Pretrial and Its Contribution To Protection Of The Rights Of Suspectives

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Abstract.

People suspected of committing a crime must be respected for their human rights. To find evidence that the person suspected of committing a crime is guilty, one or several methods of coercion must be used. In upholding and respecting the human rights of alleged perpetrators of criminal acts, the process of arrest and detention must be by procedures. If not according to guidelines, pretrial efforts can be carried out. The purpose of this study was to determine whether the pretrial has provided legal benefits to the suspect's rights. The specification of this research is analytical descriptive, with normative juridical research type. Methods of data collection through collecting secondary legal materials, which include; books, laws and regulations, documents, journals, and scientific articles. Based on this research, it is found that in practice, the implementation of the pretrial trial has not been able to maximally provide legal benefits to the rights of the pretrial Petitioner. The pretrial Judge has tried to make it happen. However, if the Petitioner feels that his rights are still not protected and what is requested by the pretrial Petitioner, it is because of the facts in the Judge and the provisions in the Court. The applicable law makes the Judge unable to give a decision anymore. In addition, to provide legal benefits to the suspect as a pretrial Petitioner and then grant his request, there are still several obstacles or obstacles, including not fully understanding the meaning, scope, and existence of this pretrial. Put forward other facts that can be taken into consideration by pretrial judges in making decisions. In addition, some pretrial judges are less thorough in examining what things will be requested or requested in the submission and pretrial examination.

Keywords: *Pretrial, Protection of Suspect's Rights, Court*

1. INTRODUCTION

The purpose of the law is nothing but to achieve justice and regulate all aspects of human life so that the object of law is very complex. Various actions, circumstances, and events in society are the community's legal needs, which lawmakers formulate into law. Humans as social and legislators with all their limitations, the resulting product is undoubtedly inseparable from shortcomings, weaknesses, or imperfections. Likewise, the Criminal Procedure Code must concretely be able to maintain the boundary between carrying out forced efforts, namely arrest, detention, confiscation, and search of both goods and bodies and bookkeeping of documents with the rights of a person

suspected of having committed a criminal act, thus reflecting that our Criminal Procedure Code still within the scope of a rule of law [1].

The use of any of the above coercive measures has resulted in a violation of a person's human rights, whereas on the other hand, to seek evidence that a person has committed a criminal act [2]. This situation is a consequence of the adoption of the principle of presumption of innocence by our Criminal Procedure Code, as stated in Article 8 of Law Number 48 of 2009 concerning Judicial Power as follows: before a court, must be presumed innocent before a court decision declares his guilt and obtains permanent legal force.

From the article's contents above, it can be interpreted that even if a person suspected of having committed a criminal act must be considered innocent until a court declares his guilt and the decision has permanent legal force. The person suspected of having committed a criminal act must be respected for his human rights, while to find evidence that the person suspected of committing a criminal act is genuinely guilty, one or several of the coercive measures must be used [3].

With the emergence of a new thing in the Criminal Procedure Code called pretrial, it is hoped that it will serve as a tool for suspects to exercise their rights over investigative actions that are felt to violate the suspect's human rights [4]. The pretrial here has the duty to protect the conflicting interests of the police and prosecutors on the one hand and the rights of the suspect on the other. For the sake of efficiency and effectiveness of work sometimes happens where the police are looking for a relatively easy evidence and the prosecutor will immediately bring the suspect before the court.

The development of pretrial in practice shows both positive and negative things. It can be seen that the pretrial is to test the "forced efforts" carried out by the investigators, both by the police and the prosecutor's office [5]. The basic idea is to give the “judicial institution” authority at the investigative and investigative stage to review whether coercive measures, particularly arrests and detentions, have been carried out in accordance with existing provisions[6].

Pretrial in the Criminal Procedure Code only has a function as supervision, and the matter of supervising the entire forced effort is not explained but only part of the effort, namely regarding the validity of an arrest and the validity of detention which is also accompanied by the determination of compensation and rehabilitation. Meanwhile, the Criminal Procedure Code does not explain violations of other coercive measures and how the pretrial authority over violations in carrying out body searches, searches of places, confiscation of goods, and opening of documents is not explained [7]. Thus, the purpose of holding a pretrial is to monitor all coercive measures, so that the rights of the suspect are given the maximum possible protection and are still based on the law [8]. From this it is reflected that pretrial is able to contribute in protecting the rights of suspects.

II. METHODS

The type of research used in this research is normative juridical. Normative juridical research is a type of research used to determine the legal norms in the legislation. The specifications used in this research are descriptive-analytical research. The data used in this paper was obtained from a literature study, a method of data collection carried out by translating, quoting, or adapting the author of the essay in the form of scientific work reports and related legislation to obtain secondary data. Secondary legal materials are taken from the literature relating to written materials, namely in the form of library books journals by scholars—tertiary legal materials, including Big Indonesian Dictionary and Improved Spelling Guidelines. The data analysis method was carried out by analyzing normative juridical using descriptive and perspective descriptions, starting from normative qualitative analysis.

III. RESULT AND DISCUSSION

Pretrial consists of two words, namely pre means before and judiciary means a process of examining a case before the court. Literally means before the process of examining a case before the court, it can be concluded that pretrial is a voluntary examination process before the examination of the main case takes place in court, therefore pretrial is only a follow-up to the main case, so that the decision is also voluntary.

The definition of pretrial based on Article 1 point 10 of the Criminal Procedure Code is the authority of the district court to examine and decide according to the method regulated in the law regarding:

1. Whether or not an arrest and/or detention is legal at the request of the suspect or his family or otherwise is at the discretion of the suspect.
2. Whether or not the termination of the investigation or the termination of the prosecution is legal at the request of upholding law and justice.
3. Requests for compensation or rehabilitation by the suspect or his family or other parties on their behalf whose cases have not been brought to court.

The birth of a new pretrial which is known in the Criminal Procedure Code can be equated with the Rechter Comisaris arises because of the demands of the times that require judges to play an active role in criminal justice, because in criminal justice concerning the Criminal Procedure Code, more human rights are at stake, so there needs to be supervision carried out by judges. The supervision referred to here is that the judge supervises how the legal apparatus carries out their duties and uses the authority granted by the law, as well as those who are victims of attitudes and actions that are not based on the applicable law are entitled to get their good name back [9].

With the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code which includes pretrial, it is hoped that there will no longer be arbitrary treatment of human rights that incidentally still occurs but at least the means to prevent it already exist, namely pretrial, so that Law enforcement officers will be

careful in implementing them because this institution is also expected to be a control for investigators, namely the police and prosecutors.

a. Provisions on the Legality of an Arrest

As explained in Article 1, number 20 of the Criminal Procedure Code, what is meant by arrest is an investigator's action in the form of temporary restraint on the freedom of a suspect or defendant if or prosecution and or trial in matters and according to the method regulated in this law. In Article 17 of the Criminal Procedure Code, it is written that "An order to arrest a person is strongly suspected of committing a crime based on sufficient preliminary evidence." Article 18 paragraph (1) of the Criminal Procedure Code states, "The execution of the arrest task is carried out by an officer of the Indonesian National Police by showing a letter of assignment and giving the suspect an arrest warrant which contains the identity of the suspect and states the reason for the arrest as well as a brief description of the suspected crime case when examined."

Referring to the two articles above, the arrest of a person who is strongly suspected of committing a criminal act must be based on sufficient preliminary evidence, while what is meant by sufficient initial evidence is initial evidence to suspect that a criminal act has been committed by a person who is reasonably suspected of being the perpetrator of the act [10]. the. The material requirement for an arrest is the existence of sufficient evidence, while the formal requirements are a letter of assignment and the issuance of an arrest warrant to the suspect.

Looking at the provisions of Article 18 paragraph (1) of the Criminal Procedure Code, it can be concluded that those who are truly authorized to make an arrest are:

1) Investigators on the orders of investigators
   Investigators are police officers of the Republic of Indonesia who are authorized by law to conduct investigations, while what is meant by orders of investigators is in the form of a warrant made separately and issued before the arrest is made.
2) Investigators are officers of the State Police of the Republic of Indonesia or certain civil servants who are given special authority by law to carry out investigative tasks.
3) Assistant investigator is an official of the State Police of the Republic of Indonesia who is given certain authority to be able to participate in carrying out investigation tasks.

Arrests can only be made for a maximum of one day or 24 hours. If it turns out that the suspect has committed a criminal act and meets the requirements for detention, the suspect will be detained for 20 days, while if it is not proven that he has committed a criminal act, the suspect must be released.

b. Provisions on whether or not a detention is legal

Arrest and detention are included in the type of investigative effort that is classified as harsh because it directly concerns independence and human rights [11]. Detention is difficult to separate from arrest, whereas an arrest can sometimes be

directly followed by detention but detention is not always carried out after an arrest and also exists without going through an arrest, namely in the form of further detention that can be carried out by the Police, Prosecutors, District Court Judges, High Courts and Courts Great. The pretrial judge's authority in examining the validity of a detention is the same as the problem with a pretrial judge examining an arrest [12]. Judicial judges in examining the validity of detention have the authority to examine the subjective and objective conditions of a detention [13].

A detention is carried out if a suspect has fulfilled the subjective requirements of detention, for example, it is strongly suspected that based on sufficient evidence has committed a criminal act, Detention is carried out because it causes the suspect to escape, destroys or destroys evidence and/or repeats a criminal act, and conditions the objective of detention, for example, detention is carried out because of a criminal act that is punishable by a sentence of five years or more.

In the provisions of Article 24 of the Criminal Procedure Code, it can be interpreted that the detention order by the investigator for this level of investigation is valid for a maximum of 20 (twenty) days and if within that period the examination has not been completed, the investigator may apply for an extension or additional detention to the public prosecutor for a maximum of 40 days. (forty) days, and if the investigation has not been completed, the investigator must release the suspect from his custody.

Examination of the validity of a detention by a pretrial judge is to look for the grounds for carrying out the detention, because detention is considered valid if it meets the requirements set out in the law and of course includes both subjective and objective detention conditions [14]. The time limit for a pretrial examination is 7 days until the case is brought before a court hearing and detention for which an examination of its validity can be submitted before a pretrial hearing is that the detention is carried out by investigators and public prosecutors.

c. Provisions on whether or not a termination of an investigation is legal.

The submission of a pretrial request for the validity of the termination of the investigation can be made by the Public Investigating Officer and interested third parties. The police are tasked with conducting investigations, so if there is a third party who feels aggrieved by the police, they can apply for a pretrial examination at the local District Court.

Pretrial is a means in order to provide horizontal supervision, so that third parties who feel aggrieved can be accommodated. In addition, it may happen that the termination of the investigation will cause unrest in the community, so that the prosecutor can apply for a pretrial examination to determine whether or not the termination of the investigation is legal. And if it is decided that the termination of the investigation is invalid, then this is not yet a final examination because an appeal can still be made to the High Court.

d. Provisions on whether or not a Discontinuation of Prosecution is Legal.

Prosecution is an action by the public prosecutor to delegate the case file to the competent PN in the event that according to the procedure regulated in the criminal procedural law with a request to be examined and decided by a judge in court. At the pre-prosecution level, the public prosecutor is required to study and examine the results of the investigation in the form of a case file submitted by the investigator. The result of this obligation can be in the form of a notification to the investigator by the public prosecutor within a period of 7 (seven) days that the investigation is complete or it can also be in the form of sending back the case file within 14 (fourteen) days after receiving it because the investigation is considered incomplete. complete. If the public prosecutor decides to stop the prosecution because there is not enough evidence or the event is not a crime so that the case is closed for the sake of law, then the public prosecutor puts it in a suratdecision.

The Criminal Procedure Code gives the right to third parties and investigators to submit a pretrial request through the competent district court if they cannot accept a termination of the prosecution. This means that if there is a cessation of prosecution, there will be no other legal means for the victim or a third party to ask for justice, so with this pretrial which authorizes the pretrial judge to examine the validity of a termination of prosecution, it is also a legal tool for the victim or a third party in seek justice.

e. Provisions on Claims for Compensation and Rehabilitation

Errors can, however, arise at all levels of examination in a criminal justice system and victims of such errors must be compensated. The compensation referred to is compensation for those who were illegally arrested or detained and became the authority of the pretrial judge. This compensation can be in the form of fulfilling compensation for a sum of money as the suspect's right because he has been arrested and detained or tried without a clear reason and based on the law, or because of a mistake to the person or the law stipulated. With the claim for compensation as stipulated in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code through a Decree of the Minister of Finance, it is hoped that law enforcement officers will no longer be able to carry out arbitrary actions in carrying out their duties because as a result the suspect can file a claim for compensation through pretrial arrangements. Article 95 of the Criminal Procedure Code is broader when compared to Article 9 of Law Number 48 of 2009 concerning Judicial Power. Claims for material compensation are usually applied in the form of a certain amount of compensation in the form of money and the amount has been determined, while claims for immaterial compensation are rather difficult to determine and cannot be submitted through a pretrial institution as stipulated in Government Regulation No. 27/1983 through the Decree of the Minister of Finance No. 983/KMK/1983.

In the Criminal Procedure Code and in Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, it is not determined what forms of loss can be requested for compensation that must be considered by the judge. The forms of loss are regulated in the explanatory memory of the Nederland SS, namely losses regarding:

1) Damaging honor and good name
2) Losing freedom
3) material loss,

Rehabilitation is not only the authority of pretrial judges, but district court judges also have the authority to determine rehabilitation for a person, the only difference is that pretrial judges provide rehabilitation if it is deemed that the arrest or detention of a person is considered illegal and the level is still under investigation and prosecution, while for district court judges it can be only at the next level, namely since the main case has begun to be heard in the district court.

The provision of rehabilitation referred to here is the provision of rehabilitation determined by the pretrial judge, so it must be able to distinguish between rehabilitation associated with sentencing and rehabilitation for those who are illegally arrested, detained or prosecuted. Rehabilitation in this case is the restoration of good names for those who are arrested and detained or suspects, where there has been a mistake in the person or in the application of the law so that for them their good name is restored in their social environment. The request for rehabilitation itself must be submitted no later than 14 (fourteen) days after the decision regarding the legality of the arrest and detention is notified to the pretrial applicant.

Basically, in accordance with Article 77 of the Criminal Procedure Code, requests regarding the legality of arrest, detention, termination of prosecution, termination of investigation as well as provision of compensation and rehabilitation, all of which can be requested for examination and decision through the local district court.

The pretrial request may be submitted to the Head of the local District Court by the suspect, his family or his proxies by clearly stating the reasons. In practice, the suspect or his family or their proxies must submit a written application for a pretrial examination to the Head of the District Court which was previously registered at the Case Registrar. In terms of how to submit a pretrial there is no requirement in a certain form, where the applicant is given the freedom to formulate a letter of application as long as the application in question is clear enough to provide an overview of the basic events of the application from the pretrial applicant.

In principle, a pretrial application must contain:

a. Identity of the parties, what is meant by the identity of the parties are the characteristics of the applicant and the respondent, namely their name, address or place of residence and occupation.
b. The basis of the petition (fundamentum petendum) is concrete arguments regarding the existence of a legal relationship as the basis and reasons for the claim consisting of:

1) The part which is a description of the event or incident which is an explanation of the problem.
2) The part that describes the law, which is an explanation of the rights or relationships that form the basis of the claim.

c. Claims (petitum) are demands that are requested to be decided fairly and granted by the judge.

In the application letter, the basis of the application must be clear and support what is being requested or demanded by the applicant. This means that every event or incident that supports a legal relationship is described chronologically and systematically, so that it is easy to determine the contents of the petitum.

After the pretrial application is recorded in the pretrial case register at the State Registrar, on the same day the clerk or the official appointed to submit the request to the Head of the District Court or deputy Chair of the District Court, who immediately appoints the SINGLE JUDGE and the clerk who will examine the case.

The pre-trial examination procedure as regulated in Article 82 paragraph (1) a of the Criminal Procedure Code is a pre-trial examination procedure for matters as referred to in Article 79, Article 80 and Article 81 as follows that within three days after receipt of the request, the appointed judge shall determine the trial day. Immediately after receiving a Decision Letter from the Head of the District Court regarding the appointment of a judge who examines and hears the pretrial case, within 3 (three) days after the case is recorded, the pretrial judge must determine the day of his trial by summoning the suspect or the respondent as well as the authorized official to heard in court.

After the judge declares that the trial is open and open to the public, the judge immediately begins to examine the applicant and the respondent. First, the judge will ask the applicant whether he will stick with the pretrial application he has submitted. Then ask the respondent whether he understands why he was summoned before the trial, whether he has received a copy of the petitioner's letter of claim addressed to him.

The judge provides the widest opportunity for the respondent to state everything that is deemed necessary to be known by the judge. The suspect or his family is also given the opportunity to provide information and explanations before the court regarding the events involving himself and his family for the unlawful acts of the respondent. In practice, it is the judge who poses questions to the suspect, so that from the suspect's answer, the judge gets an overview of the case according to the suspect's views and opinions.

In a question and answer session before the pretrial hearing, the parties, both the applicant and the respondent, are free to state events related to their case. The judge pays attention to all events presented by both parties. To get certainty that the incident has really happened, the judge needs evidence to convince himself, so that he can apply the law properly. This proof is needed because of the objection or denial of the opposing party about what is being requested or to justify a right.

If the judge's answer and response to the petition of the pretrial parties are deemed sufficient, then it is continued by means of proof, both with letter evidence and witnesses. In this pretrial hearing, the applicant is given the burden of proof first to prove the existence of the incident, and then the respondent is also given the opportunity to submit evidence to strengthen his denial or rebuttal. If the proving procedure has been completed and the parties have not submitted anything else, the judge will immediately give his decision in the form of a determination.

The provisions of Article 82 paragraph (1) c and d of the Criminal Procedure Code state that the pretrial examination is carried out quickly and within seven days the judge must have rendered his decision. In practice, because pretrial cases must be completed and decided no later than seven days, the pretrial examination is carried out by question and answer between the judge and the applicant and between the judge and the respondent verbally. The petitioner, represented by his legal advisor, must be nimble in presenting the arguments for his petition so that the respondent must at that time be ready to present the arguments for his answer, and finally arrive at proof, so that he can immediately give a decision, and a criminal case that has been started by the District Court while the examination of the pretrial request has not been completed which results in the request being void because the main case has begun to be heard and can be avoided immediately.

After the entire pretrial examination process above has been completed, the time has come for the judge to issue a decision that must clearly contain the basis and reasons, while the pretrial decision must be in the form of a determination, as regulated in the Criminal Procedure Code, Article 83 paragraphs (1) and (2). By looking at the provisions contained in the article, it is clear that pretrial decisions for arrests and detentions cannot be appealed, while decisions that stipulate the invalidity of termination of investigation or termination of prosecution do not rule out the possibility of being asked for examination by the Public Prosecutor by submitting a request for examination and to be requested immediately. decision in the High Court within the jurisdiction of the District Court. This provision is also contained in Article 82 paragraph (3) c of the Criminal Procedure Code that if an arrest or detention is illegal, the decision shall include the amount of compensation and rehabilitation provided.

By looking at the above provisions, the judge's decision which grants the pretrial application regarding the invalidity of the arrest and detention and grants the claim for compensation, can immediately apply for compensation according to Government Regulation Number 27 of 1983 concerning Implementation of the Criminal Procedure Code through the Decree of the Minister of Finance Number 983 /KMK/01/1983 concerning Procedures for Payment of Compensation. Thus, it is possible for the suspect or his family to file a claim for compensation through the Head of the District Court against the Police agency represented by his apparatus.

The suspect or his proxies may submit a request for rehabilitation to the competent court, no later than fourteen days after the decision regarding the legality of

the arrest or detention is notified to the applicant. If the request regarding the legality of the arrest or detention, the determination on rehabilitation shall be included at the same time with the determination of the legality of the arrest or detention. Rehabilitation is obtained if the court session has been decided free or free from all lawsuits and has permanent legal force.

There are several things that must be considered in giving a pretrial decision:

1) The pretrial decision must clearly contain the basis and reasons, accompanied by certain articles of the relevant regulations or unwritten legal sources that are used as the basis for adjudicating.
2) If an arrest or detention is illegal, the investigator or public prosecutor at their respective level of examination must immediately release the suspect.
3) If a termination of an investigation or prosecution is invalid, the investigation or prosecution of the suspect must be continued.
4) If an arrest or detention is illegal, the decision includes a large amount of compensation and rehabilitation provided, whereas in the event that a termination of an investigation or prosecution is legal and the suspect is not detained, then the decision will include rehabilitation.
5) If there are objects that are confiscated which are not included as evidence, then the decision shall state that the goods must be immediately returned to the suspect or from whom the goods were confiscated.
6) The pretrial decision regarding the claim for compensation must contain the reasons for granting or rejecting the claim for compensation.
7) The pretrial decision at the investigative level does not rule out the possibility to hold another pretrial examination at the examination level by the public prosecutor and for that a new request may be submitted.

In giving a pretrial decision in the form of a determination, it must really pay attention to what is the basis and reason that is right, real, logical and based on the provisions set forth in the Criminal Procedure Code for the awarding of a decision in the form of such determination, so that both the applicant and the respondent can feel the existence of justice in a pretrial trial. A pretrial decision on whether or not an arrest or detention is legal cannot be requested for legal remedies, except for a decision declaring the termination of an investigation or prosecution to be invalid, an appeal may be requested to the High Court.

Article 1 number (12) of the Criminal Procedure Code explains that legal remedies are the right of the defendant or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the convict's right to request for review in matters and according to the method regulated by law. For pretrial decisions, ordinary or extraordinary legal remedies cannot be used except in pretrial decisions that stipulate the invalidity of the termination of an investigation or termination of prosecution, this appeal can still be requested as well as a final decision, while the grace period for filing an appeal to file a pretrial appeal is seven days after

the pretrial decision is determined by the district court within a grace period of three days after receiving the appeal must have sent it to the high court.

The high court after receiving the appeal, the three-day grace period must have determined the trial day. After determining the day of the trial, the high court must have rendered or rendered a decision within a period of seven days from the date of the trial. The high court in conducting the examination at the appeals level is of the opinion that if in the examination at the first level it turns out that there is negligence or there is an incomplete application of the law, then the high court is right or not. If the decision is correct, the high court will uphold the pretrial decision and if it is not correct it will be immediately canceled then the high court will make its own decision.

Article 84 paragraph (1) d, KUHAP states that in the event that a case has begun to be examined by the District Court, while the examination of a request to a pretrial has not been completed, then the request is void. This provision limits the pretrial authority, because the pretrial examination process is terminated and the case is dismissed when the principal criminal case begins to be examined by the District Court.

Pretrial as Legal Protection of Human Rights

The state of Indonesia is a state based on law, meaning that the state in carrying out its duties must be founded on the law, and every action of the state must be legally accountable, which means that Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution. Human rights are upheld and guaranteed that every citizen has the same position before the law. Therefore, the law must be implemented and obeyed. The implementation and enforcement of the law must always uphold the right to life, freedom, independence, and security for a person because the law aims to protect human interests and create public order and security.

With the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code, which contains provisions regarding pretrial issues, the suspect's human rights must be expected to be given more attention. Someone who is not necessarily guilty is also subject to this arrest. It is hoped that the arrest or detention has gone through a predetermined procedure. In addition, a suspect can find out what his rights are in a preliminary examination stage before the subject of the case is submitted to a court session, so that the suspect's human rights will not be harmed and are more protected by his dignity as a human being in a judicial process. A human decision given by a pretrial judge must indeed be fair by looking at all existing aspects, and all of this will be adjusted to legal provisions. A pretrial judge in examining a case requested by a pretrial must be objective, meaning that he must pay attention to the information submitted by both parties. Information submitted by a suspect also deserves attention, not only information from the investigator. This attitude must be carried out by the pretrial because it must also see the provisions in Article 8 of Law no. 48 of 2009 concerning Judicial Power as follows: "Everyone suspected of, arrested, detained, prosecuted, and or brought before a court, must be presumed innocent before

a court decision declares his guilt and obtains permanent legal force". So a person is considered innocent before a court decision has permanent legal force or better known as the principle of presumption of innocence. This principle places the same position on litigants in court, especially in this pretrial process with the aim of not reducing the risk of human rights violations as small as possible.

The protection of the human rights of a suspect is also regulated in Law Number 39 of 1999 concerning Human Rights in Article 17 as follows: "Everyone, without discrimination, has the right to obtain justice by submitting applications, complaints and lawsuits, either in criminal cases, both civil and administrative, and tried through an independent and impartial judicial process, in accordance with procedural law which guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision..

Pretrial as a legal protection for human rights as a suspect which has been regulated in Law Number 48 of 200 9 concerning Judicial Power which is then redefined in Law Number 8 of 1981 concerning Criminal Procedure Code and it contains rules regarding pretrial, can be used as the basis for the work of law enforcement officers, namely judges, investigators, and prosecutors as public prosecutors in upholding the rights of a suspect which includes:

1) The same legal treatment for everyone before the law without making any difference in treatment.
2) Arrest, detention, search and confiscation can only be carried out based on a written order by law and only in the case and in the applicable manner.
3) A person who is suspected, arrested, detained, and prosecuted or brought before a pretrial hearing must be presumed innocent.
4) For someone who is arrested and detained without a clear reason and not based on the law, it must be given compensation and rehabilitation.
5) The pretrial hearing process must be carried out quickly, simply, at low cost, free, honest and impartial.
6) The judge in giving the pretrial decision must be as fair as possible by really paying attention to the statements and witnesses submitted by the applicant or the respondent.
7) Pretrial hearings must be open to the public except in cases regulated by law.

If in this pretrial hearing the things mentioned above are really considered and implemented with good ethics then the protection of the rights of the suspect can really be carried out as much as possible regardless of what will be decided by the pretrial judge. However, if each party, both the applicant, the respondent and even the pretrial judge himself, still does not pay attention to and know the applicable provisions, then each party is expected to try to do better. The Petitioner in compiling the pretrial request is expected to be more thorough and perfect, while for the Respondent, in this case, investigators conduct their investigations in accordance with predetermined procedures and judges, especially pretrial judges, to further increase their active role in the trial.

The rights of suspects and defendants have been enshrined in Indonesian legislation, so that these rights are formally guaranteed in the law, and the violators, especially regarding arrest and detention, have provided review tools through pretrial, so that they have been channeled in criminal justice [15]. which respects human rights. In addition, it is also required to grow awareness of human dignity which must be upheld by law enforcement officers. All of this is related to the mental factors of each individual and criminal law in Indonesia is expected to be a means of guidance for law enforcers to make mental changes that lead to recognition and respect for human dignity, in this case the suspect through pretrial.

Pretrial as a Control Tool against Investigators and Public Prosecutors

Pretrial functions as a means of control over the actions of investigators and public prosecutors in the event of an abuse of authority that has been given to the two law enforcement officers[16]. The control tool meant is that every action of the investigator and prosecutor must be based on the rules that have been in effect and in accordance with the Criminal Procedure Code. Every action of an investigator in making an arrest, detention, termination of an investigation and in terminating a prosecution must actually have a solid foundation in carrying out these actions. Pretrial has the duty to safeguard the two opposing interests, namely the police and prosecutors on the one hand and the rights of the suspect on the other.

For the sake of efficiency and effectiveness of work, it is not uncommon for the police to look for a relatively easy proof, for example by forcing a suspect to confess to his crime, making arrests without a warrant or making detentions that are not in accordance with applicable procedures. Thus the prosecutor can immediately bring the suspect before a court trial. This situation is the weakness of the investigator and makes it an opportunity for the suspect to be brave enough to request a pretrial submission against the police and prosecutors.

This pretrial institution controls the coercive measures carried out by investigators so that the investigator's actions do not violate a person's human rights, namely the act of coercion needed for an investigation so that it can bring someone before a court hearing because they have been suspected of committing a criminal act, they must clearly know what which are their rights and the extent of the authority of law enforcement officers who will carry out such coercive measures if the investigator's actions can reduce the human rights of a suspect.

If we look at the system used in the Criminal Procedure Code, it is expected that judges will play an active role in pretrial which is nothing but a means of monitoring the actions of law enforcers, especially in the preliminary examination stage if there are legal provisions. In this case, the pretrial judge is actually the supervisor who oversees whether the investigating officers and prosecutors as public prosecutors in carrying out their duties work actively and effectively, especially in finding facts and applying them from a legal perspective or maybe even paying less attention to the facts and legal provisions that apply in this case. laws that can violate the human rights of the suspect.

From the results of the researcher's search , it can be said that law enforcement officers who are successfully pretrial are indeed very rare, even in Semarang there has been no prosecutor's case that has been pretrial . All of this is because law enforcers, in this case prosecutors and police, are more vigilant and careful in carrying out existing regulations. Also because between investigators and public prosecutors there is always good coordination in handling a case. From the suspect's side, there were those who did not dare to file a pretrial, because they did not know about pretrial, which might be due to the low level of education, the place to report was far, it was not easy to get compensation, so dealing with law enforcers did not want to be bothered because of the complicated procedure. - complicated, afraid and ashamed of the problem being known by other parties, afraid of threats and because of the lack of public information about pretrial.

The limited time in the pretrial process is felt to be too short, because if the pretrial case proceedings are not completed within 7 (seven) days, the pretrial case will be considered void and thus the main case will begin to be examined by the District Court. This is in accordance with Article 82 paragraph (1) letters c and d of the Criminal Procedure Code. In addition, Article 82 paragraph (1) letter d of the Criminal Procedure Code can be manipulated by law enforcement officials, especially public prosecutors, in this case transferring cases to the District Court more quickly so that the main case is immediately examined so that the pretrial case becomes invalid, even though it is not necessarily the arrest made. by the investigator it is legal according to law or the termination of the investigation or the termination of the prosecution is legal. The rights of suspects contained in the Criminal Procedure Code cannot be properly protected in order to uphold law, justice and truth. In this pretrial, there are no verstek decisions, namely decisions that are not attended by the parties concerned, namely the pretrial applicant or the pretrial respondent.

IV. CONCLUSION

In practice, the implementation of this pretrial trial has not been able to maximally provide legal benefits to the rights of a pretrial Petitioner. The pretrial Judge has tried to make it happen. However, suppose the Petitioner feels he is still not protected by his rights and what he is asking for by the pretrial Petitioner. In that case, it is because the facts in the Judge and the provisions of the applicable Law have made the Judge unable to give another decision.

In providing legal benefits to the suspect as a pretrial Petitioner and then granting his application, there are still some obstacles, including not fully understanding the meaning, scope, and existence of this pretrial. In addition, it is also because the facts received by the Judge are only from one party, namely the Investigator and the Petitioner, who is not brave enough to put forward other facts that might be taken into consideration by the pretrial Judge in giving a Decision. In addition, some pretrial judges are not very careful in examining what things will be requested or requested in the submission and pretrial examination.

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