



WORLD CLASS ISLAMIC CYBER UNIVERSITY  
**UNISSULA**  
SULTAN AGUNG ISLAMIC UNIVERSITY

**Sept 5th 2019**

# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

**UNISSULA PRESS**

# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

Diterbitkan oleh :  
UNISSULA PRESS

ISBN. 978-623-7097-23-5

The 5<sup>th</sup> PROCEEDING

*“Legal Reconstruction in Indonesia Based on Human Right”*

Reviewer:

Prof. Dr. H. Gunarto, S.H., S.E., Akt., M.Hum

Dr. Hj. Anis Mashdurohatun, S.H., M.Hum

Prof. Henning Glaser

Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM

Prof. Shimada Yuzuru

Prof. Associate Dr. Dr. Ahmad Zaharudin Sani

Editor:

Dr. Amin Purnawan., S.H., CN., M.Hum

Dr. Hj. Widayati., S.H., M.H

Dr. Hj. Sri Endah Wahyuningsih, S.H., M.Hum

Dr. H. Ahmad Khisni., S.H., M.H

M. Abdul Hadi., SE

Hak Cipta © 2019, pada penulis

Hak Publikasi pada penerbit PDIH UNISSULA

Dilarang memperbanyak, memperbanyak sebagian atau seluruh isi dari buku ini dalam bentuk

apapun, tanpa izin tertulis pada penerbit.

Hal I-X, 1-358

Cetakan Pertama Tahun 2019

Penerbit PDIH UNISSULA

Jl. Raya Kaligawe Km. 4 Semarang 50112

PO BOX 1054/SM,

Telp. (024) 6583584, Fax. (024) 6594366

**ISBN. 978-623-7097-23-5**

COMMITTEE OF THE 3rd INTERNATIONAL CONFERENCE  
AND CALL FOR PAPER  
“Legal Reconstruction in Indonesia Based on Human Right”

Responsible Person	: Prof. Dr. H. Gunarto.,S.H.,SE.,Akt.,M.Hum	(Dean)
Advisory	: Dr. Hj. Widayati.,S.H.,MH	(Vice Dean I)
	Arpangi.,S.H.,M.H	(Vice Dean II)
	Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
	Dr. H. Ahmad Khisni.,S.H.,M.H	(Head of M.Kn)
	Dr.H. Umar Ma’ruf, SH.,Sp.N.,M.Hum	(Head of MIH)
	Kami Hartono.,S.H.,M.H	(Head of S1)
Chairwoman	: Dr. Hj. AnisMashdurohatun,S.H,M.Hum	(Head of PDIH)
Secretary	: Dr. Hj. Sri Endah Wahyuningsih,S.H,M.Hum	(Secretary of PDIH)
Treasurer	: Dr. Hj. Sri Kusriyah.,S.H.,M.Hum	(Secretary of MIH)
Drafting Team	: Dr. H. Amin Purnawan.,SH.,CN.,M.HumH	
	Denny Suwondo.,S.H.,M	
	Hj. AryaniWitasari.,S.H.,M.H	
Event Division	: Erna Sunarti.,S.S.,M.H	
Secretariat and Supplies		
Division		
Coordinator	: M. Abdul Hadi.,SE	
Member	: Slamet Ariyanto	
	Dyan Teguh Aryanto, Amd	
	M. Ngaziz.,S.H.,M.H	
	Hendro Widodo.,S.H.,M.H	
	NailulMokorobin.,S.Psi	
	AgusPrayoga	
Publication and		
Documentation Division	: Ikrom.,S.H	
Member	Ahmad Mutohar.,S.H	
	Achmad Arifullah.,S.H.,M.H	
Consumption Division	: Shinta Pratiwi	
Member	Latifah Rosdiyati.,S.E	
	Siti Pardiyah	
	Laili Rohmah.,S.E	
	Laila Najihah.,S.H	
Receptionist	: Riftia Anggita W.S.,S.H	
	M Auliana	
General Assistant	: Riswanto	
	Nur Alamsyah	
	Rofiq	
Security	: Rohmani	
	Arif	
Driver	: Irwanto	

## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

### The 5<sup>th</sup> International Conference and Call for Paper Faculty of Law 2019 Legal Reconstruction in Indonesia Based on Human Right

#### Table of Contents

<i>FRONT PAGE</i> .....	<i>I</i>
<i>Information of The International Seminar</i> .....	<i>III</i>
<i>Committee Composition</i> .....	<i>IV</i>
<i>PREFACE</i> .....	<i>V</i>
Fulfillment Of Teacher Protection Rights <i>Yenny AS, Rini Setiawati</i> .....	<i>I</i>
Legal Reconstruction Of Laws Regarding Human Rights Through Judicial Re- view To The Constitutional Court <i>Umar Ma'ruf</i> .....	<i>13</i>
Legal Analysis Of Social Security Transformation And The Reality Of Its Implementation In The Community In Indonesia <i>Siti Ummu Adillah, I Gusti Ayu Ketut Rachmi Handayani ,Adi Sulistiyono</i> .....	<i>30</i>
Increasing Voluntary Compliance Of Tax Payments In Micro Small And Medium Enterprises (Msmes) Post-Issuance Of Government Regulation Number 23 Of 2018 (Case Study In Semarang City) <i>Amin Purnawan, Akhmad Khisni, Aryani Witasari</i> .....	<i>41</i>
Legal Analysis Of Racist Exams In Surabaya Papua Dormitory <i>Ma'aruf Akib</i> .....	<i>50</i>
Reconstruction Of Misdemeanor Settlement Based On Pancasila Value <i>S. Andi Sutrasno</i> .....	<i>57</i>
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i> .....	<i>63</i>
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i> .....	<i>67</i>
Problematic Presidential Electoral Threshold In The Operation Of Value-Based Simultaneous Justice <i>Widayati , Winanto</i> .....	<i>73</i>

Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methodsbased On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Sopyono, Nuridin</i> .....	82
Reconstruction Of Criminal Sanction And Rehabilitation Combating On Narcotic's Victims Based On Religious Justice <i>Carto Nuryanto, Gunarto, Anis Mashdurohatun</i> .....	91
Study of the theory of Legal Protection Against Online High Yield Investment Program Contracts in Indonesia (HYIP) <i>muhamad Iqbal al Hakiem,aryani witasari</i> .....	96
Reconstruction Completion Of The Crime Of Light On Value Pancasila <i>Andi S. Sutrasno</i> .....	102
Law Reconstruction Of Registration On Fiduciary Obligation Based On Justice Value <i>Wieke Dewi Suryandari ; Gunarto; Amin Purnawan</i> .....	108
Reconstruction Of Transport Regulatory On Marine Toll To Support Sea Connectivity Based On Pancasila Justice <i>Hartanto, Gunarto, Anis Mashdurohatun</i> .....	114
Reconstruction Of Scientific Investigation In Indonesia Based On Justice <i>Teguh Prihmono; Gunarto, Sri Endah Wahyuningsih</i> .....	120
Legal Construction On Training Ship Management Belongs To Human Resources Development Of Transportation (Bpsdmp) Based On Dignity Justice Value <i>Wahyu Wibisono, Gunarto, Anis Mashdurohatun</i> .....	126
Protection Of Law Refugees/Asylum Seekers In Indonesia (As A Transit State) No Ratify 1951 Convention Of And The 1967 Protocol <i>Muhammad Djamir</i> .....	133
Reconstruction Of Legal Policy On Decency Crime In Indonesia Based On Pancasila Value (Lgbt Rehabilitation Institute For Children) <i>Cucuk Kristiono, Gunarto, Anis Mashdurohatun; Suparji</i> .....	144
Legal Protection Against Indonesian Workers (Tki) In Abroad <i>Yaya Kareng ,Ong Argo Victoria ,Sri Yulianingsih</i> .....	149
Recontruction Of Auction Execution Of Mortgage Object In Determine The Auction Price Based On Justice <i>Moh Djarkasih**</i> .....	158

Reconstruction Policy Of Sanctions Against Destruction Of Evidence Illegal Fishing Based Small Fishing Welfare Values <i>R. Juli Moertiyono</i> .....	165
Reconstruction Of Legal Policy Interfaith Marriage In Indonesia <i>Moh. Zeinudin, Dian Novita</i> .....	179
Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia <i>Nana Ruhyana</i> .....	186
Legal Protection Against Disability In Getting Work <i>Oktavianto Setyo Nugroho</i> .....	193
Reconstruction Of Authority To Arrest In Doing Judge Accused Of Value-Based Justice <i>Agus Sugiarto</i> .....	203
Enforcement Of Criminal Law In False News (Hoax) Management According To Law No. 11 In 2008 That Has Been Amended To Be Law No.19 Of 2016 Concerning Electronic Information And Transactions In Islamic Law And Positive Laws <i>Yanto Irianto</i> .....	208
Reconstruction Validity Legal Deeds Are Dealing With Children In The Process Of Law Criminal Justice System Based Child Justice <i>Asep Hermawan</i> .....	220
Reconstruction Of Performance Assessment Of Drinking Water Companies (Pdam) Based On Consumer Protection <i>Bustaman</i> .....	225
Reconstruction Legal Rights Associated With A Warranty Not A Bank Debt <i>Euislistianti</i> .....	229
Reconstruction Of Operational System As A Community Economic System Based On Welfare <i>Abbas Ibrahim Idris</i> .....	234
Reconstruction Of Criminal Responsibility For Actors Prostitutorial Criminal Justice In The Criminal Justice Based On Value <i>Iwan Rasiwan</i> .....	242
Reconstruction Of Legal Drinking Water Management Company (Pdam) Based On Justice <i>Suharyadi</i> .....	248



Reconstruction Of Private Criminal System Implementation In The Commitment Values In Indonesia Justice <i>Sumanto</i> .....	252
Reconstruction Of Justice Law Protection Law Protection <i>Wamyani</i> .....	260
Criminal Code Draft Law And Development In Indonesia <i>Nany Pujianti Suwigjo</i> .....	265
Deconstruction of the Principle of Legal Thinking <i>Sriyati</i> .....	270
Development Of The Law Of Complete Systematic Land Registration (Ptl) And Effect Of Conduct Values of Land Based On Dignify Justice In The District Of Kendal, Central Java <i>Desy Dwi Nurhayati Hartanti</i> .....	279
Interpretation Teaching Of Human Rights Laws Against Material In Corruption Provisions <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i> .....	293
Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice <i>Rahmatsyah</i> .....	301
Law Due To Delay The Registration Under Fiduciary Guarantee Pmk No 130 / Pmk.010 / 2012 <i>Jaenudin Umar</i> .....	307
The Effectiveness Of The Handling Of The Criminal Acts Of Light Tend To Be Settled Judicial Custom <i>Supena Diansah</i> .....	313
Interpretation Human Rights Law Against The Teaching Material In Corruption Criminal Offenses <i>Burham Pranawa, Hartiwiningsih, Hari Purwadi</i> .....	319
Urgency Of Legal Assistance For Poor People As A Request Of Human Rights <i>Adhi Budi Susilo, Indra Yuliawan</i> .....	327
Independence Institute Of Justice And Judge In Perspective Judicial Reform Blueprint 2010 - 2035 <i>Ahmad Agus Bahaudin</i> .....	331

Policies Against Crime Criminal Law Made By Children <i>Achmad Arifulloh</i> .....	341
Law Enforcement Of Law Number 23 Of 2004 In Preventing Efforts Human Rights Violations In Indonesia <i>Andri Winjaya Laksana , Lathifah Hanim</i> .....	350
Position Of Agreement On Land Acquisition For Development For Public Interest <i>Djoni Sumardi Gozali</i> .....	359
The Village Fund As Indonesian Social Welfare Program: The Gap Between Regulatory And Practice (A Study On Penal Perspective) <i>Ifrani*</i> .....	367
The Finality Of Arbitration: The Pros And Cons Of The Court's Power To Setting Aside Arbitral Awards In Indonesia <i>Yati Nurhayati</i> .....	376
Reconstruction Of Learning Methods In Criminal Law Subjects Using Inquiry Methods Based On Human Rights And Islamic Values <i>Ira Alia Maerani, Eko Soponyono, Nuridin</i> .....	382
Improvement of the Presidential System in Concurrent Elections <i>Endro Wibowo Aji</i> .....	391
Restorative Justice and Penal Mediation in Resolving Cases of Children Confronting the Law in Indonesia <i>Agustinus Dian Leo Putra</i> .....	398
Criminological Aspects of Corruption Crime <i>Angga Kusumah</i> .....	405
Policy Online Single Submission (OSS) System as a Public Service Innovation in the Field of Environmental Licensing <i>Haris Fadillah Harahap</i> .....	413
The Relevance of Civil Law and Common Law Systems in Regulating Standard Contract Law in Indonesia <i>Iman Fathurrahman</i> .....	421

Legal Politics In Erading Money Launching Criminal Actions In Indonesia <i>Abdul Haris</i> .....	427
The Legal Politics Of The State Defense Industry In Indonesia <i>Ade Christian Manapa</i> .....	433
Political Directions For Land Law On Land Property Rights For The People <i>Aga Wigana</i> .....	438
Political Form Of Pre-Justice Law In Law Enforcement In Indonesia <i>Apromico</i> .....	443
Inner Legal Political Strategy Prevention Of Radicalism In Indonesia <i>Beno</i> .....	448
The Government's Efforts Through Legal Politics In Hajj Management <i>Dhanar Dhono Vernandhie</i> .....	453
Political Law Of Regional Autonomy As The Management Of Local Government <i>Eka Damayanti</i> .....	458
Responsibility Of Corporate Crimes In Criminal Actions Of Narcotics <i>Himawan Aji Angga</i> .....	464
Juridical Review of The Existence of Notary Prohibitions on The Office of The Curator <i>Nurchahyo Pratomo Widodo</i> .....	469
The Legal Strength of Covernote and Notary Responsibility for The Making of a Covernote as a Legal Product Not Regulated by Notary Laws <i>Arif Bahtiar Jefry</i> .....	474
Role of Notary / PPAT in Making Authentic Assets Towards False Document Description <i>Kanzu Khirzul Yaman</i> .....	479
Legal Review of Personal Warranties Made Against The Notary of Lending <i>Nur Chamid</i> .....	484

Harmonization in Regulation of Heritage Certificate by Notary in Sociolegal Perspective <i>Desi Wulan Anggraini</i> .....	488
Legal Protection of The Wife's Property in Marriage by Making a Marriage Agreement Made in a Notary Provision <i>Nur Ismi Hanifah</i> .....	492
Legal Due To The Implementation Of Absolute Authorization In The Sale And Purchase Agreement Before The Development Of Sale And Purchases <i>Bayun Kismantoro</i> .....	496
Political Laws Notary Honor Assembly <i>Muhammad Wildan Mahindra</i> .....	500
Role of Notary in The Making of Deal of Sale and Buy Agreements to Support National Development <i>Ika Yulia Ningrum</i> .....	506
Legal Due to The Implementation of Public Business Credits with Guarantee of The Rights of Liability Made in Notary <i>Riska Fauziana</i> .....	511
Implementation of Credit Agreement Through Notary Notary And Its Legal Due When Performance Occurs <i>Iqbal Rino Akta Pratama</i> .....	515
Implementation of Court Determination on The Sell and Purchase Process Towards Officials of Land Associates who are Herities Under The Age <i>Zaenal Arifin</i> .....	519
Authority of The Notary Regional Supervisory Assembly to Issue a Client's Document Return Order <i>Adi Candra Saputra</i> .....	524
Implementation of Management and Environment of Damaged Land <i>Agil Aladdin</i> .....	528

## Political Form Of Pre-Justice Law In Law Enforcement In Indonesia

**Apromico**

Student of Master of Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) email [apromico2009@gmail.com](mailto:apromico2009@gmail.com)

*Abstract*

*Today pretrial has a very important place in criminal procedural law, it can even be said that every person who is suspected of committing a criminal act is then named a suspect. The first legal remedy is pretrial. The demand for pretrial use is getting stronger in the community who are indicated as being accused of a criminal act. Because in various criminal cases that have occurred so far, it has shown that pretrial has shown that there is protection, not only regarding justice, but also for the protection of human rights. Pre-trial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are aims and objectives to be upheld and protected, namely upholding the law and protecting the human rights of suspects at the level of investigation and prosecution. The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that "Determination of Suspects" is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the Criminal Procedure Code are contrary to the 1945 Constitution of the Unitary State of the Republic of Indonesia.*

*Keywords: Political Law, Pre-trial, Law Enforcement*

### A. INTRODUCTION

The best efforts to enforce material criminal law always demand and rely on how the regulations of the formal criminal law provisions are able to be a guard in framing the spirit and purpose of material criminal law itself. One of the guardian frames in law enforcement in Indonesia that aims to protect justice in the community's criminal justice system is the pretrial means available in the Criminal Procedure Code (KUHAP).

Pre-trial as a new institution in the world of justice in Indonesia in the life of law enforcement. Pre-trial is not an independent court institution. In essence, it is a system, this is because the criminal justice process in Indonesia consists of stages which form an integral and inseparable part. The stages in the

criminal justice process are a series, where one stage affects the other stages.<sup>1</sup>

In the criminal justice process in Indonesia, the authority to carry out investigations and investigations lies with the police, while the one who has the authority to carry out prosecutions is the prosecutor's office, while the authority to judge during an examination in court is the judge. The powers of the judge, prosecutor's office, and Although the police are different, in principle, they constitute an integral and inseparable unit.

Efforts can be made to eliminate the implementation of detention that is contrary to the provisions of the applicable law and which is very detrimental to the suspect or defendant or his family. Most of these efforts are contained and regulated in the Criminal

---

<sup>1</sup> Efa Rodiah Nur, *Eksistensi Praperadilan Bagi Penegakan Hukum Dalam Mencapai Keadilan Substansif di Indonesia*, UIN Raden Intan Lampung, Jurnal Hukum, Vol.9 No.2, Juli 2017, p. 27

Procedure Code, this fact is quite encouraging, thus it is hoped that it will provide guarantees and protection of human rights, protection of human dignity as is normally owned by a rule of law. One such effort is pretrial.<sup>2</sup>

Nowadays pretrial has a very important place in criminal procedural law, it can even be said that every person who is suspected of committing a criminal act is then named a suspect. The first legal remedy is pretrial. The demand for pretrial use is getting stronger in the community who are indicated as being accused of a criminal act. Because in various criminal cases that have occurred so far, it has shown that pretrial has shown that there is protection, not only regarding justice, but also for the protection of human rights.

Pre-trial as part of the criminal justice system in effect in Indonesia is an effort to tackle crimes that are penal in nature by using criminal law as the main means of both material criminal law and formal criminal law. Pretrial as part of law enforcement, as stated by Barda Nawawi Arief, that law enforcement problems, both in abstracto and in concreto are actual problems which have recently received sharp attention from the public.<sup>3</sup> As is the case with the implementation of pretrial which is part of a rule of law principle in which a rule of law state has various criteria and elements.<sup>4</sup>

## B. PROBLEM FORMULATION

- 1) What is the political pretension of pretrial law in Indonesia?
- 2) What is the form of pretrial law politics in law enforcement in Indonesia?

---

<sup>2</sup> Muhamad Solichin, *Politik Hukum Praperadilan Dalam Penegakan Hukum*, Magister Ilmu Hukum UMS, Tesis, 2018, p. 2

<sup>3</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, 2007, p. 18

<sup>4</sup> Mien Rukmini, *Perlindungan HAM melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Kedudukan Dalam Hukum Pada Sistem Peradilan Pidana*, Alumni, Bandung, 2003, p. 1

## C. DISCUSSION

### 1. Pretension of Pre-Trial Law Politics in Indonesia

The scope of State powers is limited by law. The role of the government is to ensure law enforcement in order to achieve justice. In the process of law enforcement, not only a set of laws and regulations are needed. But also the driving instrument, namely state institutions, such as the police, prosecutors, judiciary and correctional institutions.<sup>5</sup>

A country has a legal system that contains common expectations about transactions, relationships, planned events and accidents in everyday life so that they can be faced. Such as matters of court procedure, which begins with the judiciary, which is a process that ends with giving justice in a decision, where this process is regulated in a procedural law. And the judiciary is also the authority of an institution to resolve cases for and in the name of law for the sake of upholding law and justice.

The pretrial institution cannot be separated from the political and legal links. Political law consists of two words, namely politics and law, the term politics is often used in various meanings, namely: polytheic in Dutch means something related to the State and secondly, politics means discussing state matters or those related to the state. Legal politics that will be or have been implemented nationally by the government; also includes an understanding of how politics affects the law by looking at the configuration of forces behind the making and enforcement of the law. Laws cannot only be viewed as articles which are imperative or necessity, but must be viewed as a sub-system which in reality is not impossible to be determined by politics, both in the formulation of the material and its articles, as well as in its implementation and enforcement. This implies that criminal law politics must be carried out with full rational

---

<sup>5</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegak dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2005, p. 40

not emotional considerations because criminal law politics is a process of selecting laws that will be applied in society in achieving the ideals of society so that choices must be justified.

Criminal law politics is part of legal politics, so in the formation of a law one must know the value system that applies in society. According to Soedarto, if criminal law is to be involved in legal politics, then it must see the overall relationship between national policy and legal policy in general. This is done so that there is no imbalance between criminal law policies and national legal policies.<sup>6</sup>

Criminal law policy is an effort to tackle criminal acts, in addition to other efforts, namely prevention by using non-penal policies. The politics of criminal law are repressive after the occurrence of a criminal act. Marc Ancel argues that the politics of criminal law or criminal law policy is both a science and an art that has a practical aim to enable positive legal rules to be better formulated and to provide guidance to legislators and to implementers of court decisions.<sup>7</sup>

When someone feels that they have been wronged in a judicial process such as arrest, detention, or investigation, they have the right to demand and get justice through pretrial, which is one of the institutions to examine a case process up to the stage of proceedings in the District Court. Thus, the pretrial institution is a trial process before the trial of the main issue of the case is tried. Pre-trial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are

---

<sup>6</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Jakarta, Kencana Prenada Media Group, 2011, p. 26

<sup>7</sup> Abdul Halim Barkatullah & Teguh Prasetyo, *Politik Hukum Pidana: Kajian. Kebijakan Kriminalisasi dan Dekriminalisasi*, Yogyakarta: Pustaka. Pelajar, 2005, p. 18

purposes and objectives to be upheld and protected.<sup>8</sup>

## **2. Forms of Pre-Trial Law Politics in Law Enforcement in Indonesia**

The elucidation of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) mandates that the will of the legislators understand and live properly, especially for law enforcers who have been directly involved in the application of the law, because without understanding and living up to the will of the legislators, the provisions that legislators have regulated in the body (substance) of the Criminal Procedure Code will be more perceived as an obstacle to law enforcers, or limiting the space for movement, and for the public it will become an obstacle to access certainty, justice, and protection of human rights.

Pretrial does not always have to be interpreted dogmatically as an order to follow the sound of a law, but more than that it must pay attention to social facts that occur in society, because legal certainty does not always reflect justice, the desired justice is not just conceptual, but must touch feelings for every person seeking justice or justice that is substantive. This has been contradicted by the editor in Satjipto Rahardjo's book in his introduction, which states that legal truth cannot be interpreted solely as the truth of the law, but must be understood as the truth of the principle of justice that underlies the law.<sup>9</sup>

The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that "Determination of Suspects" is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the

---

<sup>8</sup> M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP: Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta, 2006, p. 3

<sup>9</sup> Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, 2009, p. vii

Criminal Procedure Code are contrary to the 1945 Constitution of the Unitary State of the Republic of Indonesia. given by law, because the Constitutional Court Decree cannot make new norms that can change the prevailing legal order. Even though the authority of the Constitutional Court is not a new norm,

The decision of the Constitutional Court above shows a contradiction with Perma Number 4 of 2016, dated April 18, 2016 concerning the Prohibition of Reviewing Prapredilan Decisions. ) makes every pretrial case cannot be appealed, PK including appeal. The aim is to avoid differences in perceptions, especially after the issuance of a Constitutional Court Decree which establishes norms that expand the object of pretrial. The Supreme Court regulation has placed the object of the pretrial in accordance with the context of procedural law, because pretrial only concerns the formality of the legality of the legal procedure of arrest, detention,<sup>10</sup>

It cannot be denied that law in reality has become a commodity of law enforcement officers not only limited to the abuse of authority which tends to strengthen power, but has become an economic necessity, namely to enrich themselves, certain groups even more broadly to their cronies, starting from the lowest level to the highest level, namely decision makers, both at the level of investigation by the police, at the level of prosecution by prosecutors and at the court level by judges before the court.

This situation has received such sharp attention and criticism from various circles today, especially at the level of investigation which determines whether a person can be arrested, detained and terminated and the investigation is based on two preliminary evidence as stipulated by the prevailing laws and regulations, in this is Law Number 8 of 1981 concerning KUHAP as the basis for the criminal justice process.

Pre-trial is not only limited to law enforcement and protection of human rights, but also as a means of limiting arbitrary

powers of law enforcers through a system of horizontal surveillance carried out by the community, as the philosophical will of the principle of equality before law and government. Especially in the act of arresting and detaining a person who is suspected of committing a criminal act based on two unclear preliminary evidence, which evidence meets the elements to determine a person as a suspect.

Based on the description stated above concerning the position of pretrial in the criminal justice system, in the view of the author, pretrial is part of the core characteristics of the Due Process Model (DPM) which emphasizes that a criminal justice process is how legal rules are carried out by finding facts. In addition, pretrial must also emphasize the procedures that are taken in stages in carrying out a case process, especially those concerning the criminal justice system.

#### **D. CONCLUSION**

1. Pre-trial is a new legal effort in the life of law enforcement in Indonesia. Every thing is new, has a specific mission and motivation, there must be something to be achieved and to be achieved. Nothing is created without being driven by purpose and purpose. Likewise with pretrial institutionalization. There are aims and objectives to be upheld and protected, namely the upholding of the law and protection of the suspect's human rights at the level of investigation and prosecution;
2. The authority of the law enforcer, in this case the police, to determine the evidence for the determination of the suspect is based on the Constitutional Court Decision Number 65 / PUU-IX / 2011 which stipulates that "Determination of Suspects" is part of pretrial. In addition, the next legal basis is the Decree of the Constitutional Court Number 21 / PUU-XII / 2014 which states that the provisions of Article 77 letter a of the Criminal Procedure Code are contrary to the 1945

---

<sup>10</sup> Maria Muntaha, *Kedudukan Pra Peradilan Dalam Sistem Hukum Pidana di Indonesia*, FH UGM, Mimbar Hukum, Vol.29 No.3, Oktober 2017, p. 469



Constitution of the Unitary State of the Republic of Indonesia.

## REFERENCES

- Abdul Halim Barkatullah & Teguh Prasetyo, *Politik Hukum Pidana: Kajian. Kebijakan Kriminalisasi dan Dekriminalisasi*, Yogyakarta: Pustaka. Pelajar, 2005
- Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegak dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2005
- \_\_\_\_\_, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, 2007
- \_\_\_\_\_, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Jakarta, Kencana Prenada Media Group, 2011
- Efa Rodiah Nur, *Eksistensi Praperadilan Bagi Penegakan Hukum Dalam Mencapai Keadilan Substansif di Indonesia*, UIN Raden Intan Lampung, Jurnal Hukum, Vol.9 No.2, Juli 2017
- Maria Muntaha, *Kedudukan Pra Peradilan Dalam Sistem Hukum Pidana di Indonesia*, FH UGM, Mimbar Hukum, Vol.29 No.3, Oktober 2017
- Mien Rukmini, *Perlindungan HAM melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Kedudukan Dalam Hukum Pada Sistem Peradilan Pidana*, Alumni, Bandung, 2003
- Muhamad Solichin, *Politik Hukum Praperadilan Dalam Penegakan Hukum*, Magister Ilmu Hukum UMS, Tesis, 2018
- M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP: Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta, 2006
- Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Publishing, Yogyakarta, 2009