International Journal of Law, Crime and Justice
Volume 2, Number 1, March 2025
E-ISSN : 3047-1362; P-ISSN : 3047-1370; Pages 98-107
DOI: https://doi.org/10.62951/ijlcj.v2i1.416
Available online at: https://international.appihi.or.id/index.php/IJLCJ

Juridical Review of Pretrial Proceedings Against the Determination of a Suspect in the Crime of Maltreatment

Ritian Handayani [1], Yasmirah Mandasari Saragih [2]
[1,2] Universitas Pembangunan Panca Budi, Indonesia

Jl. Gatot Subroto Km.4,5 Sei Sikambing 20122 Kota Medan, Sumatera Utara
Email : ritianhandayani30@gmail.com yasmirahmandasari@gmail.com

Abstract *Examination of a criminal case in a judicial process essentially aims to find the material truth, namely the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and in a timely manner with the aim of finding out who the perpetrator is who can be charged with committing something. violation of law. Making a post mortem et repertum gives the full duty to the doctor as an implementer in the field to assist the prosecutor in determining the direction of the charges that will be brought against the defendant, as well as assisting the judge in finding the material truth in deciding the criminal case. This research includes normative legal research, so the legal materials used are primary, secondary and tertiary legal materials. The technique for collecting legal materials that will be used as a source in this research is library research, namely collecting legal materials by reading statutory regulations, official documents, journals, articles from the internet, and other literature that is closely related to The issues discussed are based on secondary legal materials. The presence of the Pretrial Institution provides a warning that law enforcers must be careful in carrying out their legal actions and every legal action must be based on applicable legal provisions, meaning that they must be able to exercise restraint and distance themselves from arbitrary actions. Thus, it is clear that organizing pretrial proceedings is not an easy task considering that the activities of one law enforcement agency to assess and test the work patterns of other law enforcement agencies is definitely work that must be carried out carefully and mastering all law enforcement mechanisms. The judiciary in Indonesia, one of whose tasks is to examine laws against the constitution, is what we often call judicial review. This judicial review is carried out to protect the rights of citizens who feel disadvantaged by the enactment of a law. In this case, what concerns the author is the judicial review of article 77 of the Criminal Procedure Code, which in this article is felt to be detrimental to someone who is designated as a suspect by investigators, because the article does not regulate the determination of suspects as pre-trial objects.*

Keywords: *Pretrial, Crime, Persecution*

1. INTRODUCTION

The birth of pretrial is due to the fact that most law enforcement officers or officials authorized to conduct investigations, in exercising their authority, cannot avoid the possibility of committing acts that are contrary to the provisions of the applicable laws and regulations, which can violate human rights. The rule of law is a state that upholds the rule of law to uphold truth and justice where it does not see a power, so that there is no power that cannot be accounted for. Law is a compelling regulation, which determines human behavior in society, which is made by authorized official bodies. Where violations of these rules result in action being taken, namely with certain penalties.

Pretrial is a natural thing and does not need to be feared as long as the investigation process and the coercive measures taken are based on the rules contained in Law No. 8 of 1981 on Criminal Procedure, hereafter referred to as (KUHAP). Not all pretrial decisions are won by the suspect or the filing party. In the pretrial hearing process, of course, it will consider both

Received: December 30, 2024; Revised: January 20, 2025; Accepted: February 10, 2025; Online Available: February 12, 2025;

juridical and material facts. Pretrial itself is a new institution in the world of justice in Indonesia in the life of law enforcement. Pretrial is not a stand-alone institution.

In essence, it is a system, this is because the criminal justice process in Indonesia consists of stages which are an inseparable whole. The stages in the criminal justice process are a series, where one stage affects the other stages. The stages in the criminal justice process in Indonesia include investigation, prosecution and court hearing conducted by law enforcement officials .

Problem Formulation

1. What is the Legal Arrangement of Pretrial against suspects of criminal offense of maltreatment?
2. How is the judicial review related to pretrial for suspects of criminal offenses of persecution?

2. RESEARCH METHODS

In this research, the author uses several research methods in order to obtain data to solve problems in the object of research. The author uses qualitative analysis to analyze data obtained from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions, or researchers' own opinions. Data analysis is an explanation of how data processing works. Therefore, it can be information and materials used in research. This research includes normative legal research, so the legal materials used are primary, secondary, and tertiary legal materials. The technique of collecting legal materials that will be used as a source in this research is a literature study, namely the collection of legal materials by reading laws and regulations, official documents, journals, articles from the internet, and other literature that is closely related to the issues discussed based on secondary legal materials.

3. RESULTS AND DISCUSSION

a. Legal Arrangements for Pretrial Hearing of Suspects in the Crime of Persecution

Pretrial is one of the institutions introduced by KUHAP in the midst of law enforcement. Pretrial in KUHAP is placed in Chapter X, Part One, as part of the scope of authority of the District Court. In terms of judicial structure and organization, pretrial is not an independent court institution. Pretrial is a new authority and function delegated by KUHAP to each District Court.

Article 1(3) of the 1945 Constitution reads 'Indonesia is a State of Law'. This means that the Rule of Law must have at least 3 (three) characteristics, namely: the rule of law,

equality before the law and the guarantee of self-protection of rights. The rule of law means that citizens are governed by the law and by the law itself a person can be punished, not punished for a different reason. Basically, every forced effort (enforcement) in law enforcement contains very basic human rights values. Therefore, it must be protected carefully and carefully, so that the deprivation of it must be in accordance with the applicable procedures. What we must first understand here is what is meant by the suspect and also the determination of the suspect itself, whether these two are the same or different, to answer this question let's look at Article 1 point 14 of the Criminal Procedure Code which states that a suspect is a person who because of his actions or circumstances based on preliminary evidence should be suspected of being a perpetrator of a criminal offense .

From the sound of the article we can see that a suspect is a person suspected of committing a criminal offense which does not necessarily mean that the suspect has committed a criminal offense, because to find out whether the act is a criminal offense must go through the process of investigation and investigation. The determination of a suspect is a form of authority possessed by law enforcers to give a title to the person suspected by the name of the suspect, against a determination of a suspect there is no deprivation of rights against a person as referred to in article 77, as long as the Criminal Procedure Code has not been amended then the provisions therein remain in force. Any objection to a determination of a suspect that is submitted to the Pretrial institution on the grounds that the decision was made by an unauthorized official cannot be submitted to Pretrial.

Similarly, the lack of evidence for a suspect determination is not a pretrial competence, but must go through the main case trial process and in material evidence, the authority to determine whether or not the preliminary evidence is sufficient is the investigator, and the determination of a suspect is also based on preliminary evidence. The determination of a suspect that is submitted to the pretrial institution on the grounds of coercion in the form of prevention, cannot be the object of pretrial because prevention is not included in the coercion as referred to in Article 77 of the Criminal Procedure Code. Although pretrial under Article 77 of the Criminal Procedure Code is authorized by the district court to examine and decide, in accordance with the provisions stipulated in the law. Pretrial is not at all concerned with the validity of the determination of a suspect made by an investigator, while the investigator himself is concerned with human rights so that in determining a person as a suspect, it is not arbitrary .

Protection of human rights is a very broad term. The human rights law does not provide a complete interpretation of the term protection. The elucidation of the law on human rights,

in particular the elucidation of article 8 only states 'what is meant by protection' includes the defense of human rights. In principle, the main purpose of the pretrial institution in KUHAP is to exercise 'horizontal supervision' over coercive measures imposed on suspects while they are under investigation or prosecution, so that these measures are not contrary to the provisions of the law and the law in relation to coercive measures taken by investigators, whether POLRI investigators or KPK investigators or public prosecutors against suspects. The Criminal Procedure Code has clearly regulated, sourced from the articles, the pretrial authority. However, there is another authority, namely to examine and decide on claims for compensation and rehabilitation as specified in Articles 95 and 97 of the KUHAP. The first authority granted by law to the pretrial court is to examine and decide whether or not:

1. A suspect who is subjected to arrest, detention, search or seizure may apply to the pretrial court to examine whether or not the action taken by the investigator is valid. The suspect may apply to the pretrial court to examine whether the detention imposed by the investigating officer is contrary to the provisions of Article 21 of the Criminal Procedure Code, or whether the detention imposed has exceeded the time limit specified in Article 24 regarding the conditions of detention.
2. The scope of pre-trial authority is to examine and decide whether or not the termination of investigation by the investigating officer is valid, as well as whether or not the termination of prosecution by the public prosecutor is valid .

The fundamental principle of Criminal Procedure is the presumption of innocence. The presumption of innocence is realized in the form of a number of rights for the suspect/defendant. The processes and procedures in the investigation, prosecution and examination before the court are devoted to protecting, fulfilling and realizing the rights of the suspect/defendant. In this way, the treatment of suspects/defendants regarding their alleged guilt of a criminal offense is at a reasonable level.

The presumption of innocence does not mean that a person is presumed innocent, until the court declares him/her guilty of a criminal offense, but is actually a mechanism used before a person is declared guilty by the court, ie the person concerned has the right to behave like a person in general. With the existence of these rights, there is basically a prohibition for the criminal justice system apparatus to presume guilt against the suspect/defendant. Pretrial is the authority of the district court to examine and decide in the manner set out in the criminal procedure law, whether or not an arrest and or detention at the request of the suspect or his family or other parties on behalf of the suspect .

b. A Juridical Review of the Pretrial of Suspects in the Crime of Persecution

Pretrial is a legal mechanism that allows suspects or related parties to test whether or not the actions of investigators or prosecutors in the investigation or prosecution process are valid before the judicial process (trial) begins. In the context of criminal offenses of maltreatment, pretrial can be used by suspects to test several aspects, such as the validity of arrest, detention, or investigation procedures conducted by law enforcement officials.

Pretrial proceedings are regulated in Articles 77 to 82 of the Criminal Procedure Code (KUHAP). Article 77 of the Criminal Procedure Code stipulates that pretrial can be filed against certain decisions made by investigators or prosecutors that concern the rights of suspects. This pretrial can be conducted to examine matters such as whether or not the arrest or detention is valid. Whether or not the termination of investigation or prosecution is valid. As well as the authority of the investigator or public prosecutor in carrying out certain legal actions.

This can be seen from the existence of regulations governing pretrial as specified in Article 77 to Article 83 of KUHAP. Pretrial is only an additional authority possessed by the district court, which serves to examine the validity of a case handling process, meaning that what is examined in pretrial is not the subject matter of a case. As specified in the Criminal Procedure Code, specifically Article 77 on Pretrial, which states that 'The district court is authorized to examine and decide, in accordance with the provisions set out in this Law on :

a) Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal.
b) Compensation and/or rehabilitation for a person whose criminal case is terminated at the investigation or prosecution level.'

The presence of pretrial institutions warns law enforcers to be careful in conducting their legal actions and every legal action must be based on applicable legal provisions in the sense that they must be able to restrain themselves and refrain from arbitrary actions. It is thus clear that organizing Pretrial is not an easy task considering that the activities of one law enforcement tool to assess and test the work patterns of another law enforcement tool must be a job that must be done carefully and master the entire mechanism of law enforcement .

However, in pretrial proceedings, judges must have criteria in deciding whether or not an arrest or detention is valid and must be based on the objectives set out in KUHAP. Article 16 of the Criminal Procedure Code specifies that arrest can only be made 'for the purpose of investigation, the investigator on the order of the investigator is authorized to make an arrest'. Meanwhile, Article 20 of the Criminal Procedure Code stipulates that detention can only be carried out 'for the purpose of investigation, the investigator or investigator assistant on the

order of the investigator as referred to in Article 11 has the right to make detention. An arrest must have a legal basis in the applicable law, especially the legal basis for the authority of the official making the arrest. In an investigation, detention is basically the authority of the Indonesian National Police (Article 6 paragraph (1) letter a jo Article 7 paragraph (1) letter d of KUHAP).

Meanwhile, other civil servant investigators (Article 6 paragraph (1) letter b of KUHAP) are generally not authorized to detail. However, with special provisions (lex specialis). Looking at Article 77 letter a, it is clear that in pretrial hearings, the district court is only authorized to examine and decide whether or not the arrest or detention is valid, as well as whether or not the termination of investigation or termination of prosecution is valid.

In the criminal justice process in Indonesia, the presumption of innocence is one of the most important principles. The nature of this principle is fundamental in criminal procedure law. The provision of the presumption of innocence can be seen in Article 8 of Law Number 14 of 1970 jis Law Number 35 of 1999, Law Number 4 of 2004, and general number 3 letter c of KUHAP which states that: 'every person explained who is suspected, arrested, arrived at, and/or brought before a court of law shall be presumed innocent until there is a court decision stating his/her guilt and obtaining permanent legal force'.

The criminal justice system is the result of a dynamic concept where the creation of the concept of a civilization, forms of punishment, and rights as well as law enforcement reform will continue to evolve with social, economic, and political changes in a country. The political system behind the criminal justice system in Indonesia, and the social concepts that exist in Indonesia play an important role in explaining the way criminal justice is practiced. Ultimately, the combination of the two is the foundation on which criminal justice is based. In practice, criminal justice is prone to deviations, due to the dynamic nature of criminal justice in Indonesia, and often its application is far from what is expected.

According to Article 20 paragraph 1 of Law Number 48 of 2009 concerning power, which reads: all court decisions must not only contain the reasons and bases for the decision, but must also contain certain articles of the relevant regulations or unwritten sources of law that are used as the basis for judging. Paragraph 2 states that the judge's decision is a pretrial examination procedure regarding the matter as referred to in Article 79, Article 80 and Article 81, must clearly contain the basis and reasons. Furthermore, paragraph 3 states that the content of the decision, in addition to containing the provisions referred to in paragraph 2, also contains the following matters:

1. In the event that the decision determines that an arrest or detention is unlawful, the investigator or public prosecutor at the respective level of examination shall release the suspect.
2. In the event that the verdict determines that a termination of investigation or prosecution is invalid, the investigation or prosecution of the suspect shall be continued.
3. In the event that the decision determines that an arrest or detention is unlawful, the decision shall state the amount of compensation and rehabilitation provided, while in the event that a cessation of investigation is legal and the suspect is not detained, the decision shall state rehabilitation.
4. In the event that the decision determines that the seized object is not an evidentiary tool, the decision shall state that the object shall be immediately returned to the suspect or from whom it was seized.

Looking at the provisions regarding the content of pretrial decisions as mentioned in Article 82 paragraph 2 and paragraph 3, it appears that a pretrial decision is a declaratory decision, which is basically a decision that confirms that a person has a right. Wirjono Prodjodikoro stated that a declaratory judgment is when the requested judgment has a legal effect. For example, two husband and wife request that the judge determine a child as a legitimate child, that the testament of the deceased is valid. Although this kind of judge's decision is also declared in nature, meaning that it determines the nature of a situation by not containing an order for a party to do this or that, but the applicant clearly has an interest in the existence of this decision, because there are real and important legal consequences of this decision.

A pretrial motion is the right of the agreed party. Because it is right, there must be a request from an interested party, even if there is an arrest, detention or determination of a suspect that is clearly illegal, for example, a pretrial hearing will not immediately be held without a request from the party who feels aggrieved by the action. An important point that needs to be considered is how the pretrial application is filed or in other words, how to file a pretrial application. It is possible for a person to know or even feel that they have the right to file a pretrial application, but because they do not understand the procedure for filing a pretrial application, it is not uncommon for a person to remain silent without exercising their rights, or if they do, their application must be rejected because it does not meet the formal requirements, or the application is null and void.

Furthermore, to find out the procedure for filing a pretrial application, several provisions in the law that need to be considered are:

1.The request is addressed to the President of the District Court. All requests for pretrial review shall be addressed to the president of the district court covering the jurisdiction of the place where the arrest, detention, search or seizure took place, or to the president of the district court where the investigator or public prosecutor who stopped the investigation or prosecution is domiciled.

2.Parties entitled to file a pre-trial petition,

As the author has discussed above, before filing a pretrial motion, it is important to understand who are the parties entitled to file a pretrial motion.

3.The stages or levels of examination must be taken into account. All requests submitted to the pretrial court are examined and decided by a single judge. This is confirmed in Article 78 paragraph (2) which reads: 'Pretrial proceedings shall be presided over by a single judge appointed by the President of the District Court and assisted by a court clerk'.

It must be noted that the grace period here is from the examination until the verdict is handed down, this is regulated in article 82 paragraph (1) which reads (1) The procedure for pretrial examination as referred to in article 79, article 80, and article 81 is determined as follows within three days after receipt of the request, the appointed judge sets the day of the hearing to examine and decide on the validity or invalidity of the arrest or detention, whether or not the termination of investigation or prosecution is valid, the request for compensation and/or rehabilitation due to the invalidity of the arrest or detention, the validity of the termination of investigation or prosecution and the seizure of objects that are not included in the evidence, the judge shall hear testimony both from the suspect or the applicant and from the competent authority;

1. the examination shall be conducted expeditiously and the judge shall render his/her decision within seven days at the latest;

2. in the event that a case has already been examined by the district court, while the examination of the request for pre-trial review has not yet been completed, the request shall be dismissed;

3. a pre-trial judgment at the level of investigation does not preclude the possibility to hold another pre-trial examination at the level of examination by the public prosecutor, if a new request is submitted for this purpose.

It must contain strong legal grounds and reasons. This is in accordance with the provisions of Article 82 paragraph (2) which states that the judge's decision in the pretrial examination procedure regarding the matters referred to in Article 79, Article 80 and Article

81, must clearly contain the basis and reasons. It is clear that all judges' decisions must have a legal basis in order to have permanent legal force.

4. CONCLUSIONS AND SUGGESTIONS

1. The judiciary in Indonesia, one of whose duties is to test the law against the basic law, which we often call judicial review. This judicial review is conducted to protect the rights of citizens who feel harmed by the enactment of a law. In this case, the author's concern is a judicial review of Article 77 of the Criminal Procedure Code, which is considered detrimental to a person who is designated as a suspect by an investigator, because the article does not regulate the determination of a suspect as an object of pretrial. Whereas Article 28D paragraph (1) of the Constitution states that everyone has the right to recognition, guarantees, protection of fair legal certainty and equal treatment before the law, from the sound of this article, Article 77 of the Criminal Procedure Code is considered contradictory to Article 82 paragraph 3 that the pretrial decision.
2. In the event that the verdict determines that an arrest or detention is invalid, the investigator or public prosecutor at the respective examination level shall release the suspect; in the event that the verdict determines that a termination of investigation or prosecution is invalid, the investigation or prosecution of the suspect shall continue; in the event that the verdict determines that an arrest or detention is invalid, the verdict shall include the amount of compensation and rehabilitation. Pretrial is a right for suspects to test the validity of the actions of investigators or prosecutors, such as arrest, detention, or termination of investigation. In the criminal offense of maltreatment, pretrial can be used by the suspect to ensure that his or her rights are protected and the legal process is conducted in accordance with the applicable provisions. Although the pre-trial is limited to testing the procedure and legality of legal actions, it still has a very important role in maintaining justice and preventing abuse of power by law enforcement officials.

REFERENCE LIST

Lamintang, P. A. F. (2012). *The basics of criminal law in Indonesia*. PT. Image.

Poerdaminto, M. (2016). *Kamus bahasa Indonesia umum* (*Dictionary of General Indonesian Language*). Hall Library.

Muhammad, A. K. (2015). *Law and study law*. PT. Image Aditya Devotion.

Muhammad, A. K. (2014). *Law and study law*. PT. Image Aditya Devotion.

Moleong, L. (2019). *Metodologi penelitian kualitatif* (*Qualitative Research Methods*). PT. Remaja Rosdakarya.

Mulyadi, L. (2007). *Judge's decision in criminal procedure*. PT. Citra Aditya Bakti.

Sidabutar, M. (2001). *The rights of the accused, convicted, and public prosecutor to take legal action*. Rajagraf Indo Persada.

Makarao, M. T., & Suharsil. (2004). *Criminal procedure law in theory and practice*. Ghalia Indonesia.

Harahap, M. Y. (2000). *Discussion of problems and application of the criminal procedure code: Court hearing examination, appeal, cassation, and review*. Sinar Grafika.

Zen, P. M., et al. (n.d.). *Guide to legal aid in Indonesia* (Ed. II). Yayasan Obor Indonesia.

Soekanto, S. (2014). *Introduction to legal research*. UI Press.

Soekanto, S., & Mamudji, S. (2012). *Normative legal research*. Rajawali Press.

Sofyan, A. (2013). *Criminal procedure law: An introduction*. Rangkang Education.

Saragih, Y. M. (2021). *Introduction to criminology theory and criminal law theory*.

Saragih, Y. M. (2017). *Law enforcement toward the perpetrators of human smuggling into Indonesia as the cleanup efforts of illegal immigrants*. Retrieved from www.uniska.ac.id.

Saragih, Y. M. (2022). *Introduction to criminal law (Transition of criminal law in Indonesia)*. Retrieved from https://repository.pancabudi.ac.id/files/document/Um1FbitNTUxqTEpJcy9tOFB4Si93QT09/THNEZW5xS0x4UC9aSU9JVzQrTTVqQT09/YkJNTXUycXp1VlNHTlV0Z2RNTk5RUT09.