

Institutional urgency Pretrial in system Justice Criminal Indonesia Based on the Basics of Justice, Certainty and Legal Benefits

Ikhwaluddin Simatupang¹, Fahrizal S. Siagian*²

¹Doctor of Science Program Law, Sultan Agung Islamic University, Indonesia Jalan Kaligawe Raya, Genuk, Semarang, 50112, Central Java, Indonesia

²Master of Law, University of North Sumatra, Indonesia, Academic Community Street Number 9, Padang Moon, Medan New District, Medan City 20155, North Sumatra, Indonesia

*Corresponding Author Fahrizal S. Siagian

Master of Law, University of North Sumatra, Indonesia, Academic Community Street Number 9, Padang Moon, Medan New District, Medan City 20155, North Sumatra, Indonesia

Article History

Received: 09.06.2023
 Accepted: 17.06.2023
 Published: 26.06.2023

Abstract: Pretrial is an Indonesian criminal justice supervisory institution whose function is to provide oversight of the implementation of criminal procedural law by law enforcers. Related to the natural principle that humans are never free from mistakes. This is intended so that the rights of innocent people are not violated. The formulation of the research problem is *First*, What is the Urgency of the Institution Pretrial in the System Justice Criminal Indonesia? *Second*, what is the role of the pretrial institution in the Indonesian criminal justice system in realizing the goals of justice, certainty, and legal benefits? The purpose of this study is solely to get answers to the two formulations of the problem. The research method, namely the normative legal research method refers to laws and regulations using secondary data, namely primary legal materials, secondary, and tertiary. Data collection through *Library Research* and processed with descriptive analysis.

The results of these studies are *First* information was obtained that Pretrial in the Justice System Indonesian criminal law is needed to achieve the rights of all parties without anyone being marginalized. *Second*, obtained information that the role of pretrial institutions in System Criminal Justice Indonesia plays an important role in realizing the goals of just law, legal certainty and usefulness and maintaining a constructive legal culture. Pretrial in Indonesia has been widely used to test the legitimacy of law enforcement that has been carried out, so that equal rights before the law can be obtained.

Keywords: Criminal Justice System; Praperadilan; Equality Before The Law.

INTRODUCTION

The law actually functions to create a sense of security and peace in society. However, the most important thing is that the law is not used as a tool to punish people directly. However, the law was created to order society to create national security. Based on the aspect of its application, law is divided into 2 (two), namely material law and formal law. Based on the context of the regulated line, law is divided into private law and public law. Public law including criminal law. Criminal law is divided into 2 (two), namely material and formal criminal law. Regarding material criminal law, namely discussing regulations that contain prohibitions and threats of sanctions if they violate them. Formal criminal law discusses how to enforce and carry out material legal

mandates. In other words, this formal criminal law places more emphasis on material law enforcement.

Formal criminal regulations contain rules regarding technical implementation of material criminal regulations. Starting from the legal cycle at the police level such as police reports, examinations, examinations, confirmation of suspects, arrests, detentions, confiscations (strictly for objects), up to the stage of examination by investigators, especially investigations by public examiners. Law enforcement is the work of ensuring that regulations or guidelines are consistently maintained and utilized as basic norms in running the wheel of life of the nation and state. In the world of law enforcement, this is an important matter to pay attention to, especially the hypothesis put forward by Lawrence M.

Friedman who argues that the components that make up the legal instrument as a whole consist of three components. It combines the components of *structure*, *substance* and *legal culture*.

Law enforcement is formed from law enforcement elements and their regulations. When associated with Friedman's theory, law enforcement consists of 3 elements, namely legal substance, legal structure and legal culture. As it is known that the legal substance according to Friedman includes the context of statutory regulations that are regulatory and coercive. Then next is the legal structure, including law enforcement officials. Law enforcement officials in question are *law enforcer*, including the Police, Prosecutors, Advocates (Lawyers) and Judges. According to Friedman, the legal system has a legal system structure consisting of law enforcement elements ranging from the Police, Prosecutors' Office, Advocates, Judges, Judiciary Institutions and other related institutions. The legal structure is closely related to the implementation of formal law (legal substance). In addition, the element of legal substance includes statutory regulations that are binding. These two elements are complemented by a third element, namely the legal culture owned by the community. This element concerns the level of public compliance in carrying out orders from the applicable laws and regulations, including the Criminal Procedure Code which acts as public law. Then by itself will concern the interests of the people in general.

The practice of enforcing criminal procedural law in the field after at the Police level is in the form of Police Reports, Investigations, Determination of Suspects, Arrests, Detentions, Confiscations, Searches, Pre-Reconstruction, Reconstruction and so on until the files are handed over to the Public Prosecutor. In accordance with Article 1 Number 7 of the Criminal Procedure Code, it is stated that Prosecution is the act of the public prosecutor, to transfer his criminal case to the competent district court in terms of and according to ways regulated in The law on criminal procedure law is preceded by a request to be examined and decided by a judge in a court session. [Soesilo, 2015] Enforcement of criminal procedural law often creates problems which result in the birth of legal remedies in the form of pretrial lawsuits filed by the parties after being named suspects. If according to the party designated as a suspect there are irregularities in the treatment of him. For example, there is not enough evidence as intended according to the principle *one witness no witness*, which means that one piece of evidence is not proof. In accordance with Article 183 juncto 184 of the Criminal Procedure Code which stipulates that an event is said to be a criminal event if 2 times of evidence is sufficient. There is not enough evidence, but the National Police investigators have taken action in the form of establishing a suspect as soon as possible. Therefore, this matter is considered to have procedural flaws. Parties who are designated as suspects can submit pretrials addressed to the Judicial Power Institution according to their jurisdiction (relative competence) based on these conditions.

Pretrial is an institution authorized to examine the application of Criminal Procedure Law by Investigators and or Public Prosecutors. Another term states that Pretrial is a Supervision Institution for law enforcement officials, especially those carrying out criminal procedural law. This pretrial only focuses on procedures and does not go into the matter of the case. Pretrial focuses on whether or not the process of investigation, determination of suspects, arrest, detention, search and

prosecution is legal. In addition, the pretrial also has the authority to examine the decision of the Investigator at the Police regarding whether or not the Termination of Investigation (SP3) is legal. In addition, the Pretrial Institution also has the authority to examine whether the Prosecution Termination Letter is valid or not. Parties entitled to file a Pretrial are those related to Arrest, Detention, Search, Determination of Suspects and legal no Prosecution. However, if it is related to the termination of the Investigation with the issuance of SP3 by POLRI Investigators, and the end of prosecution by the Prosecutor's Office, then a pretrial request can be submitted by the Victim or the Family of the Victim of a Crime. In addition, given the right to *Interested Third Parties* who has the right to file a Pretrial Petition.

Interested Third Parties are certain parties who are outside the subject of a crime, but experience losses both morally and materially. Therefore the Criminal Procedure Code gives the right to carry out a pretrial lawsuit. The application or lawsuit is submitted to the District Court in accordance with its jurisdiction. This is a manifestation and commitment of the District Court to implement procedural law both criminally and civilly. Specifically regarding criminal cases, the District Court applies a principle known as the Supervision Principle as a principle in the Criminal Procedure Code, one of which is through pretrial. [Hiariej, 2005] The District Court proactively supervises formal and material law enforcement processes at the Investigation and Prosecution Levels.

Pretrial is a supervisory institution in formal criminal law institutions in Indonesia. Pretrial, in the view of the general public, is not fully aware of the existence of this legal remedy. The practice of implementing this mechanism is still not optimal. This can be seen from the fact that it is still rare for people to use this mechanism in fighting the injustice they suffer. This institution gives rights to suspects or people accused of committing a crime, where their basic freedoms are violated by law enforcers.

Habeas corpus became the forerunner to the birth of pretrial. This agency thrives on law enforcement in the United Kingdom. *Habeas corpus* means "*control one's self*". This institution's role is to detain a person and try him with evidence after 2 days after detention. The UK legal system can be interpreted materially and formally. The material meaning lies in the function of this legal institution to oppose the detention of a person. Formally against the so-called court order *great writ*. [Marpaung & Moeliono, 2021] Pretrial and *Habeas corpus* have differences that lie in the underlying legal system. Pretrial background civil law system (*Civil Law System*), whereas *Habeas corpus* developed in a country that adheres to the Anglo-Saxon legal system.

Pretrial is only limited to a special institution in supervising the enforcement of Indonesian criminal procedural law which aims to protect human rights which are unilaterally treated unfairly. The human rights protected by this institution are the rights to freedom according to the theory put forward by John Locke. In its implementation, this institution must always prioritize the principle of presumption of innocence. Therefore, it is necessary to study more deeply about ***Institutional urgency Pretrial in system Justice Criminal Indonesia Based on the Basics of Justice, Certainty and Legal Benefits***. Therefore, a problem that needs to be discussed can be formulated, namely related to the topic of how is the Urgency of Pretrial Institutions in the Indonesian Criminal Justice System? Second, what is the role of the pretrial institution in the

Indonesian criminal justice system in realizing the principles of justice, certainty and the benefit of law?

MATERIALS AND METHODS

This research uses normative legal research as its method. Legal research that focuses on material studies or secondary data is known as normative legal research. Examples of normative legal research include studies on legal principles, legal systematics, levels of legal harmony, comparative law, and legal history. Data or materials that include primary, secondary and tertiary legal materials are referred to as secondary data [Soekanto, 2019] Library research (*Library research*) is used for data collection to collect theoretical or doctrinal results, opinions or conceptual thoughts, and previous research on the subject matter of this research study. Legislation, court decisions, books, and other scientific works are all used in this research. This research data was obtained by first searching for data through library research related to books, scientific works such as journals, accessing information sources from internet media, and seeking decisions from Judicial Institutions such as Decisions of the Supreme Court of the Republic of Indonesia through the Directory of Decisions of the Supreme Court of the Republic of Indonesia. Data obtained from various sources are then sorted based on their suitability with the topic being discussed.

This research uses primary, secondary, and tertiary data. Primary legal material is legal material obtained from regulatory sources, for example the 1945 Constitution of the Republic of Indonesia, Law of the Republic of

Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police, Law of the Republic of Indonesia Number 16 of 2004 which has been amended to become Law of the Republic of Indonesia Number 11 of 2021 concerning the Attorney General of the Republic of Indonesia, and Law of the Republic of Indonesia Number 39 of 1999 concerning Rights Human Rights. Second, secondary legal materials are legal materials that provide an explanation of primary legal materials. This legal material as a source of knowledge, includes legal books and scientific papers and so on related to the subject under study. Third, Tertiary Legal Materials, especially tertiary legal materials can complement primary and secondary legal materials. These legal materials are encyclopedia legal dictionaries and legal articles obtained from web media.

All kinds of data are processed by descriptive analysis, especially by focusing on hypotheses, standards, principles, articles of law, and guidelines related to the subject matter discussed. By understanding the interrelationships between various types of information, subjectively decomposed information will also be introduced as an effective and comprehensive picture. In addition, all data is processed and then presented descriptively so that besides being able to describe a valid legal basis, it can also offer solutions to the problems under study.

RESULTS AND DISCUSSION

First, the Urgency of Pretrial Institutions in the Indonesian Criminal Justice System

The Criminal Justice System is a theory of how to deal with crime in society through cooperation between state agencies and authorities regulated by law. In this context, what is meant by

"prevention" is an effort to control crime within the limits of social tolerance. Systemic movements originate from the supporting subsystems (police, prosecutors, courts, correctional institutions, and advocates) of the criminal justice system. Together, these movements aim to change *input* become *output* desired by the Criminal Justice System. [Sugiharto, 2012] The implementation of law enforcement between state institutions known as the integrated criminal justice system has a very important role. The judge's correction of the actions of the law enforcers' quarters was taken through pretrial.

Pretrial is a criminal procedural law enforcement supervisory institution that was born after the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law. Pretrial is the biological child of the Criminal Procedure Code or KUHAP. [Rusman Sumadi, 2021] Pretrial oversight institutions in criminal law enforcement agencies in the Criminal Justice System in Indonesia. Many parties claim that pretrial was initiated to realize the presumption of innocence in law enforcement in Indonesia. Pretrial was born to realize an independent, clean and politicized law enforcement system. So many also say that this pretrial is equated with *Habeas corpus*. However, *Habeas corpus* unsuitable for use during the New Order era. So that the pretrial system was initiated in the Indonesian criminal justice system as contained in the Criminal Procedure Code. During the New Order era, the justice system was still under executive power, making it difficult to implement an independent and independent criminal justice system. Therefore, this pretrial mechanism is used to accommodate the desire to create a clean and independent criminal justice system. Before the birth of the Criminal Procedure Code, law enforcement by the Police and the Attorney General's Office ran wildly which led to injustice.

These law enforcers operate without heeding the principle of the presumption of innocence which is a human right guaranteed by the 1945 Constitution and the Human Rights Act. On this basis, the legal structure and substance related to criminal procedural law was born which can later guarantee the achievement of the presumption of innocence and guarantee the achievement of justice, certainty and legal benefits.

Pretrial is a new system of law enforcement in Indonesia. This institution is not run by a new institution, but is still a law enforcement process that begins with investigations, prosecution investigations, and examinations by law enforcement officials. [Suhardjo, 2019] Pretrial interpretation goes beyond the stages of investigation and prosecution. On the other hand, suspects, advocates and heirs are of the opinion that investigators' attempts to coerce arrests, detentions, searches and confiscations are against the law. The applicant can submit this pretrial to the District Court for speedy evaluation by a Single Judge, who will make a decision within seven days. [Arief, 2018]

Pretrial is an institution that was born from inspiration known as *Habeas corpus* in Courts that adhere to the Anglo Saxon system which provides fundamental guarantees about human rights regarding the right to freedom. [Yanto, 2013] *Habeas corpus* is a medieval judge's order, which orders someone who controls convicts to display a convict figure before the judge whose function is so that the judge can decide whether the convict is guilty or not. *Habeas corpus* authorize the prison guard to carry out the detention. Pretrial is carried out if there is a determination of a

suspect who violates procedures by law enforcement officials who have been authorized by law. Determination of suspects is part of the investigative process which is a deprivation of human rights so that the determination of suspects by investigators must be an object that can be requested for protection through pretrial legal remedies. [Kavalova, 2022]

Pretrial becomes a special institution within the District Court that functions as a supervisor for law enforcement officials in carrying out criminal procedural law so that it is in accordance with the principle of the presumption of innocence [Eddyono, 2014] Regarding the pretrial mechanism, it is explained in detail in Pretrial is the authority of the district court to examine and decide, according to this law, whether or not the arrest and/or detention is legal at the request of the suspect, his family, or other parties under the authority of the suspect, this is regulated in Article 1 point 10 of the Criminal Procedure Code whether or not the termination of prosecution or investigation is legal upon request for the sake of law and justice; a request for compensation or rehabilitation through the suspect's attorney whose case was not brought to court by the suspect, his family, or another party (a third party who has an interest in the case). Pretrial trials are also regulated in Article 77 of the Criminal Procedure Code which states that the district court has the authority to examine and make decisions in accordance with this law regarding:

- a. Whether or not it is lawful to arrest, detain or end an investigation or prosecution;
- b. Restitution and/or rehabilitation for people whose criminal cases are terminated at the level of investigation or prosecution.

Pretrial in a rule of law must prioritize the principle of upholding human rights. Pretrial is a form of guarantee of equal rights before the law or commonly known as *Equality Before the Law*. According to Adrian Bedner, one of the indicators of a rule of law is the upholding of human rights in the life of the nation and state. Complete indicators of rule of law according to Adrian Bedner are as follows:

1. Rules based on law;
2. State actions based on law;
3. Formal legislation;
4. Democracy;
5. The law and its interpretation are based on the principle of justice;
6. Protection of human rights and individual freedoms, group rights and fulfillment of social rights;
7. Judicial independence and
8. Other institutions that function to maintain the fulfillment of these elements *rule of law*.

Individual basic rights are considered to have been violated and the noble ideals of the Indonesian nation have been damaged by procedural errors by law enforcers. As a result, the principles of human rights are upheld in the pretrial process in accordance with the Human Rights Law and the 1945 Constitution. The judicial decision not to review the Criminal Procedure Code, the Constitutional Court said, this legal institution is a new

development in law enforcement in Indonesia.

Everyone who is arrested, detained and tried for allegedly committing a crime has the right to be presumed innocent until his guilt is legally proven in court, according to Article 18 Paragraph 1 of the Human Rights Law of the Republic of Indonesia Number 39 of 1999. listen to and receive all legal guarantees necessary for his defense in accordance with laws and regulations. According to the language of the article, it has been confirmed that anyone who has not been convicted by a court and does not yet have legal force (*inkracht van gewijsde*), a person who is considered to be the perpetrator of a crime or who has been given suspect status, must be interpreted as innocent. When human rights are upheld, a country is said to have a strong rule of law. This illustrates that the need for basic freedoms within the framework of law enforcement in Indonesia is very vital. In addition, the Preamble to the 1945 Constitution mandates that Indonesia upholds human rights.

As a judicial body related to the constitution, the Constitutional Court examines all laws and regulations that violate the 1945 Constitution. This court has explained that pretrial preparation is essential for a country's criminal justice system, including Indonesia, which is based on law. Pretrial is a criminal law institution that is very important for achieving justice and avoiding the arbitrariness of investigators or public prosecutors in carrying out arrests, searches, confiscations, investigations and prosecutions. It is also important to stop the investigation and/or prosecution with compensation and/or rehabilitation. The constitutional mandate has been fulfilled if law enforcement operations are successfully carried out.

Second, Role. Institution, Pretrial In system Justice, Criminal Indonesia in Realizing the Principles of Justice, Certainty and Expediency of Law

Indonesia is a nation that always upholds the rule of law and places the rule of law at the helm of all aspects of state administration. In fact, the purpose of law is to instill a sense of security and peace in society. However, the fact that laws are not used to punish people directly is what matters the most. However, the purpose of the law is to provide a sense of security and protection to the general public from various threats and disturbances. Law is divided into two categories based on its use, material law and formal law. Based on the context of the regulated line, law is divided into private law and public law. Public law including criminal law. Criminal law is divided into 2 (two), namely material and formal criminal law. Regarding material criminal law, namely discussing regulations that contain prohibitions and threats of sanctions if they violate them. Formal criminal law discusses how to enforce and carry out material legal mandates. In other words, this formal criminal law places more emphasis on material law enforcement.

Pretrial is an institution authorized to examine the application of the Criminal Procedure Code by investigators and/or by the Public Prosecutor. Another term states that the supervisory institution for law enforcement officials, especially those following criminal procedural law, is pretrial. This pretrial does not go into material; it only focuses on procedural text. The pretrial mechanism being discussed is whether the investigation, arrest, detention, search are legal or not, the prosecution is legal and the suspect determination is legal. In addition, the pretrial also has the authority to examine the decision of the Investigator at the Police regarding whether or not the Termination of the Investigation is legal.

As a country with a lawful state, Indonesia's society, nationality and statehood including the government must always be based on law. Pretrial is a warning for law enforcement officials to implement statutory regulations, because pretrial can create legal certainty (*rechtmatigheid*), Gustav Radbruch stated that the concept of a rule of law must contain three identity values. especially how procedural law is applied in accordance with existing regulations. Legal certainty is when a law is made and promulgated with certainty because it regulates clearly and logically and does not raise questions because it can be interpreted in multiple ways so that it does not conflict with other norms. Hans Kelsen said that law is a set of rules. Statements that emphasize "should" or "should" by including a number of laws about what must be done are referred to as norms. The concept of legal certainty can be realized through pretrial which is a legal remedy for parties who are harmed by the actions or legal procedures of law enforcement officers. Articles 77 to 83 of the Criminal Procedure Code establish standard pretrial procedures. The existence of a pretrial institution, especially an institution that regulates and acts to decide whether a confiscation is legal or not, termination of investigation, or termination of prosecution. Pretrial will prevent the law enforcement process from mistakes known as inappropriate legal processes or mistakes on people in the arrest/detention process. [Dharmawan, 2022] Pretrial is faced with someone who has received the actions of law enforcement officials whose procedures are flawed so that they have harmed themselves both materially and morally. Pretrial can create legal justice, emphasizing that pretrial will provide justice for parties who are harmed by criminal law enforcement.

Pretrial can realize the benefits of law, meaning that pretrial in its application in the Indonesian criminal justice system has had a positive or negative impact on society and has a positive impact on law enforcement culture, and this pretrial has a positive impact on society. law enforcement officers. This pretrial issue concerns rights *Interested Third Parties* in submitting a pretrial, may submit a pretrial request to the Chairperson and Panel of Judges at the Court in their jurisdiction. Pretrial can create a sense of justice for all parties. Regarding the concept of a sense of legal justice that is to be obtained from the application of pretrial in the Indonesian criminal justice system, namely the elucidation of Article 77 of the Criminal Procedure Code, it is explained that the termination of prosecution is not the submission of cases, for the public interest this is the absolute authority of the Attorney General's Office. In addition, Article 80 states that a request for an examination to be valid or not to terminate the investigation and prosecution can be submitted by the investigator or public prosecutor respectively. In addition, it can also be submitted by interested third parties.

Pretrial functions to provide a sense of justice and legal certainty to the aggrieved party. Pretrial as one of the control mechanisms against possible arbitrary actions by investigators or public prosecutors in carrying out arrests, detentions, searches, confiscations, investigations, determination of suspects, prosecutions, termination of prosecutions, whether accompanied by requests for compensation and or rehabilitation or not. For example, according to the story of a senior legal academic, it was stated that prior to the existence of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code (KUHP), those suspected of committing criminal acts were

brought before investigators and every effort was made to ensure that later the accused perpetrator admits that the criminal act was true. Pretrial puts forward the principle of presumption of innocence in collaboration with the principle *Equality before the Law* which means equal rights before the law. Thus, if the pretrial is realized it will have a positive impact on the world of law enforcement in Indonesia. Pretrial test whether there is a determination of suspects, arrests, detentions, confiscations, searches. Therefore, the Criminal Procedure Code is a manifestation of the presence of the state through law enforcement officials so that the judicial process runs in balance between the interests of the parties and the status of the perpetrator. [Mulyadi, 2007]

The existence of a pretrial institution does not fully guarantee the protection of the principle rights of citizens who are made suspects. This is because the criminal procedural law in Indonesia limits pretrial authority. The judge narrowed his limited powers to review the formalities of arrest and detention. At the beginning of the formation of the Criminal Procedure Code, this was also stated by various criminal law experts in Indonesia. The context of the big question is that the pretrial does not explain in detail how the pretrial process works, which raises a big question mark for society in the future. This is a problem in the implementation of the Indonesian Criminal Procedure Code, especially in the pretrial context. Speaking of pretrial as a supervisory institution, more precisely a horizontal supervisor. The horizontal oversight function is related to the preliminary examination process held by the pretrial institution which is a form of the framework for an integrated criminal justice system. This concerns the authority of the pretrial to examine whether the application of criminal procedural law is appropriate or not. [Loqman, 1987]

Pretrial as a criminal procedural law enforcement agency that functions to correct the process of implementing criminal procedural law at the stage of investigation and prosecution. The perfection of the implementation of the rules mandated by the Indonesian criminal procedural law is everyone's constitutional right. This is what is called legal certainty. Legal certainty means that law must regulate various aspects of national and state life, especially in law enforcement itself. In addition, good law enforcement is the right of every citizen to receive it. As stated in the 1945 Constitution Article 28D Paragraph 1 which reads *Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law*. On that basis, every citizen has the right to obtain good and just law enforcement.

Calculatively, by looking at the current condition of law enforcement, there will always be contradictions between justice, certainty and the benefits of law. However, long before Indonesia's independence, philosophers and international law experts such as Immanuel Kant and Gustav Radbruch had studied it. Immanuel Kant "*highest right, highest injustice, highest law, highest cross*". Therefore, even though justice is not the only goal of law, it is the highest and most basic goal of law. Laws that are so harsh can be dangerous unless justice can help them. Presented by Eddy Hiariej, Professor of Law at the Faculty of Law, Gadjah Mada University (UGM), said that from the theory presented by Immanuel Kant, Immanuel Kant concluded that legal certainty would always conflict with supreme justice, and vice versa. So, it is up to law enforcers to prioritize justice or legal certainty. Several hundred

years after Immanuel Kant, a German jurist named Gustav Radbruch came up with a theory called the Radbruch Formula. Gustav Radbruch is more specific in what Immanuel Kant once said, namely when faced with the goals of law, namely justice, certainty, and expediency. It is very difficult to realize the three objectives of the law, so what must come first is justice. If legal certainty is prioritized, it will clash with justice and legal expediency. Likewise, if prioritizing legal benefits, it will conflict with legal justice and legal certainty. Therefore, in line with what Immanuel Kant once said that justice is a very substantive purpose of law. In essence, if the goal of legal justice is fought for and put forward, then legal certainty and legal benefits will naturally be achieved.

Considering that pretrial is a form of criminal procedural law and a shield for upholding the constitution, pretrial will be able to achieve one of the objectives of law, namely justice, certainty and legal benefits. For example, if there is an arrest of a person who essentially means that the arrest is procedurally flawed, then the party who is arrested can submit a request for pretrial to the Head of the local District Court in accordance with his jurisdiction, henceforth appointing a Judge to become a Pretrial Judge. People who are arrested are defended by pretrial efforts. The arrest violated human rights because of the constitutional mandate that good law enforcement is the right of every citizen to receive it. According to paragraph 1 of Article 28D of the 1945 Constitution, "Every person has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law". Therefore, everyone has the right to just and efficient law enforcement.

In addition, every person who is arrested, detained and tried for allegedly committing a crime has the right to be considered innocent until his guilt is legally proven in court, according to Article 18 paragraph 1 of the Law on Human Rights of the Republic of Indonesia Number 39 of 1999 and all legal guarantees necessary for his defense is provided in accordance with the law. As a result, the law has ensured that anyone who has not been proven by a court decision that has not been legally binding (*inkracht*) is considered innocent. So the person who is considered as the perpetrator of a crime or has been given the status of a suspect, must be interpreted as not guilty. Legal efforts to arrest procedurally violate the principles of justice and legal certainty. Because good and correct law enforcement or in the sense of carrying out the principle of good and correct legal certainty for every citizen has been considered to maintain and realize the principle of legal justice as the purpose of the law concerned.

The injustice received by the person who was arrested (according to article 1 number 10 juncto articles 77, 78, 79, 80, 81, 82, 83 of the Criminal Procedure Code on Pretrial) with these conditions has violated the principle of certainty law and legal benefits. Therefore, in order to restore the psychological state of a person with procedural disabilities who has been arrested by Police Investigators, a pretrial lawsuit can be filed at the District Court in accordance with their jurisdiction. In addition, the pretrial requesting party has the authority to request compensation for the actions of the investigator or public prosecutor if the criminal law process is immediately stopped by the police or an SP3 (Notification of Termination of Investigation) is issued by the investigator. In addition, in the event that SP3 (Notification of Termination of Investigation) is revoked or cancelled. The process of determining a suspect is essentially an administrative police

action and not an act of coercion by participating in selecting the perpetrators of a crime to be prosecuted based on sufficient evidence. [Opolska, 2022] However, unilateral termination of investigations and prosecutions without a strong legal basis is also a violation of human rights for victims or families of victims of criminal acts so that a pretrial lawsuit can be filed. In addition, according to Articles 80 and 81 of the Criminal Procedure Code, pretrial can be submitted by parties who are considered to have an interest or can be called interested third parties. Pretrial exists to realize and uphold the basics of human rights within the scope of criminal justice (court process). According to Article 80 of the Criminal Procedure Code, investigators, public prosecutors or interested third parties can submit a request to the chairman of the district court with valid reasons or not to terminate the investigation or prosecution. In addition, it is stated in Article 81 of the Criminal Procedure Code that requests for compensation and/or rehabilitation for illegal arrest, detention or termination of investigations or prosecutions are carried out by interested parties, by giving reasons, third parties to the chairman of the district court.

This is a form of pretrial in achieving the principle of legal certainty and also legal justice. As explained in the Criminal Procedure Code. KUHAP is an indicator that has the principle of equality and has an institution that functions to uphold justice and human rights. The Criminal Procedure Code in principle aims to ensure that the material law is implemented properly. It should be noted that material law is law that contains commands accompanied by binding and non-binding prohibitions. Material law complements the application of formal law in the Indonesian criminal justice system. In line with the nature of criminal law which constitutes public law, criminal procedural law also pays attention to the public interest. KUHAP is a rule of public law, therefore KUHAP regulates various interests of the wider community. [Harahap, 2003] The essence of the existence of a pretrial institution is a form of oversight mechanism and objections to the law enforcement process which is closely related to guaranteeing the protection of human rights. [Afandi, 2016] Notice of Termination of Investigation (SP3) or unilateral termination of prosecution by law enforcement agencies has betrayed a sense of justice and legal certainty. Therefore, it is necessary to submit a pretrial so that the investigation and/or prosecution of a crime can be reopened and examined and prosecuted again. If talking about aspects of legal benefits with pretrial, it is only natural that if the principles of justice and legal certainty can be achieved, then legal benefits will also be obtained.

Conclusion

From the Urgency of Pretrial in the Indonesian Criminal Justice System Based on the Principles of Justice, Certainty, and Legal Benefits, this research raises the following topic as a conclusion from two discussions: The first conclusion concerns the history of the urgency of pretrial institutions in the Indonesian criminal justice system. It can be concluded that the question about how important pretrial institutions are in the Indonesian criminal justice system must be answered, very important. In a country which, according to the 1945 Constitution, always upholds human rights; This nation is known as a nation of "rule of law", pretrial is needed and becomes an important instrument. Therefore, pretrial aims to defend human rights. suggestions and input to the Legislature, Executive and Judiciary so that they can be included in the latest Draft Law on Criminal Procedure so that law enforcement is

always up to date.

Pretrial institutions need to play a bigger role in realizing justice, certainty and legal goodness. In principle, a pretrial process is said to be able to achieve justice, certainty, and legal benefits. Pretrial can result in fair law enforcement for all parties, therefore it is so. Pretrial is a legal effort to seek justice so that if the trial is successful, benefits and certainty will follow. suggestions on how the Attorney General's Office can educate the general public to help them maintain the spirit of law enforcement, especially pretrial institutions, together.

REFERENCES

1. [Afandi, F, 2016]
2. [Arief, B. N, 2018]
3. [Dharmawan, F. H. & M, 2022]
4. [Eddyono, S. W, 2014]
5. [Harahap, M. Y, 2003]
6. [Hiariej, E. O. S, 2005]
7. [Kavalova, O. V, 2022]
8. Loqman, L, 1987]
9. [Marpaung, R., & Moeliono, T. P, 2021]
10. [Mulyadi, L, 2007]
11. [Opolska, N, 2022]
12. [Rusman Sumadi, 2021]
13. [Soekanto, S. & S. M, 2019]
14. [Soesilo, R. & M. K, 2015]
15. [Sugiharto, R, 2012]
16. [Suhardjo, 2019]
17. [Yanto, 2013]

Correspondent Author:

Fahrizal S. Siagian

Email: fahrizalssiagian@gmail.com