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**TRANSFORMATIVE LEGAL PROTECTION FOR  
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# TRANSFORMATIVE LEGAL PROTECTION FOR SUSPECTS IN PRE-TRIAL DECISIONS

Dede Suryana<sup>1</sup>

## ABSTRACT

This research employs the Transformative-Participatory Legal Method to enhance the protection of suspects in pre-trial proceedings. The aim is to apply the values of legal certainty, ensure fair treatment of suspects, and consider principles of justice and legal integrity in judicial decisions. The role of the judge is crucial in this process, as they must uphold independence and neutrality, employ careful legal interpretation, and consider human rights and progressive values in decision-making. All these steps are taken to improve the effectiveness of legal protection for suspects in pre-trial proceedings.

**KEYWORDS:** *Suspect protection; Pre-trial proceedings; Suspect rights*

## A. INTRODUCTION

The principle of presumption of innocence asserts that every suspect is considered not guilty until proven legally and convincingly guilty in a court of law. The burden of proving the suspect's guilt lies with the accusing party (the prosecutor) and must meet the standard of proof beyond a reasonable doubt. This aligns with the principle of equality before the law, ensuring that all individuals have the right to fair and equal treatment in court without any form of discrimination.

Furthermore, the principle of open court aims to make criminal justice proceedings accessible to the public, except in specific situations that require confidentiality or security. Another important aspect is the principle of free and voluntary testimony, where witnesses must provide their statements willingly without any pressure or coercion. Lastly, the principles of independence and neutrality of the judiciary demand that judges and judicial institutions remain independent and impartial in carrying out their duties when deciding a case. In order to achieve justice for all parties involved, the criminal justice process involves a series of steps, including investigation, arrest, inquiry, prosecution, trial, and final verdict. All these stages are conducted in accordance with applicable laws to ensure justice prevails in society.<sup>2</sup>

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<sup>2</sup> John Smith, *Criminal Justice System: Principles and Practices*, New York: ABC Publishing, 2022, hlm: 14.

Before delving into the realm of actual law and criminal justice, it is essential to clarify that criminal law is divided into two parts: substantive criminal law and procedural criminal law. Substantive criminal law covers actions that can be subject to punishment, who can be punished, and what penalties can be imposed. On the other hand, procedural criminal law is concerned with the methods of enforcing substantive criminal law. Procedural criminal law is also often referred to as criminal procedure law (Formele Strafrecht or Strafprozessrecht) and plays a crucial role in ensuring, implementing, and upholding substantive criminal law.<sup>3</sup> Furthermore, the presence of criminal procedural law is essential as it serves as a guide for law enforcement agencies and society to prevent vigilante justice.<sup>4</sup>

Indonesian Criminal Procedure Law, regulated in the Criminal Procedure Code (KUHAP) based on Law No. 8 of 1981, is considered a significant achievement of the Indonesian nation that strongly emphasizes the respect and protection of Human Rights. KUHAP places a greater emphasis on demonstrating a humanistic approach in every criminal justice process, representing a new way adopted by Indonesia. The purpose of establishing KUHAP is, without a doubt, to uphold an impartial system of law and justice, ensuring that its implementation aligns with legal and orderly principles.<sup>5</sup>

Investigators and public prosecutors have the authority to carry out coercive measures such as arrest, detention, search, and seizure to facilitate the examination of criminal offenses. Although these actions are recognized by the law, it remains essential to adhere to the principle of compliance with applicable laws and regulations. In law enforcement, it is crucial to carry out coercive measures in accordance with formal procedures and the authority established by the law. The principle of legal certainty involves limitations and authorities for arrest, types of detention, the execution of searches, and the seizure of property. All these actions must be documented in writing and should always protect the rights of the suspects. By understanding and applying these principles, law enforcement can operate more justly, in line with the existing legal rules, while safeguarding the rights of every individual involved in the legal process.<sup>6</sup>

Arrest and detention are related to the restriction of freedom. Search relates to personal privacy, while confiscation pertains to the forced taking of property. The rights to freedom, privacy, and ownership

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<sup>3</sup> Lilik Mulyadi, *Hukum Acara Pidana, Normatif, Teoritis, Praktik dan Permasalahannya*, Alumni, Bandung : 2007, hlm. 1.

<sup>4</sup> Bambang Poernomo, *Orientasi Hukum Acara Pidana Indonesia*, Amerta: Yogyakarta : 1988, hlm.2.

<sup>5</sup> Mien Rukmini, *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)*, Alumni, Bandung : 2009, hlm.149.

<sup>6</sup> Lilik Mulyadi, *Putusan Hakim dalam Hukum Acara Pidana (Teori, Praktik, Teknik Penyusunan dan Permasalahannya)*, PT Citra Aditya Bakti: Bandung, 2007, hlm: 8.

are fundamental human rights that must be safeguarded and respected. Therefore, any actions, including legal measures, that infringe upon these rights should be detailedly regulated to prevent abuses of power.

Moreover, steps are necessary to avoid unlawful detention that may harm suspects/accused individuals and their families. These steps are mostly outlined and regulated in the Criminal Procedure Code (KUHAP), which is a reassuring development. The hope is that these measures can provide guarantees and protections for human rights while preserving the dignity and worth of individuals in a rule-of-law state. One of these steps is Pretrial Procedure (Praperadilan).<sup>7</sup>

The Pre-Trial Institution plays a crucial role in the judicial process in Indonesia, with a focus on examining the validity of detention or legal actions before entering the trial stage. In this process, the institution examines both the formal and substantive aspects to determine whether the legal actions are legitimate. If it is found that they are not valid, the individual involved is released or the legal actions are canceled. On the other hand, if the actions are deemed valid, the case proceeds to trial. The clarity in the authority of the Pre-Trial Institution is vital to ensure that the legal process is fair, in accordance with applicable laws, and protects the rights of individuals involved.

Pre-trial is the authority of the district court to examine and decide on the following matters: 1) The validity of the arrest and/or detention of a suspect, at the request of the suspect or other authorized parties. 2) The validity of the termination of an investigation or prosecution at the request of interested parties, for the sake of upholding the law and justice. 3) Claims for compensation or rehabilitation from the suspect or other authorized parties if the case is not brought to court. Pre-trial is essential to ensure that law enforcement actions are in line with legal provisions and protect the rights of individuals.

With the existence of the Pre-Trial Institution, its main objective is to safeguard the fundamental rights of a suspect in presenting their defense and to ensure that their rights are upheld based on principles of justice and legal certainty. The institution also aims to monitor law enforcement agencies to prevent arbitrary actions against suspects, thus preserving human dignity and rights.

Article 77 of the Indonesian Criminal Procedure Code (KUHAP) regulates the Pre-Trial Institution, which has two main tasks. Firstly, the institution can examine whether an arrest, detention, termination of investigation or termination of prosecution has been conducted lawfully. If someone feels that their rights have been violated, they can file a pre-

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<sup>7</sup> Sudibyo Triatmojo, *Pelaksanaan Penahanan dan Kemungkinan Yang Ada dalam KUHAP*, Alumni, Bandung, 1982, hlm: 54

trial request to examine such actions. Secondly, the institution also provides compensation or rehabilitation to individuals if their criminal case is terminated during the investigation or prosecution stage. The Pre-Trial Institution plays a significant role in protecting individual rights and seeking justice within the criminal justice system.

Article 77 of the KUHAP provides protection for individuals' rights to test the validity of law enforcement actions and to receive compensation and rehabilitation if their criminal case is terminated during the investigation or prosecution stage. The Pre-Trial Institution plays an important role in ensuring justice and protecting individual rights within the criminal justice system.

Requests for pre-trial related to the validity of arrest or detention can be submitted according to Article 79 of the Criminal Procedure Code (KUHAP) by the suspect, the suspect's family, or a person appointed by them. The appointed person is given the authority by the suspect or their family to file the pre-trial request. Only those with a direct relationship to the suspect or those with legitimate authority are given the power to submit the pre-trial request, and this authority is not granted to others without a direct relationship or legitimate power.

In the context of the termination of investigation or prosecution, the parties eligible to file pre-trial applications to determine the validity of such actions include investigators, public prosecutors, and relevant third parties. The third parties falling under this category include suspects/defendants, the families of suspects/defendants, attorneys of suspects/defendants, and complainants/reporters who feel aggrieved.<sup>8</sup>

In Indonesia, the pre-trial examination is regulated by Law Number 8 of 1981 concerning Criminal Procedure Law. In the pre-trial process, the court will review the validity or legality of a legal action that has the potential to violate a person's constitutional rights before the case is brought to criminal court.

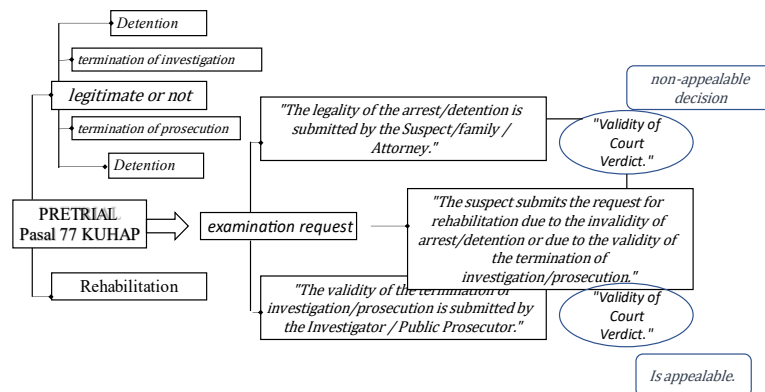
The pre-trial hearing is presided over by a single judge appointed by the Chief of the High Court or the Chief of the District Court. The court clerk's role is also to assist the judge in administrative tasks and the trial process. After the pre-trial examination is completed, the judge will issue a decision, which may include rejecting the pre-trial application, accepting the pre-trial application, or directing necessary actions to be taken. In the United States legal system, the role of the judicial institution in the preliminary examination phase varies depending on the applicable jurisdiction. In some jurisdictions, there is a special institution called a grand jury, which consists of a group of ordinary citizens tasked with

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<sup>8</sup> Darwan Prints, *Hukum Acara Pidana: Suatu Pengantar*, Djambatan: Jakarta, 1989, hlm: 1.

determining whether there is enough evidence to bring charges against someone in a trial. Grand juries are generally summoned by prosecutors and conduct their duties in secrecy.<sup>9</sup>

Article 83 of the Indonesian Criminal Procedure Code (KUHAP) states that decisions issued by pre-trial institutions based on Article 79, Article 80, and Article 81 of the KUHAP cannot be appealed. This means that if a pre-trial decision concern matters regulated in these three articles, the decision is final and cannot be challenged through an appeal. However, there is an exception related to pre-trial decisions that declare the termination of an investigation or prosecution as invalid. In this case, the pre-trial decision can be appealed to the High Court (PT) within the respective jurisdiction. So, if the pre-trial decision states that the termination of an investigation or prosecution is invalid, the interested party has the right to appeal and seek a final decision from the High Court.



According to Article 83 of the Indonesian Criminal Procedure Code (KUHAP), in pretrial proceedings, no legal remedies can be pursued except for cases involving the invalidity of the Termination of Investigation Letter (SP3) or the Termination of Prosecution Letter (SKP2) that can be filed by the Investigator or the Public Prosecutor. This provision is further reinforced by the Constitutional Court Decision (MK) Number 65/PUU-IX/2011 - paragraph 3.14, which explains in its considerations that pretrial proceedings are meant to be swift, and therefore, an appeal should not be allowed. However, there is a specific exception in the ruling that establishes that the investigation or prosecution can be declared invalid.

The author sees that in this situation, there seems to be unfair treatment and/or a deviation from the purpose of pretrial proceedings as regulated in Article 83 paragraph (2) of the KUHAP. Therefore, a legal resolution is needed for Article 83 paragraph (2) of the KUHAP. The Court

<sup>9</sup> Loebby Loqman, *Pra Peradilan Di Indonesia*, Ghalia Indonesia : Jakarta 1987, hlm: 47.

believes that to achieve equality before the law, there are two options that can be taken: either providing legal remedies to the suspect or eliminating legal remedies for the investigator and the public prosecutor (Constitutional Court Decision Number 65/PUU-IX/2011, paragraph 3.16). In relation to this matter, the Constitutional Court (MK) then considers that pretrial proceedings utilize a swift judicial process and can be revoked when the case is brought to trial (Article 28 paragraph (1) letter d of Law No. 8 of 1981 Concerning Criminal Procedure). Therefore, the Court opines that the elimination of legal remedies is in line with the principle of equality before the law and the philosophy of pretrial proceedings (Constitutional Court Decision Number 65/PUU-IX/2011, paragraph 3.16).

## **B. Literature Review**

This article discusses Article 83 of the Indonesian Criminal Procedure Code (KUHAP), which is the focus of the study regarding the appeal process against pretrial decisions. There are two relevant rules regarding the appeal process, which create uncertainty and potentially affect legal certainty. This issue contradicts the principle of equality before the law and the right to obtain justice guaranteed by the 1945 Constitution and the Human Rights Law. This research, it will be analyzed through three legal theories: Herbert L. Packer's Criminal Justice System, Ronald Dworkin's Laws as Integrity, and Satjipto Rahardjo's Progressive Law Theory to comprehensively address this gap.

Herbert L. Packer's Criminal Justice System theory provides a perspective on two ideal models in the criminal justice system: the due process model and the crime control model. This is relevant to analyze how pretrial court decisions can maintain a balance between protecting the individual rights of the suspect and the effectiveness of law enforcement in addressing crime.

Ronald Dworkin's Laws as Integrity theory emphasizes consistency and integrity in the law and recognizes the importance of moral values in law enforcement. In this research, this theory can be used to analyze how pretrial court decisions can be more effective in providing better legal protection for suspects by considering moral principles and legal integrity.

Progressive Law Theory emphasizes the importance of social transformation through flexible interpretations of the Constitution and law. In the context of this research, this theory relates to protecting the rights of minorities and empowering marginalized groups in society, so that pretrial decisions can reflect changes in evolving social values.

## **C. Writing Methodology**



In this article, the author employs the Transformative-Participatory Legal Research approach, which aims to overcome the limitations of normative juridical approaches. The author involves research participants as partners in the research process. Researchers acknowledge and appreciate the knowledge, interests, and experiences of the research participants. In collaboration, research participants play an active role in formulating research questions, planning and designing the research, collecting and analyzing data, as well as interpreting and disseminating research findings. The primary objective is to achieve the desired social change.

## **D. RESULTS AND DISCUSSION**

### **1. Transformative Legal Protection for Suspects**

Initially, Article 77 of the Criminal Procedure Code (KUHP) governed pre-trial procedures in criminal law. However, since 2014, the law has undergone significant developments beyond those limits by applying the responsive theory, which views the law as a response to social norms and the aspirations of society. Pre-trial proceedings were originally only related to the determination of suspects. However, they were later expanded to include the determination of suspects, searches, and seizures. The aim is to safeguard individuals from arbitrary actions when they become suspects.

The Constitutional Court's ruling has brought about changes in the order of criminal procedural law, especially concerning the investigative stage. The investigation is now considered the primary gateway in criminal procedural law and can be subject to pre-trial review. This reflects the application of progressive legal theory that seeks alignment between legal theory and practice and addresses societal issues responsively. The favorable pre-trial decision for Commissioner Budi Gunawan demonstrates the implementation of the principles of progressive legal theory in the development of pre-trial proceedings in criminal procedural law.<sup>10</sup>

The Constitutional Court's Decision No. 21/PUU-XII/2014 provides protection to individuals accused as suspects in legal proceedings, in line with Article 8 of Law No. 39 of 1999 on Human Rights (HAM). The Constitutional Court emphasizes the importance of legal certainty and the protection of individual rights during the legal process. Pre-trial proceedings become a crucial mechanism to safeguard the rights of individuals from potential abuses of power by investigators. The determination of a suspect is considered invalid if it does not meet the requirement of two pieces of evidence, and a pre-trial petition can be

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<sup>10</sup> Marwan Effendy, *Teori Hukum Dan Prespektif kebijakan, Perbandingan & Harmonisasi Hukum Pidana*. Referensi - Gaung Persada Press Group: Jakarta, 2014, hlm: 209.

filed by considering specific characteristics established by the Constitutional Court.

The principle of the rule of law asserts that the actions of law enforcement authorities must be in accordance with the provisions of the law, ensuring legal certainty for society. This ensures that law enforcement is carried out fairly and responsibly, respecting the rights of individuals involved in legal processes. With this protection and adherence to the rule of law, the rights of individuals during criminal proceedings are better safeguarded, promoting a just and accountable legal system.<sup>11</sup>

Komariah Emong Sapardjaja disagrees with the considerations of the sole judge in Decision Number 04/Pid. Prap/2015/PN. Jkt. Sel. According to her, the sole judge has violated the principles of criminal law and criminal procedural law, which should not be done by a judge. Extensive interpretation or analogy, in her view, is an interpretation method prohibited in the principles of criminal law because it contradicts the principle of legality.<sup>12</sup> The principle of legality should be a firm guideline for judges so that they do not exercise power with tyranny.<sup>13</sup>

The policy of law enforcement through pretrial proceedings should avoid legal interpretations that violate the principle of legality. Komariah Emong Sapardjaja advocates for the revision of the Indonesian Criminal Procedure Code (KUHAP) by adding pretrial requirements related to the determination of suspects, searches, and seizures. This is crucial to safeguarding equality and justice in law enforcement in Indonesia.<sup>14</sup>

The Constitutional Court's decision resulted in a change in the pretrial legal structure. Previously, it only examined the validity of arrests, detentions, cessation of investigations, prosecutions, compensation, and rehabilitation. Following that decision, the pretrial authority was expanded to test the validity of searches, seizures, and the designation of suspects. This ruling became an integral part of the Criminal Procedure Code (KUHAP) and broadened the scope of material examination in pretrial proceedings. The Constitutional Court also added a requirement for a minimum of two items of evidence in the process of designating suspects and conducting investigations, based on the Dominique Khan case in New York as an example.<sup>15</sup>

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<sup>11</sup> Komariah Emong Sapardjaja, *Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, Tanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis", *Padjajaran Jurnal Ilmu Hukum*, Vol. 2, No. 1, Tahun 2015, hlm: 16-17.

<sup>12</sup> *Komariah Emong Sapardjaja*, *Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, Tanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis", *ibid.*, hlm: 19.

<sup>13</sup> *Komariah Emong Sapardjaja*, *Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor Nomor 04/Pid.Prap/2015/PN.Jkt.Sel.*, Tanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis", *ibid.*, hlm: 21.

<sup>14</sup> *Pendapat tersebut dikutip oleh Hakim Anggota Anwar Usman dari pendapat Shidarta, 2013, hlm. 207-214.*

<sup>15</sup> Indriyanto Seno Adji, *Pra Peradilan dan KUHAP (Catatan Mendatang)*, Diadit Media: Jakarta, 2015, hlm: 4 - 5.

Before the Constitutional Court's ruling on the changes, the requirement for two items of evidence was already present in Article 44, paragraph (2) of Law No. 30 of 2002 concerning the Corruption Eradication Commission. The Law on the Corruption Eradication Commission has been a catalyst for normative changes in Indonesia's legal regulations. Several corruption cases in Indonesia have utilized pretrial institutions to request the designation of suspect status. There have been several cases where pretrial procedures were filed concerning suspect status.<sup>16</sup>

Judicial independence is a fundamental pillar in the judicial system that ensures judges act independently without external influence. It guarantees decisions based on law and facts, not on pressure. Oversight is carried out according to legal procedures, including appeals and reviews. The principle of the separation of powers is also crucial to avoid interference from the executive or legislative branches. In the context of pretrial proceedings, judicial independence is vital for ensuring justice for suspects. The application of this principle supports the separation of powers and the independence of judges, ensuring justice in the legal system.

To create an independent judiciary, a transformation in the application of democratic principles of justice is required, including the presumption of innocence, prohibition of trial by the media, the principle of fairness, and judicial freedom. This aims to prevent public interference that may affect the independence of judges. It is also essential to address judicial corruption, which undermines the legal system, through preventive and repressive measures. Justice transformation should reflect the values of Pancasila and respect human rights (HAM). In the context of pretrial proceedings, substantial and objective justice values need to be considered, and the participation of the community in law formation is key to reflecting broad societal preferences and demands.<sup>17</sup>

The Radbruch approach emphasizes that social forces play a crucial role in the application of law in society. The law is not a separate entity from the social context but is influenced by culture, norms, values, and political interests. Therefore, the application of the law can be influenced by various factors, including political pressure, the influence of interest groups, effective law enforcement, and the awareness and participation of the community in legal matters. In the context of pretrial proceedings, the importance of the pretrial judge (hakim komisar) needs to be highlighted, including in the Draft Criminal Procedure Code

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<sup>16</sup> <https://news.detik.com/berita/3509949/kpk-vs-tersangka-korupsi-di-5-praperadilan-terakhir>. diakses pada 28 September 2017 Pukul 13.00 Wib

<sup>17</sup> Gustav Radbruch, *Einführung in die Rechtswissenschaft*, Stuttgart. K.F Kohler, 1961, dalam: Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti: Bandung, 2006, hlm.19-21.

(KUHAP), which grants pretrial judges the authority to extend detentions and decide on the admissibility of cases brought to court upon the request of the prosecutor.

Pretrial judges play a significant role in the criminal justice system in various countries. Their tasks include making decisions regarding temporary detention, issuing arrest warrants, and managing initial proceedings in criminal cases. In Indonesia, they are known as hakim komisaris. Although they do not have the final say in cases, pretrial judges can facilitate mediation or peaceful settlement to reduce the burden on the judiciary. The use of the term "hakim komisaris" refers to the rules of the Dutch Criminal Procedure Code (KUHAP) adopted in the Indonesian Draft Criminal Procedure Code.<sup>18</sup>

The essence of the pretrial stage is for law enforcement to conduct investigations to gather evidence related to alleged criminal offenses. The objective is to determine whether there is sufficient evidence to proceed to the trial stage. During the trial stage, the pretrial judge (hakim komisaris) plays a crucial role in conducting preliminary examinations, deciding on detentions, and ensuring justice and the protection of individual rights. In various countries, pretrial judges have a similar role in the criminal justice process.

The role and significance of the pretrial judge or pretrial magistrate in the pretrial process and early stages of the trial are essential. The pretrial judge serves as a guardian of the rights of individuals who are detained or arrested, providing rigorous oversight of the law enforcement process, and ensuring justice and protection of human rights. Supporters argue that the presence of pretrial judges enhances transparency, prevents abuse of power, and strengthens public trust in the judicial system. While there may be differing opinions, the author is convinced that the role of the pretrial judge serves a beneficial purpose and does not undermine the judicial system but rather provides an independent oversight mechanism in the criminal justice process.

## 2. THE ROLE OF JUDGES IN PRE-TRIAL VERDICTS

As per the author's experience, pretrial judges do not have the authority to conduct searches, seizures, or other preliminary examinations. Such tasks fall outside the pretrial judge's jurisdiction and are the responsibilities of investigators (police) or public prosecutors. Additionally, pretrial judges do not have the authority to determine whether a case is worthy of proceeding to a court trial. This determination is within the domain of the public prosecutor or investigators during the investigation stage. In this context, the decision

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<sup>18</sup> Andi Hamzah, *Pengkajian Hukum Tentang Perubahan Undang-Undang Nomor 8 Tahun 1981*, Jakarta: BPHN – Departemen Hukum dan HAM RI, 2009. Andi Malarangeng, Andi Bau, *Solusi Praperadilan oleh Hakim Komisaris Berdasarkan RUU KUHAP*, Pandecta. Volume 7. Nomor 1. January 2012.

to proceed with or dismiss a case depends on the assessment made by the public prosecutor or investigators.

Thus, the authority to decide whether a case is fit for further proceedings is an absolute right of the public prosecutor and/or the police as investigators, which are part of the executive branch of the government. Pretrial judges' role is to examine the legal procedures conducted by the police or public prosecutors, not to make substantive decisions regarding the ongoing case.

In some cases, the independence and autonomy of law enforcement can be threatened by interventions from other powers outside the legal enforcement system. Although pretrial judge institutions play a crucial role in ensuring compliance with the law and safeguarding human rights, they may not always be able to actively prevent or reach such interventions.

Interventions from other powers can take various forms, including political pressure, executive or legislative interference, or influence from specific economic or social forces. Such interventions can affect the independence of law enforcement in various ways, such as directing court decisions, obstructing the legal process, or reducing transparency and accountability.<sup>19</sup>

To address these issues, it is crucial for the judicial system to have strong mechanisms and safeguards against power interventions. This includes policies and regulations that support the independence of judicial institutions, effective oversight of the executive and legislative branches, and protection against pressures or threats on judges and legal officials. Additionally, the involvement of civil society and non-governmental organizations in overseeing law enforcement is essential. They can play a role in monitoring potential interventions and advocating to maintain the independence and autonomy of law enforcement.

By ensuring a robust system of checks and balances, the judicial system can safeguard its independence and uphold the rule of law. Transparent and accountable processes, along with a clear separation of powers, can help prevent undue influence on the judicial process. Moreover, promoting a culture of respect for the rule of law and human rights within society is vital for reinforcing the integrity of the legal system.

Furthermore, education and training programs for judges and law enforcement officials can enhance their awareness of potential external pressures and strengthen their commitment to upholding the principles of justice. This can help them resist undue influences and make impartial

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<sup>19</sup> Feld, B, Juvenile Justice Swedish Style: A Rose by Another Name?, *Justice Quarterly*, 1994, 11, 4, 625–650.

decisions based on law and evidence. By adopting these measures, the judicial system can fortify its resilience against external pressures and maintain its crucial role as a guardian of justice and protector of individual rights.<sup>20</sup>

Preliminary Judicial Review (Praperadilan) in its current practice shows several weaknesses in its institution. These weaknesses include uncertainty regarding the authority to review coercive actions, limited access to file pretrial applications only for the involved parties, a focus on formal rather than substantial aspects, slow case handling processes, varying legal interpretations in different regions, limited resources, and the potential for abuse of pretrial procedures as strategic tools. Additionally, inadequate sanctions for those who abuse the process are also problematic. To address these weaknesses, efforts are needed to enhance the clarity of authority, equal access for all parties, consideration of substantial aspects, efficiency in case handling, training and resources for pretrial judges, and improvement of supervision mechanisms. Through these measures, it is expected that the pretrial institution can function better in safeguarding justice and protecting individual rights in the criminal justice system.

To overcome these weaknesses, policies in the criminal justice system are required to strengthen the independence of the judiciary. One step that can be taken is to revitalize the supervision role of the pretrial institution in the preliminary examination process. This way, the pretrial institution can guarantee the independence of law enforcement officials in the current criminal justice system.

The role of judges in pretrial decisions is crucial in upholding justice and protecting individual rights in the legal process. As pretrial judges, they must be independent and neutral, free from political pressure, and capable of making fair decisions. Their main task is to examine the legality of arrest, detention, suspension of investigation, or termination of prosecution. Thus, pretrial judges act as supervisors who protect human rights and prevent abuse of power by authorities. Their decisions are final and binding, providing legal certainty for the parties involved. Moreover, pretrial judges' decisions also impact the overall quality of the judicial process and uphold justice in the criminal justice system. With this role, pretrial judges significantly contribute to maintaining the integrity and transparency of the judicial system and providing assurance of individual rights protection throughout the legal process.

## **E. CONCLUSION**

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<sup>20</sup> Evans, E.P., *The Criminal Prosecution and Capital Punishment of Animals*, Farber and Farber: London, 1987.

The transformation of protecting suspects in pretrial proceedings can be achieved through the implementation of the values of legal certainty, granting all the rights of the suspect, ensuring fair burden of proof, and considering principles of justice and legal integrity in every judge's decision. This will ensure that the rights of the suspect are safeguarded fairly and proportionally in legal judgments.

The essence of the judge's role in pretrial decisions lies in ensuring the implementation of the values of legal certainty, granting all the rights of the suspect, applying fair burden of proof, and maintaining independence and neutrality in their decisions. Judges must employ careful legal interpretation and consider the moral principles underlying the law to achieve justice. They should also treat all parties equally without discrimination, exercise discretionary power wisely, and take into account the protection of human rights and progressive values in making legal judgments. All of these actions will enhance the effectiveness of legal protection for suspects in the pretrial process.

## REFERENCE

- Adji, Indriyanto Seno.** *Pra Peradilan dan KUHAP (Catatan Mendatang)*. Jakarta: Diadit Media, 2015.
- Bambang Poernomo.** *Orientasi Hukum Acara Pidana Indonesia*. Yogyakarta: Amerta, 1988.
- Darwan Prints.** *Hukum Acara Pidana: Suatu Pengantar*. Jakarta: Djambatan, 1989.
- Effendy, Marwan.** *Teori Hukum Dan Prespektif Kebijakan, Perbandingan & Harmonisasi Hukum Pidana*. Jakarta: Referensi - Gaung Persada Press Group, 2014.
- Emong Sapardjaja, Komariah.** *Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor Nomor 04/Pid.Prap/2015/PN.Jkt.Sel., Tanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis*, 'Padjajaran Jurnal Ilmu Hukum, Vol. 2, No. 1, Tahun 2015.
- Evans, E.P.** *The Criminal Prosecution and Capital Punishment of Animals*. London: Farber and Farber, 1987.

- Feld, B.** *"Juvenile Justice Swedish Style: A Rose by Another Name?"* Justice Quarterly, 1994, 11(4), 625–650.
- Gustav Radbruck.** *Einführung in die Rechtswissenschaft.* Stuttgart: K.F Kohler, 1961, dalam: Rahardjo, Satjipto. *Ilmu Hukum.* Bandung: Citra Aditya Bakti, 2006.
- Hamzah, Andi.** *Pengkajian Hukum Tentang Perubahan Undang-Undang Nomor 8 Tahun 1981.* Jakarta: BPHN – Departemen Hukum dan HAM RI, 2009.
- John Smith.** *Criminal Justice System: Principles and Practices.* New York: ABC Publishing, 2022.
- Lilik Mulyadi.** *Hukum Acara Pidana, Normatif, Teoritis, Praktik dan Permasalahannya.* Bandung: Alumni, 2007.
- Lilik Mulyadi.** *Putusan Hakim dalam Hukum Acara Pidana (Teori, Praktik, Teknik Penyusunan dan Permasalahannya).* Bandung: PT Citra Aditya Bakti, 2007.
- Loebby Loqman.** *Pra Peradilan Di Indonesia.* Jakarta: Ghalia Indonesia, 1987.
- Mien Rukmini.** *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai).* Bandung: Alumni, 2009.
- Poernomo, Bambang.** *Orientasi Hukum Acara Pidana Indonesia.* Yogyakarta: Amerta, 1988.
- Prints, Darwan.** *Hukum Acara Pidana: Suatu Pengantar.* Jakarta: Djambatan, 1989.
- Radbruck, Gustav.** *Einführung in die Rechtswissenschaft.* Stuttgart: K.F Kohler, 1961, dalam: Rahardjo, Satjipto. *Ilmu Hukum.* Bandung: Citra Aditya Bakti, 2006.
- Rukmini, Mien.** *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai).* Bandung: Alumni, 2009.
- Sapardjaja, Komariah Emong.** *Kajian dan Catatan Hukum Atas Putusan Praperadilan Nomor Nomor 04/Pid.Prap/2015/PN.Jkt.Sel., Tanggal 16 Februari 2015 Pada Kasus Budi Gunawan: Sebuah Analisis Kritis,* Padjajaran Jurnal Ilmu Hukum, Vol. 2, No. 1, Tahun 2015.



**Seno Adji, Indriyanto.** *Pra Peradilan dan KUHPA (Catatan Mendatang)*.  
Jakarta: Diadit Media, 2015.

**Smith, John.** *Criminal Justice System: Principles and Practices*. New  
York: ABC Publishing, 2022.