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Juridical Analysis for the Rights of Interested Third Parties in Filing Pretrial Applications in the Indonesian Criminal Justice System

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R T I C L E I N F O

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ABSTRACT

Law enforcement is often faced with procedural errors by its law enforcement officials. Pretrial is an institution for supervising criminal procedural law enforcement so that nothing conflict with the principle of *presumption of innocent*. The Problem Formulation of this research about how is the Right of Interested Third Parties Filing Pretrial Applications in the Indonesian Criminal Justice System? how is the correlation between the Criminal Procedure Code and Constitutional Court Decision Number 76/PUU-X/2012 concerning the Results of the Review of Pretrial Authority of Interested Third Parties? The purpose of this study is solely to obtain answers to both problem formulations. The research method is a normative legal research method referring to legislation and court decisions using secondary data, namely primary, secondary and tertiary legal materials. Data collection by *Library Research.* All data is processed by descriptive analysis. The results of this study are *first* known that the Rights of Interested Third Parties in judicial practice are still lacking and this is because the Criminal Procedure Code does not specify that Interested Third Parties can apply for Pretrial. *Second* The Constitutional Court has made it clear specifically that interested third parties can still apply for pretrial with the aim that everyone has the right to social control. Pretrial has been strengthened by the existence of the Criminal Procedure Code and the Constitutional Court Decision as legal standing that proves that anyone who is considered interested with strong reasons can apply for pretrial in order to achieve justice, certainty and legal expediency.

ABSTRAK

Penegakan hukum sering dihadapkan pada kesalahan procedural oleh aparat penegak hukumnya. Praperadilan merupakan lembaga pengawasan penegakan hukum acara pidana agar tidak terjadi pertentangan dengan asas *presumption of innocent*. Rumusan Masalah Penelitian ini yakni bagaimana Hak Pihak Ketiga yang Berkepentingan untuk Mengajukan Permohonan Praperadilan dalam Sistem Peradilan Pidana Indonesia? bagaimana korelasi antara KUHAP dengan Putusan MK Nomor 76/PUU-X/2012 tentang Hasil Peninjauan Kembali Kewenangan Praperadilan Pihak Ketiga yang Berkepentingan? Tujuan penelitian ini semata-mata untuk memperoleh jawaban atas kedua rumusan masalah itu. Metode penelitian yakni metode penelitian hukum normatif mengacu pada Perundang-undangan dan putusan pengadilan dengan Menggunakan data sekunder yakni bahan hukum primer, sekunder dan tersier. Pengumpulan data secara *Library Research.* Semua data diolah secara analisis deskriptif. Hasil Penelitian ini yakni *pertama* diketahui bahwa Hak Pihak Ketiga Berkepentingan dalam praktik peradilan masih kurang dan namun hal ini dikarenakan KUHAP tidak menjelaskan secara spesifik bahwa Pihak Ketiga Berkepentingan bisa mengajukan Praperadilan. *Kedua,* MK sudah memberikan penjelasan secara spesifik bahwa pihak ketiga berkepentingan tetap bisa mengajukan praperadilan dengan tujuan bahwa setiap orang berhak sebagai kontrol sosial. Praperadilan telah diperkuat dengan adanya KUHAP dan Putusan Mahkamah Konstitusi sebagai legal standing yang membuktikan bahwa siapa saja yang dinilai berkepentingan dengan alasan yang kuat dapat mengajukan praperadilan demi tercapainya keadilan, kepastian dan kemanfaatan hukum.

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I. INTRODUCTION

In a rule of law there are several things that need to be considered, one of which is the enforcement of human rights (HAM) which is a general goal of world peace initiated by the nations of the world. Human rights are basic rights that every individual has since he was born on earth as a gift from God Almighty that cannot be violated by anyone and for any reason. Law enforcement is an effort to keep the law or rules upright and always used as the main standard in running the wheel of life of the nation and state. Law is essentially the protection of human interests which is a guideline on how it should and should be that people should act. The law must create a sense of certainty and a sense of justice and feel its benefits for the benefit of mankind. (Taghupia et al., 2022)

According to the theory put forward by Lawrence M. Friedman regarding the elements forming the legal system, it consists of 3 elements, namely the elements of legal structure, legal substance, and legal culture. If the discussion focuses on legal structure, it will talk about instruments that will act as law enforcement officials. The legal structure includes the essence and existence of the Police, Attorney General's Office, Judges and Advocates as part of the law enforcement structure projected for material and formal law enforcement. Friedman's sentence regarding legal structure is as follows: "First of all, the legal system has a legal system structure consisting of similar elements: the number and size of courts; Jurisdictions, their structure also means how the legislature is governed, what procedures the police department follows, and so on. Structured in such a way, is a kind of cross-section of the legal system, a kind of still photo, with freeze action."

The legal structure that is part of the legal system consists of the following elements, namely the number and size of courts, their jurisdiction (including cases authorized to be examined, absolute competence or relative competence possessed by them). In addition, it also includes procedures for filing appeals from the district court to the high court. The legal structure will be closely related to the implementation of formal law. This is because formal law is a rule that contains material law enforcement procedures in order to achieve justice, certainty and legal benefits. If we look at formal law, especially criminal law as public law, it will automatically offend the Criminal Procedure Code (KUHAP).

Criminal law is one of the sub-laws owned by the world community which regulates the interests of the people. Criminal law has a series of procedures in upholding material law (laws/wet) in order to achieve legal objectives, namely justice, certainty and legal benefits. Criminal law in protecting the interests of many people (public law) then, one of the objects that is the realm of criminal law is to maintain the upholding of law and human rights. Human rights are always voiced by many parties in various forms. Starting from the social organizational structure at the regional and central levels, it always includes legal and human rights divisions. This is very much in line with the aims of the Indonesian nation and the ideals of the August 17, 1945 Proclamation which always opposed colonialism and upheld the noble rights of humanity.(Rusman Sumadi, 2021). The Process of criminal procedural law enforcement that occurs in the field has stages that must be passed. Based on the Regulation of the Chief of the National Police of the Republic of Indonesia Number 9 of 2019 concerning Criminal Investigation. This stage begins with a police report (LP). Once the police report is obtained, the case is investigated based on the police report in the form of examination or interrogation of the complainant and witnesses. After that conduct an investigation, to determine

an event is a crime or not. After conducting the investigation, an Investigation Report (LHP) will be obtained. After that, if it is proven that there is a criminal element, then the status of the case will be raised to Investigation. This is marked by the issuance of a Notification of Commencement of Examination (SPDP). Then, this investigation is carried out in order to find suspects in the criminal acts that occur. In accordance with Article 10 Paragraph 5, it is stated that every progress in handling cases in criminal investigation activities as referred to in paragraph 1, a Notification of the Development of Investigation Results (SP2HP) must be issued. After that, the purpose of this stage of investigation is to determine the suspect for the crime that occurred. Arrest and/or detention by Police Investigators.

The process of criminal procedural law enforcement that occurs in the field after at the Police level, switches to the Prosecutor's level or known as the prosecution stage. In accordance with Article 1 number 7 of the Code of Criminal Procedure, it reads that prosecution is the action of the public prosecutor to transfer a criminal case to the competent district court in the case and in the manner provided for in this law with a request to be examined and decided by a judge at a court hearing. The process of criminal procedural law enforcement that occurs in the field as referred to above, often results in problems that result in the birth of legal remedies in the form of pretrial requests made by parties made or determined as suspects. If according to the party made or determined as a suspect there are irregularities in treatment or action against him. For example, there is not enough evidence as referred to according to the principle of *unus testis nullus testis*, 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 the evidence is sufficient.

Pretrial is a legal remedy that falls within the scope of the Code of Criminal Procedure. therefore, comply with the principles applicable in the Criminal Procedure Law in Indonesia. The principle in the Code of Criminal Procedure relevant to pretrial is the Supervision Principle. The point is that Pretrial is an institution authorized to examine the application of the Code of Criminal Procedure at the level of Investigation by the Police and Prosecution by the Prosecutor's Office. The context tested is whether or not the process of Investigation, Arrest, Detention, Search, whether or not the Prosecution is valid and whether or not the Suspect Determination is valid. In addition, pretrial is also authorized to examine the decision of the Investigator in the Police about the lawfulness or not of the Dismissal of the Investigation.

In addition, the Pretrial Institute is also authorized to test whether or not the Prosecutor's Dismissal of Prosecution is valid. Parties who can apply for Pretrial are if they are related to Arrest, Detention, Search, Determination of Suspects, and whether or not the Prosecution is valid given to Suspects (Perpetrators of Criminal Acts). However, if it relates to the termination of the Investigation marked by the issuance of SP3 by the POLRI Investigator, and the termination of the Prosecution by the Prosecutor's Office, a pretrial application may be submitted by the Victim or Family of the Victim of the Crime and by other Parties known as Interested Third Parties entitled to apply for Pretrial. The application was filed with the District Court in accordance with its jurisdiction. This is the manifestation and commitment of the District Court to carry out the Procedural Law both criminally and civilly. Especially regarding Criminal Cases, the District Court applies a principle known as the Supervision Principle as a principle in the Criminal Procedure Law. The District Court pro-actively functions to supervise formal and material law enforcement processes at the Police Investigation Level and the Public Prosecutor Prosecution Level.

Pretrial as a new system of law enforcement in Indonesia is not carried out by a new institution but remains in a law enforcement process carriage, starting from investigation, investigation, prosecution and examination by law enforcers. (Suhardjo, 2019). Pretrial is not interpreted in the process of investigation and investigation alone. Instead, there was a rebuttal by the suspect, his legal counsel, heirs, against the illegality of the investigator's actions in forced efforts by

investigators against arrest, detention, search and confiscation. the objection can be submitted to the District Court to be assessed by a Single Judge by means of a quick examination, which is decided within seven days by the District Court. (Arief, 2018) The birth of legal remedies in the form of pretrial requests made by parties made or determined as suspects.

Pretrial is a legal effort carried out by a suspect or victim of a crime or someone who is considered to have an interest in that problem. Compensation efforts are an integral part of the pretrial institution when examining whether a person has gone through the initial process of arrest and detention by lawful investigators according to law or a detention and or arrest that contains legal defects. A flawed or illegal arrest and detention carried out by the investigating apparatus results in a suspect being able to claim compensation and rehabilitation. Then the process of investigation and or prosecution which is suddenly stopped with weak reasons or not based on proper rules, can be submitted to pretrial by parties who feel aggrieved, including the victim of the crime, or the family of the victim of the crime, and/or " interested third parties" with a record that must be accompanied by strong reasons and submitted to the Chairperson of the local District Court.

The Claims for compensation filed by suspects basically describe above, defendants or heirs for arrest or detention, as well as other actions without reason based on law or due to a mistake regarding a person or the law applied as referred to in Paragraph (1) where the case is not submitted to the Court Country, decided at the pretrial hearing as referred to in Article 77 of the Criminal Procedure Code. (Napitupulu & Firmansyah, 2022) In addition to Article 1 Point 10 of the Code of Criminal Procedure, Article 80 of the Code of Criminal Procedure also regulates pretrial cases. Pretrial is defined in terminology or separated into pre and trial.(Dharmawan, 2022) Pretrial as referred to in Article 80 reads that an application to examine whether or not the termination of the investigation or prosecution is valid can be submitted by an investigator or public prosecutor or an interested third party to the chairman of the district court stating the reasons. Termination of Prosecution is an action by the Public Prosecutor not to submit a criminal case to the Court based on valid reasons for it in accordance with applicable provisions.

The Criminal Procedure Code (KUHAP) as an indicator that has the principle of equality has an institution that functions to uphold justice and human rights. This certainly explains that the Criminal Procedure Code has a supervisory function through pretrial institutions in the Criminal Justice System in Indonesia. (Smith, 2022). A little study of the history of Pretrial is associated with the legal system that developed in Indonesia, namely the civil law system. In the European Union, the desire and possibility for the EU to harmonize the norms governing detention, particularly pretrial detention, has often been discussed by the European United Institutions (Council 2009, European Commission 2011) and by scholars. (Wieczorek, 2022).

Pretrial detention has been in the spotlight for the past few years with empirical projects underway in Europe and globally. Pretrial detention is common in Europe. All of these are the results of studies that show problematic (excessive) use, which negatively impacts individual varieties and procedural rights, such as the right to liberty, the presumption of innocence, the privilege of non-incriminating oneself, and the right to legal advice. (Martufi & Peristeridou, 2020) The detentions carried out are in stark contravention of human rights. The first thing to note is that the European Convention on Human Rights (ECHR) may not be sufficient in giving a lot of authority to national authorities. In addition, several reasons are inconsistent with the presumption of innocence. Pretrial proceedings in national law in other countries appear to serve different purposes which raises the question of whether the ECHR standard fails as an appropriate yardstick for all elements. Based on these functions, everyone can understand retributive elements which are increasingly endangering the presumption of innocence and justice in pretrial.

Prior to the existence of the Law of the Republic of Indonesia Number 8 of 1981 Concerning Criminal Procedure Code or known as the KUHAP, there was no supervisor of the performance of

the police and public prosecutors in enforcing material criminal law. Because of this, the Criminal Procedure Code was born and became the new face of Indonesian law enforcement. Pretrial by itself emerges into the world of Indonesian Law Enforcement. (Firmansyah & Farid, 2022).

In european law enforcement especially the case law in the european court of human rights (ECTHR) has very strongly encouraged the use of pre-trial detention as an exceptional measure. Different in Indonesia and also in various countries in the world. Especially in Ambrus-zkiewiecz v Poland, 31 the Courts stated that the detention of an individuals is such a serious measures that it is only justified where other. Less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it also must be necessary in the circum stances.

The judicial conditions in Europe, especially those incorporated into the European Union, are very unstable. However, the law enforcement community in EU countries places great importance on law enforcement and human rights. This is evidenced by the existence of UCHR or known as the United Convention on Human Rights and a special human rights judicial institution known as ECtHR (European Court of Human Rights). From this it is clear that in Europe law enforcement always prioritizes the principle of Human Rights and promotes the principle of Presumption of Innocent which is so glorified in Europe. However, people who are members of the scope of national legal researchers in the Netherlands also criticize the inherent provisions do not meet the sense of justice because they do not offer programs that support protection against the over-power of judicial power in the country. In Ireland there is a pretrial system known as an extensive system and uses flexible conditions attached to a person's freedom when released on certain bail. The assurance was that he was proven innocent and the procedural arrest was inappropriate, so pretrial action was taken.(Rogan, 2022)

The supervisory function carried out by the Pretrial Institute is basically identical to the *Rechter Commissaris* in the Netherlands or the *Judge d'Instruction* Institute in France. The oversight function in pretrial actually has to understand and master the nature of law, principles, theories and norms that apply as well as those that exist in society. A judge who decides on pretrial must also explore the laws that live in society. (Hamzah, 2019) Both of these institutions emerged from a civil law system that has the authority to examine whether or not a coercive attempt is legal. The Civil Law System is different, the Common Law System. While in the common law system, pretrial institutions are identical to pre-trial institutions in the United States that apply the *principle of Habeas Corpus* which basically explains that in a civilized society the government must always guarantee the right to freedom of a person. Basically as a country that retains most of the Dutch Colonial laws, Indonesia adheres to an inquisitorial criminal justice system. Speaking of Pretrial as a supervisory institution, more precisely horizontal supervisors. According to Loebby Loqman, it was explained that the horizontal oversight function of the preliminary examination process conducted by the pretrial institution is also part of the framework of the integrated criminal justice system.

Article 80 of the Code of Criminal Procedure contains 2 phrases that have broad meanings, giving rise to multiple interpretations regarding the sound of the article, especially regarding the phrases "Interested Third Party" and "by stating the reasons". These two phrases give rise to various meanings regarding which parties are entitled to pretrial applications other than those who are designated as suspects in a criminal event. Therefore, this study discusses "*Juridical Analysis of the Rights of Interested Third Parties in Filing Pretrial Applications in the Indonesian Criminal Justice System*". Based on the above background description, some problems can be formulated as follows, *The First*, How is the Right of Interested Third Parties to File Pretrial Applications in terms of the Indonesian Criminal Justice System? *The Second*, How is the correlation between the Criminal

Procedure Code and Constitutional Court Decision Number 76/PUU-X/2012 concerning the Results of Review of the Authority to Apply for Pretrial by Interested Third Parties?

II. RESEARCH METHOD

The type of research used in this study is normative legal research. Normative legal research is research by reviewing secondary materials or data which include research on legal principles, legal systematics, the level of legal synchronization, comparative law and legal history (Soekanto, 2019) This study uses secondary data, namely primary, secondary and tertiary legal materials. Collection of data using Library Research to obtain theoretical or doctrinal conceptions, opinions or conceptual thoughts and previous research related to the objects that are the subject of study in this study. This research refers to laws and regulations, court decisions, books, and other scientific works. This research data was obtained by first searching for data through library research related to books, scientific papers such as journals, accessing information sources from internet media, and seeking decisions from Judicial Institutions such as Constitutional Court Decisions through the Website Directory of Republican Constitutional Court Decisions. Indonesia. The data obtained from various sources are then sorted based on suitability with the topic being discussed.

The main data in this study include primary data, secondary data and tertiary data. First, Primary Legal Materials, which are data obtained from sources in the form of applicable laws and regulations, in this case the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 8 of 1981 Concerning Criminal Procedure Code (hereinafter referred to as 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 as amended to become Law of the Republic of Indonesia Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, Decision of the Constitutional Court Number 76 /PUU-X/2012 concerning Results of Review of Authority to submit Pretrial by Interested Third Parties and along with other laws and regulations. Second, Secondary Legal Materials are legal materials that provide an explanation of primary legal materials. This legal material is in the form of literacy sources, including legal books and written works in the form of journals and so on related to the topic being discussed. Third, Tertiary Legal Materials, which are legal materials that serve to explain as well as complement primary and secondary legal materials. These legal materials are in the form of legal dictionaries, legal encyclopedias and articles obtained from internet media.

All data is processed by descriptive analysis, namely by selecting theories, principles, norms, doctrines, and articles in laws and regulations that are relevant to the issues being discussed. Furthermore, the data analyzed qualitatively will be presented in the form of a systematic and comprehensive description by explaining the relationship between various types of data. Furthermore, all data is processed and then stated descriptively, so that in addition to describing the legal basis, it also provides solutions to the problems faced.

III. RESULT AND DISCUSSION

1. Right of Interested Third Parties to File Pretrial Applications in the Indonesian Criminal Justice System

The criminal justice system is a system in society for dealing with crime. Overcoming means here the effort of controlling crime so that it is within the limits of social tolerance. The criminal justice system contains a systemic movement of support subsystems (police, prosecutors, courts, prisons, and advocates) that as a whole and constitute a whole (totality) seeks to convert inputs into outputs that are the goal of the criminal justice system. For this reason, there is a need for integration in the implementation of law enforcement between subsystems (*integrated criminal justice system*).

The Code of Criminal Procedure (KUHAP) governs, inter alia, the rights of suspects and defendants, legal assistance at all levels of combined examination of civil and criminal cases in terms of compensation, supervision of the execution of judges' and pretrial judgments. The Criminal Procedure Code is closely linked to Indonesia's criminal justice system. The Code of Criminal Procedure regulates criminal law enforcement procedures by authorizing 4 (four) elements of law enforcement, namely the element of power to conduct investigations. The elements of power to demand, the elements of power to try and the elements of power to carry out decisions.

The fundamental weakness in the enforcement of criminal law in question is the neglect of the rights of victims of criminal acts in the process of handling criminal cases and the consequences that must be borne by victims of criminal acts. Victims of crime, who are essentially the ones who suffer the most in crime, do not receive as much protection as the law provides for perpetrators of crime. Victims of criminal acts must always be given their rights, one of which is to carry out legal actions called pretrial which will later create a sense of justice for the victim's family (Interested Third Parties) to file legal remedies so that the case can be resumed if the case concerned is unilaterally stopped both at the investigation and prosecution levels.

The idea of pretrial institutions was born from inspiration derived from Habeas Corpus in Anglo Saxon courts that provided fundamental guarantees of human rights to the right to liberty. Pretrial is taken if there is a determination of a suspect who has violated 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 the determination of suspects by investigators should be objects that can be requested for protection through legal efforts of pretrial institutions (Kavalova, 2022). According to bender's opinion, one of the indicators for a rule of state law is the struggle to uphold human rights. The indicators of the rule of law (*Rechtstaat*) according to Adriaan Bedner are as follows: (a) Rules based on law; (b) State actions are subject to law; (c) Formal legalization; (d) Democracy; (e)The law and its interpretation are subject to the principle of justice; (f) Protection of human rights and individual freedoms, group rights and fulfillment of social rights; (g) Judicial independence, and (h) Other institutions that function to maintain the fulfillment of the rule of law elements.

The process of determining a suspect is basically not a forced effort but as a form of administrative police action after someone is suspected of being the perpetrator of a crime based on sufficient evidence (Opolska, 2022). However, unilateral termination of investigations and prosecutions without being based on strong legal standing is also a violation of human rights for the families of victims of criminal acts or third parties affected by criminal acts. Therefore pretrial exists to realize and uphold the foundations of human rights in the world of National Justice (Litigation).

Pretrial in the Netherlands has previously been carried out and of course always raises pros and cons among law enforcement officials and legal activists in the Netherlands. Pretrial controversies have always existed in various countries around the world, one of which is in the Netherlands. Controversy over the use of pre-trial detention in the Netherlands and whether this use complies with ECTHR Standards. However, an article by three judges of the District Court in Rotterdam in June 2013 provided a very strong impetus to the discussion currently underway about pre-trial detention in the Netherlands. In this article the judges called for an (internal) discussion about the use of pre-trial detention that should lead to a new approach to the use of this tool. The judges described the practice of pre-trial detention as an "*efficient pastry factory*".

The criminal justice system in Indonesia is a unity within the scope of justice, especially criminal cases in Indonesia which consist of several supporting elements, one of which is pretrial. Pretrial is an institution that functions to test the implementation of the law enforcement process at the level of investigation to prosecution. When talking about the criminal justice system, it will mention the Criminal Procedure Code (KUHAP) as a formula to support the criminal justice system in Indonesia.

In the Criminal Procedure Code, there is an article that defines and regulates the procedure for submitting pretrial proceedings. The definition of pretrial is contained in Article 10 of the Code of Criminal Procedure, and further provisions regarding pretrial are contained in Articles 77, 78, 79, 80 to Article 83 of the Code of Criminal Procedure.

Pretrial is one of the institutions in the Indonesian criminal justice system. Historically, Pretrial was unknown in the old criminal procedural law system, which was based on the Herziene Inlandsche Reglement (H.I.R). (H.I.R) adheres to the teaching of the inquisitoir system which means that a suspect or defendant is placed as an object that allows arbitrary treatment by the investigator against the suspect, so that from the moment the first examination is carried out before the investigator, the suspect is a priori presumed guilty. The pretrial hearing only examines formal issues from an action carried out by an investigator or public prosecutor. Pretrial consists of two parties, namely the party submitting a request for pretrial examination is referred to as the Petitioner or the Petitioners.(Syahputra, 2022) So that before the existence of the Criminal Procedure Code, the criminal procedural law system in Indonesia that still adheres to H.I.R is not based on the principle of presumption of innocence which in fact is a shield to achieve a sense of justice in society. In accordance with Article 1 number 10 of the Code of Criminal Procedure, it is explained that pretrial is the authority of the district court to examine and decide in the manner provided for in this law (KUHAP), regarding: (a) whether or not the arrest and/or detention is lawful at the request of the suspect or his family or other parties under the authority of the suspect; (b) whether or not the termination of the investigation or termination of prosecution on request for the sake of upholding law and justice; (c) Requests for compensation or rehabilitation by the suspect or his family or other parties on his behalf whose case is not brought to court.

One of its manifestations is the regulation of equal citizen status before the law (*Supremation of Law*) and upholding the principle of presumption of innocence. Therefore, the institution of Pretrial was born. Pretrial itself serves as a tool of social control over the implementation of law enforcement carried out by law enforcement officials in accordance with applicable procedures or not, and ensures that actions taken by law enforcement officials reflect the sense of justice to be achieved. Pretrial as one of the control mechanisms over possible arbitrary actions by the Investigator or Public Prosecutor in making arrests, detentions, searches, seizures, investigations, determination of suspects, prosecution, termination of prosecution, whether accompanied by requests for compensation and or rehabilitation or not. For example, according to a story told by a senior legal academic, it is stated that before the existence of Law of the Republic of Indonesia Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP), those suspected of committing criminal acts were brought before investigators and every effort was made to later the alleged perpetrators admit that the crime was true.

Based on the description of this story, of course before the birth of the Criminal Procedure Code, the Indonesian Criminal Justice System was still very wild and not based on the principle of presumption of innocence. So that the purpose of law has not achieved a sense of justice, certainty and real benefits of law. The Criminal Procedure Code has changed the system adopted by HIR by placing suspects or defendants no longer as objects of examination but suspects and / or defendants are placed as subjects, namely as human beings who have equal dignity and position before the law (*rule of law).* One application of the *Rechtsstaat* concept contained in the purpose of the Criminal Procedure Law, namely to obtain the true material truth, uphold public legal order, and protect the human rights of individuals, both victims and suspected perpetrators of criminal acts.

Supervision of acts of irregularities and abuse of authority by the police as investigators and investigators and the prosecutor's office as public prosecutors. The supervision in question is part of the implementation of an integrated criminal and human rights system. The authority possessed by pretrial has one loophole that is problematic, namely in Article 80 of the Code of Criminal

Procedure there is the phrase "*Interested Third Party*". The factor of no clear and unequivocal authentic interpretation in the Criminal Procedure Code regarding the phrase Interested Third Party, although it has been affirmed by the Constitutional Court Decision. This is a weakness owned by the Criminal Procedure Code, causing legal uncertainty. Basically, the interpretation given by the Judge in order to make legal discovery to cover up a legal rule that is unclear and incomplete. Problems arise regarding parties that are clearly defined as Third Party Stakeholders.

The case illustration Interested Third Party in Filing Pretrial For example, the occurrence of a National Figure who is suspected of committing a Corruption Crime together who has fulfilled the elements of being said to be a Corruption Crime, such as being carried out by utilizing the authority attached to him, enriching himself or another person as evidenced by an Audit of the BPK or an authorized institution , and cause financial losses to the state. However, the legal process against the perpetrator was issued an SP3 (Notification of Termination of Investigation) by Police Investigators. Thus, Anti-Corruption NGOs as Social Control agents can submit Pretrial efforts to the District Court according to their jurisdiction, with the aim that the Investigation into the alleged Corruption Crimes can be continued because the Corruption Crime incident concerns the rights of millions of Indonesian people. This was then said to be the authority of Interested Third Parties in submitting a pretrial (Praperadilan).

The pretrial becomes a supervisory institution against acts of irregularities and abuse of authority by the police as investigators in terms of whether the determination of a suspect, arrest, detention, search, investigation and prosecution by the Public Prosecutor is legal. This is because police investigators and public prosecutors in carrying out formal and material law enforcement duties as ordinary people are not spared from mistakes and mistakes. So pretrial can be submitted if the process of law enforcement by the police or at the stage of prosecution by the prosecutor who is received by a person or suspected suspect of a crime is considered procedurally flawed. Pretrial is generally submitted at the stage of investigation at the Police and at the stage of prosecution at the Attorney General's Office. This supervision is part of the implementation of an integrated criminal system and human rights which always prioritizes the principle of presumption of innocent. The authority possessed by the pretrial has one loophole which becomes a problem, namely in Article 80 of the Criminal Procedure Code there is the phrase "Interested Third Parties". Problems arise regarding parties that are clearly defined as Third Party Stakeholders. KUHAP as part of formal criminal law does not explain in detail and comprehensively about who are the interested third parties as mentioned in Article 80 of the Criminal Procedure Code. However, this condition was so wild that all parties who had proper reasons as stated in Article 80 of the Criminal Procedure Code were interested, they could submit a Pretrial Request addressed to the Head of the District Court which was the jurisdiction of the case.

Pretrial has a function as one of the manifestations of human rights enforcement in the Criminal Procedure Code. This can be seen from the Pretrial task to check the administrative completeness of an act of coercive effort by law enforcement officials to ensure that it does not violate the law or the human rights of suspected perpetrators of criminal acts. In addition, Pretrial also serves to check the administrative completeness of an act of forcibly stopping the investigation process and / or prosecution of criminal acts unilaterally without a clear reason according to applicable laws and regulations considered detrimental to the public interest. This is also because the nature of criminal law as public law certainly cannot be separated from the interests of the general public. Therefore, pretrial can be submitted in order to achieve the principles of justice, certainty and legal expediency as always narrated by national and international legal fighters.

2. Correlation Between the Criminal Procedure Code and Constitutional Court Decision Number 76/PUU-X/2012 concerning the Results of Review of the Authority Filing Pretrial by Interested Third Parties

The Code of Criminal Procedure is a manifestation of the existence of formal law based on the birth of Law of the Republic of Indonesia Number 8 of 1981 concerning the Indonesian Code of Criminal Procedure. The Criminal Procedure Code as part of the laws and regulations is in the hierarchy of laws and regulations in accordance with Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations. The Code of Criminal Procedure in principle aims to ensure that material laws are implemented.

The material laws in question include the Criminal Code as a special criminal law as a lex specialist such as Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering and other laws. Accordance statement M. Yahya Harahap said that Related to its position as a rule of public law, the Criminal Procedure Code has a principle of balance. The principle of balance means that the Criminal Procedure Code is used as a monitor to ensure that law enforcement can run properly and realize justice, certainty and the benefits of law. This means that apart from regulating the violated public interest, this KUHAP also regulates in a balanced manner the interests of parties with the status of perpetrators. The Criminal Procedure Code as part of the laws and regulations is in the hierarchy of laws and regulations, must be in accordance with the laws and regulations above it, in this case the Constitution of the Republic of Indonesia Year 1945 and TAP MPR. Regarding the multi interpretation of loopholes in Article 80 of the Code of Criminal Procedure, which regulates pretrial that can be submitted by interested third parties, it is a problem.

In Article 80 of the Code of Criminal Procedure, there is a phrase that mentions "Interested Third Party" which has a broad meaning. The Code of Criminal Procedure does not provide a clear interpretation of who can be categorized as an interested third party. This will lead to different interpretations from interested third parties, including NGOs or Non-Governmental Organizations (NGOs). This is due to the fact that there is no clear and explicit authentic interpretation based on the Code of Criminal Procedure. The problem of not having a clear explanation regarding the meaning of the phrase "Interested Third Party" in the Code of Criminal Procedure is not without impact. This resulted in legal uncertainty and resulted in a reduction in the constitutional rights and sense of justice of a Petitioner which the Investigator said was insufficient evidence, so the investigation was stopped by issuing SP-3. After that, a lawsuit from an "*Interested Third Party*" emerged, causing the case to be reopened for investigation.

The Criminal Procedure Code as part of the laws and regulations that are in the hierarchy of laws and regulations, must comply with the regulations above it, in this case the Constitution of the Republic of Indonesia Year 1945 and TAP MPR. Regarding the multi interpretation of loopholes in Article 80 of the Code of Criminal Procedure, which regulates pretrial that can be submitted by interested third parties, it is a problem. There is an analysis that Article 80 of the Code of Criminal Procedure contradicts the human rights possessed by every citizen, including those possessed by suspects or defendants of crimes. If a criminal case against a suspect or defendant is dismissed by the investigation or prosecution process, an interested third party, such as an NGO, has the right to submit a pretrial to the District Court in accordance with the jurisdiction of the case. The purpose is solely so that cases that have been stopped can be reopened and the investigation and prosecution process resumed. This is considered by some parties to be contrary to the principles of human rights contained in Article 1 Paragraph 3, Article 28 D Paragraph 1 and Article 28 I Paragraph 2 of the Constitution of the Republic of Indonesia Year 1945.

Based on these conditions, a group of people who consider Article 80 of the Criminal Procedure Code to be contrary to the 1945 Constitution, then they submit a request for judicial review to the Constitutional Court of the Republic of Indonesia. Judicial Review was conducted on Article 80 of the Code of Criminal Procedure correlated with Article 1 Paragraph 3, Article 28 D Paragraph 1 and

Article 28 I Paragraph 2 of the Constitution of the Republic of Indonesia Year 1945. Judicial review itself is a legal effort made to test whether a law contradicts the Constitution of the Republic of Indonesia Year 1945 or not. The Constitutional Court held that although the Criminal Procedure Code does not provide a clear interpretation of the parties that can be categorized as interested third parties. However, according to the Constitutional Court, what is meant by an interested third party is not only a witness to a victim of a crime or whistleblower but must be interpreted broadly. Thus, the definition of interested third parties must also be interpreted broadly, which includes groups of people who have the same interests and goals, namely as institutions or agents in fighting for the public interest (public interest advocate) such as Non-Governmental Organizations or Community Organizations and anothers. This is because in essence the Criminal Procedure Code is a legal instrument to enforce the Criminal Law. Criminal law it self is essentially intended to protect the public interest.

This has been reinforced by the Constitutional Court in its Decision number 76/PUU-X/2012 which contains a firm statement that the meaning of Interested Third Parties must be interpreted broadly and not only addressed to individuals, both suspects and defendants. However, from the association as a forum of social control is also included in it. The Constitutional Court as guardian of the constitution in several of its decisions has also outlined the legal position in submitting requests for review of laws not only to individual Indonesian citizens but also to groups of people who have the same interests and goals to fight for the public interest and care about a law. act. in the public interest. Based on the Ruling of the Constitutional Court Number 76/PUU-X/2012 concerning Request for Review of Law Number 8 of 1981 concerning Law of Criminal Procedure against the 1945 Constitution of the Republic of Indonesia which states that the meaning of the phrase "*Interested Third Party*" must be interpreted broadly, not only fixated on suspects/defendants or witness victims of criminal acts.

However, this includes agencies with an interest in overseeing the performance of law enforcement agencies or institutions concerned with overseeing various issues related to cases currently being tried. The meaning of the sentence "must be interpreted broadly". In the next sentence in the Decision of the Constitutional Court Number 76/PUU-X/2012 concerning Request for Review of Law Number 8 of 1981 concerning Criminal Procedure Law against the 1945 Constitution of the Republic of Indonesia there is also such a sentence, the interpretation regarding third parties in the a quo article is not only limited to victims or reporting witnesses but covers the wider community, including non-governmental organizations that fight for people's aspirations.

On the basis of the above considerations, the Constitutional Judge who tried the Pretrial Application against Article 80 of the Code of Criminal Procedure concerning the Right of Interested Third Parties to file Pretrial, the Petitioner's Application was rejected in its entirety. Thus, the Constitutional Court in its Decision automatically stated that Article 80 of the Code of Criminal Procedure does not contradict the Constitution of the Republic of Indonesia Year 1945 as postulated by the Applicant. The Judge's considerations in the Judicial Review Decision emphasize that that Article 80 of the Code of Criminal Procedure is essentially a social control over the implementation of the Formil Criminal Law so that any interested person or third party, including non-governmental organizations, has the right to apply for pre-trial accompanied by strong reasons. Article 80 of the Criminal Procedure Code does not conflict with Article 1 Paragraph 3, Article 28 D Paragraph 1 and Article 28 I Paragraph 2 of the Constitution of the Republic of Indonesia Year 1945, so that the existence of Article 80 of the Criminal Procedure Code can be intended as a means of correction for law enforcement officials who come from third parties either individually or from institutions that function as social control over the implementation of law enforcement. Law Enforcement Officials are ordinary people who are not free from sin. So, anyone has the right to correct and monitor law enforcement in the community. The law is useful for society so that crime does not occur so that public order is realized. Finally, the essence of the Criminal Procedure Code

as part of the criminal law institution which is Public Law is reaffirmed through the Ruling of the Constitutional Court of the Republic of Indonesia Number 76/PUU-X/2012, especially in the context of the weaknesses of Article 80 of the Criminal Procedure Code.

IV. CONCLUSION

The First Conclusion, Right of Interested Third Parties to File Pretrial Applications in the Indonesian Criminal Justice System is The Criminal Procedure Code stipulates that an Interested Third Party has the right to submit a pretrial. This supervision is part of the implementation of an integrated criminal system and human rights. The authority possessed by the pretrial has one loophole which becomes a problem, namely in Article 80 of the Criminal Procedure Code there is the phrase "Interested Third Parties". Issues arise regarding parties that are clearly defined as Stakeholder Third Parties. KUHAP as part of formal criminal law does not explain in detail and comprehensively about who are the interested third parties as mentioned in Article 80 of the Criminal Procedure Code. However, this condition was so wild that all parties who had proper reasons as stated in Article 80 of the Criminal Procedure Code were interested, they could submit a Pretrial Request addressed to the Head of the District Court which was the jurisdiction of the case.

The first suggestions especially goals to the Legislative, Executive, Judiciary and legal academics to formulate a revised KUHAP that is in accordance with the current situation and conditions and that the KUHAP contains comprehensive and complete explanations.

The Second Conclusion, Correlation Between the Criminal Procedure Code and Constitutional Court Decision Number 76/PUU-X/2012 concerning the Results of Review of the Authority Filing Pretrial by Interested Third Parties is about the essence of the Criminal Procedure Code as part of the criminal law institution which is Public Law is reaffirmed through the Ruling of the Constitutional Court of the Republic of Indonesia Number 76/PUU-X/2012, especially in the context of the weaknesses of Article 80 of the Criminal Procedure Code. Article 80 of the Criminal Procedure Code does not conflict with Article 1 Paragraph 3, Article 28 D Paragraph 1 and Article 28 I Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, so that the existence of Article 80 of the Criminal Procedure Code can be intended as a means of correction for law enforcers originating from parties third, both individually and from institutions that function as social control over the implementation of law enforcement. The Panel of Judges is of the opinion that Article 80 of the Criminal Procedure Code is essentially social control over the implementation of formal criminal law so that everyone who has an interest, including Non-Governmental Organizations, has the right to submit a pretrial accompanied by strong reasons. Pretrial submitted by parties who feel aggrieved or interested parties related to criminal acts or investigations and prosecutions of criminal acts are solely carried out to fulfill the principles of justice, certainty, and the benefit of law. This was reinforced by the Constitutional Court in Decision number 76/PUU-X/2012 which contains a firm statement that the notion of an Interested Third Party must be interpreted broadly and not only be directed at individuals, both suspects and defendants. However, association as a vessel for social control also includes it.

The second Suggestions to Judicial Institutions, especially the Supreme Court, to formulate an Internal Regulation of the Judicial Power of the Republic of Indonesia which explains certain definitions that are not explained in the Criminal Procedure Code. This is so that crucial debates do not occur within the scope of the judiciary if the explanation of the Criminal Procedure Code is deemed incomplete. This is needed if the revision of the Criminal Procedure Code has not been implemented.

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