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THE ADOPTION OF INDONESIA PRE-PROSECUTION INSTITUTION A LEGAL FRAMEWORK TO FULFILL THE HUMAN RIGHTS OBLIGATION IN INDONESIA

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Abstract: This research aims to provide a framework law for Indonesia's Justice Institution. Furthermore, the research herein also seeks to understand how the pre-prosecution institution as an aspired institution may enhance Indonesia's obligation to fulfill its citizens' human rights. The research herein applies the normative juridical method through the gathering and application of secondary data consisting of regulations and legal doctrines. Furthermore, the author also applied a doctrinal approach by gathering regulations related to the issues, and a conceptual approach in gathering literature consisting of legal theories, principles, and doctrines. In analyzing the legal issues, the author may express that investigation as a due process is indeed qualified as an integral part of due process in a form of prosection. Nevertheless, existing Indonesia's Procedural Criminal Law, in concreto Law Number 8 the Year 1981 does not provide how Indonesia's police as an investigator shall coordinate with Indonesia's attorney general as the prosecutor. This issue leads the author to apply Schutter's opinion regarding how framework law shall be adopted to ensure a state party to a human rights treaty shall fulfill its obligation. By stating that Indonesia shall provide a legal framework in a form of regulation regarding the pre-prosecution, Indonesia may fulfill its citizens' human rights and conduct its criminal due process at the same time.

Keywords: Pre-Prosecution, Legal Framework, Responsibility to Fulfill, Attorney General, Due Process

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Introduction

As a member state of the International Covenant on Civil and Political Rights [ICCPR], it can be construed that Indonesia shall respect its citizens' human rights, protect them, and fulfill them. The premise herein is based on the trilogy of obligations that exist in the International Human Rights Law [IHRL] consisting of the responsibility to respect, protect, and fulfill its citizens' human rights as the typology proposed by Eide (Schutter (a), 2021). Meanwhile, for the purpose to provide a brief introduction, it can be understood the ICCPR is one of the human rights treaty binding upon its ratifying states which protects civil and political rights that come into force as soon as that state ratifies it (Raso and Hiligoss, 2018).

In explaining the ontology of IHRL, Lankford, and Fellmeth (2022) expressed that IHRL norms have a definite and significant implication on how public policy shall be structured. In line with the public policy matter, the European Law Institute (2022) inter alia explained in the context of the European Union, that a National Action Plan under a rights-based approach based on human rights norms should be adopted by each of its member states. Despite such a premise being addressed in the EU context, the author opined that Indonesia shall transpose the National Action Plan Concept to a certain measure that may fill the existing gap which may bar Indonesia from providing its appropriate civil and political rights.

In this article, the author decided to address human right obligation related to Indonesia's criminal due process unable to be fulfilled due to the lack of public policy structurization. The decision herein is based on Arief's opinion (2008) stating that Indonesia's Police and Indonesia's Attorney General in the context of the investigation, and prosecution shall be synchronized, harmonized, coordinated, and monitored in advance. This doctrine has been triggered in the development of Indonesia's Criminal Procedural Law due to the lack of a legal framework or national action plan which may provide certainties in the matters therein.

Such a legal gap can be seen in Article 110 of the Indonesia Criminal Procedural Law Code (Kitab Undang-Undang Hukum Acara Pidana) (hereinafter mentioned as [KUHAP]), inter alia providing the rights of the attorney general as a prosecutor to receive files from the police as a prosecutor and to determine whether those files have provided adequate evidence or not (Keuangan (a), 2022). From the stipulation herein, the author views that both the standalone police obligation and the prosecution right may cause their complexity in practice. Such complexity can be expressed in form of circumstances where the police and the prosecutor may sometimes have difficulties in communicating and coordinating the files related to the entire criminal due process.

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Besides having a practical implication, the problem herein is also not far from the academic realm. Widjaja (1997) stated that from the perspective of policy, the existence of pre-prosecution is needed to unify the investigation and prosecution so that both matters cannot be divided extensively. Furthermore, the standalone formulation explained herein can be seen in Article 30 of Indonesian Attorney General Law stating that in conducting the pre-prosecution, the Attorney General may monitor the development of an investigation after receiving the notification from the investigator, study and/or research the result of the investigation received from the investigator, and providing instruction for the prosecutor to complete the files and to determine whether those files can be delegated to the prosecution stage or not (Keuangan (b), 2022). From this formulation, it can be addressed that the insufficient legal certainties herein may have their human rights implication.

The implication may arise as an obstacle to the condition of proportionality as the condition that determines whether a human right application fails or succeeds (Schutter (b), 2021). From the point of view of the victim, the lack of coordination between the investigator and the prosecutor may become an obstacle for him or her to claim his or her legal rights including compensation. Meanwhile, from the point of view of the suspect or perpetrator, detainment for an undue period may also cause his or her right violated. Therefore, it can be construed that the lack of certainties regarding this coordination may cause the civil and political rights related to the victim and the perpetrator violated.

Therefore, in the article herein, the author decided to provide a discussion on how the pre-prosecution shall be reconstructed based on a framework law offered by the author himself. The reconstruction herein is necessary to provide certainties in Indonesia's (Criminal) Justice Institution. Furthermore, the author also decided to provide a further discussion on how the aspired pre-prosecution institution stated by the author may enhance Indonesia's capacity to enforce its obligation to fulfill its human rights as a member state of the ICCPR. In achieving these purposes, the authors divided the discussions of this article into two parts herein.

The first part is discussing the reconstruction or the reformulation of Indonesia's pre-prosecution institution based on the legal framework or framework law stated by the author based on relevant regulations and doctrines. Meanwhile, the second part of this article discusses how the aspired pre-prosecution institution may ensure Indonesia enforces the obligations under ICCPR. These discussions are provided by the authors based on the research methods explained by the authors herein.

Methods

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The research herein is applying the normative juridical methods by gathering secondary data in a form of law in the books and applying those laws to answer the formulated issues above (Ammiruddin and Asikin, 2018). Furthermore, the applied method herein is also complemented by the doctrinal approach and the conceptual approach explained herein. The doctrinal approach explained herein is applied through the gathering and application of related legal substances under Indonesia's regulations to answer the following legal issues (Ammiruddin and Asikin, 2018). Meanwhile, the conceptual approach is applied by gathering legal scholars' opinions in the form of theories, principles, and definitions in answering the mentioned issues above (Ammiruddin and Asikin, 2018). Lastly, the authors also gather secondary data in a form of primary legal sources such as applicable Indonesian regulations and applicable international treaties, and secondary legal sources such as scholarly opinions regarding the primary legal sources in discussing the issues of this article.

Result / Discussion

1. The Reconstruction of Indonesia's Pre-Prosecution Institution based on A Framework Law Concept

In answering the first discussion herein the authors applied Pound's doctrines regarding Law as a Tool of Social Engineering hereinafter mentioned as the Social Engineering Theory. The theory herein is applied as the main analytical basis of the author in discussing this issue. In expressing his theory, Pound stated that law as a tool for social engineering can be explained as an illustration of how law shall be construed as means to regulate human behavior, and not as an instrument to formulate human behavior (Gochhayat, 2011). Furthermore, Pound also stated that the social engineering role herein may only be achieved once a law can balance the existing conflict of interests in society (Gochhayat, 2011).

However, the application of this theory has its constraints. The first constraint of this theory application is the notion that such balance may only be achieved if one of the interests of the societies is sacrificed (Gochhayat, 2011). Due to the weakness therein, the author decided to apply Pound's doctrine regarding how law can be applied as an instrument of social change. In explaining Pound's doctrine, Prakoso (2021) stated that there are six steps to actualize the role of law as a tool of social change. Those six steps are: 1.) Learning the real social effect from legal institutions and legal teachings; 2.) Conducting sociological studies in preparing regulation(s); 3.) Conducting studies regarding the

effectiveness of a legal norm; 4.) Conducting studies on law history on how legal norms were born and developed; 5.) The urgency of law enforcers to solve legal issues is not only based on regulations per se, but also reasonings, and 6.) Trying the effective means to achieve legal purposes (Prakoso, 2021).

In addressing his opinion, Vago and Barkan (2018) expressed that the law as a tool of social engineering and social change are the same. Both concepts can be stated as the same matters since both the role of law as a tool of social engineering and social change is set to fulfill the need of humans (Vago and Barkan, 2018). By understanding Vago's interpretation of these two theories, the author applies these two theories at the same time in the passage herein. This statement can be addressed by the author since the aspired pre-prosecution institution referred to in this paper has a purpose to balance the interests of both the investigator and the prosecutor according to the institution's point of view, and to balance both the victim and the suspect interests according to the society's point of view. Furthermore, the idea of the author herein is also based on the author's opinion regarding how the existing law shall be changed by an enhanced institution based on a new legal norm.

As the main Indonesian law regulating due process in a criminal act, KUHAP has become the basis of the four law enforcers consisting of the police as the investigator, the attorney general as the prosecutor, the judges as the examiner, and the verdict provider, and the advocates as the counsel of the defendant (Sriwidodo, 2020). In consolidating the premise herein, the author quotes the stipulation from KUHAP herein. From Article 109 paragraph (1) of KUHAP, it can be understood that the investigator shall notify the prosecutor regarding the fact that a criminal act occurs (Keuangan (a), 2022). Furthermore, paragraphs (2) dan (3) of this stipulation furthermore inter alia stated that if an investigator decided to stop the investigation process since the occurred action is not a criminal act or due to lack of evidence, the finding therein shall be notified to the prosecutor.

Furthermore, and as is explained above, Article 110 KUHAP inter alia ordered the investigator to immediately submit the files of the case to the prosecutor, and the prosecutor has the authority to determine whether the files therein are complete or incomplete and the prosecutor is obliged to provide instructions if the files therein are incomplete (Keuangan (a), 2022). In explaining this stipulation, the author also explains Article 139 KUHAP which shall be viewed as an interrelated stipulation with Article 110 KUHAP. The stipulation gave the authority for the prosecutor to receive or to re-receive the outcome of an investigation and to determine whether the files therein are delegatable to the court or not (Keuangan

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(a), 2022). The formulation herein is the implication of the Opportunity Principle which provides authority to an attorney general as a special organ authorized to conduct the prosecution (Annisa and Saini, 2022). The referred authority of the prosecutor is also known as the full power of the attorney general or dominus litis (Annisa and Saini, 2022).

Besides being regulated under KUHAP, Burhanuddin (2022) stated that Indonesia's Attorney General is obliged in controlling the due process of a criminal case(s) due to its central position in law enforcement or as dominus litis. Furthermore, the author understands the doctrine therein under the notion that the attorney general is the sole institution that determines whether a case can be delegated to the court or not (Burhanuddin, 2022). This notion is in line with Article 139 KUHAP inter alia stating that once the prosecutor received or re-received the outcome of an investigation from the investigator, the prosecutor may determine whether such case has fulfilled the requirements to be submitted to the court or not (Keuangan (a), 2022).

The full authority of the attorney general as a prosecutor is stipulated under Article 1 number 1 of Indonesia's Attorney General Law stated that the attorney is a governmental institution with a judiciary function of conducting state action in prosecution and other authorities based on the law (Keuangan (b), 2022). Furthermore, Article 2 paragraph (1) of this law stated that in conducting its judiciary function, the attorney general conduct it independently (Keuangan (b), 2022). In interpreting this stipulation, Burhanuddin (2022) stated that the attorney general has functioned as both the judiciary process and the state authority in the matter of prosecution due process.

By considering the doctrines mentioned above, and the stipulations under both KUHAP and Indonesia's Attorney General Law, the author stated that the attorney general has the authority in conducting prosecution as due process which does not only enforce the criminal law under Indonesia's Jurisdiction but also enforce the protection of human rights in the jurisdiction therein. However, due to the lack of coordination that often occurs in the practice of KUHAP vis-à-vis the police, the attorney general may not effectively conduct the existing pre-prosection process. The issue herein is explained by the author further after the author explained the authority of the police in the mentioned due process.

As the investigator of a criminal act, the police should invoke a memorandum (mentioned as Berita acara in Bahasa Indonesia) and submit the related files to the prosecutor according to Article 8 KUHAP (Keuangan (a), 2022). Such authority shall be interpreted systematically

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with Article 1 number 1. KUHAP stated that the Investigator is an Indonesian police officer or a state civil officer who was given the authority to conduct an investigation (Keuangan (a), 2022). Besides that, Article 8 is also in line with Article 1 number 2. KUHAP constitutes investigation as a process regulated under KUHAP to seek and gather evidence(s) to enlighten the occurred criminal act and to find the suspect.

Besides being regulated under KUHAP, the authority of the police as an investigator is also regulated under Indonesia's Police Law. The following authority therein is covered in Article 13 of Indonesia's Police Law stating that the main task of the police is to ensure security and order in the society, enforce the law, and provide protection, and service to society (Keuangan, (c), 2022). Furthermore, Article 14 letter g. of Indonesia's Police Law inter alia states that Indonesia's Police is tasked to conduct an investigation on every criminal act based on KUHAP and other regulations (Keuangan, (c), 2022). Lastly, the police authority in exercising this due process rights is also formulated under Article 16 of this law inter alia stating that the police are authorized in conducting an investigation, stop the investigation, and submit files related to the investigation to the prosecutor (Keuangan (c), 2022).

By understanding both the authorities of the prosecutor and the police explained above, the authors opined that despite these two institutions being regulated under a different law, the relationship between the police and the attorney general is indeed interrelated. The opinion herein is based on Article 14 which inter alia regulates the authorities of the prosecutor including exercising the pre-prosecution process. Letter b. of this stipulation stated that "the prosecutor has the authority to conduct pre-prosecution of a constraint that occurs during the investigation process by taking Article 110 paragraph (3) and (4) into account, by providing instruction(s) to the investigator for the improvement of the investigation." (Keuangan (c), 2022) From this sentence, it can be construed that the pre-prosecution according to Indonesian Law only consists of filing correspondence by the prosecutor vis-à-vis the investigator.

Despite both institutions mentioned above shall work in a coordinative manner (Maringka, 2017), the author viewed these two institutions are often unable to work in such a manner. This lack of coordination is caused by the fact that KUHAP does not determine the grace period regarding how long the investigator shall fulfill his or her obligation in completing the related files based on the prosecutor's input. Furthermore, another problem in a form of the investigator intentionally decided not to return the file to the prosecutor which cause a revolving

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door for the criminal due process application. From the empirical facts known by the author herein, the author applies Pound's theory by stating that the law does not only have to balance the interests of both the police and the attorney general, but it shall also balance the interests of both the suspect or perpetrator and the victim.

Such balance is necessary for the protection of human rights in concreto the civil and political rights owned by the suspect or perpetrator. The first right that will be violated due to this due process constraint is the right to be free from an arbitrary arrest or detention based on Article 9 ICCPR (Nations, 2022), since the omission by the investigator may cause the suspect to be arbitrarily arrested. The second violated right is the right to be equal before courts or tribunals constituted under Article 14 ICCPR. That premise can be addressed by the author since the following right is entailed with one of the minimum guarantees of equality which is the right to be tried without undue delay (Nations, 2022). And since the right mentioned in Article 14 ICCPR shall be interpreted extensively in form of an investigation and prosecution process shall be included, the current constraint occurring in Indonesia may also violate the right to be equal before the law of both the suspect and perpetrator and the victim written in Article 16 ICCPR (Nations, 2022).

According to the victim's perspective, the victim's right to be recognized, secured, protected, and treated equally before the law mentioned in Article 3 paragraph (2) Indonesia's Human Rights Law is violated (Keuangan (d), 2022). Besides that, other victims' right which is the right to prosecute before the law constituted under Article 5 paragraph (1) Indonesia's Human Rights Law is also violated (Keuangan (d), 2022). Last but not least, the rights to acquire justice owned by a criminal act victim under Article 17 of Indonesia's Human Rights Law may also be violated herein. Therefore, it can be seen that the positive criminal procedural law discussed in this article may entail the violation of material law in a form of human rights law.

From all the explanations above the questions lie in a form of "How can the current law may accommodate the lack of coordination that exists within the criminal due process institutions?", "How may the law play its role to balance the human rights protection of both the suspect or perpetrator and the victim?". The author decided to answer these questions in general prima facie by stating that the notion of law as a tool of social engineering shall play its role in the issue herein. This theoretical framework can play its role by balancing the interests of these four actors although particular interests shall be sacrificed. Furthermore, the current law shall also be changed to actualize the role of law as the

tool of social change. These theories are explained in the passages herein.

In applying these theories, the author transposed Widjaja's (1997) opinion regarding the restructuring of Indonesia's criminal justice system through the urgency of the adoption of pre-prosecution, pre-judiciary, and supervision judges as new institutions. Therefore, the authors stated that Indonesia shall consolidate its existing pre-prosecution stipulations mentioned above through the adoption of government regulations regarding pre-prosecution in criminal due process. In adopting this aspired law or ius constituendum (Syamsuddin, 2019), the government shall establish a quasi-tribunal that involves both the police as the investigator and the attorney general as the prosecutor to ensure that the attorney general may exercise its role as dominus litis in an appropriate manner.

From the explanation above, the author emphasized that this aspired law shall be able to balance the application of the investigator's authority and the prosecutor's authority according to KUHAP and each of their legal basis. As Pound explained in the quotation above, the application of law as a social engineering instrument may cause an effect in a form of a condition where the interest of a group is deprived. Therefore by explaining the fact that the attorney general is a prosecutor and has the full power in determining whether a case shall be delegated to a court or not, the police thereby have to be monitored through the adoption of this aspired law. By sacrificing the authority of the investigator in a practical manner (or without reducing its authority under the written law), the concept of law as a tool of social engineering shall prevail.

Meanwhile, in applying the law as a tool for social change, the author transposed one of the statements set by Prakoso (2021): the studies on the effectiveness of legal norms. By providing all the explanations regarding the authorities of the police and the prosecutor above, and based on the empirical fact described by the author as a member of Indonesia's attorney general, the author stated that currently, Indonesia's procedural law is lack effectivity. Due to this lack of effectiveness, the author needs to state that to achieve the aspired social change, itself shall also be changed. This is based on the notion that law is set as an instrument to regulate human behavior, despite it shall not be viewed as an instrument to formulate human behavior (Gochhayat 2011). By the re-regulating process herein, the coordination between the police, and the attorney general may be achieved.

Besides Pound's theory explained above, the premise herein is also Schutter's (b) (2021) opinion regarding the requirement as the threshold

for limiting the human right of an individual. By adopting the discussed legal norm herein, Indonesia will have a legal norm that may balance the human rights of the perpetrator explained above, and the human rights of the victim as they are mentioned above. In explaining this doctrine, Schutter (b) (2021) stated that the judicial decision on Hatton and others v. United Kingdom can be viewed as an illustration of where certain rights of a particular individual or group can be sacrificed to protect others' rights. This can be seen by knowing that the group of people living near the airport shall face the noise caused by the aircraft (Schutter (b), 2021).

2. The Role of the Aspired Pre-Prosecution Institution to Ensure the Fulfillment of Human Rights under the International Covenant on Civil and Political Rights

Before providing further discussions, allow the author to provide the meaning of framework law or legal framework under the doctrine herein. Framework Law can be defined as a concept that is transposed into legislative commitments and policies that aim at the fulfillment of human rights (Schutter (d), 2021). Furthermore, this concept allocates human rights responsibility under human rights treaties to each branch of the government of a state by setting a precise time-bound target and encouraging permanent evaluation (Schutter (d), 2021). In this article, the author only provides a framework law that consists of the encouragement for the police and the attorney general to conduct a permanent evaluation since this aspired law is set to be applied without a limited period.

In providing the discussions of these legal issues, the authors will apply the framework law concept explained by Schutter and related doctrines recognized in the development of IHRL. In explaining the obligation to fulfill human rights, Schutter (c) (2021) stated that there are three duties of a state consisting of the duty to facilitate, the duty to promote, and the duty to provide a normative instrument for its citizens (Schutter (c), 2021). Furthermore, the duty to facilitate means that a market shall be allowed to provide social goods that are required for human rights (Schutter (c), 2021). Meanwhile, the duty to promote means states are obliged to provide information so that its citizens may make the right choices. And lastly, the duty to provide means that the state is obliged to provide the necessary goods if the market is unable to conduct such action (Schutter (c), 2021).

Even though the explanations above are strongly related to modern economic, social, and cultural rights, the author provides further elaboration regarding the correlation of these sub-elements with the

existence of traditional civil and political rights. This can be addressed by the author since the author addresses his premise based on Schimmel's opinion (2022) in explaining the relation of IHRL with Refugee Law by stating that the legal substance of the IHRL treaty is dependent on the state but it does not offer any substantive legal resources to its citizens, and state routinely violating their human rights. This notion may be connected with the notion stated by Arinanto (2021) regarding the fact that cultural relativism is inherent in the practice of IHRL applied by the state as a member of IHRL treaties.

From the existing constraints under IHRL treaties including ICCPR, and the doctrines above, the author may state that the aspired law explained in the first discussion explained above shall be viewed as an antithesis of the disparity of the prosecutor authority and the investigator authority under KUHAP. Such disparity existed since the police institution was formulated as the helper of the prosecutor before 1981 or when criminal procedures under Herziene Indlansch Reglement were still applicable (Santoso, 1999). After the KUHAP was stated to the state's gazette, both the police and the prosecutor worked in a coordinative manner (Maringka, 2017). This nature however has caused an undue delay in the operations of criminal due process in concreto in the investigation and the prosecution stages due to the blurred lines between these two stages (Maringka, 2017).

Therefore, the author hereby transposes Burhanuddin's opinion (2022) stating that the position of an investigator and a prosecutor shall not be placed under the same stage. In line with the doctrine herein, the author stated that the aspired law herein shall provide a monitoring process during the period where an investigator is obliged to fulfill the order of the prosecutor if the investigation outcome is insufficient to state that a person has committed a criminal act. From this lege ferenda, the author stated that in the matter of pre-prosecution, the attorney general shall be attributed with the power to monitor the police. And to ensure this monitoring process is conducted in a non-arbitrary manner, the author opined that a quasi-tribunal shall be adopted in ensuring the monitoring process is conducted according to the formal procedural law, and the material law regarding the police and the attorney general authorities.

3. **Furthermore, the other reason why the state shall provide this quasi-tribunal institution is to ensure the fulfillment of the civil and political rights of the suspect or perpetrator and the victim explained above**.

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Such insurance can be actualized by giving power to that quasi-tribunal to examine both parties under a reasonable period to make sure that the investigator by effectively conducting their evidence-gathering process. This idea is in a line with Schutter's opinion regarding the duty to provide explainable under the notion where the state is obliged to provide a legal product to fulfill its citizens' human rights due to the legal uncertainties that exist due to the criminal procedural legal constraints explained above.

Despite a social hence institutional phenomenon where Indonesia's police and Indonesia's attorney general are often having their tension due to the brief legal history explained above, the author stated that the Vienna Declaration and Program of Action 1993 shall be applied. Susetyo (2019) explained that this declaration consists of the framework which claimed that all human rights are universal, indivisible, interdependent, and interrelated. By citing this doctrine, the author does not fully deny the cultural relativism concept, but for this matter only, the author opined that the legal framework regarding criminal due process shall transpose the legal substances under the ICCPR mentioned above to provide legal certainty and fulfill Indonesia citizens' human rights.

Besides achieving the two purposes mentioned above, the author also believes that this aspired law shall be viewed as Indonesia's commitment to conduct its primary responsibility as a party to the ICCPR. This premise is stated based on Oegrosoeno's opinion (2021) stating that Indonesia's membership in the ICCPR is entailed Indonesia's international responsibility in applying the covenant itself. Therefore, Indonesia shall provide a legal system that may support the membership herein (Oegrosoeno, 2021). Therefore, this framework law may not only utilize Indonesia's criminal procedure at the national level, but it may also utilize this procedure at the international level.

In providing this model law which provides balancing on the authority of the investigator and the prosecutor, and both the rights of the suspect or perpetrator and the victim the author took into account the anthropocentric nature of law. Arnold (2021) states that the ultimate objective of the law is to provide service for the human being, and hence to protect and promote it. He also stated that such service, protection, and promotion lie in the constitution of a state (Arnold, 2021). From this doctrine, the author may state that this aspired law in a form of a framework law does not only has validity under KUHAP and the institutional regulations mentioned above, but it will also be valid under Article 27 paragraph (1) Indonesia's Constitution regarding the equality before the law, and Article 28D paragraph (1) Republik of Indonesia

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Constitution regarding the recognition, insurance, protection and certainty under the fair law (Keuangan (e), 2022).

These validities may also be considered as a guide to providing legal protection at the domestic level which is very important in any democratic government (Mitrofan, 2021). Mitrofan (2021) may address such a notion since the presence of adopted international norms without supporting national law and constitutional norms will only make the presence therein meaningless. The presence of this aspired domestic law will also be in line with the notion stating that a legal norm has a purpose in guaranteeing individual freedom which may defend against any arbitrary infringement brought to the person's freedom (Mitrofan, 2021).

Conclusion

In closing this article, the author may state despite it being regulated under KUHAP, the authority of the police as an investigator, and the authority of an attorney general as a prosecutor is regulated under separate legal regimes. This fraction has indeed caused the pre-prosection under KUHAP may not to be conducted effectively. Due to these procedural constraints, the author opined that a government regulation regarding the pre-prosecution shall be established to provide balance for the authority of the police and the authority of the prosecutor in conducting the pre-prosecution itself. Furthermore, this government regulation is needed to provide balance for both the rights of the individual(s) claimed as the suspect or the perpetrator of a criminal act and the rights of the victim of the criminal act.

Acknowledgements

Furthermore, this framework law or legal framework shall also be viewed as the reflection of Indonesia in fulfilling its citizen's human rights in concreto civil and political rights. The legal framework herein shall consist of substances regulating the monitoring that shall be conducted by the prosecutor. Besides that, the aspired law herein or this legal framework shall also consist of the quasi-tribunal to ensure that the prosecutor will not arbitrarily exercise its authority and to ensure that the human rights of the suspect or the perpetrator and the victim are guaranteed. From this idea, the author may express that Indonesia may actualize the human rights norm under Indonesia's constitution and regulations, and hence it may conduct its primary responsibility as one of the parties of the ICCPR.

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