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Pre-Trial in Indonesia: Why it Should be Reformed

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Abstract: This study aims to find reasons why pretrial institutions are no longer relevant and must be immediately renew in Indonesian criminal procedural law. This article was compiled using the normative legal method. The study was conducted by examining the legislation, legal literature and doctrines related to pretrial. This study also uses three approaches, namely the statutory approach, the historical approach, and the conceptual approach. The results of the study show that pretrial reform in Indonesian criminal procedural law is important to be carried out immediately, Considering the many shortcomings that pre-trial institutions currently have, such as limited authority in the scope of the pre-adjudication stage which makes pre-trial far behind the models of similar institutions in various countries, and the absence of control or supervision over other crucial matters, such as determining whether evidence is obtained. in a legal way or not. Therefore, through the formation of a new criminal procedural law with pre-trial institutions changing their form to Commissioner Judges or Preliminary Examining Judges with a more active nature, it is hoped that human rights and citizen rights can be realized in the judicial process, as well as to achieve due process of law such as that is aspired to. The pros and cons of legal certainty and the principle of legality related to the decision of the constitutional court that expands the authority and broadly interprets several matters related to pretrial and criminal procedural law will be answered through the establishment or ratification of a new KUHAP with a pretrial institution that changes its form as a Commissioner Judge or Preliminary Examining Judge with more active nature.
Keywords: Pre-trial, Institutional Reform, Criminal Procedure Code

1. Introduction

In Indonesia, one of the problems often encountered in legal proceedings is the implementation of coercive measures. Coercive measures or *dwang middelen* are efforts made by law enforcers to act under certain conditions and limit a person's human rights, such as carrying out searches, arrests, detention or confiscation for the purposes of investigation, prosecution and court examination.[1] According to Yahya Harahap, these actions, in principle are only carried out when it`s really needed and are used proportionally for the purposes of the case examination.

Problems arise if law enforcers do not follow the formal and material requirements for implementing these efforts. Therefore, horizontal supervision is needed which can simultaneously fulfill the due process of law in law enforcement in Indonesia. One of the things that was done was by establishing a pre-trial institution in the 1981 Criminal Procedure Code. Pretrial in Indonesia was born through Law no. 8 of 1981 as an institution that was formed as a proof of concern for the enforcement of human rights in the judicial process. Institutions that are expected to reflect respect for human rights back then considered have many shortcomings and are no longer relevant to today's demands for the fulfillment of human rights, especially those relating to the human rights of a person in his position as a suspect. This is also in line with the second precept: Just and civilized humanity. That means

[1] Ariyanto. (2014). *Pelaksanaan Upaya Paksa Terhadap Anggota POLRI Pelaku Tindak Pidana di Wilayah Hukum Polres Jayapura Kota.* Legal Pluralism: 4 (2). p.275-296. https://core.ac.uk/download/pdf/229022295.pdf

that we must treat humans fairly and civilly without exception, even though the human being is a suspect of criminal case.[2]

Article 1 Number 10 of the Criminal Procedure Code states that pretrial is the authority of the district court to examine and decide according to the method regulated regarding the legality of an arrest, detention, termination of investigation, termination of prosecution, compensation or rehabilitation. This limited authority over time has even created a nightmare for the fight for human rights in the judiciary. The number of requests for judicial review related to pretrial is a proof that pretrial is no longer relevant at this time.

Looking at the subject and object of pretrial, it can be understood that pretrial is also made to supervise law enforcers, namely the police and prosecutors. Pretrial maintains two conflicting interests, namely between law enforcement and the community in their positions as defendants and victims of crime.[3] Supervision in question is supervision of arbitrariness that occurs in the process of investigation or prosecution.[4] But in reality, the objectives to be achieved from the establishment of this pretrial have not been fulfilled.

The number of weaknesses in terms of authority and procedural, has led to many requests for judicial review related to pretrial, including the Constitutional Court Decision Number 21/PUU-XII/2014, Constitutional Court Decision Number 109/PUU-XII/2015, Constitutional Court Decision Number 102/PUU-XIII /2015, Constitutional Court Decision Number 130/PUU-XII/2015, these decisions prove that pretrial should be reformed or re-formed into a better institution, in order to realize the enforcement of human rights in the judicial process which is aspired to.

As we know, problems related about the weakness of pre-trial authority have become a topic of discussion among academics, law enforcement and the legislature. The draft reform of the Criminal Procedure Code has actually been discussed and amended several times, but until now it has not been renewed. Changing the pretrial concept to become a commissioner judge and changing again to a preliminary examination judge is something that is questionable. but the most important thing is whether changes or reforms to pretrial institutions can fulfill the fair trial process as envisioned.

Based on the background of the research above, the formulation of the problem that will be discussed is whether it is necessary to reform pretrial institutions in Indonesian criminal procedural law?

2. Method

This research uses normative legal research. The research was conducted by examining the laws and regulations, legal literature and doctrines related to pretrial. In this research, data sources are used from secondary data, which consists of two legal materials, secondary legal materials and primary legal materials. The secondary legal materials used consist of textbooks, research results, works from legal circles such as legal journals and articles. Meanwhile, primary legal materials such as laws or other regulations support this research.[5] Data

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[2]Ramiyanto. (2015). *Sah Atau Tidaknya Penetapan Tersangka Sebagai Objek Gugatan Praperadilan (Kajian Putusan Nomor 04/Pid.Prap/2015/PN.Jkt.Sel).* Jurnal Yudisia 8 (2). p. 167 – 189. DOI: http://dx.doi.org/10.29123/jy.v8i2.51

[3]Loqman, Loebby. (1987). *Pra-Peradilan di Indonesia*. Jakarta: Ghalia Indonesia, p. 95.

[4]Aristeus, Syprianus. (2007). *Penelitian Hukum Tentang Perbandingan Antara Penyelesaian Putusan Praperadilan Dengan Kehadiran Hakim Komisaris Dalam Peradilan Pidana*. Jakarta: BPHN- Departemen Hukum dan HAM RI, p. 22.

[5] Soekanto, Soerjono dan Sri Mamudji, (2014). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat. Ed. 1*. Cet. 16. Jakarta: Rajawali Pers, p.13.

collection in this research was carried out by means of literature study, namely a method carried out by collecting, reviewing and processing secondary, primary and tertiary legal materials. The data was then analyzed using qualitative methods and described in the form of systematic or prescriptive sentences to make it easier to draw conclusions in this research.This study also uses three approaches, namely the statutory approach (*Statute Approach),* the historical approach (*Historical Approach), and the* Conceptual *Approach.*[6]

3. Results and Discussion

3.1 History of Pre-Trial in Indonesia

When the Republic of Indonesia was established, the applicable criminal procedural law in Indonesia was HIR or *Het Herziene Inlandsch Reglement*, which is the procedural law of the Dutch colonial heritage. Then over time the provisions contained in the *HIR* began to be felt not in accordance with the ideals and legal spirit of Indonesia, as contained in Pancasila. The HIR provisions are considered to lack respect for human rights, so the government and the DPR RI are trying to reform the procedural law, and by that the Criminal Procedure Code was born through Law no. 8 of 1981. In the criminal procedural law issued by the Indonesian government, an institution is regulated which is considered to be able to fulfill human rights guarantees, especially in criminal justice in Indonesia. The institution is called Pretrial.[7] The Pretrial Institution is an institution that monitors the performance of investigative agencies and the Public Prosecutor in the implementation, arrest, detention, termination of investigations and termination of prosecution.[8] Actually, the pre-trial institutional model that we are familiar with now in the 1981 Criminal Procedure Code, there was a proposal to include the institution of judge commissioners in the 1974 Criminal Procedure Law Draft by Prof. Oemar Seno Adjie, S.H., who at that time served as Minister of Justice. The concept of commissioner judge is similar to the concept that exists in *the Reglement op de Strafvoerdering.* Pre-trial in Indonesia is an imitation of The *Rechter Commisaris* which existed in Netherlands. It has ability to determining the legality of an arrest, detention, confiscation, body searches or houses, examine document and it also conducts an initial case analysis. Example: the public prosecutor can ask the judge`s opinion whether the case to be ruled out or not.[9] Actually, there is another institution that is similar to it, namely *Judge d`Instruction.* This institution exists in France. These Institution have broad powers in the preliminary examination. It has the authority to examined the defendant, witnesses, and evidence-to determine whether the evidence comes from legal or illegal conduct. *Judge d`instruction* can make a report, house search and certain places, make arrests, confiscate and close certain areas. After that, it can determine whether the case should send to court or not. The case will be got an *ordonnance de renvoi,* and if the case not submitted to court, they will release the suspect with an *ordonnance de non-lieu.*[10] However, in its development, the

[6]Marzuki, Peter Mahmud. (2007). *Penelitian Hukum*. Jakarta: Kencana Predana Media Group, p. 134.

[7]Syprianus Aristeus, *Op. Cit,* p. 23-24.

[8] Rahmadi, Aji. (2018). *Penetapan Tersangka Baru Dalam Lembaga Praperadilan (Studi Kasus Putusan Pengadilan Negeri Jakarta Selatan Nomor: 24/pid.Pra/2018/Pn.JKT.SEL).* Jurnal Hukum Jurisprudence, 8 (2). p. 74-80.

[9] Suarda, I Gede Widhiana; Taufiqurrohman, Moch. Marsa; and Priambudi, Zaki (2021) "*Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System*," Indonesia Law Review: Vol. 11: No. 2, Article 3. DOI: https://dx.doi.org/10.15742/ilrev.v11n2.2

[10] Iswantoro , Wahyu. *Penemuan Hukum Oleh Hakim dan Implikasi Terhadap Perkembangan Praperadilan. Jurnal Hukum dan Bisnis (Selisik)* 4, No. 1 (2018): 17.

commissioner judge's idea was then disallowed by the State Secretariat which was then replaced with a pre-trial institution.[11]

According to Andi Hamzah in Luhut Pangaribuan that pretrial is a translation of *habeas corpus*[12]. The main point of *Habeas Corpus* is a person's human rights before the law. As outlined in the *Habeas Corpus Act (1679)* signed by King Charles II that the arrest or detention of a person must be based on valid and complete legal reasons, a person who is arrested or detained must then be examined no later than two days from the date of arrest or detention and if the defendant has been released from a case, then he may no longer be arrested and examined for the same case or as we know it as *ne bis in idem*.[13]

The KUHAP, which was greeted with joy, failed to fulfill the human rights of the justice seekers. There are many shortcomings on it, including that the Criminal Procedure Code does not regulate in detail how the process of examining suspects and determining legitimate suspects, then regarding the time of the fall of a pretrial lawsuit which gives the impression that the pretrial institution is only a formality institution, the problem of the fall of the pretrial lawsuit, causing the failure of the seekers of justice demands their rights in the pre-trial process. In fact, before pretrial was established, Indonesia was familiar with the commissioner judge institution, which is tasked with supervising the coercive efforts carried out by law enforcers, but in the formation of the 1981 Criminal Procedure Code, pretrial was realized.[14]

One of the aims of the Criminal Procedure Code to be established is to realize the protection of human rights in balance with the public interest, as reflected in the principle of presumption of innocence adopted by the Criminal Procedure Code. In line with the objectives of the Criminal Procedure Code, the establishment of a pretrial institution is for the purpose of supervising the protection of the rights of the suspect/defendant in the preliminary examination.[15] However, if we look at the pretrial authority as described in Article 77 of the Criminal Procedure Code, it is very limited, namely as follows:

1. To test whether or not an arrest is legal;
2. To test whether or not a detention is legal;
3. To test whether or not a termination of an investigation is valid;
4. To test whether or not a termination of prosecution is legal;
5. Determine compensation and or rehabilitation of people whose cases are terminated at the level of investigation and prosecution.

As we know, basically the stages of criminal justice are divided into two, namely pre-adjudication and post-adjudication. where pre-adjudication includes the process of inquiry, investigation, prosecution and examination of the case at trial. At this stage, law enforcers are given the authority to carry out coercive measures, such as searches, arrests and detention, including wiretapping and confiscation.[16] But, from the five pretrial authorities, we can see that not all coercive measures are pretrial authorities.

From the definition and authority of pretrial that has been described, we can see that pretrial is not an independent institution. Pretrial is only additional authority and function

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[11] Afandi, Fachrizal. (2016). *Perbandingan Praktik Praperadilan dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia.* Jurnal Mimbar Hukum, 28 (1), p. 94-104. DOI: https://doi.org/10.22146/jmh.15868

[12]Pangaribuan, Luhut. (2005). *Hukum Acara Pidana*. Jakarta: Djambatan, p. 22.

[13]Harahap, M. Yahya. (2012). *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan.* Jakarta: Sinar Grafika, p. 68-69.

[14]Afandi, Fachrizal, *op.cit.*

[15]Tanusubroto, S. (1983). *Peranan Pra Peradilan dalam Hukum Acara Pidana*. Bandung: Alumni, p. 72-73.

[16] Maroni. (2018). *Wajah Hak Asasi Manusia dalam Peradilan Pidana.* Jakarta: Aura Publishing, p. 46.

delegated by the Criminal Procedure Code to the District Court. Pretrials are generally formed to supervise law enforcement, both vertically and horizontally.[17] However, in practice this does not materialize due to the provisions regarding the case that if a pretrial application is made, while the main case has been transferred to the District Court, the pretrial application is declared void. Whereas in accordance with the purpose of the establishment of pretrial is as a means of control that aims to enforce legal certainty and protection of the suspect's human rights.[18]

From the description above, it can be seen that from the history, inspiration and purpose of the establishment of the Institution, the Pretrial Institution in Indonesia does not live up to its name. The word *pre* or before, which is actually meant as an initial examination before a court hearing regarding the subject matter. All matters relating to the preliminary examination process such as investigations, investigations, all application of coercive measures, collection of evidence in a legal way and the determination of suspects are the pretrial authority to assess whether it was carried out with human rights in mind or not.

3.2 Reforming The Pre-Trial in Indonesia`s Criminal Procedure Code

When viewed from the history of pretrial that the concept and purpose of pretrial is very good. Learn from past mistakes, where human rights have not been fulfilled in the law enforcement process, especially for people who are in conflict with the law in their status as suspects. However, what is aspired is not in accordance with the reality, there is so many shortcomings related to pretrial authority, that actually make the function of pretrial in the enforcement of human rights to be gray.

In facts is that there have been law developments in recent years that penetrate the boundaries of Article 77 of the criminal procedure code regarding pre-trial authority and even precede the discussions on the draft of new criminal procedure code (RKUHAP). This law development can be seen through the decisions of the constitutional court regarding the pretrial. With the Constitutional Court's decision related to pretrial and declaring some of these articles *unconstitutional, it* provides the basis for how *urgent* the pretrial reform in criminal procedural law is. According to Luhut Pangaribuan, the efforts to introduce the concept of *habeas corpus* in the Criminal Procedure Code have been unsuccessful.[19] Starting from there is a time limit for submitting a pretrial which may fail, even though the pretrial examination has taken place. The pretrial authority does not cover all types of coercive measures, only concerning arrest and detention. There is no firmness about what if the evidence is obtained in an illegal way, or how the determination of the suspect is legal or not.

Although some of these shortcomings of pretrial have been answered through the decision of the Constitutional Court. Among other things, in the decision Number 21/PUU-XII/2014 concerning the expansion of the pretrial object, namely adding the pretrial authority to examine the validity of the determination, search and confiscation, then the Constitutional Court's Decision No. 109/PUU-XIII/2015 which interprets the meaning of an independent KPK investigator, the Constitutional Court's Decision No. 102/PUU-XIII/2015 Regarding the limit period of a case, it is not interpreted grammatically but systematically, Then the Constitutional Court Decision No. 130/PUU-XIII/2015

[17]Hartono, Dodik, Maryanto, Djauhari. (2018). P*eranan Dan Fungsi Praperadilan Dalam Penegakan Hukum Pidana Di Polda Jateng.* Jurnal Daulat Hukum 1 (1). p. 53-64. DOI: http://dx.doi.org/10.30659/jdh.v1i1.2564

[18]Yuliarta, I Gede. (2009). *Lembaga Praperadilan Dalam Perspektif Kini Dan Masa Mendatang Dalam Hubungannya Dengan Hak Asasi Manusia.* Journal Law Reform, 5 (1), p.1-24. DOI: https://doi.org/10.14710/lr.v5i1.667

[19]Pangaribuan, Luhut, *Op.cit,* p. 24.

concerning the submission of a warrant for the commencement of an investigation (SPDP) is not only required for the public prosecutor but also for the reported party/and the victim/rapporteur.[20]

The decisions of the Constitutional Court provide space to increase authority and improve pretrial to become an ideal institution in accordance with the ideals of the originators of the Criminal Procedure Code. However, the addition or change of norms related to the pretrial raises pros and cons related to the legality principle which is so strict in criminal law. Constitutional judges are considered to have taken up the legislative position as lawmakers and it is important to remember that the interpretation in criminal law is very strict.

The addition of an object of pretrial authority cannot be called an interpretation but an addition to a norm, because in fact, there is no a word or a sentence that can be interpreted as an authority to examine the determination of a suspect in Article 77 of the Criminal Procedure Code. The principle of legality in criminal law in general, both material and formal, contains the same meaning, namely *lex scripta, lex certa and lex stricta.*[21] Prof. Eddy OS Hiariej in his book explains that the principle of legality in criminal procedural law contains three meanings, namely that prosecutions in criminal procedural law must be written (*Lex Scripta),* Second, that criminal procedural law must contain clear provisions (*Lex Certa),* and Third that criminal law must be interpreted strictly *(Lex Stricta)*. From this, it can be concluded that although it is possible to interpret the articles in the criminal procedure law, the interpretation is restrictive.[22]

According to Andi Hamzah in his book Principles of Criminal Law, that the principle of legality in criminal procedural law is stricter than material criminal law or the Criminal Code[23] and is contained in Article 3 of the Criminal Procedure Code.[24] This is because the existence principle of legality is actually to protect citizens from the arbitrariness of the authorities in addition to the government's authority to impose criminal penalties. According to L. Dupont in Andi Hamzah that the role of the legality principle is related to all legislation as an instrumental aspect of protection. Therefore, it should be seen that there are many problematic articles related to pretrial and must be interpreted or even expanded by the Constitutional Court, reforms to the Criminal Procedure Code or the pretrial institution itself should be carried out immediately.[25]

In the context of respect of human rights and the basic rights of citizens, pretrial is should be the most important thing in the Indonesian criminal procedure code. but, in fact, pre-trial can`t be used for fulfilled those two things. The disappointment with the concept of pretrial has given rise to many calls for immediate revision and renew of the KUHAP. The large amount of authority for coercive measures in the hands of law enforcers and the imperfection of pre-trial authority have led to the perception that pre-trial is a mechanism whose existence is no longer important.[26] If we compare pretrial institutions and pretrial reform institutions in the RKUHAP, such as Commissioner Judges or Preliminary

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[20]Riki Perdana Raya Waruwu, *Praperadilan Pasca Putusan MK.* Accessed from *https://kepaniteraan.mahkamahagung.go.id/images/artikel/Praperadilan%20Pasca%204%20Putusan%20MK.pdf*. 8 December 2023. At. 15:00 p.m.

[21]Remmelink. Jen. (2003). *Hukum Pidana*, Jakarta: Gramedia Pustaka Utama, p. 355.

[22]Hiariej, Eddy O.S. (2012). *Teori Dan Hukum Pembuktian*. Jakarta: Erlangga, p. 36.

[23]Hamzah, Andi. (2014). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, p. 41.

[24]Hamzah, Andi dan RM Surachman. (2014). *Pre-Trial Justice Discretionary Justice Dalam KUHAP Berbagai Negara.* Jakarta: Sinar Grafika, p. 28.

[25] *Ibid, p.*29.

[26] Eddyono, Supriadi Widodo dan Erasmus Napitupulu. (2014). *Prospek Hakim Pemeriksa Pendahuluan dalam Pengawasan Penahanan Dalam Rancangan KUHAP*. Jakarta: Insitute for Criminal Justice Reform. Accesed from https://icjr.or.id/wp-content/uploads/2014/03/HPP-dan-Penahanan-dalam-R-KUHAP.pdf.

Examining Judges as mentioned in the 2010 and 2013 RKUHAP concepts, Preliminary Examining Judges will replace pretrials that are considered weak in the protection of human rights. The existence of the Preliminary Examining Judge is expected to achieve the objectives of the criminal procedure law, namely the enforcement of human rights in the judicial process and the creation of a *due process of law*. The Preliminary Examining Judge, hereinafter abbreviated as HPP, has greater authority than the current pretrial. This authority is regulated in CHAPTER IX of the Draft Criminal Procedure Law, the description of which is as follows:

1. Whether or not the arrest, detention, search, confiscation or wiretapping is legal;
2. Cancellation or suspension of detention;
3. Information made by a suspect or defendant in violation of the right not to incriminate oneself;
4. Evidence or statements obtained illegally cannot be used as evidence;
5. Compensation and/or rehabilitation for someone who is illegally arrested or detained or compensation for any illegally confiscated property rights;
6. The suspect or defendant has the right to or is required to be accompanied by a lawyer;
7. An investigation or prosecution has been carried out for an unlawful purpose;
8. Termination of investigation or termination of prosecution that is not based on the principle of opportunity;
9. The suitability of a case to be prosecuted in court.
10. Violation of any other suspect's rights that occurred during the investigation stage.

We can see that the authority of the pretrial reform institution is wider than the current pretrial, and the use of its authority is not the same as that of a pretrial, where the preliminary examining judge is more active and can be based on initiative, this is different from pretrial, where the judge is only waiting for a pretrial application.

Based on the experience of other countries, it is said that the authority of the preliminary examination judge must cover all processes at the pre-adjudication stage, meaning from entering the stage of investigation and determining the suspect. Including screening which criminal cases are suitable or appropriate to be submitted to the trial court and this function is interpreted broadly, namely including minor cases that have been resolved outside the conference. The pre-trial and KUHAP does not currently have the authority to determine whether evidence was collected illegally or not. Which is one of the important things in criminal law. The exclusionary rule which is a constitutional rule of law that provides that otherwise admissible evidence may not be used in a criminal trial if it was obtained as a result of illegal police conduct. Although the evidentiary process is more dominant in court trials. However, evidentiary activities do not only occur at the stage of examining criminal cases in court.[27] Eddy Hiariej stated that proof in criminal cases is carried out at every stage of law enforcement. During the investigation stage, investigators must carry out surveillance to find sufficient preliminary evidence as a basis for determining whether the incident suspected of being a criminal act can be continued to the investigation stage, then the evidence collected becomes support for the next stage, up to the examination at the court hearing, the judge's decision, even to the point of taking legal action against the case.[28] In essence, an important target in investigative activities is to collect evidence to shed light on the criminal act that

[27] Latifah, Marfuatul. *Perlukah Mengatur Prinsip Exclusionary Rules of Evidence dalam RUU Hukum Acara Pidana? (Should We regukate Exclusionary Rule Principle in The Criminal Procedural Bill?)*. Jurnal Negara Hukum: Vol. 12, No. 1, 2012. p. 101-122. DOI: https://doi.org/10.22212/jnh.v12i1.2123

[28] *Ibid.*

occurred.[29] In America there is a legal doctrine about how law enforcement should collect evidence legally, known as Fruit of the poisonous tree doctrine: A rule under which evidence that is the direct result of illegal conduct on the part of an official is inadmissible in a criminal trial against the victim of the conduct. The doctrine draws its name from the idea that once the tree is poisoned the primary evidence is illegally obtained, then the fruit of the tree any secondary evidence is also tainted and may also not be used.[30] Where this doctrine is not stated bravely in Indonesian criminal procedural law and unlike other countries, Indonesian pretrial courts do not have this authority and notice there are many other shortcomings about criminal procedure code and specifically about pre-trial.

From the description above it can be concluded that the draft Indonesian criminal procedural law should immediately be discussed and further elaborated.[31] Considering the fact that there are many constitutional court decisions regarding Pre-trial too, it must be acknowledged that this institution has shortcomings and many legal voids demand the renewal of the pretrial institution through the renewal of the Criminal Procedure Code.[32] The many shortcomings and problems of debate regarding the authority of pre-trial now, are proving that the Pre-trial Institution, is no longer relatable with the needs of the times, not related to human rights and community justice too, the emergence of pros and cons regarding the principle of legality, then regarding the many powers that are not possessed by the pretrial, proves that the need for Institutional reform or reform is *urgently* needed.

4.Conclusion

From the description above we can conclude that it is time for Indonesia to reform criminal procedural law in general and pre-trial law in particular. The fact that inspiration and purpose of the establishment of the Institution, the Pretrial Institution in Indonesia does not live up to its name. The word *pre* or before, which is actually meant as an initial examination before a court hearing regarding the subject matter. All matters relating to the preliminary examination process such as investigations, investigations, all application of coercive measures, collection of evidence in a legal way and the determination of suspects are the pretrial authority to assess whether it was carried out with human rights in mind or not.

Then, Considering the many shortcomings that pre-trial institutions currently have, such as limited authority in the scope of the pre-adjudication stage which makes pre-trial far behind the models of similar institutions in various countries; the authority to screening which criminal cases are suitable or appropriate to be submitted to the trial court and this function is interpreted broadly, namely including minor cases that have been resolved outside the conference. and the absence of control or supervision over other crucial matters, such as determining whether evidence is obtained. in a legal way or not. Therefore, through the formation of a new criminal procedural law with pre-trial institutions changing their form to Commissioner Judges or Preliminary Examining Judges with a more active nature, it is hoped that human rights and citizen rights can be realized in the judicial process, as well as to achieve due process of law such as that is aspired to. The pros and cons of legal certainty and the principle of legality related to the decision of the constitutional court that expands the

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[29] Rozi, Fachrul. "*Sistem Pembuktian dalam Proses Persidangan pada Perkara Tindak Pidana*." *Jurnal Yuridis UNAJA*, vol. 1, no. 2, 2018, pp. 19-33, doi:10.5281/jyu.v1i2.486.

[30] Robert M. Pitler, The Fruit of the Poisonous Tree Revisited and Shepardized, 56 Cal. L. Rev. 579 (1968). Available at: http://scholarship.law.berkeley.edu/californialawreview/vol56/iss3/2

[31] *Ibid,* p. 35.

[32] Parikesit, Iqbal. Eko Soponyono, (2017). *Tinjauan tentang Objek Praperadilan Dalam Sistem Peradilan Pidana di Indonesia*. Diponegoro Law Journal 6 (1), p. 1-60. https://doi.org/10.14710/dlj.2017.15663

authority and broadly interprets several matters related to pretrial and procedural criminal law will be answered through the establishment or ratification of a new KUHAP with a pretrial institution that changes its form as a Commissioner Judge or Preliminary Examining Judge with a more active nature. In essence, Indonesia needs a pretrial reform institution that is more active in upholding human rights within the scope of the criminal process and in the status of suspects.

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