



Pretrial Efforts to Realize Legal Provisions that Are Proportional and Do Not Contract the Perspective Pancasila Law

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Abstract

Pretrial aims to monitor coercive measures carried out by investigators or public prosecutors against suspects, so that these actions are actually carried out in accordance with the provisions of the law, and are truly proportional to the provisions of the law and do not constitute acts that are contrary to the law. The purpose of this research is to describe pretrial legal efforts to achieve justice for underprivileged suspects/families. To analyze pretrials in accordance with the Pancasila legal state perspective. The method used is descriptive, with data sources obtained from journals, books and related articles. The result of this research is Article 22 paragraph (1) of Law No. 18 of 2003 concerning Advocates which states that "Advocates are obliged to provide free legal assistance to justice seekers who cannot afford it." These rules require a lawyer to provide equal access to justice for everyone. This is a form of embodiment of the principle of equality before the law adhered to by Indonesia. In fact, the concept of a legal state for Indonesia is based on the Pancasila ideology, the substance of which includes, among other things, the principle of recognition of God's law, natural law and ethical law. The elements of the Pancasila state are the recognition of guarantees of human and citizen rights; There is a division of power; in carrying out its duties, the government must always be based on applicable laws, both written and unwritten; There is a judiciary that exercises its power independently

Keywords: *Pretrial; Justice; Pancasila*

Introduction

Indonesia is a legal state based on Pancasila and the 1945 Constitution which upholds human rights and guarantees that all citizens have equal status under the law and government and are obliged to uphold the law and government without exception (letter a of the Criminal Procedure Code). Therefore, the preparation and implementation of the legal system in Indonesia since the enactment of the 1945 Constitution must be based on and imbued with Pancasila, including in creating its regulations, one of which is Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). In this case, the Criminal Procedure Code has brought about fundamental changes both conceptually and implemented in the procedures for resolving Indonesian criminal cases. The Criminal Procedure Code is a regulation that

regulates, implements and maintains the existence of criminal law provisions in order to seek, discover and obtain material or real truth.¹

Pretrial aims to monitor coercive measures carried out by investigators or public prosecutors against suspects, so that these actions are actually carried out in accordance with the provisions of the law, and are truly proportional to the provisions of the law and do not constitute acts that are contrary to the law.²This monitoring and assessment of coercive measures was not found in law enforcement actions during the HIR era. Whatever the treatment and method of implementing coercive measures carried out by investigators at that time, everything was lost due to authority that was not supervised and was not controlled by any institutional correction.³

Pretrial matters have become part of the duties and authority of the District Court which may not be handled by courts in other judicial settings. However, what needs to be noted is that the type of pre-trial procedural process is not part of the task of examining and deciding (trying) the criminal case itself, so that the pre-trial decision is not the task and function of handling a criminal act (main) in the form of examining and deciding criminal cases. punishment that stands alone as a final decision.

The concept of pretrial in Indonesia was inspired by commissioner judges in European countries. Basically, a pretrial petition is submitted to the court, if rights have been violated. The suspect or victim, their family, or other authorized parties, investigators and public prosecutors, as well as third parties have the right to submit a pretrial hearing. Cases that can be requested for pretrial include whether or not the arrest and/or detention is valid, whether or not the termination of the investigation or prosecution is valid, requests for compensation and rehabilitation. The judicial process in Indonesia is based on Pancasila, which places human dignity in its place and implements the protection and guarantee of human rights.⁴

Pancasila is the basis and ideology of the state as well as the source of all sources of law in Indonesia⁵. Therefore, there must be no laws and regulations in force in Indonesia that conflict with Pancasila. Meanwhile, Pancasila as the basis of the state must continue to be able to adapt to the objective conditions of modern Indonesian society. Pancasila is an inseparable series of unity and wholeness. This is because every principle in Pancasila contains holistic principles. The arrangement contains a systematic, hierarchical nature. This means that the five principles of Pancasila are a series of sequences, which at the constitutional level are spelled out in statutory regulations, including one sector which is the judiciary.

The juridical aspects regarding Pretrial are regulated in the KUHAP, Pretrial is regulated in Article 1 point 10 of the Criminal Procedure Code, Pretrial is the judge's authority to examine and decide,⁶namely regarding:

- a. Whether or not an arrest and/or detention is valid at the request of the suspect or his family or another party under the suspect's authority;
- b. Whether or not the termination of an investigation or prosecution is valid upon request for the sake of upholding law and justice; And
- c. Requests for compensation or rehabilitation by the suspect or his family or other parties on their behalf whose case has not been submitted to court.

¹ Sunaryo, S. (2017). Juridical Flaws in Non-Executorial Judge's Decisions in Corruption Cases. *Judicial Journal*, 3(3), 238–300.

²So that the action is truly carried out in accordance with the provisions of the law, and is truly proportional to the provisions of the law and does not constitute an action that is contrary to the law

³Tumian Lian Daya Ancient. 2017. Pretrial as a legal remedy for suspects Papua Law Journal Volume 1 Issue 2

⁴Sahat Maruli Tua Situmeang. 2016. Seeking Justice Through Pretrial Legal Efforts in the Perspective of the Pancasila Rule of Law. *Institutional Repositories & Scientific Journals*

⁵Putri, KDA, & Arifin, R. (2019). Theoretical Review of Justice and Legal Certainty in Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia). *Justitia Pulpit*, 2(2), 142-158.

⁶ Sitorus, Finta R., Et Al. "Violation of Miranda Rule Principles in Indonesian Criminal Procedure Law." *Riau University Faculty of Law Student Online Journal*, Vol. 3, no. 2, Oct. 2016, pp. 1-15

The problem formulation in this research is:

1. What are Pretrial Legal Efforts to Achieve Justice for Underprivileged Suspects/Families?
2. How is pretrial in accordance with the perspective of the Pancasila rule of law?

Discussion

1. Pretrial Legal Efforts to Achieve Justice for Underprivileged Suspects/Families

The orientation of law enforcement is not limited to legal certainty and justice, but also to the protection of human rights.⁷Pretrial is part of the criminal justice process that upholds a person's human rights in accordance with his or her dignity, regardless of status, whether he is a suspect or not. These legal guarantees are not only regulated in the criminal procedural law as the formal law that regulates the criminal justice process, but more than that in the Constitution of the Republic of Indonesia Articles 28A to Article 28J have stipulated that everyone is equal before the law and government without exception.⁸Apart from that, Law Number 8 of 1981 also contains the principle of presumption of innocence which states that a person cannot be considered guilty until there is a judge's decision which has permanent legal force.

Indonesia as a legal state has an obligation to carry out all aspects of national and state life based on laws that are in harmony with the Indonesian national legal system.⁹The Indonesian national legal system is a combination of several mutually sustainable legal elements to overcome problems that occur in national and state life from the smallest scope, namely the village, to the largest scope, namely the state.

Indonesia's existence as a legal state is characterized by several basic elements, such as recognition and protection of human rights, government organized based on law, equality before the law, the existence of administrative justice and other elements. The next characteristic of the Pancasila legal state according to Oemar Senoadji, is that there is no rigid and absolute separation between religion and state, because religion and state are in a harmonious relationship, and there should be no separation of religion and state, either absolutely or relatively because of things that would be contrary to Pancasila and the 1945 Constitution.

Equality before the law must be interpreted dynamically and not statically. This means that if there is equality before the law for all people, then it must also be balanced with equal treatment for all people. The existence of the principles of equality before the law and fair treatment for the entire community is an indication that the state is obliged to pay attention to the issue of legal assistance for its citizens. The provision of legal aid that is not serious is a violation of human rights which means it is contrary to the constitutional rights of citizens.

The provision of legal aid cannot be separated from legal regulations that can guarantee law enforcement. The legal rules that guarantee the provision of legal aid are the Criminal Procedure Code (KUHAP) which has appointed and placed suspects and defendants in an equal position as creatures of God who have complete dignity and humanity. Apart from that, Law Number 4 of 2004 concerning

⁷Osef Tote Komba, Achmad Salim, Selsus T. Djesse, WLKMRH (11). Study of East Nusa Tenggara Province's Status as an Island Province: Overview From Law Perspective. *Borneo Administrator's Journal*, 9(2).

⁸Citra Ayu Ramadhanti, Uu Idjuddin Solihin. 2012. **The crime of theft committed by a 14 year old child in the Islamic context eliminates criminal acts based on Article 69 Paragraph 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA).** *Faces of Law Volume 5(2), October 2021, 644-654*

⁹Putri, KDA, & Arifin, R. (2019). Theoretical Review of Justice and Legal Certainty in Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia). *Justitia Pulpit*, 2(2), 142-158.

Judicial Power, especially Articles 37 to 39, also provides protection for every person involved in a case who has the right to obtain legal assistance through an advocate and advocates are obliged to help resolve cases by upholding law and justice.

In the Criminal Procedure Code there is no difference before the law, both suspects, defendants and law enforcement officers are both citizens with the same position and obligations before the law, namely to both seek truth and justice.¹⁰ Anyone who violates the law will receive the same treatment without difference. Every person must be considered innocent (presumption of innocence) until his guilt is proven in a free and fair trial in public. In addition, arrests or detentions carried out by law enforcement officers are based on sufficient preliminary evidence, not solely based on the wishes of law enforcement officers. Implementation of the Criminal Procedure Code by law enforcement officers often does not comply with the rules outlined in the Criminal Procedure Code.

To obtain information from suspects at the investigative level, they are first arrested, then their confessions are obtained through intimidation, violence and torture. As a result of the process of resolving criminal incidents, there are many legal cases regarding human rights violations committed by law enforcement officers. Suspects, especially the poor, suffer from unfair treatment, are tortured, interrogated by law enforcers and tried by courts that are cruel and degrading to their human dignity, they are detained without a fair process, and even the resolution of the cases being handled is never clear. This has led to a decline in the level of public trust in the world of justice, this is reflected in the pattern of problem solving carried out by people who tend to take the law into their own hands.

Solving this problem is an alternative option amidst public distrust of the judicial apparatus. This is strongly influenced by the view that the process through judicial mechanisms is full of unfairness and uncertainty that is masked by legal certainty, resulting in conflict in people's lives. Providing legal assistance by advocates/legal advisors is of course very important in protecting and defending the rights of perpetrators of criminal acts in the process from investigation to trial.¹¹

The Indonesian Criminal Procedure Law provides opportunities for legal assistance starting from the arrest or detention of suspects or defendants at all levels of investigation. This is further reinforced in Article 54 of the Criminal Procedure Code which states that: "...For the purposes of defense, a suspect or defendant has the right to obtain legal assistance from one or more legal advisors during the time and at each level of the examination, according to the procedures specified in the law This". Based on Article 54 of the Criminal Procedure Code, it can be concluded that this article determines the right of every person to obtain legal assistance whether the person is economically capable or not. Every society needs someone (figure) whose information is reliable, trustworthy, whose signature and seal (stamp) provide a guarantee and serve as strong evidence.

For this reason, legal assistance is needed, especially for those who are less capable and legally illiterate, so that the suspect's rights as stated in Law Number 8 of 1981 concerning the Criminal Procedure Code are not ignored or reduced by law enforcers in every examination, especially in examinations at the investigative level. .¹² Basically, the main task of practicing legal advisors (advocates and lawyers) is to provide legal opinions and legal advice in order to distance clients from conflict, while in judicial institutions (court proceedings) legal advisors submit or defend their clients.¹³

¹⁰Jeroboam. Telly Axis, Rodrigo F. Elias. 2018. Constitutional Review of Article 27 Paragraph (1) of the 1945 Constitution Concerning Equality of Status Before the Law in the Arrest Process for Someone Suspected of Committing a Crime. *Lex Administratum*, 6(1):46-53

¹¹Lubis, MR. (2023). Juridical Review of Providing Legal Aid to Perpetrators of Terrorism Crimes. *Metadata Scientific Journal*, 5(3), 232-244.

¹²Heidy Visilia Your Saangga. 2013. The Suspect's Right to Obtain Legal Assistance in the Criminal Case Investigation Process. *Lex Crimen Vol. II(2):162-171*

¹³Suhrawardi K Lubis, 2012, *Legal Professional Ethics*, Sinar Garfika, Jakarta, p. 28

In Law Number 18 of 2003 concerning Advocates, there are rights possessed by advocates, namely that Advocates have the right to freely express opinions or statements in defending cases for which they are responsible in court hearings while adhering to the professional code of ethics and statutory regulations (Art. 14).

Humans need protection of their interests. In implementing the obligation to provide free legal assistance to suspects, especially for the poor and legally illiterate, it has the following objectives: Part of the implementation of constitutional rights as regulated and guaranteed by the 1945 Constitution and its amendments. The right to legal assistance is one of the human rights that must be protected. By referring to Article 27 paragraph (1) of the 1945 Constitution including the provisions of Article 28 Letter D paragraph (1) and Article 28 Letter I paragraph (1) of the 1945 Constitution which have been amended, the right to legal aid must be seen as an institution that must be owned and only exists in a legal state system.

The existence of the principle of sovereign law (supremacy of law) and the existence of guarantees for every person suspected of being guilty of receiving a fair trial (fair trial) are conditions that must be guaranteed absolutely in a rule of law. Part of implementing the principle that the law applies to everyone. There are limited legal understanding and knowledge for individuals who are legally illiterate to understand the provisions written in the law, so the role and function of advocates is needed to provide legal explanations and assistance. Part of efforts to standardize the implementation of the law enforcement roles and functions of advocates.

Based on what has been stated above, the obligation to provide legal assistance by advocates has been strictly regulated in Article 22 paragraph (1) of Law Number 18 of 2003 concerning Advocates. In Article 22 paragraph (1) it is explained that advocates are obliged to provide free legal assistance to those seeking justice who cannot afford it. According to the author, regulations that affirm the social obligations of advocates to provide free legal assistance to the poor are something that should be appreciated.

This is because in a developing country there are still many individuals or families who live in poverty, even below the poverty line. The legal assistance provided by the advocate is of course guided by respect for human values, including respect for human rights. Starting from the issue of optimizing the application of strict sanctions against advocates who do not carry out their obligations to provide legal assistance to suspects to the issue of the absence of definitive benchmarks to determine which parties can be categorized as incapable justice seekers.

Regarding the provisions for sanctions against advocates who do not carry out their obligations, it is contained in Article 7 paragraph (1) of Law Number 18 of 2003 concerning Advocates, and Article 14 paragraph 2 of Government Regulation Number 83 of 2008 has regulated several types of administrative sanctions ranging from verbal warnings, written warning, temporary dismissal and permanent dismissal. If linked to the provisions of Article 6 letter (d) of Law Number 18 of 2003 concerning Advocates, advocates who do not carry out their obligations to provide legal assistance can be categorized as having committed acts that are contrary to their professional obligations as explained in Article 22 paragraph (1) of Law Number 18 of 2003.

Therefore, the sanctions as described in Article 7 paragraph (1) of Law Number 18 of 2003 and Article 14 paragraph 2 of Government Regulation Number 83 of 2008 can be applied to advocates who do not carry out their obligations to provide legal assistance as a profession. run it. Furthermore, the implementation of the obligation to provide legal assistance by advocates cannot be separated from the role of the advocate organization itself. This is due to the reason that advocate organizations function to carry out supervision.

As explained in Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates which explains that supervision of advocates is carried out by advocate organizations. Meanwhile, Article 12 paragraph (1) of Law Number 18 of 2003 concerning Advocates explains that supervision is carried

out with the aim that advocates always uphold the professional code of ethics and statutory regulations in carrying out their duties. In accordance with the definition of legal aid according to Article 1 paragraph (1) of Law Number 16 of 2011 concerning Legal Aid, namely legal aid is a legal service provided by legal aid providers free of charge to legal aid recipients. The same definition is also given by Law Number 18 of 2003 concerning Advocates. So, by looking at the definitions provided by these two laws, legal aid contains elements of legal services provided free of charge.

The state wants no errors to occur during the judicial process. Don't let it happen when someone who is innocent actually gets criminal sanctions. In fact, in making decisions there is a principle that is held that it is better to acquit a guilty person than to impose a crime on an innocent person. The authority to examine and decide on pretrial applications rests with the district court with a composition of judges consisting of one judge. Judges cannot be nominated as parties to a pretrial hearing, because judges in criminal trials are the parties who decide cases as regulated in the Criminal Procedure Code. This is different from investigators and public prosecutors who play roles outside the court process.¹⁴The Criminal Procedure Code itself regulates that the parties that can submit a pre-trial hearing are investigators and public prosecutors.

Pretrial examination procedures are described in Article 79, Article 80 and Article 81 as follows:

- a. Within three days after receipt of the request, the appointed judge sets a trial date;
- b. In examining and deciding whether or not the arrest or detention is valid, whether the investigation or prosecution is terminated, requests for compensation and/or rehabilitation due to the illegality of the arrest or detention, the legal impact of the termination of the investigation or prosecution and whether there are objects confiscated which are not included as evidence, the judge hears information from both the suspect or applicant and from authorized officials;
- c. The examination is carried out quickly and no later than seven days the judge must have handed down his decision;
- d. In case a matter has already started. examined by the district court, while the examination regarding the request to the pre-trial court has not been completed, then the request is dismissed;
- e. A pre-trial decision at the investigation level does not rule out the possibility of holding another pre-trial examination at the level of examination by the public prosecutor, if a new request is submitted for that purpose.

Law enforcement basically contains the supremacy of substantial values, namely justice.¹⁵Sometimes the public provides various comments regarding law enforcement and justice associated with what is produced by the judiciary. So that the judiciary is a symbol of efforts to realize just laws.¹⁶Law enforcement by Law Enforcement Officials is expected to be able to realize the objectives of the law, namely justice, benefit and certainty. However, in practice it is not easy to implement these three legal objectives.

The justice system is closely related to law enforcement officials who are the initial pillars of law enforcement¹⁷. Law enforcement officers include an understanding of law enforcement intuition. In a narrow sense, law enforcement officers involved in the process of enforcing the law, starting from witnesses, police, legal advisors, prosecutors, judges and correctional wardens. Each relevant apparatus also includes parties concerned with their duties or roles, namely related to reporting or complaint

¹⁴Raseukiy, SAG, & Aulia, Y. (2019). Opening Horizons on Access to Justice for Victims of Sexual Crimes in Indonesia: A Paradigmatic Review of Law Enforcement. *National Law Magazine*, 49(1), 151-179.

¹⁵ Sunaryo, S. (2017). Juridical Flaws in Non-Executorial Judge's Decisions in Corruption Cases. *Judicial Journal*, 3(3), 238-300.

¹⁶Sajipto Rahardjo, *Law Enforcement; A Sociological Review*, Ctk. Second, (Yogyakarta: Genta Publishing, 2009), H. 7

¹⁷Didit Saltriwiguna. (2020). Legal Protection for Debtors Due to Increases in Bank Credit Interest Rates (Review of Consumer Protection Law). *Law Treatise*, 5(2), 23-45.

activities, investigations, inquiries, prosecutions, evidence, sentencing and imposition of sanctions, as well as efforts to re-incarcerate (resocialization) convicts.¹⁸

To prevent this arbitrariness from occurring, a pre-trial institution was formed which functions as a controller and provides opportunities for suspects or defendants who seek justice and defend their human rights. In the Criminal Procedure Code itself there is no definite definition of pre-trial, but pre-trial has similarities with *rechter commissaris* or commissioner judge. According to the Criminal Procedure Code, there is no provision for a pre-trial judge to conduct and preside over the examination. The pretrial judge does not carry out a preliminary examination and he also does not determine whether a case has sufficient grounds or not to be continued to a court trial. Pretrial in Indonesia has the function of controlling law enforcement.¹⁹

Pretrial is related to human rights that are inherent in substantive justice. Regarding the role of law enforcement officers themselves, advocates provide legal assistance to everyone who needs legal assistance, either free of charge or on a paid basis, in accordance with the provisions of the Advocate Law. Legal assistance is provided in any case, including pretrial cases. If the person is economically incapable then the advocate has an obligation to provide legal assistance free of charge, of course this must be accompanied by a certificate of incapacity from the sub-district.

Based on this, it is one form of realizing the fulfillment of equal justice between economically capable and disadvantaged people. This is in accordance with the provisions of Article 22 paragraph (1) of Law No. 18 of 2003 concerning Advocates which states that "Advocates are obliged to provide free legal assistance to justice seekers who are unable to afford it." These rules require a lawyer to provide equal access to justice for everyone. This is a form of embodiment of the principle of equality before the law adhered to by Indonesia. The defense provided by the advocate is of course a procedural legal defense to realize procedural law while also paying attention to substantive justice if there is a legal basis for the defense. Based on this, advocates have the role of providing defense to a defendant whether they are economically capable or incapable. This is in accordance with the provisions contained in the advocate law

Furthermore, according to Prof. Dr. Mahfud MD considers that upholding the values of justice is more important than simply carrying out various formal statutory procedures which are often associated with law enforcement. Apart from that, legal definitions are often narrowed to procedures contained in a provision or statutory regulation. In fact, a sense of justice is not only upheld if law enforcers only act rigidly based on articles in the law and do not recognize the substantive value of justice. Based on this, the values of substantive justice in enforcing a law are very important because laws are static rules while humans are dynamic objects. Apart from that, written rules are sometimes not in accordance with the needs of the community so that sometimes the implementation of these rules harms the community's sense of justice.

Basically, the judge decides a case based on the facts at trial and the available evidence in accordance with the provisions of the Criminal Procedure Code and, most importantly, can be accounted for. This applies in all cases, including pretrial cases. Regarding the implementation of law enforcement that has been running so far in Indonesia, it seems strongly that it is still oriented towards a form of procedural justice which places great emphasis on aspects of regularity and the application of legal formalities alone. In line with this, legal engineering has become a fairly strong phenomenon in almost every law enforcement in this country. Substantive justice as a source of procedural justice is still a partial concept and does not fully reach the ideas and realities that should be an intrinsic part of the concept and enforcement of justice.²⁰

¹⁸Jimmly Asshiddiqie, *Law Enforcement*, (Paper, 2010), P. 3

¹⁹Andi Hamzah, *Criminal Procedure Law in Indonesia*, (Jakarta: Sinar Graphics, 2012), H. 189

²⁰Abdul Ala In Bambang Sutiyoso, *Legal Discovery Methods*, Cet. 1, (Yogyakarta: Uii Press, 2006), H. 1

Procedural justice and substantive justice should not be seen as a dichotomy, but as two sides of a coin that are closely related to each other. Therefore, under normal circumstances, procedural and substantive justice must be synergized and accommodated proportionally. However, within certain limits, it is very possible that the two conflict with each other and cannot be compromised. Based on the description and analysis of the research results above, advocates, prosecutors and judges enforce the law in accordance with procedural justice in accordance with what is stated in the Criminal Procedure Code and the Law on Advocates as well as written regulations. Substantive justice is difficult to realize if it is not supported by statutory regulations as the basis used by enforcement officials to defend or examine and decide on a case.

The aims and objectives of the pretrial process are to uphold the law and protect the human rights of suspects at the investigative and prosecution levels. The holding of an institution called Pretrial as regulated in Articles 77 to Article 83 of the Criminal Procedure Code (KUHAP) is for the purpose of monitoring the protection of suspects' rights during preliminary examinations.

The aims and objectives are basically to provide fulfillment of human rights, however, in its implementation there are several obstacles as described above. Apart from that, there are several regulations in the Criminal Procedure Code that weaken pretrial itself, namely Article 82 paragraph (1) letter (d) which reads "in the event that a case has begun to be examined by a district court, while the examination regarding a request for pretrial has not been completed, then the request is invalid." "

From these provisions, basically there is a loophole to dismiss a pretrial case, namely by speeding up the case so that it can be tried immediately, because if the main case requested for pretrial is heard then the pretrial request has been invalidated. This provides an opportunity for investigators and/or public prosecutors to speed up the trial of the main case. Decisions on pretrial cases are decided based on the procedures contained in the Criminal Procedure Code. This means that the pretrial submitted to the District Court is decided based on procedural justice as stated in the Criminal Procedure Code. If we look at the background, cases of abuse that occur during the investigation process to determine a suspect or defendant cannot be used as pretrial objects.

As a result, law enforcement is lacking or even unable to resolve the real core of the problem.²¹The voices of oppressed people or communities as subjects who really need justice are almost completely ignored. People who have experienced injustice, or even society as a whole, are increasingly far from being touched and feeling justice. In fact, it often happens that, in the name of justice, justice seekers become victims of formal law enforcement. This reality makes justice enforcement have an ambivalent face that is far from the true values of justice and sometimes actually undermines the sense of justice itself. Referring to this statement, if substantive justice is to be realized then it must be covered by statutory regulations. Apart from that, the aim of fulfilling human rights that pretrial purposes wish to realize must be supported by written regulations. This aims to create and realize substantive justice through procedural justice

However, now a Constitutional Court decision has emerged which expands the pretrial object, namely by expanding the meaning of Article 77 of the Criminal Procedure Code by including the determination of suspects, searches and confiscations as pretrial objects. The Constitutional Court is of the opinion that human rights are a principle that must be upheld in the criminal justice process, especially for law enforcement agencies. The realization of equal rights is realized by providing a balanced position based on applicable legal rules, especially for suspects or defendants in maintaining their rights in a balanced manner. Therefore, according to the State Constitutional Court of the Republic of Indonesia, it is obliged to provide protection, enforcement and fulfillment of human rights.

²¹Aseuki, SAG, & Aulia, Y. (2019). Opening Horizons on Access to Justice for Victims of Sexual Crimes in Indonesia: A Paradigmatic Review of Law Enforcement. *National Law Magazine*, 49(1), 151-179.

Based on the considerations of the Constitutional Court, it is hoped that by expanding pretrial objects, substantive justice, which is an instrument of human rights, can be realized. If analyzed further, basically the decision is a form of embodiment of the accusatory system adopted by the Criminal Procedure Code, which means that the suspect or defendant is positioned as a human subject who has the same dignity and standing under the law. The implication of this is that the Criminal Procedure Code must also provide a control mechanism for possible arbitrary actions carried out by investigators or public prosecutors through pre-trial institutions. This is also a form of effort to realize the principle of equality before the law adhered to by Indonesia.

In its considerations, the Constitutional Court was also of the opinion that in the course of its development, pre-trial institutions could not function optimally because they were unable to answer the problems that existed in the adjudication process. The function of pretrial supervision is only post facto so that it does not extend to formal investigations and trials which prioritize objective elements while subjective elements cannot be supervised by the court. According to the Constitutional Court, this is what causes pretrials to be trapped in formal matters and limited to administrative matters so that they are far from the essence of the existence of pretrial institutions.

Chairman of the Constitutional Court Arief Hidayat stated that in the investigation and prosecution process there is a possibility of abuse of authority which needs attention so that law enforcement officers are more careful in carrying out their duties and authority. All designations of someone as a suspect without following due process of law constitute an abuse of authority.²²

Based on the discussion above, the existence of pre-trial institutions which so far aims to realize the fulfillment of human rights in which there is substantive justice has not been fully realized. This is because pre-trial only examines the formalities of investigation and prosecution, but cannot touch on subjective issues such as the possibility of coercive efforts made by investigators to obtain evidence and evidence in a criminal act, even though this has long been a phenomenon. not infrequently it appears in the investigation process. However, with the decision of the Constitutional Court, it is hoped that the existence of pre-trial institutions can provide substantive justice to suspects or defendants in undergoing the legal process. After the Constitutional Court's decision is issued, violations committed by investigators during the investigation can be submitted as pre-trial objects and can be examined and decided by a judge.

Pretrial as an integral part of the KUHAP has the same objectives as the purpose of establishing the KUHAP. The aim to be achieved by Pretrial is to carry out horizontal supervision of acts of coercion carried out by investigators and public prosecutors against suspects/defendants so that these acts do not conflict with legal provisions and laws. In this case, the purpose of holding this Pretrial Institution is to control or supervise the implementation of criminal procedural law in order to protect the rights of suspects. This control is carried out horizontally, namely control between investigators, reciprocal public prosecutors and suspects, their families or third parties. The Pretrial Institution was originally intended as a legal tool that can be used to file claims by suspects, victims, investigators, public prosecutors and interested third parties. In essence, the authority of the Pretrial Institution is "locked" in five reasons, namely: whether or not coercive measures are valid, whether or not the termination of the investigation or prosecution is valid, examining claims for compensation (in the form of wrongful arrest, detention, search and confiscation), examining requests for rehabilitation, and whether or not the confiscation action is valid.

The investigation process is the spearhead of the criminal justice process which greatly influences the course of the subsequent criminal case process. Terminating an investigation or stopping the prosecution of a case will raise questions for the community and can even cause unrest and harm the community's sense of justice. Investigators and public prosecutors should be accountable for all their

²²Ariyanti, V. (2019). The Concept of Victim Protection in the National Criminal Justice System and the Islamic Criminal Law System. *Al-Manahij: Journal of Islamic Legal Studies*, 13(1), 33–48

decisions and actions, including actions and decisions to stop investigations or prosecutions, to the community, especially to victims as parties who have been harmed by criminal acts, and the community whose environment has been disturbed by criminal acts has the right to participate in assessing them. Thus, it is necessary to provide supervision or control to the public regarding the actions of investigators, especially in terms of terminating investigations and actions to terminate prosecution by the public prosecutor through pre-trial instruments.

2. Pretrial in Accordance with the Perspective of the State of Pancasila Law

According to Soekarno, Pancasila Democracy means democracy, people's sovereignty which is imbued with and integrated with other principles. Logically it can be interpreted that, in its implementation, all behavior related to democratic rights must be held accountable on the basis of God in one's beliefs, uphold human values, guarantee national unity and bring the benefits of social justice. 43 The 1945 Constitution of the Republic of Indonesia contains regulations. The basis for carrying out national life is that Indonesia is a legal state with sovereignty in the hands of the people based on the Constitution

Based on the principles of democracy, laws that have been passed by the government have the meaning that these laws are the result of the aspirations and approval of the people, therefore, the people are obliged to obey these laws. Government organizations elected and run by the people are limited by law. The rule of law has the concept that power is limited by law which also guarantees human rights and legal equality.

Law plays a role in the process of moving sovereignty towards social benefits. The theoretical concept of the functioning of law as a basis for explaining how this legal system can control society is Bradmeier's Integration Concept. In Bradmeier's perspective, society plays the role of providing input (input) which aims to provide results (output) in the form of creating integration and coordination between other sectors of society. 47 The explanation of this concept is described as follows:

- a. In the political sector, for example, input from the community as law makers and their legitimacy to pass laws will produce legal objectives and the basis for their power to enforce the law;
- b. In an adaptive sector, the role of society can produce knowledge of problems and the ability to regulate the balance disturbed by these problems;
- c. In the cultural sector, the role of society can provide justice that covers the smallest part of society because extracting knowledge and cultural values can be used in the process of forming regulations.

If we discuss law enforcement with Pancasila culture and relate it to Bradmeier's theory, laws that are in accordance with the spirit of Pancasila will of course also be in accordance with the identity and aspirations of the Indonesian people.²³ Pancasila must be interpreted as a benchmark for good and bad, a postulate, a measure for all social, state and individual activities and must be interpreted as a goal or direction.²⁴ Every action that upholds Pancasila as the norm will avoid all problems.²⁵ Mahfud MD put forward the idea that the presence of Pancasila in the constitution for Indonesian citizens, as humans who are faced with a dynamic reality, means that the state is active in interfering in community activities in order to realize community welfare, but the dynamic process in society has the potential to trigger polemics between government and society, each based on constitutional reasons.²⁶

²³Ariesta Wibisono Anditya. 2018. Examination of the Validity or Not of Pretrial Determination of Suspects in the Pancasila Constellation. Law Journal Volume 34, Number 1

²⁴Sunoto, 1987, Getting to Know the Philosophy of Pancasila: An Approach Through Logic, Metaphysics and Ethics, Hanindita Offset, Yogyakarta, Pg. 116-117.

²⁵Ibid

²⁶Mahfud Md, 2003, Democracy and Constitution in Indonesia, Rineka Cipta, Jakarta, Pg. 2.

The law functions as a service to the needs of the community, so the law must always be updated so that it is current or in accordance with the conditions and needs of the community being served and in this continuous legal renewal, Pancasila must remain as a framework for thinking, a source of norms and a source of values. Pancasila is the starting point for the derivation (source of elaboration) of the legal order in Indonesia as enshrined in the 1945 Constitution. According to Sjachran Basah, the term Indonesian legal state is called a legal state based on Pancasila. The meaning of the concept of a rule of law based on Pancasila according to Sjachran, is: "Based on an analysis of the implementation of government functions and duties, where there is a guarantee that government actions do not violate human rights and obligations, as well as a balance between the interests of the state which represents the public interest and interests of the people (individuals), so that if a dispute occurs between the government and the people there is a guarantee of legal protection based on Pancasila"

In fact, the concept of a legal state for Indonesia is based on the Pancasila ideology, the substance of which includes, among other things, the principle of recognition of God's law, natural law and ethical law. In the Indonesian legal state, all laws are made by the state or government in the broadest sense and their substance must not conflict with the three types of law above. Thus, if the things stated above are related to the Indonesian legal state which is based on Pancasila, then according to Sri Soemantri Martosoewijngjo the following elements will be found:

- a. There is recognition of guarantees of human and citizen rights;
- b. There is a division of power;
- c. That in carrying out its duties, the government must always be based on applicable laws, both written and unwritten;
- d. The existence of judicial power which in exercising its powers is independent means that it is independent from the influence of government power, while specifically for the Supreme Court it must also be independent from other influences.

The state wants no errors to occur during the judicial process. Don't let it happen when someone who is innocent actually gets criminal sanctions. In fact, in making decisions there is a principle that is held that it is better to acquit a guilty person than to impose a crime on an innocent person. The authority to examine and decide on pretrial applications rests with the district court with a composition of judges consisting of one judge.²⁷Judges cannot be nominated as parties to a pretrial hearing, because judges in criminal trials are the parties who decide cases as regulated in the Criminal Procedure Code. This is different from investigators and public prosecutors who play roles outside the court process.²⁸The Criminal Procedure Code itself regulates that the parties that can submit a pre-trial hearing are investigators and public prosecutors.

Even though the purpose of the Criminal Procedure Code in this case is pre-trial as a means of control and to protect human rights, it turns out that in practice the sense of justice and legal certainty cannot be absolutely felt by pre-trial applicants, that the examination of pre-trial petition cases has been immediately declared invalid without prior proof of the main issue of the pre-trial. The dismissal statement was based on considerations that the main criminal case indicted against the Petitioner had begun to be examined in court. One form of reforming the substance of criminal law, especially formal criminal law, and to uphold human rights, guarantee that all citizens have the same position in law and government, efforts need to be made to develop national law in order to create legal supremacy by reforming criminal procedural law towards an integrated criminal justice system. by placing law enforcers in their functions, duties and authority.

²⁷ *Jekson Sipayung, Suhaidi Suhaidi, Dedi Harianto, Rizkan Zuliyadi. 2019. Analysis of the Pretrial Judge's Decision at the Medan District Court. Master of Law Scientific Journal 1(2):1-18*

²⁸ *Candra Hayatul Iman. 2013. Criminal Law Policy for Child Protection in Reforming the Juvenile Criminal Justice System in Indonesia. Judicial Law Journal 2(3):1-18*

The Indonesian nation's outlook on life is formulated in the unity of the five Pancasila principles, each of which expresses a fundamental value and at the same time becomes five operational principles in living the life of the nation, state and society, including in terms of carrying out the law (formation, discovery and application of law).²⁹The five principles of Pancasila contain recognition of human rights, so that Pancasila can be said to be the human rights philosophy of the Indonesian people. Therefore, in order to respect and protect human dignity, we must always refer to the human values contained in the Pancasila principles, especially the second principle. Another characteristic of the Pancasila legal state is the principle of kinship as a fundamental part of government administration.³⁰In fact, constitutionally the 1945 Constitution provides a basis for better appreciating and appreciating the principle of equality in the life of the Pancasila legal state. The 1945 Constitution expressly guarantees that all citizens have equal status under the law and government and are obliged to uphold the law and government without exception.³¹The principle of equality in the Pancasila legal state according to Article 28D of the 1945 Constitution is:

1. Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.
2. Everyone has the right to work and receive fair and appropriate compensation and treatment in employment relationships.
3. Every citizen has the right to equal opportunities in government.
4. Everyone has the right to citizenship status.

Conclusion

1. One form of realizing the fulfillment of equal justice between economically capable and disadvantaged people. This is in accordance with the provisions of Article 22 paragraph (1) of Law No. 18 of 2003 concerning Advocates which states that "Advocatees are obliged to provide free legal assistance to justice seekers who cannot afford it". These rules require a lawyer to provide equal access to justice for everyone. This is a form of embodiment of the principle of equality before the law adhered to by Indonesia.
2. In fact, the concept of a legal state for Indonesia is based on the Pancasila ideology, the substance of which includes, among other things, the principle of recognition of God's law, natural law and ethical law. Thus, if the things stated above are related to the Indonesian legal state which is based on Pancasila, then according to Sri Soemantri Martosoewignjo the following elements will be found: There is recognition of guarantees for human and citizen rights; There is a division of power; That in carrying out its duties, the government must always be based on applicable laws, both written and unwritten; The existence of judicial power which in exercising its powers is independent means that it is independent from the influence of government power, while specifically for the Supreme Court it must also be independent from other influences.

²⁹ Karsa, Topan I. "Development of the Pancasila Democratic Paradigm in Legal Development in Indonesia." *Justice*, Vol. 17, no. 2, 2019, PP. 130-144.

³⁰ B. Aswandi, And K. Roisah, "The State of Law and Pancasila Democracy in Relation to Human Rights," *Journal of Indonesian Legal Development*, Vol. 1, No. 1, Pp. 128-145

³¹ Achmad Asfi Burhanudin. 2017. *The Existence of Customary Law in the Modern Era*. *Journal of Islamic Religious Studies* 2(4):96-113

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