clearly whether investigators violate or not in the case examination process.

It becomes a concern when someone has been named a suspect but is not immediately followed up with the next stage of examination, even though the status of the suspect has affected a person's physiology, good name, and negative stigma. The provisions of Article 14 paragraph (5) stipulate that "...If the Investigator has not submitted the case file within 30 (thirty) days to the Public Prosecutor, the Investigator is obliged to notify the progress of the case by attaching the SPDP". From the provisions, it means that the period of time for a person who has been designated as a suspect who is not followed by a forced detention effort is not regulated, so there is no legal certainty until the time limit for becoming a suspect is immediately filed and transferred to the Public Prosecutor. It doesn't just set the time period for sending the SPDP. Indirectly there has been a violation of human rights in this regard.

The expansion of pre-trial authority in Article 77a of the Criminal Procedure Code through every process of coercive measures in the preliminary examination stage of legal norms for every act of arrest, detention, determination of suspects, confiscation, and search, essentially optimally, the State protects the human rights of its citizens. This thus obliges other people, including the State, to respect it, even constitutionally, the provisions on Human Rights (HAM). Referring to Article 1 paragraph (3) and Article 28D of the 1945 Constitution of the Republic of Indonesia, "everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law."

The basis for reforming the formal criminal law, Article 77 a of the Criminal Procedure Code, guarantees the existence of equal legal treatment during the criminal justice process. The Court has considered the legal interests involved with a person's fate in fighting for and defending himself, which is obtained through unprocedural means. The determination of a suspect against a person may not be carried out arbitrarily by law enforcers, which is the application of the principle of due process of law.

Legal certainty reflects justice in the judge's decision by basing the judge's obligation to explore, follow and understand society's values and sense of justice. The Judge's authority to determine the law through *Rechtsvinding* or legal discovery is made through

the method of interpretation. When a judge examines a case that requires an answer to a legal vacuum by making legal discoveries, the legal breakthroughs that have been carried out have provided legal certainty and justice for Commissioner General Budi Gunawan for other actions by setting him as a "suspect" to be "illegitimate." Legal certainty and justice can undoubtedly be achieved without the courage of the judge with the freedom and courage to dig and find the law. In making legal discoveries, judges can interpret conditions in a society where there is no law through a withdrawal of interpretation to fill the void. The purpose of legal discovery is to see how the relationship between legal problems, legal solutions, and decisions will be taken in the process of law formation [14]. The mechanism for administering the judiciary as a system is in line with the view of the theory of the legal system (three elements of the legal system) proposed by Lawrence M. Friedman. In his theory, Lawrence M. Friedman states that in the legal system, three things complement and influence each other: components of legal substance, legal structure, and legal culture [15].

The reform of formal criminal law in the due process of law principle with the expansion of pre-trial authority is certainly not limited to only those regulated in the provisions of Article 77a of the Criminal Procedure Code, but expanding the authority carried out there are obligations and obligations of law enforcement, investigators are increasingly careful and professional in ensuring the protection of human rights in every implementation of the examination process.

4 Conclusion

Pre-trial institutions are codified starting from Article 77 to Article 83 of the Criminal Procedure Code and have expanded the pre-trial authority based on the Constitutional Court Decision Number 21/PUU-XII/2014 dated 28 April 2015, becoming the foundation of hope for realizing justice and legal certainty for all people who are subject to coercive efforts by investigators. Control mechanisms are necessary against all possible arbitrary actions in the investigation. The District Court, as a judicial body at the first level, supervises, controls, assesses, and examines whether the actions of investigators in carrying out coercion are contrary to the law. The due process of law in the implementation of law enforcement stems from the ideals of a state of law (rechtstaat) which upholds the rule of law (the law is supreme) and emphasizes that in law enforcement, "we are ruled by law" and "not ruled by people" or "boss." Starting from the principle of due process of law, it is emphasized to investigators, investigators, and public prosecutors to adhere to the provisions of the applicable criminal procedure law (criminal procedure), which in this case is the Criminal Procedure Code.

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