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The Comparative Analysis on Pre-Trial in Relation to the Reform of Pre-Trial in Indonesian Criminal Procedural Code

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Abstract : Criminal Procedural Law is established to protect the society from the abuse of authority. To achieve that purpose, the criminal procedural law shall be established in accordance with the laws of human right and the protection of the society. One of the mechanisms to protect human rights and to ensure the compliance of authorities in criminal procedural law is pre-trial mechanism. In many countries, there are various mechanisms of pre-trial. In the recent cases in Indonesia, pre-trial has been an interesting issue. The issue is also addressed by the Constitutional Court Decision Number 21/PUU-XII/2014 which enhance the competence of pre-trial which includes the suspect determination and the legality of seizure and search. Before that decision, some pre-trial decisions have made landmark decision by enhancing the competence of pre-trial, such as the suspect determination case in Budi Gunawan Case and legality of the investigation in Hadi Purnomo Case. These pre-trial cases occurred because the society needs protection even though it is not provided by written legislations, in this matter, The Indonesian Criminal Procedural Code (KUHAP). For instance, a person can be a suspect for unlimited time because the Criminal Procedural Code does not regulate the limit of investigation, so the suspect enactment shall be able to be challenged to protect human rights. Before the Constitutional Court Decision Suspect Determination cannot be challenged so that the society is not fully protected. The Constitutional Court Decision has provided more protections. Nowadays, investigators shall be more careful in conducting the investigation. However, those decisions, including the Constitutional Court Decision are not sufficient for society to be protected by abuse of authority. For example, on 7 March 2017, a single judge, in a Pre-Trial, at the Surabaya District Court, decided that the investigation was unlawful and shall be terminated. This is not regulated according to the Code and also any decisions in pre-trial. It can be seen that the reform of pre-trial is necessary. Hence, this paper aims to examine how pre-trial shall be developed in the future to provide wide access for society to have social justice in criminal justice system. The question will be answered by normative, historical, and comparative approaches. Firstly, the paper will examine the history of pre-trial in Indonesia and also landmark decisions on pre-trial. Then, the lessons learned from other countries regarding to the pre-trial mechanism will be elaborated to show how pre-trial shall be developed and what the competences of a pre-trial are. The focus of all discussions shall be on how the society is protected and provided access to legally complain to the authority. At the end of the paper, the recommendation to reform the pre-trial mechanism will be suggested.

Keywords : pre-trial, criminal procedural law, society
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