Jurnal Penelitian Hukum De Jure
Volume 23, Number 3, September 2023
P-ISSN: 1410-5632, E-ISSN: 2579-8561
Accredited No: 10/E/KPT/2019
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EXPANSION OF INTERPRETATION OF PHRASE OF PRELIMINARY INVESTIGATION STAGES THROUGH SYSTEMATIC INTERPRETATION AS A SOLUTION TO PREJUDICIAL DISPUTE

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Submitted: 14-07-2023; Accepted: 25-09-2023
DOI: http://dx.doi.org/10.30641/dejure.2023.V23.341-356

ABSTRACT

This study examined two things; the first is related to the relationship between judicial disputes, legal protection, and the role of the preliminary investigator; the second is related to the expansion of the phrase of preliminary investigation stages in the Criminal Procedure Code through systematic interpretation. This study applied normative legal research methods specified on the type of legal research for *in-concreto* cases. To strengthen the study, a statutory approach, a case approach, and a theoretical approach were used. The results of the study found that the actions of preliminary investigator who were limited to carrying out preliminary investigation without paying attention to cases that had a direct relationship with the cases being investigated could not yet provide legal protection, because they opened up opportunities for judicial disputes to occur. Speaking of which, judicial disputes need to be avoided through the use of systematic interpretation carried out by preliminary investigator in the preliminary investigation stages to expand the interpretation of the phrase of preliminary investigation stages in the Criminal Procedure Code and its derivative regulations. The systematic interpretation referred to is carried out in a limited manner, by simply reading opportunities for civil lawsuits and state administrative requests from parties involved in the case being investigated. In addition, it ensured the similarity of the parties involved in criminal cases as well as civil cases or state administrative cases in question.

Keywords: Systematic interpretation; Preliminary Investigation; Prejudicial dispute

1. INTRODUCTION

The preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) emphasized that the Indonesian State Government was formed to protect the entire Indonesian nation and all of Indonesia's bloodshed. These provisions were then lowered into the body of the 1945 Constitution, to be precise in Article 28D which reads " *Every person has the right to recognition, guarantees, protection and certainty of law that is fair and equal treatment before the law*". The presence of the provisions in Article 28D implies that every provision of laws and regulations in Indonesia must be able to guarantee fair legal protection and certainty as well as equal treatment before the law, including in the provisions of laws and regulations governing preliminary investigation.

Article 1 point 5 of the Criminal Procedure Code (KUHAP) stipulates that a preliminary investigation is a series of investigative actions to search for and find an event suspected of being a crime in order to determine whether or not a full investigation can be carried out according to the method stipulated in this law. As for what is meant by a preliminary preliminary investigator is regulated in the provisions of Article 1 point 4 of the Criminal Procedure Code, namely an official of the Indonesian National Police who is authorized by law to conduct a preliminary investigation. The preliminary investigation as referred to in Article 1 point 5 of the Criminal Procedure Code has loopholes that lead to judicial dispute or is referred to as *prejudiciel geschill* (*prejudicele geschillen*).

Fockema Andrea defined *prejudiciel geschill* (*prejudicele geschillen*) as a dispute that is decided first and brings a decision to the case beyond. Meanwhile, *Nederlandse Encyclopedie and Dutch Law Encyclopedic Dictionary* interpret this situation as "*procesrecht - geschil waarbij een (andere) rechter eerst een beslissing*

moet nemen, voordat de hoofdzaak kan worden berecht" which means pre-judicial dispute is a part of procedural law where there are disputes for (different) judges to have to first make a decision before the main case can be tried.[1]

In practice, one of the scenarios for the occurrence of judicial disputes can be seen from the Decision on Civil Cases Number 1912K/Pdt/2001. It should be noted that before the civil case reached a verdict, the plaintiff in this case was reported by the defendant to the police that the fence on the disputed land was damaged. The basis for the defendant reporting the plaintiff to the police was that the land already belonged to the defendant based on the certificate. For this incident, the reported party (plaintiff) sued the complainant (defendant) until finally the lawsuit arrived at the Civil Case Decision Number 1912K/Pdt/2001 which essentially decided that the existence of the land which was the object in the case was jointly owned land between the plaintiff and the defendant (*budel*) which is inherited from both the plaintiff's and the defendant's parents.

Ideally, in a criminal case, the police in this case first ascertained whether the land on which the alleged criminal act was committed was really the land of the defendant. Moreover, there was a confirmation from the plaintiff that the land had not been divided to become the share of each heir. Police action to ensure was by referring to court decisions that have permanent legal force (*inkracht van gewijsde*). Thus, the criminal case could not be continued because it did not fulfill the elements of the act of vandalism regulated in Article 406 of the Criminal Code (KUHP). However, in this case, the police did not do it, instead they decided that the plaintiff committed the act of vandalism, or in other words having transferred the case files to the public prosecutor to be tried before the issuance of a decision on a civil case related to land status which became the origin of the alleged criminal act committed on it. The decision on the vandalism suspect accused of the plaintiff was too early or forced because it ignored other legal processes, which was the lawsuit filed by the plaintiff regarding ownership of the land on which the criminal act of vandalism was suspected to have occurred.

The judicial dispute, as can be seen in the case description above, had actually been addressed by the Supreme Court (MA) by issuing two regulations to resolve the issue, namely Supreme Court Regulation No. 1 of 1956 (Perma No. 5 of 1956) and Supreme Court Circular Letter No. 4 of 1980 (SEMA No. 4 of 1980). The two regulations are at the same time a follow-up to Article 81 of the Criminal Code (*Wetboek van Strafrecht*/ WvS/KUHP) which emphasizes that "*postponement of criminal prosecution in connection with the existence of pre-judicial disputes, delaying the expiration*".

As a regulation issued by the Supreme Court to address prejudicial disputes, Perma No. 5 of 1956 stipulates provisions relating to judicial disputes through four articles which substantially can be concluded that if in the examination of a criminal case, it must be decided that there is a civil matter over an item or about a legal relationship between two certain parties, then the examination of a criminal case can be postponed to wait for a court decision in examining a civil case regarding the presence or absence of that civil right.[2] Furthermore, the suspension of examination of the criminal case can be terminated at any time, if it is deemed unnecessary.[3] Finally, the court in examining criminal cases is not bound by a court decision in examining civil cases regarding the presence or absence of a civil right.[4] This last substance will certainly not help avoiding prejudicial disputes, especially through the presence of this Perma.

Furthermore, the Supreme Court also addressed judicial disputes through SEMA No. 4 of 1980, which was specifically drafted as a regulation aimed at answering problems regarding the interpretation of the provisions of Article 16 of Law Number 14 of 1970 concerning Main Provisions of Judicial Power which states that "*The court examines and decides criminal cases in the presence of the accused unless the law determines otherwise*". In part III (three in Roman numerals) related to *prejudicieel geschil* or prejudicial, SEMA No. 4 of 1980, the Supreme Court divided the two meanings of *prejudicieel geschil* (prayudisial), which are "*question prejudicielle a l 'action*" and "*question prejudicielle en jugement*". "*question prejudicielle a l 'action*" is regarding certain criminal acts referred to in the Criminal Code (among others Article 284 of the

1 Abdul Rahim and Muhammad Ibnu Fajar Rahim, "Kupas Tuntas Penerapan Prejudiciel Geschil Dalam Perkara Pidana," *Pleno Jure* 11, no. 2 (September 8, 2022): 118, https://doi.org/10.37541/plenojure.v11i2.700.

2 Article 1, Mahkamah Agung Republik Indonesia, "Peraturan Mahkamah Agung Nomor 1 Tahun 1956" (1956).

3 Article 2, Ibid.

4 Article 3, Ibid.

Criminal Code),[5] while "*question prejudicielle en jugement*" is regarding the issues regulated in Article 81 of the Criminal Code.[6] Regarding the first meaning, civil cases must first be decided before criminal prosecution is considered.[7] While related to the second meaning, the provisions in Article 81 of the Criminal Code must be interpreted as merely giving authority, not the obligation for Criminal Judges to suspend examinations, waiting for the decision of Civil Judges regarding the dispute. Furthermore, based on Point 5 Part III of *Prejudicieel geschil*, the provision related to good prejudicial which constitutes "*question prejudicielle a l 'action*" and "*question prejudicielle en jugement*" does not make criminal judges bound by the decisions of civil judges. That is, it is not an obligation for criminal judges to wait to decide on a criminal case before a civil judge decides on civil cases that have a close relationship with the criminal case in question. As a consequence, judicial disputes will be possible because judges are not obliged to wait to decide on a criminal case before the civil judge makes a decision. Judges will be able to decide criminal cases even if civil cases that are closely related to the criminal case have not been decided. Up to this point, once again, SEMA No. 4 of 1980 also failed to meet expectations to avoid prejudicial disputes, like Perma No. 1 of 1956.

Based on the description above, the substance of Perma No. 1 and SEMA No. 4 of 1980 has not been able to be a solution to the occurrence of judicial disputes. The author is of the opinion that the solution to the occurrence of prejudicial disputes is to prevent prejudicial disputes from occurring as much as possible, or in other words, two cases in two different fields of law do not enter the trial stages at the same time. Therefore, in order to avoid prejudicial disputes, before the case enters the trial stage, the case must really have been properly investigated at the preliminary investigation stage. Thus, preliminary investigators believe that the act can actually fulfill the elements of a criminal act, especially if the act has a close relationship with cases in other areas of law, such as civil cases. More than that, Article 1 of Perma No. 1 of 1956, is an indicator that an examination of a criminal case can be delayed.[8] The delay was carried out to avoid the loss of the right to prosecute the defendant as a result of a civil court decision even though based on Point 5 Part III *Prejudicieel geschil* SEMA No. 04 of 1980, points 2 and 3 were only recommendations.[9]

Based on the aforementioned, the author believes that it is necessary to expand the phrase of preliminary investigation stages because the sentence"*according to the method regulated in this law*" in Article 1 number 5 of the Criminal Procedure Code has the meaning that preliminary investigation actions are specific to criminal acts. The meaning of the phrase "*this law*" basically only refers to the Criminal Procedure Code which is a formal legal provision to enforce criminal laws regulated both in the Criminal Code and offenses outside the Criminal Code. This means that preliminary investigators will be limited to conducting a preliminary investigation of a criminal case based only on the perspective of criminal law. Meanwhile, these criminal cases may originate from problems in the civil realm, such as land ownership disputes which greatly determine whether the actions that form the basis of a criminal case are truly criminal acts or not.[10] Prejudicial disputes

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5 Point 2 Part III *Prejudicieel geschil*, Mahkamah Agung Republik Indonesia, "Surat Edaran Mahkamah Agung Nomor 4 Tahun 1980" (1980).

6 "A request for compensation and/or rehabilitation due to illegal arrest or detention or due to the legal termination of a full investigation or prosecution is submitted by the suspect or an interested third party to the chairman of the district court, stating the reasons." Article 81, Republik Indonesia, "Kitab Undang-Undang Hukum Acara Pidana" (1981).

7 Point 3 Part III Prejudicieel geschil, Mahkamah Agung Republik Indonesia, Surat Edaran Mahkamah Agung Nomor 4 Tahun 1980.

8 Amiruddin Amiruddin, Rina Khaerani Pancanigrum, and Chrisdianto Eko Purnomo, "Konsep Prejudicial Geschil Dalam Pemeriksaan Perkara Pidana Dan Perkara Perdata," *Journal Kompilasi Hukum* 6, no. 1 (June 30, 2021): 65, https://doi.org/10.29303/jkh.v6i1.71.

9 In the Hukumonline article, Wardaya said that Article 1 of Perma No. 1 of 1956 gives the authority (not obligation) to the Criminal Judge to postpone the examination and wait for the Civil Judge's decision. See Tim Publikasi Hukumonline, "K&K Advocates Menjawab Penerapan Perma 1 Tahun 1956 dalam Penangguhan Perkara Pidana," hukumonline.com, accessed July 21, 2023, https://www.hukumonline.com/berita/a/kk-advocates-menjawab-penerapan-perma-1-tahun-1956-dalam-penangguhan-perkara-pidana-lt620b112f10079/.

10 In criminal cases related to Civil Case Decision Number 1912K/Pdt/2001, if the police first wait for the decision, the criminal case may not be able to proceed. As is known, based on Article 406 of the KUHP [Republik Indonesia, "Kitab Undang-Undang Hukum Pidana" (1945).], which regulates criminal acts of destruction, it is stated that "any person who intentionally and unlawfully destroys, damages, renders unusable, or loses something that wholly or partly

should not have occurred if the preliminary investigative actions by preliminary investigator could reach and find not only pure criminal cases (as the object of the Criminal Procedure Code and the Criminal Code) but also cases that have a close relationship with civil affairs.

Prejudicial dispute is not a problem that has just been investigated through this study, but it is the first time that the author investigated this. In the search, the author found two studies that examined prejuducial disputes. The first was the article written by Peter Jeremiah Setiawan, et al. in 2022, under the title "*Konsep Penegakan Hukum yang Sistematis dalam Perselisihan Pra-Yudisial di Indonesia*". The article was published in the Law Journal IUS QUIA IUSTUM Volume 29, Number 1, January 2022. The second is a thesis compiled by Ibnu Irwan at Jambi University in 2022, with the title "*Proses Peradilan Pidana Terhadap Kasus Perselisihan Prayudisial dalam Perspektif Peraturan Perundang-Undangan di Indonesia*".

The first research resulted in the formulation of a systematic dispute-handling mechanism through legal discovery, which is the constitutional, qualification, and constituent processes. Even though the formulation is through legal discovery, this formulation cannot only be left to the judge but also pays attention to the initiative by the parties to file related cases in other courts.[11] The second research concludes that in prejudicial matters, an arrangement (norm) is needed which is regulated in the law and used as a legal basis as a guideline for law enforcers to resolve the same case (which can be in the dimensions of criminal law or civil law). Based on the research results from the two studies (which have a correlation with the formulation of the problems raised by each researcher in the study), this research clearly has different recommendations or formulas from the other two studies. The reason is that neither study offers a "*systematic interpretation of the investigation arrangements in the Criminal Procedure Code*" as a solution to prejudicial disputes.[12] In addition, this research focuses on the actions of the police when they are going to preliminary investigate criminal cases related to civil cases, while the first research focuses on the trial stages.[13] The second study did not reach the formulation or conception stage offered but was limited to recommendations for regulating pre-judicial issues into statutory regulations.[14]

Based on research tracing related to prejudicial disputes, the author argued that it is necessary to examine two things: First, related to the relationship of prejudicial disputes, legal protection, and the role of preliminary investigator; Second, related to the expansion of the phrase of preliminary investigation stages through systematic interpretation. The author hopes that the study of these two matters can formulate a systematic interpretation of the preliminary investigation arrangements in the Criminal Procedure Code and its derivative regulations with the aim of expanding the interpretation of the phrase stages of preliminary investigation so that preliminary investigation do not only focus on matters that are in the criminal realm, but also matters that are in civil domain provided that it has a direct connection with the criminal case being investigated. Systematic interpretation of the preliminary investigation arrangements in the Criminal Procedure Code and its derivative regulations is expected to provide legal protection.

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belongs to another person is threatened with a maximum imprisonment of 2 years and 8 months or a maximum fine of IDR 4.5 million." Based on Article 406 of the Criminal Code, the elements of the criminal offense of management consist of: (1) Whoever; (2) Intentionally and unlawfully; (3) Committing an act of destroying, damaging, rendering something unusable, or eliminating something; and (4) The goods are wholly or partly the property of another person. Of course, the last element cannot be fulfilled because the land that is the origin of the alleged criminal act of destruction committed on it is also the land of the reported party (plaintiff), based on Civil Case Decision Number 1912K/Pdt/2001. (Paulus E. Lotulung, Marina Sidabutar, and Widayatno Sastrohardjono, Putusan Mahkamah Agung Republik Indonesia Nomor 1912K/Pdt/2001 (Mahkamah Agung Republik Indonesia May 5, 2006).

11 Peter Jeremiah Setiawan, Xavier Nugraha, and Luisa Srihandayani, "Konsep Penegakan Hukum Yang Sistematis Dalam Perselisihan Pra-Yudisial Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 29, no. 1 (January 31, 2022): 87–88, https://doi.org/10.20885/iustum.vol29.iss1.art4.

12 Ibnu Irwan, "Proses Peradilan Pidana Terhadap Kasus Perselisihan Prayudisial Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia" (Thesis, Jambi, Universitas Jambi, 2022), https://repository.unja.ac.id/.

13 Setiawan, Nugraha, and Srihandayani, "Konsep Penegakan Hukum Yang Sistematis Dalam Perselisihan Pra-Yudisial Di Indonesia," 87–88.

14 Irwan, "Proses Peradilan Pidana Terhadap Kasus Perselisihan Prayudisial Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia."

2. METHOD

This study was conducted using the normative legal research method, which is research that places written law to be studied from various aspects, such as aspects of theory, philosophy, comparison, structure or composition, consistency, general explanation, and explanation of each article, formality, and strength binding the law. In this research method, the language used is legal language.[15] Regarding the specifications of the normative legal research method used, this study used a type of legal research for in-concreto cases, which is a normative legal research that aims to examine whether a normative postulate can or cannot be used or applied to a concrete case, not abstract.[16] In this case, it is to be studied whether the arrangement for the preliminary investigation stages in the Criminal Procedure Code and derivative regulations under the Criminal Procedure Code can be applied in a concrete case, namely a criminal case that has a close relationship with other cases, like civil cases. However, to strengthen this study, a theoretical approach was used to complement the case approach and statutory approach.[17] In the theoretical approach, the arrangement of preliminary investigation under the Criminal Procedure Code and the rules under the Criminal Procedure Code was analyzed from the perspective of legal protection. The results of the analysis are then presented in a prescriptive manner to provide arguments for the research results in question. The argumentation is intended to provide a description or assessment of right or wrong or what should be according to law regarding facts or legal events from the research results.[18]

3. DISCUSSION

3.1 Prejudicial Disputes in the Perspective of the Role of Preliminary Investigator and Legal Protection

Law as a protector of human rights and freedom of its citizens was put forward by Immanuel Kant. In his view, humans are rational beings and have free will. In relation to the state, human rights and freedoms as citizens must be upheld by the state. Prosperity and happiness of the people as citizens is the goal of the state and law. Speaking of which, the fulfillment of the basic rights of citizens must not be hindered by the state. Basic rights inherent in human beings naturally, universally, and eternally as a gift from God Almighty, include the right to life, the right to have a family, the right to self-development, the right to justice, the right to freedom, the right to communicate, the right to security, and the right to welfare, which therefore should not be neglected or deprived by anyone.[19]

With regard to basic rights, the *International Covenant on Civil and Political Rights* affirms, among other things, that all people are equal before the law and are entitled to the same legal protection without any discrimination. It is further emphasized that in this case the law must prohibit any discrimination, and guarantee equal and effective protection for all people against discrimination on any basis such as race, colour, sex, language, religion, politics or other opinions, national origin, or social status, wealth, birth or another status.[20]

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15 Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus, Cet. 4, Edisi Revisi (Yogyakarta: Mirra Buana Media, 2021), 99.

16 Ibid., 114.

17 According to Irwansyah, research into the validity of a norm or legal rule, apart from examining the legal principles that underlie it, can also examine the legal theory that underlies the legal norm. This process is known as a theoretical approach in normative legal research. See ibid., 158. Regarding the statute approach, Peter Mahmud Marzuki is of the view that legal research at the level of legal dogmatics or research for the purposes of legal practice cannot be separated from the statutory approach. See Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 13, Edisi Revisi (Jakarta: Kencana Prenada Media Grup, 2017), 136.

18 Due to its prescriptive nature, legal science studies or examines the ideal requirements of the das sollen nature contained in the order of positive legal norms. These ideal requirements in the order of positive legal norms are studied in jurisprudence in relation to things such as legal objectives, justice, legal certainty, legal usefulness, predictability, legal values, legal morality, and so on. See Asmak ul Hosnah, Dwi Seno Wijanarko, and Hotma P. Sibuea, *Karakteristik Ilmu Hukum Dan Metode Penelitian Hukum Normatif* (Depok: Rajawali Pers, 2021), 204.

19 Jh Sinaulan, "Perlindungan Hukum Terhadap Warga Masyarakat," *Ideas: Jurnal Pendidikan, Sosial, Dan Budaya* 4, no. 1 (February 19, 2018): 80, https://www.jurnal.ideaspublishing.co.id/index.php/ideas/article/view/67.

20 Article 26, United Nations General Assembly, "International Covenant on Civil and Political Rights" (1966).

Satjipto Rahardjo is of the view that legal protection is to provide protection for human rights (HAM) that are harmed by other people and that protection is given to the society so that they can enjoy all the rights granted by law.[21] Satjipto Rahardjo's views regarding legal protection cannot be separated from Fitzgerald's opinion when explaining Salmond's thoughts on "*Jurisprudence*". According to Fitzgerald, in Salmond's thoughts, the purpose of law must be created with the aim of protecting the interests of society by integrating and coordinating various interests in society. The reason is, in traffic of interests, the protection of certain interests can only be done by limiting various interests on the other hand.[22] Salmond's thought illustrates that law cannot be separated from interests. Regarding this matter, it is necessary to place the views of Roscoe Pound which also describes the relationship between law and interests through the theory of interests.

According to Roscoe Pound, law is certain interests, which according to society must be protected by law. Furthermore, Roscoe Pound stated that not all of these interests must be protected by law. There are a number of social interests that can be protected through religion, morals and aesthetics, and other forms of protection. In Roscoe Pound's view, interests that must be protected by law are the main function of law. The interests in question are public interests, social interests, and personal interests. The protection of these three interests must be carried out in a balanced manner. This harmonious balance is the essence of justice. On this basis, broadly speaking Roscoe Pound made three categories of interests, namely individual interests, public interests, and the interests of the state as a guardian of social interest.[23]

In order to formulate these various interests into a harmonious balance, Roscoe Pound introduced the concept of Social Engineering, which requires legal experts and judges to abandon their rigid attitude to understanding the law. The legal experts and judges must accommodate changes that occur in society so that law can bridge the creation of satisfaction in fulfilling people's interests and aspirations, and minimize the occurrence of social friction. Legal experts or judges must be able to balance conflicts and conflicts of interest in society into a happy balance. In order to bridge conflicts of interest into harmony, Roscoe Pound suggested that these interests be packaged into a certain form that has the same level and quality.[24]

Figure 1. The Process of Balancing Interests in Certain Forms that Have the Same Level and Quality in Rescoe Pound's Interest Theory



Source: Author, processed from references [25]

In short, based on the figure above, state freedom and state security give rise to conflicts of interest because the state must limit personal freedom in order to maintain state security;[26] it will become harmony

21 Anak Agung Istri Ari Atu Dewi, "Aspek Yuridis Perlindungan Hukum dan Pemenuhan Hak Penyandang Disabilitas," *Pandecta Research Law Journal* 13, no. 1 (August 2, 2018): 55, https://doi.org/10.15294/pandecta.v13i1.13933.

22 Satjipto Rahardjo, *Ilmu Hukum*, Cet. 8 (Bandung: Citra Aditya Bakti, 2014), 53.

23 Atip Latipulhayat, "Khazanah: Roscoe Pound," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (July 25, 2014): 415, http://jurnal.unpad.ac.id/pjih/article/view/7083.

24 Ibid., 416–17.

25 Ibid.

26 Ibid., 417.

when placed at the same level and quality, which is in the social interests. It is because, in the social interests, both personal freedom and state security are two things that must be realized.

Based on the views of Satjipto Rahardjo (who was influenced by Fitzgerald and Salmond) to Rescoe Pound, it can be concluded that legal protection is something that must be realized in the relationship between the people (citizens) and the state. To achieve this legal protection, a balance (harmony) is needed in the interests that arise in this relationship. This conclusion needs to be used as an analytical tool for prejudicial disputes, despite the regulation issued by the Supreme Court (as described in the introduction) to resolve prejudicial disputes. This cannot be separated from the understanding that legal protection can be in the form of protection *in abstracto* and protection *in concreto*. More than that, the protection of human rights is not only a matter of 'guarantees' but also the mechanism, implementation, and behavior of the state and society. In other words, efforts to care for human rights in practice are as important as guaranteeing human rights normatively.[27]

Protection in abstracto implies that the substance of a rule of law must provide protection, while legal protection in concreto implies that law enforcement practices must provide protection. There are at least two parameters that can be used as a measure to state whether in abstracto legal protection is contained in a rule of law; first is by ensuring that the rules guarantee legal certainty; second is by ensuring that the rules are not discriminatory. The two parameters are cumulative. That is, if even one of the parameters is not met, then it can be said that the rule of law does not provide protection *in abstracto*.[28]

Criminal law protection *in abstracto* and *in concreto* can be seen in the stages of reports and complaints, both of which are acts of notification regarding criminal acts to the authorities. In the provisions of Article 1 points 24 and 25 of the Criminal Procedure Code, it is explained that a report is a notification submitted by a person due to rights or obligations under the law to an authorized official about having or being suspected of a criminal incident. Criminal acts in the form of reports constitute or are categorized as ordinary crimes (delicts). In the report, the party that can submit is anyone who experiences or sees a criminal act because of their rights or obligations. In practice, people who have submitted a report to the authorities have the consequence that even if the report is withdrawn, the authorities will not stop the case process. This is what differentiates a report from a complaint.[29]

Complaint is defined as an act of notifying law enforcement officials and accompanied by a request for an action that according to law has committed a criminal act committed by a person in the hope of receiving protection based on applicable legal provisions. The report or complaint is then developed by the preliminary investigator by digging for information to search for and find evidence. Up to this point, it can be concluded that the provisions in Article 1 points 24 and 25 of the Criminal Procedure Code constitute legal protection *in abstracto*, while *in concreto* criminal law, protection will materialize if the preliminary investigator's actions at the report or complaint stage are actually carried out based on the provisions stipulated in the Criminal Procedure Code in particular, as well as other laws and regulations in general.

Basically, an initial investigator and full investigator who is authorized to carry out a series of initial investigations and full investigations into an alleged crime has the same position as a researcher, namely seeking facts and truth from an object.[30] A full investigator and initial investigator in uncovering a criminal incident must have the ability to collect and analyze data on the information and evidence obtained.

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27 Atip Latipulhayat, "Editorial: Merawat Hak Asasi Manusia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (2016): 1.

28 Zainal Arifin Mochtar and Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum* (Jakarta: Red & White Publishing, 2021), 13.

29 Article 75 of the KUHP [Republik Indonesia, Kitab Undang-Undang Hukum Pidana.] states "The person who files a complaint has the right to withdraw it within three months after the complaint is filed.". This provision was then distorted through Supreme Court Decision No. 1600 K/Pid/2009, which became jurisprudence. The Supreme Court argued that one of the objectives of criminal law is to restore the balance that occurs due to criminal acts. The complaint referred to in Article 75 is a complaint defined in Article 1, point 25, of the Criminal Procedure Code [KUHAP].

30 Article 1 point 5 of the KUHAP [Republik Indonesia, Kitab Undang-Undang Hukum Acara Pidana.] states, "Preliminary investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not a full investigation can be carried out according to the method regulated in law. invite this." Article 1, point 2, of the Criminal Procedure Code [KUHAP] states, "Full investigation is a series of full investigator's actions in terms and according to the methods regulated in this law to search for and collect evidence that will shed light on the criminal act that occurred and in order to find the suspect.

It is important for a preliminary/initial investigator to obtain initial data to then analyze and use it to make an initial hypothesis. An initial investigator and full investigator, before starting the initial and full investigations, must be able to dig up as much data as possible from the data they already have (data mining) to then do filtering (data refinery) to find out which data is suitable for use or not and carry out grouping and analysis from the data that has undergone the filtering process. Through all the processed data, an initial investigator or full investigator must be able to conclude hypotheses (guess) about what events occurred, by inferring relationships or interconnections between the data. The preparation of this hypothesis is very useful for narrowing the scope of the preliminary investigation and saving time and resources in the preliminary investigation process.[31]

Based on the description above, the preliminary investigator's actions should not only be limited to concluding hypotheses of events that occurred in the form of criminal acts. However, this action must be able to find and establish that from the data and information the alleged crime has a close relationship with other cases, one of which could be a civil case. Data and information must be examined not only based on fulfilling the elements of a crime that will be applied to the suspect but more than that. It is done to realize social interests, namely guarantees of safety, health insurance, security, and order.[32]

Basically, the preliminary/initial investigator's actions as referred to above are a manifestation of *due process of law*, which in its implementation cannot be separated from human rights. In other words, it can be said that the *due process of law* is human rights itself. In this context, *due process of law* requires not only *due process* in the sense of fulfillment of basic procedural rights, but also protection of basic substantive rights. Substantive rights are general rights possessed by a person to do something or to own something, even though the government wishes the opposite, for example, freedom of speech and freedom of association and assembly. Procedural rights are rights that a person has to obtain services from the government fairly. Although the government for certain reasons can reduce or limit the substantive rights possessed by a person, this must be done with justifiable reasons and in a fair manner. Thus it can be said that *due process of law* is an integral part in the protection and fulfillment of substantive rights such as the right to associate and assemble.[33]

Due process of law is a constitutional guarantee that ensures a fair legal process which gives an opportunity for someone to know about the process and have the opportunity to be heard explaining why their right to life, liberty, and property has been taken away or eliminated. It is a constitutional guarantee that affirms that the law will not be enforced irrationally, arbitrarily (*arbitrary*), or without certainty (*capricous*). *Due process of law* is a principle which postulates that the government must respect the law, respect the people's rights as set out in the constitution, and protect the people from arbitrary. *Due process of law* is believed to have a philosophical basis that connects to natural law which postulates that *due process of law* is nothing but justice inherent in nature to humans in defending their rights and freedoms (*natural justice*).[34] Thus, seeing in practice the actions of preliminary/initial investigators who are limited to carrying out preliminary investigation without paying attention to cases that have a direct relationship with the case being investigated (as happened in criminal cases related to Civil Case Number 1912 K/Pdt/2001), it can be said that legal protection crime, especially *in concreto*, has not really materialized. The reason is that the determination of the suspect, in this case, violates the values of the purpose of criminal law to protect the social interests as a collective from actions that threaten or even harm them, whether coming from individuals or groups of people (an organization).[35]

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31 Akhmad Wiyagus, *Analisa dan Pengelolaan Barang Bukti* (dalam Kajian Teoritis dan Kerangka Peraturan Kapolri Nomor 10 Tahun 2010 tentang Pengelolaan Barang Bukti)

32 Latipulhayat, "Khazanah," 416.

33 Atip Latipulhayat, "Editorial: Due Process of Law," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 2–3.

34 Ibid., 2.

35 Pahmi Syaripudin, "Analisis Terhadap Tindak Pidana Pemalsuan Dokumen dan Persyaratan Administrasi Perkawinan Dikaji Menurut Pasal 263 dan Pasal 264 Kitab Undang-Undang Hukum Pidana," *Journal Justiciabelen (JJ)* 1, no. 1 (January 12, 2021): 71, https://doi.org/10.35194/jj.v1i1.1116.

3.2 Expansion of the Phrase of Preliminary Investigation Stages through Systematic Interpretation

The 1982 Criminal Procedure Code implementation guidelines regulate the objectives of the criminal procedural law which consists of three objectives, which in essence include, first, seeking and obtaining or at least approaching material truth; second, finding out who the perpetrators of a crime are; third, setting the principal agenda of the implementation and supervision of a court decision.[36] In addition to the 1982 Criminal Procedure Code Implementation Guidelines, in the preambles of letter c of the Criminal Procedure Code, one can also find the foundations or goals to be achieved by the Criminal Procedure Code. The first is to ensure that people live up to their rights and obligations. The second is to improve the attitude of law enforcers in accordance with their respective functions and authorities in the direction of upholding law, justice, and protection of human dignity, order, and legal certainty for the sake of establishing a rule of law in accordance with the 1945 Constitution. The purpose of the criminal procedural law is an elaboration of the objectives of forming the Indonesian state as described in the Preamble to the 1945 Constitution and the elaboration of Article 28D of the 1945 Constitution.

Of the several objectives of criminal procedural law, the protection of human dignity is one of the most crucial objectives.[37] It is proven by looking at the nature of criminal procedural law which explicitly refers to aspects of public interest. As a consequence of this situation, criminal procedural law has several characteristics. First, its provisions are coercive. Second, it has a dimension of protection of human rights. The first characteristic aims to maintain security, peace, and peaceful social life. As a result, this can be seen from the attitude of the state which will continue to take action against the perpetrators, even if the victims of the actions of the perpetrators do not make complaints, except for criminal complaints (*klacht delict*). The second characteristic aims to protect the interests of the rights of the person being prosecuted (the suspect/defendant). For example, the requirement to be accompanied by legal advisors from the full investigative, prosecution, and judicial levels as stipulated in Articles 52-62 of the Criminal Procedure Code, provisions for being able to contact and receive visits from clergy (Article 63 of the Criminal Procedure Code), the right to be tried in trials open to the public, submit witnesses and make an appeal or cassation legal action (Articles 64, 65, 67, and 244 of the Criminal Procedure Code). This second characteristic is a logical consequence of the Indonesian state in the form of a rule of law (*rechstaat*).[38]

By looking at the objectives and characteristics of criminal procedural law (KUHAP), all provisions contained in the Criminal Procedure Code should be able to realize the objectives and be able to describe the nature of criminal procedural law as intended, including provisions related to the initial and full investigation stages. Moreover, the presence of the preliminary/initial and full investigation stages is basically very important in the implementation of law enforcement, bearing in mind that when the HIR was enacted, the boundaries between the initial investigation and full investigation became chaotic. According to M. Yahya Harahap, the distinction between initial investigation and full investigation as stipulated in Article 1 point 5 and Article 1 point 2, brings positive consequences, which are:[39]

1) The creation of stages of action to avoid hasty law enforcement methods, namely actions that cause the attitudes and behavior of police investigators to simplify and trivialize the fate of a person being investigated;

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36 Yetisma Saini and Febrina Annisa, *Hukum Acara Pidana Indonesia* (Padang: LPPM Universitas Bung Hatta, 2022), 9.

37 The Criminal Procedure Code has five overall objectives, which include: (1) protection of human dignity (suspect or defendant); (2) protection of legal and government interests; (3) condification and unification of criminal law; (4) achieving unity in the attitudes and actions of law enforcement officials; and (5) realizing criminal procedural law that is in accordance with Pancasila and the 1945 Constitution. See Andarwati Enan, "Penegakan Hukum Terhadap Tindak Pidana Pencurian Sepeda Motor Di Semarang (Studi Di Pengadilan Negeri Semarang)," *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 2, no. 1 (April 3, 2023): 2194, https://doi.org/10.59141/comserva.v2i10.626.

38 Joko Sriwidodo, *Pengantar Hukum Acara Pidana*, Cet. 1 (Yogyakarta: Kepel Press, 2023), 18.

39 Nyoman Indra Putra, "Azas Minimum Pembuktian Untuk Menentukan Tersangka Dalam Perkara Pidana," *Lex et Societatis* 7, no. 12 (2019): 66, https://doi.org/10.35796/les.v7i12.27580.

2) Hope to foster a more humane attitude of prudence and a sense of legal responsibility in carrying out law enforcement duties. More than that, there is also hope that prosecutions that lead to prioritizing extortion of confessions rather than finding information and evidence. Even if it is connected with the provisions of Article 17 of the Criminal Procedure Code, it makes it clearer how important the initial investigation stage is before proceeding to the full investigation stage to avoid actions that violate human rights.

The presence of the preliminary/initial investigation stages in the criminal law enforcement process regulated in the Criminal Procedure Code is an effort to realize the protection of human rights as the aim and nature of the criminal procedural law. However, as described in the previous discussion (first) in practice the actions of initial investigators who are limited to carrying out preliminary investigation without regard to cases that have a direct relationship with the case being investigated, have the consequence of not realizing criminal law protection, especially *in concreto*.[40] The limitations of the preliminary investigator's actions are a loophole so that judicial disputes occur, which, if viewed from the perspective of Rescoe Pound's interest theory, should not have happened.

Prejudicial dispute arrangements in Point 5 part III of *Prejudicieel geschil*, SEMA No. 04 of 1980 emphasized that "*criminal judges are not bound by decisions of civil judges*", there should be no need. The reason is that both criminal and civil cases will lead to the same interests, which are social interests. Indeed, civil law is private law, but the legal structure does not pay attention only to individuals separately, but to the relationship between individuals. This relationship does not mean there is an exchange between parties, but the relationship is seen as a unit.[41] At this stage, civil law which is private in nature will ultimately lead to social interests, as criminal law which is public in nature.[42] Thus, the provisions in Point 3 part III of *Prejudicieel geschil*, SEMA No. 04 of 1980, which stipulates that civil provisions must be decided in advance before criminal prosecution is considered, should not be a recommendation as stipulated later in Point 5. This view can be strengthened by Chaerul Huda's view which states that SEMA No. 04 of 1980 and Perma No. 1 of 1956 were born when the courts were still simple and not as developed as they are now so these two regulations should be corrected.[43]

Thus, the preliminary investigation stages (as stipulated in the Criminal Procedure Code and its derivative regulations) which are the entry point for judicial disputes, need to be adjusted so that the preliminary investigation stages can truly realize what is the purpose and nature of criminal procedural law. One of these adjustments is through systematic interpretation carried out by preliminary investigators in the preliminary investigation process.

Basically, the law is not something that is simply available, so that at any time the judge can apply it to the facts. Likewise, with events that occur, judges cannot simply derive existing legal rules without paying attention to the problems surrounding these events. At this stage, what is needed is an interpretation of the text of the law while still adhering to the text of the law in question.[44] Laws containing general and abstract legal norms only regulate in outline what is obligatory (*obligatre*), what is prohibited (*prohibere*), and what is permissible (*permittere*). Paul Scholten argued that law is basically an open system, but within the legal system, there are open systems and closed systems.[45] As an unfinished text and not a final text, an open system

40 Seeing in practice the actions of preliminary/initial investigators who are limited to carrying out preliminary investigations without paying attention to cases that have a direct relationship with the case being investigated (as happened in criminal cases related to Civil Case Number 1912 K/Pdt/2001), it can be said that legal protection crime, especially *in concreto*, has not really materialized. The reason is that the determination of the suspect, in this case, violates the values of the purpose of criminal law to protect the social interests as a collective from actions that threaten or even harm them, whether coming from individuals or groups of people (an organization).

41 Mochtar and Hiariej, *Dasar-Dasar Ilmu Hukum*, 7.

42 Lihat kembali Gambar 1. Proses Penyeimbangan Kepentingan pada Bentuk Tertentu yang Memiliki Tingkat dan Kualitas yang Sama dalam Teori Kepentingan Rescoe Pound.

43 Hukumonline.com, "Penerapan Prejudiciel Geschill Dalam Perkara Publik Dan Privat," July 2, 2007, https://www.hukumonline.com/berita/a/penerapan-iprejudiciel-geschilli-dalam-perkara-publik-dan-privat-hol17060/?page=all.

44 Serlika Aprita and Rio Adhitya, *Filsafat Hukum* (Depok: Rajawali Pers, 2020), 142.

45 Sarah Sarmila Begem, Nurul Qamar, and Hamza Baharuddin, "Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (HAM) Berat Melalui Mahkamah Pidana Internasional," *SIGn Jurnal Hukum* 1, no. 1 (September 5, 2019): 4, https://doi.org/10.37276/sjh.v1i1.28.

views that regulations open the possibility for different interpretations of who uses them. It is because of that interpretation that the rules are always changing. This change occurs to fulfill legal objectives as well as the development of an increasingly modern era. The science of law, which among others consists of authoritative texts, can only be understood through methods specially created to understand it. At this point, it seems that Paul Scholten's view is absolutely correct, which emphasizes that the study of law must be carried out by educated people.[46]

Normatively, interpretation is implicitly regulated in Article 5 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power (Judicial Power Law) which reads that Judges and Constitutional Justices are obliged to explore, follow, and understand legal values and sense of justice in society. This action is a consequence of Article 10 paragraph (1) of the Judicial Power Law which affirms that the Court is prohibited from refusing to examine, adjudicate, and decide on a case filed on the pretext that the law does not exist or is unclear, but is obliged to examine and adjudicate it. Based on these provisions, it is clear that the court has an important position in the legal system of the Unitary State of the Republic of Indonesia (NKRI). According to Mochtar Kusumaatmadja and B. Arief Sidharta the judiciary has a function that essentially completes written legal provisions through law formation (r*echtsvorming*) and legal discovery (*rechtsvinding*). In other words, judges in the Indonesian legal system, which are basically written, have the function of making new laws (*creation of new laws*).[47]

This interpretation concept can be used by initial investigators in carrying out a series of preliminary/ initial investigations in making light of a criminal event. Preliminary investigative actions as a first step must be able to ensure that the case being handled has been investigated in the context of relations with other cases, for example, civil cases or state administrative cases. The act of ensuring is intended that the criminal incident being handled by preliminary investigators will not be influenced by violations of civil rights or state administration. As the main indicator, preliminary investigators must pay attention that the parties involved in criminal cases as well as civil cases or state administrative cases are the same parties. For example, Article 284 of the Criminal Code stipulates that before a criminal judge decides on the crime of adultery committed by a husband, a civil decision must first be made regarding the divorce between the wife and the husband accused of adultery. This means that the examination of criminal cases must be suspended until a civil decision is made, in which case the parties are husband and wife. In cases of alleged adultery, the wife is the complainant, who is then represented by the state/prosecutor, and the husband is the reported party. Thus, the party disputing in a civil case is the same as the party litigating in a criminal case.

The similarity of litigants in cases that use *prejudiciel geschil* (prejudicial disputes) is very important. It was Chaerul Huda's view in the alleged corruption case on the extension of Building Use Rights (HGB) Numbers 26 and 27/Gelora which involved two former officials of the National Land Agency (BPN). Chaerul Huda considered that the use of prejudiciel geschil (prejudicial dispute) in this case was inappropriate. The reason is that in a civil case that is considered to have a connection with the intended criminal case, namely a civil case filed at the South Jakarta District Court involving PT. Indobuildco as the plaintiff and BPN, the State Secretariat (Sekneg), and the Public Prosecutor as the defendant, the parties to the case differed between criminal cases and civil cases. In the alleged criminal act of corruption extending Building Use Rights (HGB) Numbers 26 and 27/Gelora, the parties involved were the Public Prosecutor (JPU) and BPN, while in civil cases, the parties involved were PT. Indobuildco and the Secretary of State so that Chaerul Huda was of the view that the criminal case and the civil case in question have no relationship.[48]

Systematic interpretation carried out by Initial investigators through the act of ensuring is the act of interpreting statutory regulations by connecting them with other legal regulations, or with the entire legal

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46 Rocky Marbun, "Keterlemparan (Gowerfen-Sein) Hukum Pidana Dalam Rasio Tindakan Instrumental Terhadap Direksi Sebagai Rechts Persoon Dalam Praktik Peradilan Pidana," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 1 (October 29, 2018): 1, https://doi.org/10.25105/hpph.v1i1.3536.

47 Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum, "Dialektika Penalaran Hukum Sistemik Ke Arah Penalaran Hukum Non-Sistemik: Basis Nilai Penalaran Hukum Non-Sistemik | Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum," August 10, 2022, 40, https://ejournal.uinsaid.ac.id/index.php/al-ahkam/article/view/4030.

48 Hukumonline.com, "Penerapan Prejudiciel Geschill Dalam Perkara Publik Dan Privat."

system.[49] Initial investigators apart from using the Criminal Procedure Code and the Criminal Code as well as other provisions governing offenses outside the Criminal Code, must also use laws and regulations both in the civil and state administration fields as long as the criminal act in question is related to civil or state administrative cases. For example, in the case described in the previous section, the act of vandalism must not only be seen from the perspective of the Criminal Code but also to see it from a civil perspective to ensure that the land on which the alleged criminal act of vandalism occurred is really the land belonging to the complainant. This needs to be done because if the land does not belong to the complainant, then the elements of the criminal act of vandalism regulated in Article 406 of the Criminal Code cannot be fulfilled.

The use of systematic interpretation in preliminary investigations as an act of ensuring can be done by means of research and analysis of documents.[50] However, it needs to be underlined that given the capacity and capability of preliminary investigators who from the start are intended to investigate criminal cases from a criminal law point of view, preliminary investigators do not really have to be positioned to carry out systematic interpretations like a judge.[51] For this reason, the actions taken by preliminary investigators must be limited to reading opportunities for actions to file civil lawsuits or state administrative requests from parties involved in the cases being investigated, and to pay attention to the similarity of the parties involved in these cases. Civil lawsuits as well as state administrative applications in question must have a close relationship with the criminal case being investigated and can have direct consequences for fulfilling the elements of the alleged criminal act being investigated. Basically, if a civil lawsuit or a state administrative request from a party involved in the case being investigated actually occurs, the preliminary investigator will later be assisted by the judge to ensure that the act is truly a criminal act through a judge's decision on civil or state administrative cases in question.

Furthermore, even though the systematic interpretation that will be carried out by preliminary investigator is conducted by means of research and analysis of documents, the objectives of the preliminary investigation still refer to the current provisions of the Criminal Procedure Code, which include people, objects, or goods, places, events/incidents, and/or activities.[52] Systematic interpretation does not only need to be carried out by preliminary investigators when the preliminary investigation is carried out in the field (research and analysis of documents), but also during the implementation of the case title to ensure that the incident being investigated is a crime or not a crime, so that it can proceed to the full investigation stage, or delegated to the competent authority, or terminated the preliminary investigation.[53]

The consequences of using systematic interpretation by initial investigators will demand that preliminary investigators are not limited to carrying out preliminary/initial investigations by referring only to the Criminal Procedure Code (and its derivative regulations) which are formal legal provisions for enforcing criminal law regulated both in the Criminal Code and offenses outside the Criminal Code. As is known, in carrying out preliminary investigations, preliminary investigators refer to the Criminal Procedure Code and its derivative regulations, such as the Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Investigation of Criminal Acts (Perkapolri No. 6 of 2019) which is a technical document of initial investigation and full investigation. The preliminary investigations as stipulated in the Criminal Procedure Code through Article 1 point 5, 102-105, was followed up by Police Chief Regulation No. 6 of 2019 through Article 5 to Article 9, with more technical arrangements such as preliminary investigations activities, preliminary investigations objectives, preliminary investigations plans, reports on preliminary investigations results and case titles. If it is connected with a systematic interpretation that needs to be carried out by the preliminary investigator, then the preliminary investigator may no longer be trapped in a sentence like " *according to the*

49 Sitti Mawar, "Metode Penemuan Hukum (Interpretasi Dan Konstruksi) Dalam Rangka Harmonisasi Hukum," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 1, no. 1 (2020): 12.

50 "Preliminary investigative activities are carried out by: a. crime scene processing; b. observation; c. interviews; d. surveillance; e. under cover; f. tracking; and/or g. document research and analysis." Article 6, paragraph (1), Kepala Kepolisian Negara Republik Indonesia, "Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 6 Tahun 2019 Tentang Penyidikan Tindak Pidana" (2019).

51 Article 1, point 4, of the Criminal Procedure Code [KUHAP] states, "Initial investigators are police officials of the Republic of Indonesia who are authorized by this law to conduct preliminary investigation". The phrase "this law" is interpreted as the Criminal Procedure Code [KUHAP], which is formal criminal law.

52 Article 6 paragraph (2), Ibid.

53 Article 9 paragraph (1) and (2), Ibid.

method regulated in this law" in Article 1 number 5 of the Criminal Procedure Code which means that the act of preliminary investigation is specific to the method of preliminary investigation with reference to the Criminal Procedure Code. More than that, preliminary investigators should not be limited to interpreting the preliminary investigative activities stipulated in Article 6 of the Chief of Police Regulation No. 6 of 2019 which is limited through the lens of criminal law. This means that preliminary investigation activities, in particular those carried out by means of research and analysis of documents, may not only be done using a purely criminal perspective but also using a civil and state administration perspective.

In the end, the author is of the opinion that the interpretation of a legal norm carried out by preliminary investigators is a natural thing as long as it is done with a clear purpose, which is to uphold law and justice. This is to avoid the reality that interpretation methods produce different views of legal norms that have been ratified. Law is neutral in nature; legal neutrality cannot guarantee that those who win are right and those who lose are wrong. In practice law enforcers are guided by the provisions of the legal system in force in Indonesia; in the legal system it is taught that interpretation is a characteristic of decision-making, thus it can be said that law is the art of interpretation (*law is the art of interpretation*).[54]

4. CONCLUSION

In practice, the actions of preliminary investigators who are limited to carrying out preliminary investigationa without paying attention to cases that have a direct relationship with the case being investigated, have not been able to provide legal protection (both protection *in abstracto* and *in concreto*). The reason is that such preliminary investigative actions open up opportunities for judicial disputes to occur, which in practice harms the values of the purpose of criminal law to protect the social interests as a collectivity from actions that threaten or even harm them, whether coming from individuals or groups of people (an organization).

The occurrence of prejudicial disputes can be avoided through the initial investigator's systematic interpretation of the stages of preliminary investigation to broaden the interpretation of the phrase of preliminary investigation stages in the Criminal Procedure Code and its derivative regulations. Systematic interpretation is carried out in a limited manner, which is simply to read the possibility of civil lawsuits or state administrative requests from parties involved in the case being investigated. In addition, it ensures the similarity of the parties involved in criminal cases as well as civil cases or state administrative cases in question. These actions aim to guarantee whether the criminal case being handled by preliminary investigators does not have any connection with cases in other areas of law, which will result in the failure to fulfill the criminal element in the act being investigated. The use of systematic interpretation in preliminary investigations can be done by means of research and analysis of documents. Systematic interpretation does not only need to be carried out by preliminary investigators when the preliminary investigation is carried out in the field (research and analysis of documents), but also during the implementation of the case title to ensure that the incident being investigated is a crime or not a crime so that it can proceed to the full investigation stage, or delegated to the competent authority, or terminated in the preliminary investigations.

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54 Mochtar and Hiariej, *Dasar-Dasar Ilmu Hukum*, 467.

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