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Abstract: The legal principle underlying the pretrial is the presumption of innocence. That principle emphasizes that suspects have the right to obtain their rights through pretrial institutions. With sociological legal research, data collection was gathered from the pre-trial cases of Indonesian courts. Data obtained showed that the number of pre-trial applications from 2011 to 2015 was 155 pretrial cases in North Sumatra Province of Indonesia. From 155 cases it found 145 were rejected, 9 were granted and only 1 application was revoked, and no application was declared invalid. It concludes that the attention of judges in pretrial hearings tends to look only at the formal aspect rather than examining the material requirements. Secondly, judges tend to seek formal requirements rather than examining the material requirements in determining that a person is subject to arrest or detention.

Keywords: Indonesian Criminal Law; pre-trial; court; challenges.

BACKGROUND

Pre-trial as an instrument for suspects and defendants to defend themselves from actions of law enforcement officials who exceed the limits of their authority to carry out their duties and powers during the arrest, detention, termination of investigation of suspects, including termination of prosecution and compensation or rehabilitation for someone who is still suspected of being a suspect (Article 77 Indonesian Criminal Law Book). The legal principle underlying the pretrial is the presumption of innocence. This principle emphasizes that suspects have the right to obtain their rights through pretrial institutions. Every person who is still suspected, arrested, detained, prosecuted, indicted, and brought to trial must be presumed innocent before a court decision has permanent legal force (Tanusubroto, 1983). Pre-trial is not a separate institution that has its judicial level which has the authority to give a final decision on a criminal event (Hidayat, 2010). The pre-trial authority is to assess whether or not detention, confiscation, termination of investigation or prosecution is valid or not carried out by an investigator or public prosecutor in a district court (Harahap, 2012).

The authority of pretrial judges following Article 77 of the Criminal Procedure Code is limited to examining and deciding whether or not the arrest, detention, termination of the investigation, termination of prosecution, including compensation or rehabilitation for someone whose case has been terminated, is nothing more than that. This weakness is one of the reasons for the study (vide: formulating policy) because it does not accommodate provisions on confiscation, searches, and determination of suspect status as included in these articles.

Policies should not be just criminal application and public policies ought to be carried out by public officials based on freies ermessen in the field of State Administrative Law (Indonesian -HAN), and not administrative policies in criminal law (administrative penal law policy). Policy is a set of decisions taken by political actors to choose goals and how to achieve legal goals based on a paradigm of thinking based on wisdom (Hamzah, 1996).

Criminal policies are actions carried out by agencies or organizations rationally as a social reaction to crime (Lubis, 2007). The criminal policy talks about crime prevention policies (Hoefnagels, 1969). The criminal policy is a rational effort by society as their reaction to crime to tackle crime (Arief, 2011). The meaning of crime is not only aimed at crime but also offences. The object of pretrial is a violation or deviation, not a crime. The policies in the Criminal Code (KUHP) consist of three chapters, namely General Regulations (first book), crimes (second book), and violations (third book).
RESEARCH METHODS
This legal research applied normative and empirical methods (Mulyadi, 2008). It used secondary data (Marzuki, 2005), examined the positive legal norms, principles, legal principles (Ediwarman, 2015), and examines statutory regulations and court decisions (Ibrahim, 2008). It took relevant theories (Soekanto, 1996), and also examined legal principles (Hartono, 1994). Data gathering with a sociological legal research (Soekanto and Mamudji, 2003); data obtained was directly from the community as the first source.

RESEARCH FINDINGS
The case approach to pretrial challenges was from the determination of pretrial objects. The case approach in this research involves several pretrial lawsuits. The provisions of the pretrial procedural law substantively have weaknesses regarding the scope of the objects contained in Article 77 of the Criminal Procedure Code which is too narrow, namely only regulating the lawfulness of arrest, detention, termination of the investigation, or termination of prosecution, as well as compensation and rehabilitation for someone whose criminal case has been terminated at the investigation and prosecution level. There is no mention of forced attempts, confiscation, searches, and determination of the status of a suspect in Articles 77 to 83 of the Criminal Procedure Code, whereas, in practice forced attempts, confiscation, body and house searches are often pretrial by the suspect (victim), including the determination of the status of the suspect. Data on the number of pretrial lawsuits in the jurisdiction of the North Sumatra Province Police (POLDASU) between 2011 and 2015 are as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Indicator</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Rejected Pre-Trial</td>
<td>19</td>
<td>34</td>
<td>39</td>
<td>38</td>
<td>15</td>
<td>145</td>
</tr>
<tr>
<td>2.</td>
<td>Granted Pre-Trial</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>3.</td>
<td>Revoked Pretrial</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>4.</td>
<td>Died Pretrial</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

The number of pretrial applications from 2011 to 2015 was 155 pretrial cases. Of these, 145 applications were rejected, 9 applications were granted, and 1 application was revoked, and no application was declared invalid. The ratio of the number of pretrial applications that were rejected and granted was very different. Meanwhile, based on the facts, many problems were found, both the problem of the provisions and scope of the pretrial in the Criminal Procedure Code, as well as the lack of applicable policies by law enforcement officials in interpreting the law.

Based on table 1, it can be informed that North Sumatra Police Office still benefits more from pretrial efforts with the current par-trial regulations, while the rights of suspects are related to forced attempts, or confiscation, or searches, or the determination of the status of suspects which do not fulfill the sense of justice. Even though there is a suspect's objection to the act of coercion by the investigator and public prosecutor during the preliminary examination stage of the confiscation, search, arrest, detention and determination of the suspect's status, or other actions against the suspect, through pretrial proceedings, the judge generally refuses on the grounds it is not the pretrial authority, because the pre-trial powers they have exercised have been purely administrative (formal requirements), or some have examined the subject matter of the case (material requirements) but the petition is not the pretrial authority.

The further weakness of pretrial is that it cannot be used to test the juridical principle of forced attempts (valid or not) in a material sense (applications that contain material requirements can be submitted in pretrial such as how investigators obtain sufficient preliminary evidence that they can be examined and tested). But in reality pretrial cannot be used to test "sufficient preliminary evidence" as a basis for determining the status of a suspect by establishing forced measures such as material legal detention. The
The narrow scope of pretrial in Article 77 of the Criminal Procedure Code creates weaknesses in the implementation of applicable law enforcement policies, among others (Kaligis, 2006):

1. Not all coercive attempts can be asked for an examination to be tested and assessed for its truth and accuracy by pretrial institutions because searches, confiscation and opening and examination of documents are not explained in the Criminal Procedure Code.

2. The pretrial is not authorized to test or judge an action without a request from the suspect or his family or other parties on the power of the suspect, so that often even though the action of the police/prosecutor is arbitrary, it cannot be carried out pretrial if the suspect or his family does not request it.

3. The attention of judges in pretrial hearings tends to look only at the formal aspect rather than examining the material requirements. Judges often pay attention to the formal requirements rather than examining the material requirements in determining that a person is subject to arrest or detention.

4. Pre-trial decisions only take the form of decisions and ask for an explanation from the relevant law enforcement officials, so law enforcers often ignore them when the court calls them.

The results of research from the Faculty of Law, Gajah Mada University (FH UGM) related to the 2009 Draft Criminal Procedure Code compiled by the National Working Group, among others, Salman Luthan, Andi Samsan Nganno, and Ifdhal Kasim, refute the idea of establishing a Commissioner Judge in the RKUHAP with the consideration that there is the use of unnecessary force. can be put on trial because confiscation and searches are not regulated. The thing that is most likely to be done is to expand pretrial authority (Luthan et al, 2014) through formulating policies. The research from the Faculty of Law Universitas Gajah Mada recommends maintaining the pretrial institution with a note that the authority of this institution needs to be expanded to cover existing weaknesses. Criminal procedural law should provide a balance of protection of human rights for perpetrators, suspects, and victims (Luthan et al, 2014). The public or anyone who submits a pretrial effort should first really understand what the scope of the pretrial is before submitting a pretrial to the district court so that an application to be rejected will be less likely (Suriansyah, 2014).

It is necessary and important to establish a formulation policy to update the criminal procedure law related to the substantive weaknesses of the pretrial institution object in Article 77 of the Criminal Procedure Code in the future. Reformulation of pretrial authority related to the rights of suspects in the context of the policy of reforming criminal procedural law in the future, through normative and empirical studies regarding supervision of the fulfillment of material requirements, not only supervision of whether formal (administrative) requirements are fulfilled. The methods of investigators, in terms of finding and meeting the minimum requirements of two pieces of evidence which are inappropriate, violating the law and violating the rights of the suspect, must be the object of pretrial. So that pretrial judges no longer focus on fulfilling the legal requirements as in Article 77 of the Criminal Procedure Code.
CONCLUSIONS

It concludes that: (1) the attention of judges in pretrial hearings tends to look only at the formal aspect rather than examining the material requirements. (2). Judges tend to seek the formal requirements rather than examining the material requirements in determining that a person is subject to arrest or detention.

REFERENCES

2. Article of 77 KUHAP.