



RESEARCH ARTICLE

DETERMINATION OF EVIDENCE OWNED TO THE VICTIMS THROUGH PRELIMINARY EXAMINATION IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA

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Manuscript Info

Manuscript History

Received: 28 September 2022

Final Accepted: 30 October 2022

Published: November 2022

Key words:-

Determination, Evidence Owned,
Preliminary, Examination Criminal
Justice System

Abstract

Victims in the criminal justice system will become victims of being re-victimized by the state because they have to wait so long to get their goods as a result of confiscation. Therefore, the problem in this study is how is the construction of the procedural law for determining evidence belonging to a victim of a crime through a preliminary examination based on restorative justice. This study aims to examine the philosophy of confiscation in the criminal justice system, the effectiveness of the criminal justice system regarding the return of confiscated goods, and the formulation of a system for determining the victim's confiscated goods through a preliminary examination based on the value of justice. The research method used is normative legal research, namely research using legal positivism. The results of the study stated that the nature of evidence in evidence in the criminal justice system is one of the materials that form evidence instructions and can be used to strengthen the formation of a judge's conviction. The function and position of evidence in the criminal justice system in Indonesia are as supporting evidence and preliminary evidence, with a preliminary examination process carried out by the judge to accommodate a request for the return of evidence from a victim.

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Introduction:-

Concern for evidence in the criminal justice system is basically a lot of attention for researchers in Indonesia, as is the case with research conducted by Chaerul Amir (Chaerul Amir n.d.), who saw a legal vacuum regarding legal protection for confiscated goods in the criminal justice system, causing injustice to confiscated goods resulting in a decrease in quality. and the quantity of the goods. However, his research has not examined the victim's problem and also the victim's evidence confiscated by law enforcers.

Victims in the criminal justice system will become victims of being re-victimized by the state because they have to wait so long to get their goods as a result of confiscation. Therefore it is necessary to have an institution or procedure for determining the victim's confiscated objects through a preliminary examination based on the value of justice so that law enforcers are also not burdened with risks in managing confiscated objects, on the other hand, victims are also served by being able to enjoy their rights as owners of confiscated objects, thus criminal justice not only to be fair to the accused but also to the victim. Based on this, it is necessary to build a construction procedure for determining evidence belonging to victims of criminal acts through a preliminary examination based on social

justice. The renewal of the criminal procedural law regarding the determination of evidence belonging to victims of criminal acts through preliminary examination is basically a new concept. Likewise, the ideas regarding the preliminary examining judge did not even touch the scope of victim protection, let alone regarding the determination of the return of evidence belonging to the victim. Arif Setiawan (Setiawan n.d.), in his research, stated that Commissioner Judges have a far wider jurisdiction than Pretrial. This extension of power guarantees the fulfillment of the rights of suspects or defendants at every stage of the judicial process. In addition to the rights of suspects or defendants, developments in human rights thinking have contributed to the idea of regulating victims' rights in the reform of the Criminal Procedure Code. The Criminal Procedure Code is still oriented toward the perpetrators and therefore does not provide adequate protection for the protection of victims' rights.

Jaholden (Jaholden 2018) also expressed the same opinion stating that the scope of the preliminary investigation in the Criminal Procedure Code is too limited, but it is expanded in Article 111 paragraph (1) of the draft Criminal Procedure Code in the concept of supervisory judges, active and passive actions in supervision, investigation, determination and determination, according to and related laws and regulations are the basis of certainty law, but the long mechanism for returning confiscated goods because they have to wait for a legally enforceable decision also raises the victim's side of suffering which of course has no legal benefits. Therefore the idea of Preliminary Examination as a system for determining confiscated objects belonging to victims brings together the principles of expediency and legal certainty, so that law enforcement runs fairly. Benefit is a representation of the interests of the victim, and legal certainty is a representation of the interests of law enforcement officers in conducting evidence, so that these two representations of legal elements are bridged by justice, namely the determination of judges in the form of using confiscated objects for victims. Law enforcers can use copies, pictures, specifications and even details of evidence that has been determined. This of course gives rise to legal certainty for law enforcers, therefore the formulation of a system for determining confiscated objects belonging to victims through a preliminary examination based on the value of justice is an interesting and urgent matter for the reform of criminal procedural law in Indonesia.

Based on the background above, the problem in this study is how is the construction of the procedural law for determining evidence belonging to a victim of a crime through a preliminary examination based on restorative justice.

Method:-

The research method used is normative legal research, namely research using positivist legislature, which states that law is synonymous with written norms compiled and promulgated by authorized institutions or officials (Marzuki 2005). In this research, the use of normative legal research methods is often referred to as doctrinal research, which examines the law that is conceptualized and developed based on the doctrines adhered to by its creators and/or developers (Irianto and Sidharta, 2009). The approaches used include statutory approaches, philosophical approaches, conceptual approaches, and comparative approaches.

Discussion:-

The construction of the procedural law for the determination of evidence belonging to a victim of a crime through a preliminary examination based on restorative justice

The Urgency of the Value of Victim Protection in the Process of Returning Evidence in the Criminal Justice System

This model of the due process of law criminal justice system is often misunderstood only in relation to the application of current criminal procedural law rules against suspects and defendants, even in a fair trial far from just applying formal laws or regulations. The Due Process Model is much more skeptical about the administrative investigative process and the ability to make accurate judgments of wrongdoing without judicial oversight. The fair trial model respects individual rights and dignity before state power, not just crime eradication. Whereas John Griffiths, the due process model looks very different from the crime control model, the due process model system is based on the concept of respect for the individual and the concept of limiting official powers (Griffiths 1969). Hence, the due process model rejects informal fact-finding administration and prefers arbitration against formal processes. In the due process model, there is no valid discovery of facts until the case is openly tried and evaluated by a fair trial court, and the accused has had the full opportunity to discredit the case against him. The characteristic

of the due process model is the protection of the rights of the accused to prove a crime and the guilt of the person who will undergo trial (Muhadar, Edi Abdullah dan Husni Thamrin 2009).

According to Edward Omar Sharif Hiariej who stated that "basically any evidence is in the interest of investigation or trial, if it is in the form of real evidence or physical indeed evidence must be confiscated" to prevent efforts to eliminate the evidence or reduce the level of the evidence or increase the level of the evidence. So it really has to be confiscated, because what went back to that goal was to seek material truth from an act that was suspected of being a crime, so it had to be confiscated. Therefore, when we confiscate it, it must be kept in a safe place so that the evidence does not change because it is in the context of seeking material truth. Confiscation is basically a process that respects Human Rights (HAM), therefore confiscation is only permitted through a confiscation permit to the court. Confiscation is one of the coercive measures regulated in the Criminal Procedure Code, namely in Article 1 point 16 of the Criminal Procedure Code, Articles 38 to 46 of the Criminal Procedure Code, Article 82 paragraph (1) and paragraph (3) the Criminal Procedure Code in the context of Preliminary Examination, Articles 128 to 130 the Criminal Procedure Code, Article 194 the Criminal Procedure Code and Article 215 the Criminal Procedure Code. Confiscation according to Article 1 number 16 of the Criminal Procedure Code is a series of acts by investigators to take over and or keep under their control movable or immovable goods, tangible or intangible goods for the purposes of evidence in investigations, prosecutions and trials.

Confiscation is included as an act of coercion (means of coercion) which is permitted by law, but can also violate human rights, so according to the provisions of Article 38 of the Criminal Procedure Code, confiscation can only be carried out by investigators. with the permission of the chairman of the local court, but in urgent matters. Confiscation can be carried out first by investigators and then must be immediately reported to the head of the court for approval. To protect the public interest, in this case, the rightful owner of the object confiscated by investigators, Article 46 of the Criminal Procedure Code also regulates the mechanism for the return of confiscated objects, namely that the confiscated property must be returned to the person or those whose property has been confiscated, or to another person or persons the most entitled person, if the investigation process has been completed, unless according to a judge's decision the goods are confiscated for the State, to be taken over. Destroyed or destroyed until it can no longer be used or if the object is still needed as evidence in another case.

Based on this, the main essence of confiscating evidence belonging to the victim is borrowed by the state. By borrowing, there is also an obligation for goods borrowed by the state. Mudzakir stated that the criminal justice system as the basis for resolving criminal cases does not recognize the existence of crime victims as justice seekers, victims of crime will again suffer the consequences of the justice system itself because victims of crime cannot be actively involved as in civil proceedings, cannot directly file their own criminal cases to court but must go through designated agencies (police and prosecutors) (Mudzakir 2001). The evidence will be returned to the owner in accordance with the decision of the panel of judges who examine and try a criminal case themselves. If the confiscated evidence belongs to the victim, it means that the victim must wait for a court decision that has permanent legal force if he really wants to return his property both in reality and legally, but through the legal process as stipulated in the law.

The leakage system borrows use which actually resulted in criminogenic factors. The loan-to-use process is as personal as a policy. This is whether given or not is the obligation of a law enforcer. So a lot of borrowing becomes a way to get money (illegal levies). Therefore this policy can actually be a criminogenic factor. The author sees that victims are asked for a certain amount of money, even though the confiscated objects are their belongings so that victims become secondary victims, that is, they have become victims again in the system. criminal justice.

The legal effectiveness of the process of returning confiscated objects in the criminal justice system in the solution is in the form of an alternative model of returning confiscated objects in the criminal justice system. The author in this case already has the concept that the formulation of a system for determining the victim's confiscated objects can be carried out through a preliminary examination. Therefore it is necessary to have an institution or procedure for determining the victim's confiscated objects through a preliminary examination based on the value of justice so that law enforcers are also not burdened with risks in managing confiscated objects. Victims on the other hand are also served by being able to enjoy their rights as owners of confiscated objects so that criminal justice can not only be fair to the accused, but also to the victims.

Benefit, certainty, and fairness are of course the cornerstone of the new institution, namely the Preliminary Examination. In this case, expediency is a representation of the interests of the victim, and legal certainty is a representation of the interests of law enforcement officials in conducting evidence. Thus the two representations of legal elements are bridged by justice, namely the determination of the judge in the form of using confiscated objects for victims. So that law enforcers can use the copies, pictures, specifications, and even details of the evidence that has been determined. This of course gives rise to legal certainty for law enforcers, therefore the formulation of a system for determining confiscated objects belonging to victims through a preliminary examination based on the value of justice is an interesting and urgent matter for the reform of criminal procedural law in Indonesia.

The problem of returning evidence is actually a conflict between two values, namely legal certainty and the value of victim protection. The criminal justice system is a series of law enforcement that has legal aspects that aim to apply laws and regulations in an effort to tackle crime and achieve legal certainty (Atmasasmita 2010). The criminal system and accountability do not aim to protect victims directly and concretely, but only indirectly and concretely, but only indirectly and abstractly (Arief n.d.). Regulations regulated through the Criminal Procedure Code and other derivative regulations require legal certainty rather than victim protection. Therefore, the arrangement for the return of confiscated goods needs to be reconstructed with a value of justice. Law enforcement is essentially an attempt to create justice. The process of fulfilling people's sense of justice through law enforcement until now still shows its old face, namely law as an instrument of oppression (retributive justice) (Manan 2008).

The concept of a criminal justice system based on retributive justice can be seen in the justice system in Indonesia which tends to still adhere to a system of retaliation against perpetrators of criminal acts. Law is used as a tool to frighten, and retaliate against perpetrators. This results in the regulations that are used to pay more attention to the perpetrators of criminal acts without paying attention to how the victims of these crimes are. This is one result of the implementation of the criminal justice system in retributive justice. The concept of legal protection for victims in retributive justice situations is not given much attention and the regulations are very minimal and do not guarantee complete protection. The concept of retributive justice does not provide a place for victims in the criminal justice system because this concept cannot provide protection for victims. Bearing in mind that victims of criminal acts can not only experience material losses, but it is very possible to experience immaterial losses.

Based on this, it is necessary to have a concept of justice that also places the victim as a party whose losses need to be repaired. Restorative Justice is a fair settlement involving perpetrators, victims, their families, and other parties involved in a crime jointly seeking a solution to the crime and its implications by emphasizing restoration to its original state. According to Bagir Manan, the substance of restorative justice contains principles, including building joint participation between perpetrators, victims, and community groups in resolving an incident or crime; placing perpetrators, victims, and society as stakeholders who work together and immediately try to find solutions that are seen as fair for all parties (win-win solutions). Victims must be seen as people who have been harmed, therefore with law enforcement, victims should not be harmed a second time by not placing them as parties in the criminal justice process. Miriam Liebman, Restorative justice emphasizes the concept of placing the victim and the environment back to their original state rather than punishing the perpetrator of a crime (Miriam Liebman 2007).

Based on the urgency of the value of victim protection in the process of returning evidence in the criminal justice system, the authors propose a concept of thinking regarding the formulation of a system for determining evidence belonging to victims through a preliminary examination based on the value of justice. Victims in the criminal justice system have rights and receive legal protection. Confiscation is basically a forced effort by law enforcement officials, solely for the benefit of the state or the interests of law enforcement. Therefore confiscation is a very extensive legal action on human rights and even property rights. Therefore, the essence of the confiscation of evidence in criminal law enforcement is related to the property rights of victims of criminal acts that need to be studied philosophically. Human rights protect a person in obtaining material rights, however, law enforcement is also interpreted as a process of upholding human rights, because law enforcement is born from the existence of someone's human rights that have been violated (crime victim). Therefore, the philosophical harmonization of material rights and the confiscation of legal name data must be based on a common perception, namely for the sake of law and for the sake of justice.

Reform of Criminal Procedure Law Towards Restorative Justice for the Return of Confiscated Goods

Criminal law reform or better known as penal reform will certainly always be interesting to be used as a study. Of course, in the midst of an increasingly critical society and changes or reforms that have long been carried out by

previous criminal justice experts. According to Barda Nawawi Arief (Arief 2005), Reform of the criminal justice system is a "big problem" facing the Indonesian people. Criminal law reform has actually been initiated or socialized for a long time by criminal law experts through the establishment of the draft Criminal Procedure Code. This was also stated by Rama Putra who argued that although efforts to reform criminal law have long been repeated and proclaimed by Indonesian criminal law experts, it remains an interesting topic and a topic for discourse study (Putra 2009). If the national legal system adheres to the Pancasila justice system, then it is appropriate to study and develop a criminal justice system that incorporates Pancasila values. Namely, criminal law that is centered on the values of the One and Only God, just and civilized humanity criminal law, criminal law that contains the values of Indonesian unity which does not discriminate between ethnicity, class, or religion. and shared interests first which are infused with populist values that are guided by wisdom in representative deliberations, as well as criminal law that is socially just for all Indonesian people.

Reform (criminal law) in the future (*ius Constituendum*), a law (substantive criminal law) ideally fulfills the following five characteristics: a) must be drafted within the framework of the national ideology of Pancasila; b) In the future, national criminal law may not ignore aspects related to the human condition, the nature, and traditions of Indonesia; c) Future criminal law must be able to adapt to universal tendencies that develop in the association of civilized society; d) Future criminal law must consider the aspect of prevention; e) Future criminal law must always respond to developments in science and technology to increase the effectiveness of its function in society. The renewal of criminal procedural law must also focus on a value approach. From the description above, it can be understood that the meaning and nature of criminal justice reform is as part of social policy, as part of criminal justice policy, part of the law enforcement policy and criminal law reform is essentially an attempt to reconsider social values (Arief 2008).

Indonesian criminal law still uses a retributive justice paradigm which views punishment of perpetrators of crimes as the only way to achieve justice for victims and society. So, criminal law which has been used as a means to deal with crime is built on the basis of a retributive paradigm so that its repressive and coercive character dominates (Widiartana 2017). Therefore, in order to achieve the expected goal of punishment, namely fulfilling the rights of the parties, the paradigm that is built is no longer retributive, but should be built on the basis of restorative justice, namely restoration to the original state before the criminal incident.

Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. Restorative justice is a sub-system of punishment in which other sub-systems are interconnected and work to achieve benefits. The principle of restorative justice is that victims get compensation for those who suffer losses, peace, and agreements that can restore the victim's condition. Thus, even when compensation is not achieved, at least the criminal justice process should not be detrimental to the victim, especially in the return of evidence.

The Criminal Procedure Code Bill has received various inputs from Robert R Strang. There have been nine fundamental changes, one of which is the issue of the relationship between investigation and prosecution, since the beginning, it was established, that the prosecutor gave instructions so that it complied with the formal requirements and the substance of the existing minutes. As well as important changes at the pre-trial stage and the establishment of a new institution, namely the commissioner judge, who has the responsibility for authorizing a search warrant. The commissioner judge conducts a special hearing on the public prosecutor. The commissioner judge can abolish and order the arrest of suspects arbitrarily, so that the commissioner judge can protect individual freedom at the pretrial stage. Then by strengthening the rights of victims with civil lawsuits that are parallel to criminal law, to receive compensation. Because of the Draft Criminal Procedure Code. Determine final criminal decisions on civil charges that have parallels with criminal cases (Anon n.d.).

The update of the Criminal Procedure Code also discusses the existence of a preliminary examination. Article 42 paragraph 1 of the Draft Criminal Procedure Code states that the public prosecutor has the duty and authority to submit a letter of request to the preliminary examining judge to carry out searches, wiretapping, and other actions. Kurniawan Tri Wibowo (Kurniawan Tri Wibowo 2021) stated that the mechanism for receiving the application for examination in this matter has not been regulated in the Criminal Procedure Code Bill, however, in Article 112, the Preliminary Examining Judge must make a decision no later than 2 days after receiving the request. Decisions are made based on the results of examining copies of warrants for arrest, detention, search, confiscation, wiretapping, or

other relevant data. Preliminary acquittal judges can hear statements from suspects or their legal advisers, investigators, or public prosecutors. If necessary, the preliminary judge may request testimony under oath from relevant witnesses and appropriate evidence.

The preliminary examination is principally concerned with confiscation, the public prosecutor and the victim may submit a preliminary examination to the court to prove whether the confiscated goods to be examined in the main trial have been taken by the victim beforehand. This is because investigators and prosecutors have an interest in proving, while the purpose of law enforcement is to defend the rights of victims.

Investigation of criminal cases in criminal procedural law is called investigation which is synonymous with the term investigation or translation from the Dutch language *oossparing*. In the Netherlands, according to Oemar Seno Adji, the *rechter commissarissen* (the judge who presides over preliminary investigations) emerged as a manifestation of the activities of judges, who in Central Europe have an important position with the power to deal with coercion (*dwangmiddelen*), detention, confiscation, body searches, houses, and checking papers. Judges-commissioners in the Netherlands oversee the implementation of the Prosecutor's duties, then the Prosecutor does the same with the implementation of the Police's duties, in Indonesia to oversee the two bodies.

Based on this, the preliminary examination is essential in the field of pre-trial in uncovering the occurrence of a crime. Thus the preliminary examination or pre-trial can also check the formal completeness of the detention, how was the arrest, what was the search, what was the investigation process like, including how he checked the authenticity of the evidence which of course protects the rights of the victim in accordance with the principles of restorative justice.

Comparison of Laws for Confiscation, Management, and Return of Evidence in Criminal Justice Systems in Various Countries

The United States implements protection for victims who experience material losses, the draft of the Criminal Procedure Code is identical to the United States Criminal Procedure Code which makes evidence as evidence. Protection for victims in returning confiscated goods or evidence is of course the policy chosen by the state. This of course varies from one country to another. The Crown Office and Procurator Fiscal Service (COPFS) and Police Scotland are committed to ensuring the confiscation of property taken from them, solely for use as evidence when necessary to prove a crime. The confiscated property will be stored safely until the trial ends. Evidence confiscated for the purposes of proof can be examined forensically. Forensic testing means the property can be treated with chemicals that can leave residues on the seized property. In extreme cases, this may mean that property cannot be safely returned to the victim, but the victim will receive a full explanation when this occurs. The victim's property will be stored securely and every movement will be tracked through the Criminal Court's recording system. This will be seen and handled only by staff from Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS) (Prosecutors), and Scottish Courts and Court Services who have a direct role in maintaining the chain of evidence. The Crown Office and Procurator Fiscal Service (COPFS) will notify Police Scotland when the property can be returned to the crime victim. At this point, the victim will be given written directions from Police Scotland allowing an authorized person to collect them from a safe place. If a victim has questions about the status of evidence these should be directed to the Investigating Officer of Police as indicated on the Victim Care Card in Scotland.

In Japan, when a crime has been committed, the police usually conduct an investigation, and all cases are handed over to the public prosecutor, then the public prosecutor conducts the necessary investigations, such as examining suspects and witnesses, evaluating the collected evidence, and making decisions on criminal acts. The next, when a case goes to court, the prosecutor examines witnesses, makes closing statements, and recommends sentences to ensure an appropriate sentence (Japan Ministry of Justice Website n.d.). In Japan, there is a Victim Support Officers agency covering activities such as responding to various questions victims may have, guiding and accompanying victims in the courthouse, and helping them access case records or return evidence to them. Also introduce victims to organizations that can provide psychological, economic, and other forms of support, according to the needs of victims. The prosecutor's office will immediately return the evidence collected from the victim after the investigation and trial are over. Stolen items confiscated from the perpetrator in cases such as theft or robbery will also be returned immediately, as soon as the investigation and trial are completed. Please contact the Victim Support Officer, the public prosecutor, or the assistant prosecutor's officer in charge if a victim wishes to have his or her items used as evidence returned.

The policy in France regarding confiscation and confiscation of criminal assets has been amended a lot in French law. Therefore, its scope is relatively limited and in practice, the courts only confiscate goods whose possession is prohibited or goods resulting from a crime with the exception of restitution to victims. Confiscation of goods during an investigation is only intended to guarantee the preservation of evidence, especially goods used in committing a crime, and to take from the suspect's hands goods that are dangerous or prohibited by the suspect. law (weapons, drugs) (Thony and Camous 2013). Confiscation of evidence is considered only as a complement to sanctions which can only be pronounced in cases specifically regulated by text (C. Ducouloux-Favard et D. Gerin n.d.). In most cases, the courts confiscated only objects whose possession was prohibited and objects directly related to the commission of the offense. The proceeds of the crime itself are confiscated only if it is proven that the proceeds of the crime were direct profits from the commission of the crime. In criminal cases, items can be confiscated by the investigator or judge-commissioner, if the goods are goods that are useful for upholding the truth or goods whose confiscation is regulated in Articles 131-21 of the French Criminal Code (du code penal), or goods that according to the law are considered harmful or dangerous. or unlawful regulation or ownership.

They are designated by the terms “scales / sealed”, “ objects placed under seal ” or “ objects placed in the hands of justice ”. They are kept either by the registry or by an external company because of their nature (foodstuff, animal, sample biological, human remains, cash), because of the danger (explosives, flammable materials, weapons and ammunition that pose a risk of fire or explosion, oxygen cylinders, etc.) or because of their volume (motor vehicles, seized machinery in the context of clandestine work, etc.). These objects may belong to the person concerned or to a third party. Under certain conditions, these objects can be returned to their owners with the following criteria:

- 1) During a preliminary investigation or open investigation, if there is no investigative judge and no court is confiscated, the public prosecutor.
- 2) If an investigation has been opened, and until this investigation is closed, by the investigating judge.
- 3) If the investigating judge closes the investigation with an order for termination, by the public prosecutor.
- 4) If the case has been stopped, by the public prosecutor.
- 5) If a court (police court, criminal court, assize court, appellate court) is confiscated, it may decide on confiscation, return, or destruction of the seal; if not specified, the competent public prosecutor (or public prosecutor if the court of the second instance or the court of the seat of the appellate court has decided).(Ministere Dela Justice n.d.)

The procedure for determining evidence belonging to a victim of a crime through a preliminary examination is based on restorative justice

The Criminal Procedure Code provides a means of horizontal oversight in terms of the state implementing law enforcement authority, namely pre-trial. A pretrial is a trial to seek justice, so what is meant by a pretrial is a trial before the hearing on the main issue of the case. The purpose of the preliminary examination can be seen from the elucidation of Article 80 of the Criminal Procedure Code "This article intends to uphold law, justice, and truth through the means of horizontal supervision". In its development, a preliminary investigation has become a tool to seek justice, this is marked by the issuance of the Constitutional Court Decision number 21/PUU-XII/2014, which in its decision stipulates that Article 77 letter a law number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia of 1981 Number 76, contradicts the 1945 Constitution of the Republic of Indonesia in so far as it is not interpreted including the determination of suspects, searches and confiscations; Considering that Article 77(a) of Law Number 8 of 1981 concerning Criminal Procedure Code The State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209 has no binding legal force, as long as it is not interpreted, including the determination of the suspect, search and confiscation.

Article 77 of the Criminal Procedure Code which contains material on preliminary investigations in Indonesia regarding the legality of arrests, detentions, termination of investigations, and termination of prosecutions, as well as compensation and/or rehabilitation, does not cover the entire process of law enforcement carried out by investigators so that it can lead to arbitrary behavior by an officials law enforcer. Given the importance of protecting human rights, the Constitutional Court considers confiscation as a preliminary examination whose validity can be reviewed through the judiciary.

The Constitutional Court in Decision Number 65/PUU-IX/2011, dated 1 May 2012, which tried in relation to Article 83 paragraph (2) of the Criminal Procedure Code, among other things, considered "... One of the arrangements for equal standing before the law is regulated in the Criminal Procedure Code is the existence of a pretrial system as a

control mechanism against the possibility of arbitrary actions by investigators or public prosecutors in carrying out arrests, searches, confiscations, investigations, prosecutions, termination of investigations and termination of prosecution, both accompanied by requests for compensation and/ or rehabilitation or not. The aims and objectives to be upheld and protected in the pretrial process are the upholding of the law and the protection of human rights as suspects/defendants during investigations and prosecutions. Implicitly, the Court has actually stated that searches and seizures are part of the control mechanism against the possibility of arbitrary actions by investigators or public prosecutors so that they are included in the scope of the investigation. However, this still focuses on the side of the perpetrator, the pre-trial does not test so that a confiscated object can be given to the victim. Therefore, pre-trial cannot be used as a preliminary examination institution in the case of returning confiscated objects.

The Criminal Procedure Code needs to regulate the existence of a preliminary trial, not only the Pre-trial which has a narrow area, but also the preliminary examination to accommodate a loan application from a victim. Thus the loan-use procedure is only one, namely an application submitted at trial before the main trial is held. Of course, the trial will also examine the ownership of the victim, as well as input from related institutions, both the Attorney General's Office and the Police, and the decision can be implemented directly by the State Storage for Confiscated Objects. The applicant can directly submit his application to the Preliminary Examining Judge after the confiscation of his property. Within 7 days from the receipt of the application to the District Court, the Preliminary Examining Judge must be able to conduct an examination until a decision is made. The examination starts with examining the applicant's files, in which the Petitioner is required to prove his ownership of the confiscated goods. If the confiscated goods are motor vehicles, both motorbikes, and cars, then the applicant must have driving equipment such as BPKB and STNK, whereas if the objects confiscated are non-certified objects such as gold and others, then the evidence that must be attached is purchase receipts and other supporting evidence. The Registrar must record all the evidence submitted, as well as document the confiscated goods.

After the preliminary examining judge examines the application and ownership of the applicant, the preliminary examining judge may also summon the relevant parties for their opinion to be heard. The parties involved here are investigators, public prosecutors, and the State Storage for Confiscated Objects. The examining judge inquires about the confiscated goods from the parties concerned, where it is these parties who have the authority to carry out the confiscation and store the confiscated goods. After the hearing, the examination judge is obliged to give a determination of the confiscated goods.

Legal Renewal of the Position of Evidence in the Criminal Justice Process

Evidence can also be referred to as real evidence or physical evidence. That in this case to find preliminary evidence, we cannot only rely on witness evidence. Apart from the fact that the scene was recorded in a closed room, making it difficult to get eyewitnesses other than them, witnesses to the incident in the context of Indonesian criminal law have the opportunity to become perpetrators of crimes. The only evidence one has is video recordings which in the context of universally applicable evidentiary law, video recordings are physical evidence or can also be called real evidence.

Indonesia has the concept of renewing evidence into evidence. The Criminal Procedure Code Bill has regulated a new concept of evidence that is different from the Criminal Procedure Code which is currently still in force. Based on arrangement tool evidence of of the Criminal Procedure Code, then what is regulated in the Criminal Procedure Code to be exact Article 175 paragraph (1) of the Draft Criminal Procedure Code reads: " Tools Legal evidence includes: evidence, letters, electronic evidence, the statement of an expert, the statement of a witness, the statement of the accused and the judge's observations. The new concept of evidence regulated in Article 176 of the Criminal Procedure Code states that evidence as referred to in Article 175 paragraph (1) letter a is a tool or means used to commit a crime or which is the object of a crime or its results or physical or material evidence may serve as evidence of the commission of a crime.

In addition to proof of concept, a completely new renewal of proof is electronic proof. of the Criminal Procedure Code does not regulate electronic evidence. In the practice of trials in Indonesia, after the existence of the MA RI letter addressed to the Minister of Justice of the Republic of Indonesia, dated January 14, 1988, no 39/TU/88/102/PID, the documentary evidence has developed. The MA RI letter is basically of the opinion that microfilm or microfiche can be used as legal evidence in criminal cases in Indonesia the court replaces the documentary evidence as referred to in Article 184 paragraph (1) letter c of the Criminal Procedure Code, provided that both the microfilm and the microfiche were previously guaranteed to be authenticated which can be traced back

from the registration and minutes of the event. However, this expansion does not include letters in the form of e-mails, or documents as referred to in several special laws that have been regulated. In this case, our evidentiary law arrangements have lagged behind Malaysia's evidentiary law, which has a broad understanding of documentary evidence, including tapes and videos.

Formulation of Regulations for the Determination of Evidence Belonging to Victims of Crime through Preliminary Examination Based on Justice

The end result of the new conception of determining evidence belonging to the victim of a crime through a preliminary examination based on justice is the existence of a new arrangement. Therefore the findings in this article offer a concrete formal concept of legislation in an article. The proposed construction of the article certainly does not only consist of 1 article, because the construction used is an adjustment to the preliminary examination formulation that has been regulated in the Draft Criminal Procedure Code. Abstract formulation of preliminary examination of confiscated objects in Article 111 paragraph (1) letter e which states "Determination of Return of confiscated objects to victims/other parties". Furthermore, Article 112 paragraph 3 states that "The preliminary examining judge may hear information from the victim/applicant, the suspect or his legal adviser, the investigator or the public prosecutor." the last one is regulated in Article 113 paragraph (5) which states "In the event that the preliminary examining judge determines or decides on a stipulation for the return of confiscated goods against a third party victim/applicant, the investigator, public prosecutor or RUPBASAN must issue the confiscated goods and give them to the applicant. ”.

The formulation of a system for determining the victim's evidence through preliminary examination based on the value of justice is based on the premise that justice must be the main goal of law enforcement, therefore the author proposes a new idea of law enforcement which has the essence of upholding justice. Law is often interpreted only as a procedure, so the essence of law enforcement is only interpreted as procedural punishment. Therefore, it is time for law and justice to become one, so the essence of law enforcement is justice enforcement. Justice enforcement will be the author's main premise in the renewal of criminal procedural law. Justice here is not only trying the perpetrators, but also justice for the victims. Victims in the criminal justice system should be the main thing, not extras. Therefore Justice enforcement bases itself on the concept of victim protection. The Criminal Procedure Code needs to regulate the existence of a preliminary trial not only like a Pre-trial which has a narrow area, but also a preliminary examination to accommodate a loan application from a victim. Thus the loan-use procedure is only one, namely an application submitted at trial before the main trial is held. Of course, the trial will also examine the ownership of the victim, as well as input from related institutions, both the Attorney General's Office and the Police, and the decision can be implemented directly by the State Storage for Confiscated Objects.

Conclusion:-

The Criminal Procedure Code needs to be reconstructed, by constructing a preliminary trial/preliminary examination. Not only is it like the Pre-trial which has a narrow area, but also the preliminary examination accommodates a request for the return of evidence from a victim. Thus the procedure for returning evidence is only one, namely an application submitted at trial before the main trial is held. Of course, the trial will also examine the ownership of the victim, as well as input from related institutions, both the Attorney General's Office and the Police, and the decision can be implemented directly by the State Storage for Confiscated Objects. With the preliminary examination process carried out by the judge to accommodate a request for the return of evidence from a victim, social justice can be maintained, namely legal certainty for prosecutors, benefits for victims, and also justice for society.

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