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Reconstruction of Pre-Trial Procedure Law Regulation Based on Justice Values

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Abstract

The purpose of this study is to analyze and find related to pre-trial procedural law regulations that are not yet based on justice values, to analyze and find weaknesses in current pre-trial procedural law regulations, and to find a reconstruction of pre-trial procedural law regulations based on Justice Values. There are 3 (three) theories used, namely the Pancasila justice theory as a grand theory, the legal system theory as a middle theory, and the progressive legal theory as an applied theory. This research method uses a socio-legal approach method that law is both a norm and a behavior that examines social phenomena. The analysis of research data is descriptive qualitative. The location of the research was conducted at the Kuala Kapuas District Court. The data source is from the Judge at the Kuala Kapuas District Court. "Mistakes that are made repeatedly over a long period of time will turn into truth." This expression is appropriate in the practice of handling pre-trial cases. Since the birth of the pre-trial institution in Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP) 38 years ago, the practice of pre-trial seems to use civil procedural law. Such as summons and notifications are carried out by bailiffs. The stages of the process are similar to civil trial trials. Normatively, the Criminal Procedure Code does not strictly regulate pre-trial procedural law. In the Criminal Procedure Code, there is also no article that mentions pre-trial cases with civil case mechanisms. In addition, from the registration and use of case codes in the Court alone, it is clear that pre-trial is a criminal case. It is reasonable that until now the pre-trial examination mechanism only refers to the customs applied in court practice, because since the Criminal Procedure Code was formed it has been handed over to the regulatory mechanism based on court policy. Judges may not reject cases on the basis that there is no procedural law. With the assumption and approach that pre-trial cases have the same nature and characteristics as civil cases, the Judge uses examination procedures as in civil cases even though pre-trial cases are actually criminal cases as seen from the use of the register and code listed in the case number.

Keywords
Pre-trial, Procedural Law, Reconstruction, Justice

I. Introduction

Pre-trial is a new institution in the world of justice in Indonesia in the life of law enforcement. Pre-trial is not a stand-alone court institution. Basically, it is a system, this is because the criminal justice process in Indonesia consists of stages that are a whole unit that cannot be separated. The stages in the criminal justice process are a series, where one stage affects the other stages. The series in the criminal justice process in Indonesia includes investigation, inquiry, prosecution and examination in court hearings carried out by law enforcement officers (APH) (Zulkifli, 2022).

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The only institution known since 1981 through Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) to test the validity of coercive measures carried out by law enforcement officers in a limited manner is the pre-trial institution. In recent years, pre-trial in Indonesia has become a very important and controversial issue in the criminal justice system. Pre-trial proceedings, which were originally designed to protect individual rights from arbitrary actions by law enforcement officers, often turn into an arena for intense and complex legal debates. Many major cases involving political figures and high-ranking officials show that the pre-trial mechanism has not been fully able to provide the justice that society expects. Problems such as varying interpretations of the law, inconsistent decisions, and allegations of political interference often overshadow the pre-trial process, damaging public trust in the existing legal system (Juwita, 2023).

The legal situation of pre-trial proceedings in Indonesia over the past five years has undergone quite significant changes, both in its implementation and in the development of its legal concept. Pre-trial proceedings are legal mechanisms used to test the legality of arrests, detentions, termination of investigations, or termination of prosecutions by authorized parties. During this period, several major cases have tested the limits and effectiveness of pre-trial proceedings in the Indonesian legal system.

The pre-trial process in Indonesia is often criticized for not being fully based on the principles of justice. One of the main issues is the inconsistency of fair legal procedures in the pre-trial process. There are many cases where suspects feel that their rights have been violated, such as in arrests that are not accompanied by sufficient evidence or detention that exceeds the time limit stipulated in the law. This reflects a lack of procedural justice, which should ensure that every legal action against a person is carried out fairly and based on clear law (Ritonga).

In addition, inconsistencies in pre-trial decisions indicate that this system often does not provide the expected justice. There are many cases where the pre-trial judge's decisions differ for similar cases, reflecting legal uncertainty and potential bias. For example, in several cases involving political figures or high-ranking officials, the pre-trial results tend to benefit parties with political power or influence. This raises the perception that the legal system can be manipulated and is not fully independent or politically influenced.

Political interference is also a factor that undermines the integrity of the pre-trial process. Several high-profile cases show allegations of interference from interested parties that influence pre-trial results. For example, in corruption cases involving high-ranking officials, there are indications that pre-trial decisions can be influenced by political or economic pressure. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). This erodes public confidence in the ability of the legal system to act fairly and impartially. The lack of transparency in the pre-trial process also adds to the problem of justice. Pre-trial hearings are often not open to the public, leading to a lack of accountability. Without adequate public oversight, there is a risk that the pre-trial process can be abused by certain parties. This lack of transparency makes it difficult for the public to monitor and ensure that the legal process is running fairly and in accordance with applicable regulations (Lestari).

This pre-trial can be said to be an attempt to correct deviations that occur during the investigation and prosecution process. The existence of the Pre-trial provisions in the Criminal Procedure Code is also a demand for officials involved in the investigation and prosecution process (primarily aimed at Investigators and Public Prosecutors) to carry out their duties professionally and for the sake of upholding the rule of law.

Lack of understanding and training among law enforcement officers about the importance of justice in pre-trial is also a problem. Many law enforcers may not fully

understand or apply the principles of justice in the pre-trial process. This can result in violations of the rights of suspects and unfair decisions. To overcome this problem, there needs to be a more serious effort to provide adequate education and training for judges, prosecutors, and police regarding the importance of justice in every stage of the legal process, including pre-trial.

"Mistakes made repeatedly over a long period of time will turn into truth." This expression is appropriate in the practice of handling pre-trial cases. Since the birth of the pre-trial institution in Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP) 38 years ago, the practice of pre-trial seems to use civil procedural law. Such as summons and notification are carried out by bailiffs. The stages of the process are similar to civil trial cases. Normatively, the Criminal Procedure Code does not explicitly regulate pre-trial procedural law. In the Criminal Procedure Code, there is also no article that mentions pre-trial cases with civil case mechanisms. For example, Articles 101 and 274 of the Criminal Procedure Code cannot be applied to pre-trial cases. In addition, from the registration and use of case codes in the Court alone, it is clear that pre-trial is a criminal case (Wahyuningsih, 2023)].

The relative competence of filing a pre-trial case also uses the principle of civil law, namely actor sequitur forum rei or filing a lawsuit at the defendant's domicile, which is clearly contrary to the spirit of the establishment of the pre-trial institution. In fact, pre-trial is established as a horizontal control institution for the implementation of all coercive measures in the investigation and prosecution process. It is impossible for there to be a pre-trial case without handling the main case. Therefore, pre-trial cases should be submitted to the court that has the authority to try the main case because pre-trial is one package with the main case. However, in practice, it is often found that pre-trial cases are filed and examined not by the court of the main case. This is because the Criminal Procedure Code does not regulate which district court has the authority to try pre-trial cases, whether it must be the jurisdiction of the respondent or the place where the crime occurred as regulated in Article 84 paragraph (1) of the Criminal Procedure Code.

Not only that, the fast examination process, no later than 7 days, the judge must have decided that it is difficult to accept the logic if the pre-trial examination process is like a civil case. Starting from the stage of submitting the application, answer (questions and answers), evidence, and conclusions of the parties, to the execution of the decision that should be carried out by the prosecutor. For example, the submission of a pre-trial case of corruption should be submitted to the district court which has a corruption court to try the main case. Based on this background, the researcher is interested in raising the title Reconstruction of Pre-trial Procedural Law Regulations Based on Justice Values as the current research. This study aims to review and reconstruct pre-trial procedural law regulations in Indonesia with an approach based on justice values. This approach is expected to overcome various problems that have arisen so far, including issues related to procedural and substantive justice. In this context, the values of justice such as equality before the law, protection of human rights, and transparency and accountability of the legal process are the main foundations in the reconstruction of pre-trial regulations. Thus, this research not only aims to find short-term solutions to pre-trial problems, but also to build a strong foundation for a fairer and more trustworthy criminal justice system in the future (Sembiring).

Research Objectives:

1. To analyze the Pre-trial Procedural Law Regulation in Indonesia that is not yet based on justice values.
2. To analyze the weaknesses of the current Pre-trial Procedural Law Regulation.

3. To Reconstruct the Pre-trial Procedural Law Regulation in Indonesia that is Based on Justice Values.

II. Research Methods

This study aims to explain and analyze the pre-trial procedural law regulation, then reconstruct the pre-trial procedural law regulation based on justice values, therefore the Author uses the socio-legal studies approach method. The research is compiled based on research conducted with different disciplines. First, conducting a textual study of laws and policies critically to explain the philosophical, sociological and legal problems of written law. Second, using various new methods of mixing legal research methods with social sciences, such as qualitative socio-legal research and socio-legal ethnography. Legal regulations in this case the Criminal Code (KUHP), Criminal Procedure Code (KUHAP), Supreme Court Regulations (PERMA) and Supreme Court Circulars (SEMA) as one of the literature studies will be combined with data from field studies to answer the problems then in processing and analyzing data using qualitative descriptive methods. The data is collected and grouped then analyzed and interpreted logically and systematically both against primary and secondary data.

III. Results and Discussion

3.1 Pre-trial

Pre-trial is a forum to test the accuracy of coercive efforts carried out by Investigators or Public Prosecutors and also as a horizontal supervisory institution among law enforcers. According to Article 1 number 10 of the Criminal Procedure Code (Law No. 8 of 1981 concerning Criminal Procedure), pre-trial is the authority of the judge to examine and decide, in accordance with the provisions stipulated in the law concerning:

a) The validity or otherwise of an arrest and/or detention at the request of the suspect or his/her family or other party at the power of the suspect;
b) The validity or otherwise of the termination of investigation or termination of prosecution upon request for the sake of upholding law and justice;
c) Request for compensation or rehabilitation by the suspect or his/her family or other party on behalf of his/her attorney whose case has not been submitted to court.

The parties who may file a pre-trial motion are as follows:

a) A request for examination of the validity or otherwise of an arrest or detention is submitted by the suspect, his/her family or attorney to the head of the district court by stating the reasons (Article 79 of the Criminal Procedure Code).
b) A request to examine the validity or otherwise of a termination of investigation or prosecution may be submitted by the investigator or public prosecutor or a third party with an interest to the head of the district court by stating the reasons (Article 80 of the Criminal Procedure Code).

In terms of the structure and composition of the court, a pre-trial motion is not a stand-alone court institution. Nor is it a judicial institution that has the authority to make a final decision on a criminal case. A pre-trial motion is only a new institution whose characteristics and existence are:

i. Existing and is an integral part of the District Court, and as a court institution, it is only found at the District Court level as a task force that is not separate from the District Court;

ii. Thus, pre-trial is not outside or beside or parallel to the District Court, but is only a division of the District Court.
iii. Judicial administration, personnel, equipment, and finance are united with the District Court, and are under the leadership and supervision and guidance of the Chief Justice of the District Court;
iv. The implementation of its judicial function is part of the judicial function of the District Court itself.

Criminal law (material and formal) is a special law, because the law is intended to protect humans from violations of their rights, while criminal law is actually created to "seize" these rights "in certain circumstances." These certain circumstances should be very limited and given clear lines about their boundaries.

The law protects the most important human rights, namely the right to life, while criminal law creates the death penalty which will take away this most basic right. The law protects a person's right to move wherever he wants, while criminal law recognizes imprisonment and criminal procedure law recognizes detention. The law protects the peace of a person's household, while criminal procedure law recognizes searches of houses or residences. Therefore, the implementation of the "seizure" of these rights must be in accordance with the methods and limits determined by law (Gunarto, 2023).

A request for compensation and/or rehabilitation due to the illegality of an arrest or detention or due to the legality of the termination of an investigation or prosecution is submitted by the suspect or a third party concerned to the chairman of the district court by stating the reasons (Article 81 of the Criminal Procedure Code). The pre-trial is led by a single judge appointed by the chief justice of the district court and assisted by a clerk (Article 78 paragraph (Juwita, 2023) of the Criminal Procedure Code). One of the crucial problems faced by Indonesia in the current transition period is reforming its law and criminal justice system towards a democratic direction. In the past, criminal law and criminal justice were used more as a tool to support authoritarian power, in addition to being used for social engineering purposes. Now is the time for the orientation and instrumentation of criminal law as a tool of power to be changed towards supporting the functioning of a democratic political system that respects human rights. This is the challenge faced in the context of restructuring criminal law and criminal justice in the current transition period. In order to answer this challenge, a planned and systematic effort is needed to answer this new challenge. A grand design for reforming the criminal justice system and law in general must be initiated (Wahyuningsih, 2020).

The criminal justice system, as is known, occupies a very strategic place in the framework of building the rule of law and respect for human rights. Pre-trial is intended as a "control mechanism" against possible arbitrary actions by investigators or public prosecutors, in making arrests, searches, confiscations, investigations, prosecutions, termination of investigations and termination of prosecutions, up to the determination of suspects. Whether accompanied by a request for compensation and/or rehabilitation or not. In general, the purpose of the Pre-trial institution is intended to uphold and provide protection of human rights to suspects/defendants in investigations and prosecutions. This mechanism is seen as a form of horizontal supervision of the rights of suspects/defendants in the preliminary examination process (pre-adjudication). The existence of pre-trial is very important in providing certainty in the investigation process and determination of suspects, which are contained in criminal procedure law. Meanwhile, the purpose of criminal procedure law is to seek and obtain or at least approach the material truth, namely the most complete truth of a criminal case by applying the provisions of criminal procedure law honestly and accurately to find out who the perpetrator of a crime is and then conduct an

examination in court to determine whether proven guilty or not, also regulates the main points of the implementation and supervision of the verdict that has been handed down. The existence of pre-trial can be said to be a medium for suspects to seek clarity related to the examination process carried out by investigators, either the police or the prosecutor's office or by an authorized institution (Harmanto, 2022).

M. Yahya Harahap stated that there are intentions and goals that are to be upheld and protected by the institutionalization of pre-trial, namely the enforcement of the law and protection of the suspect's human rights at the level of investigation and prosecution. In order to implement the interests of examining criminal acts, the law gives investigators and public prosecutors the authority to carry out coercive measures in the form of arrests, detention, confiscation and so on. Every coercive measure carried out by investigators or public prosecutors against suspects is essentially a treatment that is:

i. Coercive measures justified by law for the interests of examining the criminal act suspected of the suspect;
ii. As a coercive measure justified by law and statutes, every coercive measure is in itself a deprivation of liberty and freedom and a restriction on the suspect's human rights.

Because coercive measures imposed by law enforcement agencies are a reduction and restriction of the suspect's liberty and human rights, these measures must be carried out responsibly according to the provisions of applicable laws and regulations (due process of law). Coercive measures carried out in violation of the law and statutes are a violation of the suspect's human rights. Every act of rape that is blamed on the suspect is an illegal act, because it is against the law and statutes.

Every act of coercive efforts by investigators that violates the provisions of the law, especially criminal procedure law which adheres to the principle of formal legality (Article 3 of the Criminal Procedure Code), should be legally accountable (criminal law). This is because rape of human rights is not only against the law but also violates Article 12 of the Universal Declaration of Human Rights which explains that "no one is allowed to interfere arbitrarily with the private life, family, residence, correspondence of another person".

The so-called coercive efforts, whether in the form of arrest, detention, search or confiscation, can essentially deprive everyone of their basic rights. Arrest and detention can deprive the right to freedom and liberty, while searches and confiscation can deprive a person of the right to a comfortable personal life and residence .

To anticipate the occurrence of "wild" actions, which result in violations of a person's human rights, all procedures and stages must be in accordance with the provisions of applicable laws and regulations. For example, when making an arrest and detention, a work order and an arrest/detention order must be shown. Likewise, when conducting a search and seizure, a permit from the Head of the District Court, a work order or an identification card must be shown, unless caught red-handed. For coercive measures in the form of searches and seizures, which are carried out contrary to the procedures in criminal procedure law regulated from Article 32 to Article 46 of the Criminal Procedure Code. Of course, the "wild" action has violated the provisions of Article 167 paragraph (1) of the Criminal Code, which states that: "Anyone who forces their way into a house, room or closed yard used by another person unlawfully or is there unlawfully, and at the request of the authorized party or his order does not leave immediately, is threatened with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah".

Anang Priyanto said, for the sake of upholding the rule of law, anyone who is guilty must be punished, likewise if the investigator or public prosecutor makes a mistake in

carrying out the duties of investigation or public prosecutor, they can be sued by those who are harmed (either the suspect or a third party) during the investigation or prosecution .

Iwan Anggoro Warsito stated that the purpose of the birth of the pre-trial institution is for the sake of upholding the law and protecting Human Rights at the level of investigation and prosecution so that if in the process of arrest and/or detention, termination of investigation or termination of prosecution there is a party who feels that their rights have been violated, then the opportunity is opened to file a claim for compensation or rehabilitation by the suspect or his family or other parties or his power over illegal treatment that is detrimental to the suspect or by a party whose case has not been submitted to the Court.

Thus, the main objective of institutionalizing pre-trial in the Criminal Procedure Code is to carry out "horizontal supervision of all coercive measures taken by investigators or public prosecutors against suspects during the investigation or prosecution, so that these actions do not conflict with applicable legal provisions and laws. The National Legal Development Agency explains the history and philosophical basis of the pre-trial process. The history of criminal procedure law in Indonesia, during the pre-independence period, there were two procedural laws in force in Indonesia, namely Strafverordering (Sv) which applied to European communities in Indonesia and Inland Reglement (IR), which was replaced by Herziene Indische Reglement (HIR) with Staatsblad Number 44 of 1941, for indigenous groups. The implementation of a fair trial is an obligation of state administrators and a basic right for suspects or defendants that must be fulfilled by the state. Fulfillment of basic rights for suspects or defendants as part of the implementation of basic principles in the implementation of criminal law, both in material criminal law and formal criminal law (Octora, 2024).

The process of filing a pre-trial motion carried out by the suspect is a right to obtain justice which is very reasonable considering the limitations on his/her right to freedom. All forms of legal action against suspects or defendants that result in the deprivation of the rights of suspects or defendants must be based on the law and the law must provide conditions that must be met and become the legal basis for taking legal action against the suspect or defendant so that the authority granted by law to law enforcement officers is not used arbitrarily.

Justice and law cannot be separated, including pre-trial motion as a forum for seeking justice for suspects. John Rawls, who is seen as a "liberal-egalitarian of social justice" perspective, argues that justice is the main virtue of the presence of social institutions. However, the virtue of the whole society cannot ignore or challenge the sense of justice of every person who has obtained a sense of justice. Especially the weak community seeking justice (Isra, 2017).

Rawls argues that the willingness of all members of society to accept and comply with existing social provisions is only possible if the society is well-organized where justice as fairness is the basis for the principles of regulating the institutions within it. Justice can be achieved not only by regulating institutions, but also by a society that upholds the principles of justice in carrying out the functions of the institution. Rawls views that a fair agreement can only be achieved with an impartial procedure. Those who believe in different concepts of justice can still agree that institutions are just when there is no arbitrary distinction between people in granting rights and obligations and when the rules determine the right balance between conflicting claims for the benefit of social life. Justice as fairness is expressed by Rawls in his idea as the principles of justice agreed upon in a fair situation. One form of justice as fairness is to view the various parties in the initial situation as rational and equally neutral. Basically, this view of justice is as a granting of

equal rights but not equality. Aristotle distinguishes his equal rights according to proportional rights. Equality of rights is seen by humans as a unit or the same container. This is what can be understood that all people or every citizen before the law are the same. Proportional equality gives each person what is his right according to his abilities and achievements. According to Rawls, Aristotle clearly assumes an assessment of what is worthy of being someone's property and what is related to it.

Law enforcement at the Kuala Kapuas District Court regarding pre-trial cases from 2020 to 2024 with the following data:

Table 1. Pre-Trial Cases in 2023 and 2024 at the Kuala Kapuas District Court, Indonesia

No	Classification	2020–2022	2022–2024
1	Legality of suspect determination	5	3
2	Legality of arrests	2	3
3	Legality of detentions	2	-

Source: SIPP Kuala Kapuas District Court

Based on data from the Kuala Kapuas District Court Clerk's Office, in 2020 there were 6 (six) pre-trial cases filed with a final decision rejecting the pre-trial application for 3 (three) cases, stating that the examination was stopped for 3 (three) cases. In 2021 there were 3 (three) pre-trial cases filed with a final decision of 2 (two) cases withdrawn and 1 (one) case rejected. In 2022 there were 2 (two) pre-trial cases filed with a final decision rejecting the pre-trial application for 1 (one) case and withdrawing the application for 1 (one) case. Then in 2023 there were 2 (two) pre-trial cases filed with a final decision stating that the pre-trial application was dropped. Based on the results of an interview with one of the Judges at the Kuala Kapuas District Court regarding the obstacles experienced during the trial, there were multiple interpretations among fellow Judges regarding the procedural law used and the solutions to each problem that arose during the trial due to the lack of standard rules governing the course of the Pre-trial hearing. Multiple interpretations were also experienced by the parties involved in the pre-trial hearing, namely the Applicant and the Respondent, each of whom had their own arguments regarding the course of the pre-trial hearing process due to the form of the pre-trial procedural law which was in the form of quasi-civil.

Another interview result with one of the Investigators who often came as the Respondent in the Pre-trial petition stated that until now there has been no definite reference in terms of organizing the pre-trial hearing where sometimes the Investigator who was brought in as a party in the pre-trial hearing only followed the instructions given by the Pre-trial Judge without knowing for sure which reference was used in the pre-trial hearing (McNeeley, 2018; Kristiyanti, 2021).

Based on the provisions of Article 82 paragraph (1) letter b of the Criminal Procedure Code which states "in examining and deciding on the legality or otherwise of an arrest or detention, the legality or otherwise of the termination of an investigation or prosecution, requests for compensation and/or rehabilitation due to the illegality of an arrest or detention, the legality of the termination of an investigation or prosecution and there are objects confiscated that are not included in evidence, the judge hears statements from both the suspect or applicant and from the authorized official". The last sentence of the article above actually shows that pre-trial hearings should not be conducted using the civil case hearing mechanism, why is that? because in civil cases the parties are not asked for information verbally, but rather all are submitted in written form, while the last

sentence of Article 82 paragraph (1) letter b of the Criminal Procedure Code implies that the parties are asked for information (examined) by the judge through a question and answer process as in criminal case hearings.

In addition, the next verse states that pre-trial cases are examined quickly and must be decided no later than 7 days, so it is impossible for the pre-trial case examination process to be carried out like a civil case with the stages of answering, proving and concluding which are each carried out alternately. We can imagine that the normal civil case trial process is completed within 3-5 months applied to the pre-trial case examination process which is only given a time limit of 7 days. The author is more convinced that what was desired by the drafters of the Criminal Procedure Code at that time was a much simpler examination procedure, for example, the suspect files a pre-trial application for the invalidity of the coercive measures taken by the authorized official, then the appointed judge summons and asks for clarification from the suspect and the authorized official. In court, the suspect conveys the main points of his application and the authorized official provides clarification and at the same time submits evidence that the coercive measures taken are in accordance with the procedure. After hearing clarification from each party and examining the evidence submitted, the judge then makes a decision. With such a mechanism, it does not take long to resolve a pre-trial case, just 2 or 3 sessions the judge can make a decision, because the focus is on proving whether the pro justitia action that has been carried out is in accordance with applicable procedures or not. This means that it is more appropriate for the pre-trial examination process to be carried out quickly, similar to the examination of minor crimes, although the position of the investigator/public prosecutor is not exactly the same as the defendant in a trial of minor crimes (Adiputra, 2022).

The Supreme Court should be able to fill the gap in pre-trial procedural law by issuing a Perma on the procedures for examining pre-trial cases so that judges have a legal basis as a guideline in the trial examination process. So far, all forms of court authority granted by law, but not regulated regarding the procedures for the examination process, the Supreme Court as its function regulates based on Article 79 of Law Number 14 of 1985 concerning the Supreme Court to fill the legal gap by issuing a Perma.

So far, the process that has been running in court has never been questioned by the Supreme Court as the highest supervisor of all judicial bodies in Indonesia, so it is interpreted that the process that has been running so far has been approved by the Supreme Court. However, in the theoretical dimension, something that has been carried out for a long time does not guarantee that it is true, because it could be that people in general do not pay much attention to the issue.

Article 4 paragraph (2) of Perma Number 4 of 2016 concerning the Prohibition of Review of Pre-trial Decisions states that the Supreme Court has the authority to supervise the implementation of pre-trial cases. This supervision includes requesting information on the technicalities of pre-trial examinations and providing instructions, reprimands or warnings that are deemed necessary for pre-trial decisions that fundamentally deviate.

In substance, the Supreme Court Regulation (Perma) No. 4 of 2016 has the potential to cause intervention, although the issuance of the Perma was motivated by the large number of pre-trial decisions that exceeded the limits regulated by the Criminal Procedure Code. However, it is actually quite risky to apply the supervision model as mentioned above, because the Criminal Procedure Code itself does not explicitly outline the examination mechanism for pre-trial cases, while the Supreme Court also does not provide examination procedures to fill the existing legal vacuum. This means that it will be very debatable if the object of supervision is the technical mechanism of pre-trial examination

which has been carried out based on customs that are sometimes not applied the same in each court.

The confusion regarding the application of the applicable procedural law in pre-trial cases does not stop there. Problems often arise regarding which court the pre-trial case should actually be filed with, whether to the court where the respondent (investigator/public prosecutor) is domiciled or to the court where the crime occurred (locus delicti) or to the court where the suspect was subjected to coercive measures such as arrest, detention and search? According to Riki Perdana Raya Waruwu, it is more effective if the pre-trial is filed with the district court in the jurisdiction where the respondent (investigator/public prosecutor) is domiciled by adhering to the principles of simple, fast and low-cost justice, because it does not require a delegation summons, one can imagine if a delegation summons is used to summon the respondent through the court in the jurisdiction where the respondent lives, it is certain that the seven-day time limit will not be enough just to make a summons. Meanwhile, M. Yahya Harahap is of the opinion that if the pre-trial motion is related to the act of arrest, detention, confiscation and search, then the pre-trial motion is submitted to the court in the jurisdiction where the arrest, detention, confiscation and search occurred, but if what is submitted is related to the termination of the investigation and termination of the prosecution, then the pre-trial motion is submitted to the court in the jurisdiction of the respondent's domicile.

The opinion of Riki Perdana Raya Waruwu above is based on the argument of the objectives and benefits in the process of organizing the handling of cases by equating them with civil cases, while the opinion of M. Yahya Harahap uses a more analogical approach based on Article 84 paragraph (2) of the Criminal Procedure Code. Actually, if we position the pre-trial motion as part of the criminal case, then there will be no problem with the mechanism for summoning delegates, because the one who carries out the summons in criminal cases is the public prosecutor.

The Criminal Procedure Code does not mention which district court has the authority to try a pre-trial case, whether the district court in the jurisdiction of the respondent's domicile as in the principle of actor secuitor forum rei in civil cases, or at the place where the crime occurred as in the principle of locus delicti in the main case, as regulated in Article 84 paragraph (1) of the Criminal Procedure Code (Sumardiana, 2017).

If a pre-trial motion is filed to the court where the arrest, detention, confiscation and search were carried out, then many problems will arise, for example A committed a crime in Surabaya, but A was successfully arrested in Bali, of course A will then be taken and processed at the Surabaya Police because the court that has the authority to try his case is the Surabaya District Court based on the principle of locus delicti in the Surabaya area. If we follow the opinion of M. Yahya Harahap that the submission of a pre-trial motion to the court where the arrest and detention were carried out, then A must file a pre-trial motion to the Bali District Court. Wouldn't that make things difficult for A, because he has to come or send his lawyer to the Bali District Court? In fact, A was detained in Surabaya and the investigator is also based in Surabaya.

The author believes that it is more appropriate if the pre-trial motion is submitted to the court where the main case will be examined and tried, why is that? because the pre-trial motion is a package with the main case on the grounds that there will never be a pre-trial motion if there is no handling of the main case.

The relationship between the main case (criminal act) and the pre-trial case is like a "debt agreement with its collateral", meaning that the collateral arises because of the debt agreement. There cannot be a collateral agreement without a debt agreement. Likewise with pre-trial and its main case, there cannot be a pre-trial application if there is no

criminal case that is the main case, so that the main case and pre-trial are one package that cannot be separated, and it should be remembered that the authority of pre-trial in the Criminal Procedure Code is regulated in one chapter (namely Chapter X) with regulations on the competence of the district court in examining the main case.

Based on the arguments above, the pre-trial should be submitted to the court where the main case will be examined and tried. In addition, the pre-trial examination by following the competence of the main case is in line with the horizontal control function of the district court over the investigation and prosecution actions, so that it is more appropriate that the one holding the horizontal control role is the district court that will try the main case.

The competence of the court is regulated in Article 84 paragraph (1) of the Criminal Procedure Code which states "The district court has the authority to try all cases concerning criminal acts committed within its jurisdiction" while the exception to the principle of locus delicti is regulated in Article 84 paragraph (2) of the Criminal Procedure Code which states "the district court in whose jurisdiction the defendant resides, last resided, where he was found or detained, only has the authority to try the defendant's case, if the residence of most of the witnesses summoned is closer to the district court than the seat of the district court in whose area the criminal act was committed" meaning that if the principle of locus delicti is not used, then the provisions of Article 84 paragraph (2) of the Criminal Procedure Code apply. Judging from its position, the pre-trial institution is regulated together in one chapter with the authority of the district court, namely in Chapter X, so it can be concluded that the authority of the pre-trial examination is an authority that is connected to the district court which has the authority to examine and try the main case. The problem that arises later is because currently there are special courts that have the authority to try certain criminal acts, for example the corruption court and the fisheries court, while the Criminal Procedure Code states that the authority to examine pre-trial cases is the district court.

In current practice, pre-trial applications against coercive efforts in corruption cases are submitted to the district court where the respondent (investigator/public prosecutor) is domiciled. For example, the main case will be tried at the Central Jakarta Corruption Court, but pre-trial cases against the Corruption Eradication Commission or the Attorney General's Office are submitted to the South Jakarta District Court because the KPK and the Attorney General's Office are located in the South Jakarta area.

The author does not agree with what has been carried out in practice so far, because the submission of pre-trial cases to the court where the respondent is domiciled has no basis for argument, because it only equates the examination of pre-trial cases with civil cases. There are no provisions in the Criminal Procedure Code that explicitly determine the submission of pre-trial cases to the district court in the respondent's jurisdiction (Porto, 1991).

IV. Conclusion

1. The regulation of pre-trial procedural law in Indonesia, based on various existing articles and circulars, shows an urgent need for reconstruction based on justice values. Articles in the Judicial Power Law, the Criminal Procedure Code (KUHAP), and various Supreme Court Circulars (SEMA) regulate the procedures for mediation, conciliation, and case resolution. However, the original content of these articles often does not fully reflect the expected principles of justice, but rather focuses more on limited administrative and technical aspects. In the pre-trial process, there is a

significant difference between theory and practice that affects the effectiveness of the justice system. Articles such as Articles 183 and 184 of the Criminal Procedure Code and provisions in the SEMA often do not provide enough room for adjustment in certain situations, such as when the suspect flees or in the case of legal smuggling. This ambiguity results in injustice in the case resolution process, where the rights of the suspect and victim can be neglected. The judicial review and prohibition of filing a pre-trial motion in certain cases also add complexity and potential injustice to the existing legal system.

2. Weaknesses of pre-trial procedural law, pre-trial case management and minimal pre-trial timeliness. Regarding pre-trial procedural law and examination process, some have been regulated in the Criminal Procedure Code. However, the existing regulations are too brief, so that they do not provide clarity on which procedural law will be used. Therefore, pre-trial procedural law in the Criminal Procedure Code is not regulated explicitly, and because of its nature as a request, the judge refers to civil procedural law. In civil procedural law, pre-trial is filed at the defendant's place. Several things that are not regulated in the Criminal Procedure Code: (i) the issue of summoning the 'respondent'; (ii) the procedure for filing a pre-trial by the applicant; (iii) minimal regulation of the burden of proof, so that it is not used consistently and (iv) the duration of the pre-trial hearing.

Suggestions

1. The importance of reconstructing pre-trial regulations is not only aimed at optimizing the legal process but also to ensure that each individual receives fair treatment and their rights are maximally protected.
2. Reconstruction includes updates to the provisions on the Procedural Law used, so that the legal process is more transparent, fair, and in accordance with broader principles of justice. Thus, it is hoped that the pre-trial system in Indonesia can be more effective in resolving cases and providing justice for all parties involved.

References

Adiputra, S., A. Awanisa, and Y.H. Purba, “The Urgency of the Law on Sexual Violence Criminal Act in Combating Sexual Violence in Indonesia”, Ius Poenale 3(1), 2022, pp. 25–38.

Gunarto, Priyanto, M.E., and Wahyuningsih, S.E. “Legal Reconstruction of Investigation Warrant Submission Arrangements on Suspect Based on Justice Value”, Scholars International Journal of Law, Crime and Justice 6(1), 2023, pp. 36–41.

Harmanto, T., B. Oktafian Abriato, and X. Nugraha, “Penal Mediation By Police Institution In Handling Hate Speech Through Electronic Media: A Legal Efforts To Resolve With A Restorative Justice Approach”, International Journal Of Artificial Intelegence Research 6(1), 2022, pp. 2579–7298.

Isra, S., Yuliandri, F. Amsari, and H. Tegnan, “Obstruction of justice in the effort to eradicate corruption in Indonesia”, International Journal of Law, Crime and Justice 51, 2017, pp. 72–83.

Juwita, S.R., H. Djanggih, and R.A. Dwiasty, “The Nature of Legal Protection Against Women as Victims of Domestic Violence”, Journal for ReAttach Therapy and … 6(1), 2023, pp. 131–139.

Kristiyanti, C.T.S., “Legal Protection Of The Parties In Credit Agreement With Fiduciary Guarantee After The Issuence Of Constitutional Court Decision No. 18/PUU-XVII/2019”, NOTARIIL Jurnal Kenotariatan 6(2), 2021, pp. 65–77.

Lestari, D, R., and S. Endah Wahyuningsih, “The Concept of Justice in the Reconstruction of Legal Protection Regulations for Doctors and Patients in Health Services through Telemedicine”

McNeeley, S., R.C. Meldrum, and A.W. Hoskin, “Low self-control and the adoption of street code values among young adults”, Journal of Criminal Justice 56(May 2017), 2018, pp. 118–126.

Nugrahaa, A., “Legal analysis of current Indonesia’s marine protected areas development”, Sriwijaya Law Review 5(1), 2021, pp. 14–28.

Octora, R., D. Tiopan, and F.C. Wijaya, “Consistency of Criminal Sanctions Regulations in Protecting Women Victims of Non-consensual Pornography Content Dissemination”, European Journal of Law and Political Science 3(2), 2024, pp. 1–9.

Porto, B.L., “The Constitution and political parties: Supreme Court jurisprudence and its implications for partybuilding”, Constitutional Commentary 8, 1991, pp. 433–450.

Ritonga, S., A. Mashdurohatun, and S.E. Wahyuningsih, Legal Reconstruction Return on Assets In Money Laundering Crimes In the Department of Justice Value-Based Forestry,

Sembiring, H. K., T. Prasetyo, and S. Endah Wahyuningsih, Reconstruction of Legal Protection Regulations for Teachers Who Commit Acts of Violence in an Educational Environment Based on the Value of Dignified Justice,

Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*. Volume 3, No 1, Page: 276-286

Sumardiana, B., “Indonesian Journal Of Criminal Law Studies (Ijcls) Reversal Evidence Policy On Corruption As Specialization Of Criminalization Article Information”, (2), 2017, pp. 155–167.

Wahyuningsih, S.E., A. Indah, and M. Iksan, “The implementation of restorative justice to children as perpetrator in criminal investigation in Indonesia”, Test Engineering and Management 83(2746), 2020, pp. 2746–2752.

Wahyuningsih, S.E., S. Setiyowati, HR. Mahmuhtarom, and M. Iksan, “Implementation of Restorative Justice on Elderly Actors in Criminal Law Enforcement Based on Justice Value in Indonesia”, International Journal of Social Science and Human Research 06(02), 2023.

Zulkifli, Z., A. Rahman, M. Martina, R. Mumtiza, and M. Risma, “Social construction of law enforcement for sexual violence against women in Aceh Utara”, Jurnal Civics: Media Kajian Kewarganegaraan 19(2), 2022, pp. 224–234.