

Analysis of the Determination of the Suspect as Objects of Prejudicial

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Abstract : The purpose of this research is to know and analyze the basic idea (philosophical, theoretical and juridical base) background of suspect / legal counsel of suspect is proposed to appoint the suspect as the Pre-Court Object in Indonesia, and to know and analyze the policy of applying the suspect as an Object of Prejudicial in Indonesia. This study uses normatig method of research on legal principles, legal synchronization and legal system.

Keyword: The Determination, The Suspect, Prejudicial

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I. INTRODUCTION

The enactment of Law No. 8 of 1981 on the Criminal Procedure Code, commonly abbreviated as KUHAP, on December 31, 1981, opened a new chapter in the history of Criminal Procedure legislation which was the product of an era of independence by breaking down and burying one product legislation of the Dutch colonial regime in the field of procedural law (Criminal), namely *Herziene Inlandsch Reglement Stb 1941 No. 44*.

The norms in the Criminal Procedure Code in academic theoretical level appear in some conflict of norm or *geschijld van normen*, vacuum of norm or *leemeten van normen* even vague van normen. The existence of various weaknesses of the norms or the provisions of such a case in its application raises a variety of interpretations of law enforcement officers are no exception also from among theorists and the wider community so that not infrequently also cause a misguided interpretation.

On the other hand, the structural component of the Criminal Justice System as a law enforcement officer carrying out the duties and functions of criminal justice process mechanisms involves various elements such as: Police, Public Prosecution Service, Courts, Penitentiaries and Advocates. The institutional component of the sub-system of the Criminal Justice which is seen as the key point of the birth of the embryo of justice, is the Court which has been considered by the public especially the justice seeker as the cradle of justice through the judge's verdict which is theoretically known by the court decision or the judge's decision.

The Indonesian Criminal Justice System through investigation, *Opsporing, vervoogling* and Judicial Review (*rechtpark*) has several legal issues. One of the most important issues is in the investigation stage where the stage is the beginning to make the light of the crime and determine who the perpetrator of the crime (suspect). The determination or determination of the perpetrators of the Criminal Acts / determination of the suspect by the investigator during the investigation stage in the Criminal Procedure Code is the authority of the Investigator based on sufficient initial evidence, but by the suspect the status of the suspect is questioned by proposing the suspect by the investigator by being petitioned into the Prejudicial process. Whereas as stipulated in Article 77 of the Criminal Procedure Code, the Pre-Court Object has been determined in a limitative manner and does not include the determination of a suspect as a Prejudicial Object.

In Practice of Hukkm in Indonesia Case The determination of the suspect to be used as a Prejudicial oebjek is a case of determination of suspect Budi Gunawan by KPK in the case of criminal acts Corruption Simulativir Sim procurement at Police Headquarters by the power of Budi Gunawan through Prejudicial process by applying Prejudicial to South Jakarta District Court. Justice Sarpin Rizaldi, SH in Decision No. 04 / Pid.Prap / 2015 / PN.Jkt.Sel dated 16 February 2016 disconnected by stating the Suspect of the defendant against the Prejudicial Applicant BUDI GUNAWAN, SH, M.Si is not valid, the decision becomes Object new within the Prejudicial norm, outside the prescribed in Article 77 of the Criminal Procedure Code. The existence of the Decision in the field of material substance Object Pera Justice is always a discourse among Academics and Practitioners.

Some juridical facts about court envoys who granted the Pre-Court application as Prejudicial Objects include:

1. Prejudicial Decision of South Jakarta District Court Number: 04 / Pid.Prap / 2015 / PN.Jkt.Sel. dated February 16, 2016 disconnected by stating the Stipulation of the suspect against the Prejudicial Petitioner Kombespol BUDI GUNAWAN, SH, M.Si is not valid;
2. Prejudicial Decision of South Jakarta District Court Number: 97 / Pid.Prap / 2017 / PN.Jkt.Sel. dated 29 September 2017 disconnected by stating the Suspicion of the suspect of SETYO NOVANTO's Prejudicial Applicant;
3. Prejudicial Decision of the Surabaya District Court Number: 19 / Pid.Prap / 2016 / PN.Sby dated April 12, 2016 disconnects by stating the suspect's appeal against the applicant of La NYALLA MAHMUD MATALITTI is invalid;
4. Prejudicial Decision of South Jakarta District Court Number: 36 / Pid.Prap / 2015 / PN.Jkt.Sel. dated May 16, 2015 disconnected by stating the suspect's allegation against the applicant HERNI POERNOMO Prejudicial.

The above verdict is as an example of cases from some instances of the case applying for suspicion as a Prejudicial Object. Subsequently, the Decision of the Constitutional Court Number: 21 / PPU-XII / 2014 jo Decision Number: 35 / PPU-XIII / 2015 adds or extends the norms in Article 77 of the Criminal Procedure Code which decides by stating the Establishment of the suspect including the Pre-Court Object.

With the Court Decision and Decision of the Constitutional Court above the decision of the court granting or determining the suspect's determination by the Investigator (Police, Public Prosecutor, KPK RI) as the Prejudicial Object is considered as the norm of the savior of the protection of the rights of the citizen when stipulated as a suspect in stage investigation.

II. FORMULATION OF THE PROBLEM

From the explanation of the above-described background, to the thesis entitled "Analysis of the Suspect's Determination as a Prejudicial Object", the author can formulate the problem, as follows: What are the philosophical, sociological and juridical considerations of the suspect as a Prejudicial Object?, and What are the legal implications of Establishing a suspect as a Prejudicial Object in Indonesia?

III. THEORETICAL FRAMEWORK

Theory of the Criminal Justice System

The mechanism of the Integrated Criminal Justice System adhered to by the Criminal Procedure Code is supported by the sub-system components of the Investigators, Prosecutors, Judges, Penitentiaries and Advocates as criminal justice administrators who all law enforcement institutions are governed under the Criminal Procedure Code (Criminal Procedure Code) namely Law no. 8 of 1981 with Government Regulation no. 27 of 1983 and its respective organic laws, including: Law no. 2 of 2004 on the Police of the Republic of Indonesia, Law no. 16 of 2004 on the Attorney of the Republic of Indonesia, Law no. 48 of 2009 on Judicial Power, Law no. 12/1995 on Penitentiary, Law no. 18 of 2003 on Advocates.

In relation to the legal system, specifically regarding the existing criminal justice system in Indonesia based on the Criminal Procedure Code, the various rules of law in the field of Prejudicial Justice in the Indonesian Criminal Justice System relate to the legal system in the field of procedural law (criminal) or in the field of criminal justice, in this will include regulations as sub-systems (of substance substance), such as Law no. 8 of 1981 on KUHAP, Law no. 16 of 2004 on the Republic of Indonesia's Attorney, Law no. 48 of 2009 on Judicial Power, Law no. 3 of 2009 on the Supreme Court.

In connection with the legal system, according to Lawrence Meir Friedman there are three most important components in a legal system (three elements of legal system), namely: Legal structure, legal substance, and legal culture.

The structure of a system is its skeletal framework, it is the permanent shape, the institutionale body of the system, the tough, rigid bones that keep the process flowing within bounds (See, Wisnu Murti, 1984: 7).

The structural components associated with the Indonesian Criminal Justice System include the structure of law enforcement institutions, such as: Police, Attorney, Courts, Penitentiaries and Advocates. Police whose functions are preventive and refresive as well as carrying out various duties as obligations that must be exercised with various authorities in the field of yudisiil, such as receiving reports / complaints, making arrests, detention, searches and seizure. Prosecution with basic functions of prosecution, implementing judges and executing executions. Court (judge) in the process level of criminal justice system, its function examine and decide cases that come to court starting from level of District Court, Court of Appeal and appeal level in Supreme Court (MA). Correctional institutions functioning to carry out the task of fostering the fostered prisoners. The Advocate acts as a function as provided in Articles 50-58 and 69-74. Criminal Procedure Code when the suspect / defendant needs legal aid services.

Talking about law enforcement institutions (structural elements) is related to the issue of Determination of the suspect as a Prejudicial Object in the Criminal Justice System, in this case it will focus on investigator institutions (Corruption Eradication Commission, Civil Service Investigator), Attorney and Court.

Still according to Lawrence Meir Friedman that in addition to the structure that the legal system has substance. Concerning the substance of the substance, "Rules, norms and patterns of real behavior, substance also means the resulting product (Friedman, over., Wisnu Murti, 1984: 8).

The substance component in relation to the determination of the suspect as a Prejudicial Object in the Indonesian Criminal Justice System under the Criminal Procedure Code, the substance of the norm concerned here includes: Law no. 8 of 1981 on KUHAP, Law no. 16 of 2004 on the Republic of Indonesia's Attorney, Law no. 48 of 2009 on Judicial Power and Law no. 3 of 2009 on the Supreme Court.

Based on the substance component of the above legislation as operational for law enforcement officer as subsystem in criminal justice hence the law must also follow requirement for a system can work and produce something ideal purpose.

Furthermore, the legal culture, Lawrence Meir Friedman, states: *System their beliefs, values, ideas and expectations. Legal culture refers, then, to those parts of general culture customs, opinions, ways of doing and thinking that bend social forces to ward or way from the law and in particular ways.* (The human attitude to the law and its legal system, beliefs, values, thoughts, and expectations. These thoughts and opinions are somewhat of a determinant of the course of the legal process, so in other words, legal culture is: the atmosphere of social thought and social power that determines how law is used, avoided or abused, without legal culture, the legal system itself is powerless, such as dead fish lying in baskets and not like live fish swimming in the sea) (Friedman, terj., Wisnu Murti, 1984: 9)

Based on the theory of Lawrence M. Friedman is in the context of the legal effort to establish suspects as the Prejudicial Object in the Indonesian Criminal Justice System, the more relevant component of the system is the component of structure and substance.

Furthermore, regarding the definition of "Criminal Justice System", according to Barda Nawawi Arief, provides the following understanding: The Criminal Justice System as a criminal law enforcement process. It is therefore closely linked to the criminal legislation itself, both the substantive criminal law and the criminal procedure law. In essence, criminal legislation is the enforcement of criminal law in abstracto which will be realized into law enforcement in concreto (Barda Nawawi Arief, 1992: 1997).

On the other hand Mardjono Reksodiputro defines that "Criminal Justice System is a crime control system consisting of police institutions, prosecutors, courts, and correctional prisoners." Still according to Mardjono Reksodiputro, on another occasion argued that, "The Criminal Justice System is a system within a society to tackle the problem of crime to be within the limits of community tolerance (Reksodiputro, 1993: 1)

The definition of the Criminal Justice System outlined in the Criminal Procedure Code of the Criminal Procedure Code, namely in Article 1 point 2 of the Criminal Procedure Code, is formulated as follows "all criminal justice process through one door is through sub police system as general investigator to do investigation.

According to the opinion of M. Yahya Harahap, the criminal justice system is a collection of functions of legislators, police, prosecutors, courts and prisons as well as related bodies, either within the government or outside. The main purpose of combined functions within the framework of criminal justice system is to uphold, execute (run) and decide criminal cases (Harahap, 2003: 124).

IV. DISCUSSION

Overview of Prejudicial According to the Criminal Procedure Code

Whereas the development in the history of Indonesian Criminal Procedure Law the first Prejudicial term was introduced in the Criminal Procedure Code. Because in the HIR and RBG which is the Sumeber of the Law of Criminal Acara before the Criminal Procedure Code the term Prejudicial is not found. If using a comparative approach in the legal system of Civil Law or European Kontinental that is Dutch, Francis and Belgium Prejudicial institution known as Judge Preliminary Examination (judge d 'Instruction) which have duty and authority to examine and decide the illegality of arrest, detention and preliminary examination against a difficult case of proof. Secara etimologis pengertian Prejudicial comes from the word "pre" which means before and the word "judicial" which means before the examination in court (Hamzah, 2016: 187).

According to Hartono, Understanding Prejudicial is the trial process before the trial of the main issue of the case trial. Understanding the principal matter is the material case, whereas in pre-trial trial process only test the process of investigation and prosecution procedures, not to the subject matter only. As for the main matter is the matter of the matter, such as corruption case, then the main subject is corruption case (Hartono, 2010: 15). Whereas based on the doctrine it can be concluded that the Prejudicial is an attempt to control or test the action of the Investigator and Public Prosecutor in the case of forced efforts at the pre-trial stage of the principal case in the Court.

Whereas the legal basis of Prejudice as defined in Article 1 point 10 of the Criminal Procedure Code: Prejudice is the authority of the district courts to examine and decide upon in accordance with the law provided for in this law, on whether or not an arrest or detention of a suspect or his family or party other on the authority of the suspect, whether or not the suspension of the investigation or termination of the prosecution upon request for the enforcement of law and justice, the request for compensation or rehabilitation by the suspect or his family or any other party for his / her proxy whose case is not brought to court

Furthermore, Article 77 of the Criminal Procedure Code shall be determined to have the authority to examine and decide upon the Pre-Court Object: The district court is authorized to examine and decide upon, in accordance with the provisions of this law:

- a. validity of arrest, detention, suspension of investigation or cessation of prosecution;
- b. compensation and / or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

Whereas the norms of the Prejudicial constitute wewengan the District Court to examine and decide upon the pre-trial objek determined as limited within the norm.

Pre-Court is one of the new institutions that introduced the Criminal Procedure Code as the Substitute of HIR. The pre-trial in the Criminal Procedure Code, is placed in Chapter X, Part One, as one part of the scope of the authority to hear for the District Court.

The objectives of the Criminal Justice System are especially the pre-trial enforced and protected, namely the enforcement of the law and the protection of the human rights of the suspect in the level of investigation and prosecution investigation. The law authorizes the Investigators and Public Prosecutors to take enforceable measures of arrest, detention, seizure of the like. Any forced attempt by an investigator or prosecutor against the suspect is essentially a treatment of a lawful act of law justified in the interest of a criminal investigation suspected of a suspect. As a forced act justified by law and law, every forced act by itself constitutes deprivation of liberty and freedom and restrictions on the human rights of the suspect. Because the act of enforced endeavor imposed by law enforcement agencies is a reduction and limitation of the suspects' independence and human rights, such action shall be taken responsibly in accordance with the provisions of the law and the due process of law. The act of forcible attempts made against the law and the law is a rape of the suspect's human rights.

However, how to monitor and test forcible actions that are considered contrary to law. It is therefore necessary to establish an institution authorized to determine whether or not a forced action is imposed on a suspect. Test and judge whether or not a forced action by an investigator or public prosecutor has been transferred to the Prejudicial.

The existence and presence of the Prejudicial, is not a separate judicial institution. But it is only a granting of authority and new functions that the Criminal Procedure Code delegates to every District Court, as the additional authority and function of the District Court that has existed so far. If during this time the authority and functions of the District Court to hear and decide cases of criminal and civil cases as the main tasks then the main task was given additional task to assess whether or not the detention, seizure, cessation of investigation or termination of prosecution by investigators or prosecutors, her examination was given to the Prejudicial. The above-described matters can be read in the formulation of Article 1 point 10, which affirms: The Prejudicial is the authority of the District Court to examine and decide upon: the legality of an arrest or detention, whether or not a termination of investigation or cessation of prosecution, demand for compensation or rehabilitation by a suspect or his or her family or any other party or proxy whose case is not brought to justice.

What is formulated in Article 1 item 10, is affirmed in Article 77, which explains: The District Court is authorized to examine and decide upon, in accordance with the provisions of this law concerning: the legality of arrest, detention, suspension of investigation or cessation of prosecution, compensation and / or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

The Pre-Court Authority

The authority is determined in Article 1 point 10 of KUHAP jo Article 77 of KUHAP. The norms in those chapters are the authority of the Prejudicial. However, there is another authority to examine and decide upon the compensation and rehabilitation demands as provided in Articles 95 and 97 of the Criminal Procedure Code.

Normatively it can be stated that the authority given by law to Prejudicial is as follows:

Checking and Terminating Legitimate or Unlawful Attempts of Penangkapan and Detention.

If a suspect charged with arrest, detention, search or seizure, may request the Prejudicial to check whether or not an investigator has taken action against him or her. The suspect may file a hearing to the Prejudicial, that the detention action imposed by the investigating official is contradictory to the provisions of Article 21 of the Criminal Procedure Code or the imprisonment being imposed is already exceeding the time limit specified in Article 24 of the Criminal Procedure Code.

Checking the Legal or Absence of Cessation of Investigation or Termination of Prosecution It is included in the scope of the Prejudicial authority to examine and decide whether or not the suspension of investigation by the investigating officer or the validity of the prosecution termination by the public prosecutor. Investigators and prosecutors are authorized to stop investigations or prosecutions. The reason for the termination of Investigation is determined in Article 109 paragraph (2) of KUHAP. while the reason for Termination of Prosecution is determined in Article 140 paragraph (2) letter b Criminal Procedure Code. Therefore, if the Investigator stops the investigation or the Prosecutor suspends the Prosecution out of the above reasons, the action of the Investigator and the Public Prosecutor may be filed with a Prejudicial Appeal to verify the validity of the law enforcement action.

Article 95 of the Criminal Procedure Code regulates the claim for compensation filed by the suspect, his family or his legal counsel to the Prejudicial. The claim for damages is filed by a suspect on the grounds of illegal arrest or detention, or due to search or seizure in contravention of the provisions of law and legislation, due to errors concerning persons who should be arrested, detained or questioned.

In addition, the Prejudicial Authority is authorized to examine and decide upon the rehabilitation request proposed by the suspect, his family or his legal adviser for arrest or detention without a legal basis prescribed by law. Or rehabilitation of the wrong person or law applied, whose case is not submitted to the court. And on the subject of rehabilitation will be described separately.

Prejudicial Against Foreclosure Action

Every enforcement effort in law enforcement has a very basic human rights value. Therefore, it must be carefully and carefully protected, so that confiscation of its seizure must be in accordance with the "due process" and "due law" as provided in Article 28 s.d 42 of the Criminal Procedure Code.

1. Preferably Apply

Parties or subjects who may file a request for a Prejudicial hearing on the validity of arrest, detention, searches, seizure or the validity of termination of investigation or cessation of prosecution as provided in Article 79 s.d Article 81 of the Penal Code which may be described as follows:

a. Suspect, His Family, or Attorney of his family Prejudicial Appeals about whether or not it is valid:

- Catching;
- Detention;
- Foreclosure;
- And searches.

b. Prosecutors and Third Parties who berkepentigan

According to Article 80, the Public Prosecutor or an interested third party may file a request for an examination of the validity of the suspension of the investigation when the investigating agency terminates the investigation.

c. The Suspect, the Heirs, or his Attorney

This is in accordance with the provisions of Article 95 paragraph (2) of KUHAP. According to the provisions described in that article, the suspect, his heirs, or his legal adviser may file a lawsuit against the Prejudicial for reasons of: unlawful arrest or detention, search or seizure for no legitimate reason, or due to a misrepresentation of the person or law applied, whose case was not brought to trial. Suspects or Third Parties with an interest in claiming Indemnification Under the terms of Article 81 of the Criminal Procedure Code, suspects or interested third parties may file a lawsuit against the Prejudicial for reasons of the suspension of an investigation or the termination of the prosecution.

Procedure of Prejudicial Investigation

Regarding the procedure of Prejudicial hearing, stipulated in Article 82 and subsequent articles. Based on the aforementioned provisions, Prejudicial hearings can be detailed as follows:

a. Determination of the day of trial 3 days after the deregister.

Thus the affirmation of Article 82 paragraph (I) letter a KUHAP, ie 3 days after the receipt of the petition, the appointed judge establishes the day of the hearing.

On the day of the appointment of the hearing as well as the judge delivered the call.

b. No later than 7 days the verdict has been dropped.

c. That is what is ordered by Article 82 Paragraph (1) Sub-Paragraph c of the Criminal Procedure Code of Investigation shall be conducted with a "quick event", and no later than 7 days the judge shall decide.

The contents of the Prejudicial Decision

The content of the Decision or the determination of the Prejudicial is regulated in Article 82 paragraph (2) and paragraph (3) of the Criminal Procedure Code. the provision of Prejudicial Justice, may be in the form of statements containing:

a. Legal or Absence of Arrest or Detention

- b. If the grounds of the request by the petitioner are in the form of a request for examination on the validity of the arrest or detention determined by Article 79 of the Criminal Procedure Code, then the determination must also contain statements about the validity of arrest or detention.
- c. Legitimate or Absence of Termination of Investigation or Prosecution
- d. If the reasons filed by the petitioner are in the form of a request for an examination of the validity of the termination of the investigation or the termination of the prosecution, the meaning of the provision of the Prejudicial shall contain statements concerning whether or not an act of suspension of investigation or prosecution is required.
- e. Accepted or Rejected Request Replace Losses or Rehabilitation
- f. If the grounds of the request for an examination of the indemnity or rehabilitation demands, the determination declaration shall be granted or denied a request for compensation or rehabilitation.
- g. Command Exemption from Prisoners
- h. This matter is regulated in Article 82 paragraph (3) letter a KUHAP. In order for the pre-trial stipulation to contain an amar ordering the suspect to be immediately released from detention. If the suspect or his family filed a request for an examination of the validity of detention by the Investigator or the Prosecutor, and the Prejudicial considers the detention to be invalid, the Prejudicial judgment must contain statements and orders:
 - i. unauthorized detention;
 - j. and orders the release of suspects from detainees.
- k. The Order Continue Investigation or Prosecution
Based on Article 82 Paragraph (3) Sub-Paragraph b of the Criminal Procedure Code is absolutely stipulated in the determination of the Prejudicial. The reason is that with the stipulation declaring a suspension of an investigation or prosecution invalid, in the soul of such declaration statement has contained an order requiring the investigator to continue the investigation or to require the prosecution to proceed.
- l. Amount of Indemnity
If the reasons for a Prejudicial hearing are in the form of a request for compensation either due to the illegality of arrest or detention, the Prejudicial ruling clearly states the amount of damages granted. and men the question of the procedure and the amount of the exchange of Prejudicials that can be granted by Prejudicial may be seen in the discussion relating to compensation. Contains the Suspect Recovery Statement If the reason for the inspection request is related to rehabilitation, the ruling contains the statement of the applicant's good recovery if the petition is granted. Ordered Immediately Restore Confiscation This provision is governed in Article 82 paragraph (3) sub-paragraph d of the Criminal Procedure Code. If the reason for the request of the Prejudicial hearing concerns whether or not the act of seizure by the investigator is caused in the foreclosure, there is an object that is not classified as an evidence instrument. Or not at all involved with the crime being examined is reason enough to declare the seized item not included as a means of evidence. The judgment of the Prejudicial must contain an order which orders it to be returned to the suspect or to the person to whom it was confiscated. Legal Efforts on Pre-Trial Rulings Therefore the Prejudicial Decision there are some of the decisions, namely the ruling that can be applied for an appeal law and a verdict that can not be applied for an appeal law. The legal effort against the Prejudicial ruling is set out in Article 83 of the Criminal Procedure Code, which not all Prejudicial Decisions can be appealed, as there are several contents that can not be compared as follows: a. A Prejudicial ruling that can not be compared to an unaccountable Prejudicial Ruling has been regulated in Article 83 Paragraph (1) of the Criminal Procedure Code, a Prejudicial Decision concerning the content of judgments in Articles 79, 80 and 81 of KUHAP. b. A Prejudicial ruling which can be compared to the Prejudicial Decision which may be performed by an appeal law is as defined in Article 83 paragraph (2) of the Criminal Procedure Code of the decision which can be appealed is the content of the decision regarding the validity or unauthorized termination of the Investigation and Termination of Prosecution.

Philosophical, Sociological and Juridical Considerations Stipulation of Suspects as Prejudicial Objects

The enactment of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) on December 31, 1981 as a substitute for the legislation of the Dutch colonial legal regime in the field of Criminal Procedure Law) namely *Herziene Inlandsch Reglement Stb 1941. 44*. In contrast to the HIR in the Criminal Procedure Code resolving the limitative Pre-Court Object, the matter mentioned in Article 1 point 10 of KUHAP jo Article 77 of KUHAP.

Before the Criminal Procedure Code was formally enacted in the history of Indonesian law development, the formal legal source in the Netherlands Indies government was HIR, but the HIR did not specifically regulate the Prejudicial, so it could be understood because the HIR was indicted in the atmosphere of the Colonial regime which did not pay attention to and consider aspects the protection of human rights against a suspect or defendant may be found in the HIR's inquisitorial principle of inquisition, the principle which views

or places the suspect as an Object of the examination, in contrast to the KUHAP which accepts the accusatory principle which means that the suspect is viewed or seated as party in the preliminary hearing.

The idea of pretrial institutions within the Criminal Procedure Code was born out of inspiration derived from the right of Habeas Corpus in the Anglo Saxon judicial system, which provides fundamental guarantees for human rights, especially the right to freedom. The Habeas Corpus Act authorizes a person to pass a court order demanding that the detaining officer (police or prosecutor) prove that the detention is unlawful (illegal) or completely legal in accordance with applicable law. This is to ensure that the deprivation or restriction of independence against a suspect or defendant has fully complied with applicable laws and human rights guarantees.

This habeas corpus warrant is issued by the court on the part of the detainee (police or prosecutor) through a simple, direct and open procedure so that it can be used by anyone. The habeas corpus (the writ of habeas corpus) is as follows: "The prisoner is in your possession. You are obligated to bring the person before the court and must indicate the reason for his detention".

The basic principle of habeas corpus provides the inspiration to create a forum which gives the right and opportunity to someone who is suffering from being deprived or restricted by its independence to denounce its fate while testing the truth and accuracy of the act of power in the form of the use of force (*dwang middelen*), both arrest, detention, searches, seizure or opening of letters by police or prosecutors or other powers.

Background by the circumstances of the HIR regime where there is often a suspected rape of a suspect or defendant by the investigator and the public prosecutor, in the absence of an institution or mechanism that can assess and examine whether the act of forced attempts has been in accordance with the provisions of law or no. A suspect or defendant who is arrested or detained, as if in a "dark room" and helpless.

A Prejudicial hearing held at the request of the suspect or defendant or his family or his or her attorney is an open forum, led by a judge or more to summon an investigator or public prosecutor who has made a compulsory attempt to account for his actions in advance of the forum, totally groundless and law-based. By testing the system through this open trial, the suspect or defendant, as in the Habeas Corpus Act, is guaranteed the right of rights and remedies to combat arbitrary deprivation or restriction of independence by the investigator or public prosecutor. For such purposes, the investigator or the prosecution must, of course, prove that he has all the necessary legal requirements, whether in the form of formal or material requirements, such as a warrant for arrest or detention, allegations of having committed a crime supported by sufficient initial evidence, or in the case of a concrete and concrete reason that the perpetrator shall flee, dispel the evidence or repeat the crime.

As previously explained that the normative Object of the trial is limited / limitative as specified in the norm of Article 1 Item 10 KUHAP jo Article 77 of KUHAP. This is because the Criminal Procedure Code embraces the principle of formal legality. Whereas in the consideration / consideration of the Criminal Procedure Code has been declared that the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution which upholds human rights and which guarantees all citizens simultaneously their positions in law and government and is obliged to uphold such law and government no exception. Based on the consideration that the implementation of the Criminal Procedure Code must be based on the principle of rule of law, or all legal action must be based on the rule of law. so it can be understood that KUHAP adheres to the principle of legality.

The principle is referred to by the norm in Article 3 of the Criminal Procedure Code, the Court shall be conducted in the manner provided for in this law. So law enforcement must be based on regulation and freedom of action of legal structure ie Investigator and prosecutor, judge, legal counsel of the suspect becomes limited.

Whereas based on the norms in that article if related to the determination of the suspect as a pre-trial Object, it can be concluded that the object of Prejudicial just limited as has been specified in the norm. So it can be concluded that the determination of the suspect is not included in the scope as a pre-trial Object.

Unavailability of suspect's space or opportunity or legal counsel to file a pre-trial appeal against the suspect's appointment, some legal scholars view with arguments similar to the legislator formulating the formulation of Article 77 of the Criminal Procedure Code with the essence that the Prejudicial Object is limited to objects that have been determined.

The Prejudicial Authority Is Limitative Because The Criminal Procedure Code Adheres To The Formal Legal Principle.

Indeed, since the Criminal Procedure Code itself has been enacted, the principle of legality in the criminal procedure law has been stated explicitly, which is mentioned in the consideration of KUHAP letter a, which reads, "That the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution, upholds human rights and which guarantees all citizens at the same time in law and government and is obliged to uphold the law and government without exceptions, on the basis of this consideration, the implementation of

the Criminal Procedure must come from the rule of law, based on the law. Therefore, the Criminal Procedure Code (KUHAP) applies the Principle of Formal Legality.

In addition, the Criminal Procedure Code also includes the need for legality principles in Chapter II of Article 2 of the Criminal Procedure Code and Chapter III of Article 3 of the Criminal Procedure Code. Particularly in Article 3 shall be stipulated, "Judicial proceedings shall be conducted in the manner provided for in this law". According to Prof. Andi Hamzah, although the equivalent of the provisions of Article 3 is incorrectly stacked, it is still the equivalent of Article 1 of the Dutch *Strafvordering*, which regulates the legal principle of criminal law, as it reads, "*strafvordering hee alleen plaats op de wijze bij wet voorzien*" or criminal procedure law is run only in the manner prescribed by law.

Therefore, it is not true that the criminal procedure law does not recognize the legality principle. Prof. G.J.M. Corstens (now Chairman of the Dutch Supreme Court / *Hoge Raad der Nederlands*) confirms in his book *Het Nederlandse Strafrecht* that the principle of legality in criminal procedural law as *nullum iudicium sine lege*. It differs from the principle of legality in material criminal law and also signifies that the criminal procedure law has a national scope which can not be enacted in legislation under the degree of law. Criminal procedural law can only be changed by law as well (Hamzah, 2016: 42).

Criminal procedural law provides legal certainty to individuals in the community, because the criminal law actually ensures the enforcement of criminal law in an orderly manner through a law. Therefore, it can not be that the legislator or creator creates a hesitant, vague, or widespread interpretation of the rules. Particularly for a judge, although in this modern state it is no longer a mouthpiece of the law, but the criminal procedure law strictly limits the judges' wishes to expand and impose themselves against criminal procedural law under any pretext. Therefore, the discovery of law in the field of criminal procedural law becomes extremely limited, much more limited than the criminal law itself.

Whereas in the enforcement of material criminal law in Indonesia (under the Criminal Code and other special laws), a formal criminal code (under the Criminal Procedure Code) is required unless otherwise provided by the Special Law such as the Narcotics Drug Act, the Law on the Laundering of Money Laundering and *Undang- Corruption Act* as well as other Special Laws. The provisions of the formal criminal law are intended to strictly guard the process of criminal law enforcement, so that the interpretive space should be limited as far as possible. Therefore, the provisions of the articles in the KUHAP are limited. This limitative arrangement is made solely to ensure that law enforcement processes are in line with the procedural law.

Article 77 of the Criminal Procedure Code expressly and limitatively has regulated any legal action that can be tested in pre-trial. In the provisions of Article 77 of the Criminal Procedure Code, it is not regulated on the determination of suspects. No word or phrase in Article 77 of the Criminal Procedure Code can be interpreted as the determination of a suspect or including the determination of a suspect. It is clear that Article 77 of KUHAP has regulated what can be tested through pre-trial, and that does not include the determination of the suspect.

Related to the entry of the suspect's determination as one of the Pretrial Objects is something that is not contained in the Criminal Procedure Code, either in the form of interpretation or addition. The opening of a wide interpretation of the criminal law of criminal law and causing the contradictory to 28 D of the 1945 Constitution. The legal uncertainty arises because the articles in the Criminal Procedure Code that should have been clear and strictly interpreted and supervised by its implementation, is now can not be contained in the Criminal Procedure Code, it can not be interpreted as a pre-trial Object.

Whereas the norm in Article 77 of Criminal Procedure Code is a clear and complete norm, it is closed. Thus, conceptually, such legal norms can not be interpreted (*interpretation cessat in claris*) because the interpretation of a clear norm is the *interpretation est perversion*.

Examination of Probate Judge Against the Validity of Evidence Tool Has Entered the Case Principal.

In testing the determination of the suspect there are two things in the *pokonya* assessed, First, whether the evidence that makes a suspect is obtained legally or not. Secondly, is the evidence used by the Investigator having a strong relationship with the case under investigation. In this context, in fact, pretest examination has entered the principal case, such as the assessment of the witness's testimony of whether the information is given at the examination stage in a banal manner that is, examined by the designated investigator, when the witness is given without pressure or direction, and whether the witness' relevant to the case of the investigation, otherwise the evidence of witness testimony has no evidentiary power. Such matter as regulated in the Criminal Procedure Code is already entered in the process of examination of the principal case.

This practice can be seen in Decision Number 11 / PRAPER / 2016 / PN.SBY. a pre-trial judge stated: "... a second investigation of grants from the Government of East Java Province to the Chamber of Commerce shall be declared as a *nebis in idem* case, the investigation and investigation conducted by the Respondent shall be declared invalid and unlawful"

The judgment of a single judge of pretrial justice is based on the information of Expert Prof. Dr. Edward Omar Sharif Hiariej, SH., M.Hum where in one of his statements stated: "... according to the expert stated against a crime ever done legal process and has a permanent legal force then there is another process of repeating the same thing then basically enter in the category of nebis in idem. Noting in light of Article 76 (1) of the Criminal Code which explicitly states that to assess whether a new nebis in idem case shall be determined at the stage of prosecution in the hearing by the Panel of Judges of the Ordinary Examination and not in the pre-trial stage.

If using a comparative approach with the Dutch legal system, the Examining Judge (Rechter-Commissaris) as an institution similar to that of pre-trial does not have the authority to examine the substance of the evidence and determine whether a case has been Nebis in Idem.

Another verdict which also checks and interrupts the pre-trial application by examining the principal matter of the judgment of a single court judge in the case Number 19 / PRA.PER / 2016 / PN.SB in consideration; "...that the process and procedure of investigation and determination of the defendant against the applicant beside the invalid formally is also materially repetition of previous facts that have been held by the convict: DIAR KUSUMA PUTRA and convicted DR.IR.NELSON SEMBIRING.M.Eng.- or investigation and the second inquiry on the East Java District Government's grant funds to Kadin East Java is irrelevant and it is no longer possible to reopen so that the investigation and investigation conducted by the Petitioners in the aquo case must be declared invalid and unlawful".

In this case, the judge's argument in consideration is similar to that of Decision Number 11 / PRAPER / 2016 / PN.SBY above which again also understands that pre-trial institutions are also authorized to conduct a principal review of the case.

In addition to the view that rejects the appointment of the suspect as a pre-trial object, there is a view of a law graduate who considers the determination of the suspect as a pretrial object, based on the decision on the annulment of Budi Gunawan's status by the South Jakarta District Court Justice, to be the beginning of the expansion of the Object of the court, namely the determination of the suspect. The Pre-Judicial Decision then becomes jurisprudence, so some decisions follow and guide the previous decision.

Determination of Suspects is Forms of Attempted Efforts such as Exposure, Detention and Foreclosure

Pretrial norms in the Criminal Procedure Code are based on the consideration that a forced attempt by an investigator illegally according to law may cause harm to the rights of a suspect. Forced attempts in this context include arrest, detention, searches, seizure and examination. In other words, the assignment of a suspect can not be categorized as a forced attempt.

However, in the development of the community, the determination of the suspect has great potential to cause harm to the suspect. because the existence of articles related to the determination of suspects in several laws regulating the state institutions such as the KPK and Polri, causing losses that resulted in the law on the suspect. In Article 33 paragraph (2) of the Corruption Eradication Commission Law, it states that: "In the event that the Chairman of the Corruption Eradication Commission becomes a suspect of a criminal offense, is temporarily suspended from office".

Similar norms are contained in Article 10 paragraph (1) of Government Regulation no. 3 Year 2003:

"A member of the Indonesian National Police who is a suspect / defendant may be temporarily discharged from the office of the National Police of the Republic of Indonesia since the investigation process until a court decision has a permanent legal force."

The articles shall be required, for the KPK and the Police Force to resign temporarily from their positions. Withdrawal is a tangible consequence for a related suspect, which is clearly of a disadvantage because it causes a person to lose his position or position. The question now is, can the suspect's determination be one of the Pretrial Objects, looking at its essence which in certain situations can cause harm to the suspect.

A similar view is also explained by the concurring opinion of Patrialis Akbar, a Member Judge who adjudicates a related case at the Constitutional Court, which states that when a person is designated as a suspect, from then on, some human rights as a basic right he has must be reduced, with the prevention to go abroad, the loss of the rights to become a public official, the postponement of the right to promotion for civil servants and the The Indonesian National Army/Police of the Republic of Indonesia, and from then on also the steps are limited, to meet the neighbors and family alone would no longer be comfortable, let alone to public places or social environment and it will happen in a long time, even children, wife and extended family also bear the psychological burden.

IV. CONCLUSION

1. The basic idea (philosophical, theoretical and juridical) so as to allow the suspect to file aPrejudicial application against the determination of the suspect, because in the Criminal Procedure Code does not have a check and balance system for the act of determining the suspect by the investigator.

2. Whereas the Prejudicial application policy against the determination of the suspect although the norm in Article 77 of the Criminal Procedure Code prohibits but in the practice of justice is justified on the grounds as a form of filling the legal void.

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