The Effectiveness of Pre-trial Hearings in Preventing Abuse of Authority by Investigators and Prosecutors: A Normative-Empirical Approach to Oversight Mechanisms for Investigation and Prosecution Processes in Indonesia

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Abstract

Pretrial hearings are a legal instrument that serves as a mechanism for judicial control over the actions of investigators and prosecutors, particularly in guaranteeing the protection of suspects' human rights. However, the effectiveness of their implementation in the Indonesian criminal justice system remains a fundamental issue. This study aims to analyse the extent to which pretrial hearings are effective in preventing abuse of authority by law enforcement officials, as well as to assess the impact of expanding the authority of pretrial hearings on the criminal justice system in Indonesia. This study uses a normative juridical method with a legislative and case-based approach, thoroughly examining relevant legal provisions such as the Criminal Procedure Code (KUHAP), Regulation of the Chief of the Indonesian National Police Number 14 of 2012, as well as relevant decisions of the Constitutional Court and pretrial courts. Data was obtained from primary, secondary, and tertiary legal materials through literature study, then analysed qualitatively using legal interpretation methods. The results of the study show that pretrial hearings are not yet effective as a mechanism for supervising the actions of investigators and public prosecutors. This is due to various factors, including the limited authority of single judges, inconsistency in decisions between cases, a more administrative focus of the examination, and weak standards of objectivity in determining suspects. Constitutional Court Decision No. 21/PUU-XII/2014 does expand the scope of pretrial hearings, but it does not fully guarantee legal certainty and the protection of suspects' rights. This study recommends the need for criminal law reform by replacing the pretrial mechanism with a pre-trial hearing system under the supervision of a judge, strengthening the role of Supervisory and Observer Judges (Hakim Wasmat), establishing standards of objectivity in determining suspects, and encouraging the application of restorative justice and plea bargaining systems. This reform is expected to create a criminal justice system that is more accountable, transparent, and oriented towards the protection of human rights in accordance with the principles of due process of law

and the ideals of the Indonesian constitutional state.

I. Introduction

The criminal justice system in Indonesia is designed based on the principle of checks and balances to guarantee the protection of human rights and prevent abuse of authority by law enforcement officials. In this context, pretrial hearings have a strategic position as a mechanism of judicial control over the actions of investigators and prosecutors, especially in the early stages of the criminal justice process, which are coercive in nature towards the rights of suspects. Pretrial hearings function as a form of horizontal control between judicial institutions and other law enforcement agencies, making them an important instrument in ensuring due process of law and the protection of human rights in criminal procedure law (Napitupulu & Firmansyah, 2022; Sukono & Santoso, 2024).

Based on Article 77 of the Criminal Procedure Code (KUHAP), the scope of pretrial includes examining the validity of arrests, detentions, termination of investigations, termination of prosecutions, as well as claims for compensation and rehabilitation. However, since the issuance of Constitutional Court Decision Number 21/PUU-XII/2014, the scope of pretrial proceedings has been expanded to include the validity of suspect designations, searches, and seizures. This expansion of authority is expected to strengthen the control function over investigators and prosecutors, but it also raises new problems in the form of inconsistency in pretrial judges' decisions and differences in interpretation of the limits of judges' authority, which have an impact on legal certainty (Lestari, 2023; Kripsiaji, 2021).

In practice, pretrial hearings often face fundamental problems, including the suboptimal role of judges in assessing the validity of investigators' actions, the abuse of process by petitioners who use pretrial hearings as a means of delaying legal proceedings, and the lack of objective parameters for assessing the abuse of authority by law enforcement officials. Several important cases, such as *South Jakarta District Court Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel* (the case of Komjen Budi Gunawan), *Decision No. 24/Pid.Pra/2018/PN.Jkt. Sel* (Bank Century case), and the *Putusan Praperadilan Setya Novanto (2017)* reveal substantial contradictions in judges' decisions regarding the determination of suspects and the scope of cases (Azmi, 2022; Gunawan, 2022). This situation raises fundamental questions about how effective pretrial hearings are in controlling investigators and prosecutors, and to what extent this institution is able to consistently and proportionally protect the rights of suspects.

To understand these dynamics, it is important to review empirical data from the Supreme Court (MA) over the past three years. Based on the MA report, the number of criminal cases, including pretrial hearings, continues to fluctuate as shown in Table 1

Table 1. Number of Cases in the Supreme Court in 2022-2024

Year	Case Entry	Remaining Cases of the Previous Year	Total caseload	Case Decided	Remaining Cases End of Year
2022	28.109	175	28.284	28.024	260
2023	27.252	260	27.512	27.365	147

2024	30.991	147	31.138	30.908	230

Source: Supreme Court

The data shows that the number of cases submitted to the Supreme Court is likely to increase again in 2024. One contributing factor is the increase in the number of pretrial motions filed as a form of correction to the termination of investigations and prosecutions. Although the Supreme Court manages to resolve most cases each year, the number of remaining cases shows that the judicial system faces a high workload, including from pretrial motions that are often filed en masse.

In a more specific context, Supreme Court data recorded 474 pretrial cases registered during the observation period, as detailed in Table 2

Table 2. Table of the Number of Supreme Court Decisions

Category of Decision	Number of cases
Miscellaneous	278
Free	4
Autumn	37
Kabul	28
Retrieved	3
Unacceptable	9
Reject	115
Total	474

Source: Supreme Court Decision Directory

Of the total 474 cases, only 28 petitions were granted, while most were rejected or not accepted. This shows that many pretrial petitions do not meet the formal and material criteria as stipulated in the Criminal Procedure Code. This phenomenon reinforces the argument that the effectiveness of pretrial hearings is not yet optimal, both as an instrument for protecting the rights of suspects and as a mechanism for controlling the actions of law enforcement officials.

Theoretically, this study is based on the Checks and Balances Theory (Montesquieu), the Judicial Oversight Theory, and the Theory of Procedural Justice and Legal Legitimacy (Tyler, 2011; Kaiser, 2020). Through these theories, the effectiveness of pretrial hearings is understood not only from a legal-formal aspect, but also in terms of the extent to which this institution fosters public trust in the legal system and ensures the accountability of law enforcement officials at every stage of the investigation and prosecution.

Based on this background, this study focuses on answering two main questions:

1. To what extent are pretrial hearings effective in preventing abuse of authority by investigators and prosecutors?
2. What is the impact of expanding the authority of pretrial hearings on the mechanisms of oversight and legal certainty in the criminal justice system in Indonesia?

This study is expected to contribute empirically and theoretically to the reform of criminal procedure law, particularly in strengthening the function of judicial

oversight as a horizontal control mechanism that ensures a balance between law enforcement and the protection of human rights in the national criminal justice system.

2. Research Method

This study utilises a normative legal approach supported by a case approach. The normative legal approach was chosen because the main focus of this study is on the study of principles, norms, and provisions of positive law applicable in the criminal justice system, particularly in relation to pretrial mechanisms as regulated in the Criminal Procedure Code (KUHAP) and expanded by Constitutional Court Decision Number 21/PUU-XII/2014. This approach allows researchers to analyse law as a system of norms that is structured hierarchically and consistently (Soekanto & Mamudji, 2003; DOI: 10.2991/assehr.k.220304.005). Meanwhile, the case approach is used to explore judicial practices in the implementation of pretrial hearings through the analysis of several important decisions, such as the cases of Tom Lembong, Setya Novanto, and Boediono, in order to trace inconsistencies in the application of the law and their impact on the protection of suspects' rights (Pujiati, 2024).

The type of research used is descriptive-analytical normative legal research, which is a study that aims to systematically describe positive legal norms and their application in pretrial cases, then analyse their compatibility with the principles of justice and the supervision of investigative and prosecuting powers. This approach places the law as a written system (law in books) and then compares it with its practical implementation (law in action). The analytical nature is used to find the relationship between legal norms and their effectiveness in guaranteeing the rights of suspects and preventing the abuse of authority by law enforcement officials (Napitupulu & Firmansyah, 2022).

The data sources in this study consist of three types of legal materials, namely primary, secondary, and tertiary legal materials. Primary legal materials include legislation, such as Law No. 8 of 1981 on Criminal Procedure Code, Constitutional Court Decision No. 21/PUU-XII/2014, and relevant pretrial decisions from the South Jakarta District Court and the Supreme Court. Secondary legal materials consist of scientific literature, including national and international law journals, criminal law textbooks, and previous research discussing the effectiveness and mechanisms of pretrial (Lestari, 2023; Kripsiaji, 2021; Azmi, 2022; Gunawan, 2022). Meanwhile, tertiary legal materials include legal dictionaries, legal encyclopaedias, and official online sources that support the clarity of the legal terminology used (Harahap, 2021).

Data collection techniques were carried out through library research, by searching and analysing various legal documents and academic literature related to the research topic. This procedure included collecting legislation, searching for court decisions from the Supreme Court Decision Directory, and reviewing scientific articles from journals with active Digital Object Identifiers (DOI). Each piece of data obtained was then recorded and grouped by theme, such as pretrial authority, investigation supervision, abuse of authority, and the human rights of suspects (Fauziah & Sitorus,

2022).

Data analysis in this study was conducted qualitatively using the legal interpretation method. This technique involves the process of interpreting legal norms and court decisions to find the substantive meaning behind the legal text. The analysis began with the data reduction stage, which involved selecting relevant legal materials and removing data that was not related to the focus of the study. This was followed by the classification and categorisation of legal materials based on the issues under study, followed by systematic and teleological legal interpretation to assess the suitability of the application of norms with the aim of protecting human rights. The results of the interpretation are then synthesised to produce findings on the effectiveness of the pretrial mechanism and recommendations for legal reform to be more adaptive to the principle of due process of law (Tyler, 2011; Kaiser, 2020).

In maintaining the validity and credibility of the findings, this study applied several academic strategies, including triangulation of legal sources (comparing norms from laws, decisions, and legal doctrines), confirmation with previous research results, and rational argumentation tests to ensure that the conclusions produced were scientifically accountable. Although this study does not use an empirical approach, its credibility is maintained through consistent analysis of norms, rulings, and academic literature that are valid and verified by DOI.

The overall stages of the research are described in the following flowchart, which shows the logical sequence of this normative legal research process:

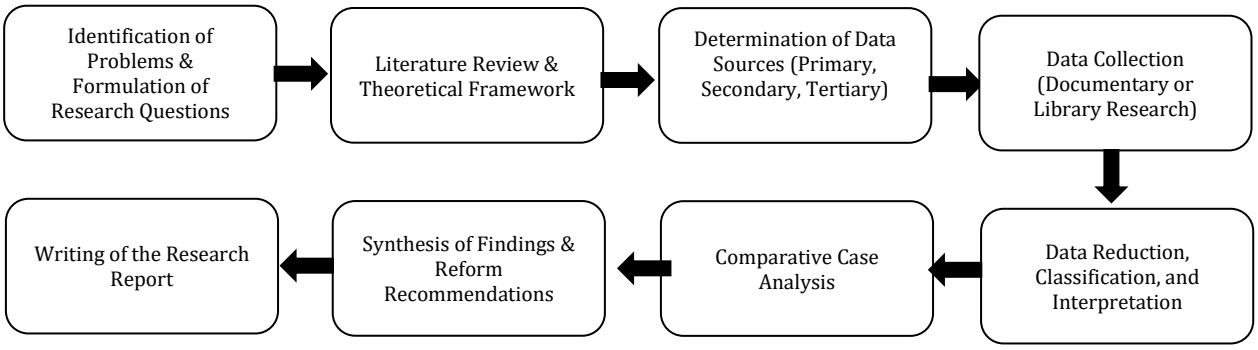


Figure 1. Normative Legal Research Flowchart

(Sumber: Peneliti, 2025)

3. Results and Discussion

The Effectiveness of Pre-trial Proceedings in Preventing Abuse of Authority by Law Enforcement Officials, Especially in Determining

In its development, the criminal justice system in Indonesia has gone through two models, namely the inquisitorial system and the accusatory system. Both systems were implemented prior to the enactment of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) No. 8 of 1981 (Irsan & Armansyah, 2016). Criminal procedure law followed the inquisitorial system, in which a suspect could be subjected to harsh treatment or torture by investigators to obtain confessions or additional evidence that

could be used to bring the suspect to court (Setiadi & Kristia. However, after the KUHP and KUHAP came into effect, the inquisitorial system was abandoned and the judicial process prioritised the protection of human rights, so that the previously inquisitorial method of evidence collection shifted to an accusatory one.

The Criminal Procedure Code explicitly applies the 'accusatory' principle, which is reflected in the emphasis on legal protection for suspects or defendants, especially in obtaining legal assistance. With legal assistance available at all stages from the initial investigation to the trial, this principle ensures that suspects or defendants are on an equal footing with investigators, prosecutors and judges. In this system, suspects or defendants are treated as subjects of investigation, not merely objects as in the 'inquisitorial' principle, which tends to place suspects as objects of investigation to force them to confess to the alleged acts (Nazih & Solmin, 2012). Criminal acts are suspected to have been committed without regard for the human rights of the suspect. This ' ' inquisitorial approach was opposed by Herbert L. Packer, quoted by Indriyanto Seno Adji, who stated that evidence obtained illegally should not be used as evidence in court (Adji, 2001).

According to Alfitra, the accusatorial model allows for more optimal evidence collection because it can reveal more facts related to the criminal act under investigation:

"Inquisitorial procedures allow for the disclosure of more facts, thus providing better guarantees to prevent errors in decision-making. In addition, this procedure is expected to be more effective in avoiding possible bias from judges compared to other methods. Participants and observers also consider the accusatory approach to be fairer than the inquisitorial method (Alfira, 2018)."

On the other hand, the application of the inquisitorial model risks violating the constitutional rights of suspects. This model is considered inappropriate because it has the potential to violate the law. Luhut M.P. Pangaribuan and his colleagues set limits so that the collection of evidence remains in accordance with the principle of due process of law, by applying the concept of inquisitorial-non-adversarial SPP, which includes the following elements:

1) In court, confessions are the main basis, which can be obtained through coercion or torture.
2) Confessions are recognised as 'sufficient legal indication' of the existence of 'reasonable grounds and reasonable suspicion.'
3) The existence of 'reasonable grounds and reasonable suspicion' is the standard for arresting suspects, searching or seizing their property, and filing criminal charges.
4) The screening process is carried out under the full control of the state in terms of prosecution.
5) Preliminary investigations are essentially closed to the public, but in their development they have adopted mixed elements from the inquisitorial and adversarial systems, providing limited opportunities for parties to present their arguments (Pangribuan, 2010).

In addition, based on Article 4 of the National Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations, investigations can be carried

out based on a police report or complaint, assignment order, investigation report, investigation warrant, and Notification of the Commencement of Investigation (SPDP) sent to the Prosecutor's Office. The SPDP is a mandatory requirement before investigators carry out coercive measures, because after it is sent to the prosecutor's office, investigators will obtain a registration number which is then included in the warrant as the legal basis for carrying out coercive measures, such as summons, arrest, detention, search, seizure, and examination of documents (Hanim, 2022).

In addition, provisions regarding investigation plans and investigations as well as case classification based on level of difficulty (easy, moderate, complex, and very difficult) are explained in Articles 16 to 19. Meanwhile, the organisational aspects regulated in Articles 20 to 23 focus on the role of the investigator's superior in managing resources, forming an investigation team, and providing budgetary and equipment support through a warrant. Personnel involved at this stage must have the competence, integrity, and abilities appropriate to the case being handled (Hanim, 2022).

The next stage is the conduct of investigations and examinations as regulated in Articles 24 to 77. In this process, coercive measures such as summons, arrest, detention, search, seizure, and examination of documents (in accordance with Article 26 of Perkap No. 14/2012) have the potential to cause conflict between investigators and suspects or their families, which can lead to legal action in the form of a pretrial lawsuit.

To determine the status of a suspect, investigators must review the case from the beginning of the investigation to discuss the criminal acts being handled. The case title must also be reviewed in the middle and at the end of the investigation process as stipulated in Article 69 of Perkap No. 14/2012. This step is intended as a form of supervision and control by the investigator's superiors over the handling of the case (Hanim, 2022).

By consistently and professionally implementing the standard procedures stipulated in Law No. 8 of 1981 concerning the Criminal Procedure Code and Perkap No. 14 of 2012, it is hoped that the possibility of legal action in the form of a pretrial lawsuit filed by the suspect, their family, or legal counsel against the investigator handling the case can be reduced.

Pretrial is intended as a control mechanism against the possibility of arbitrary actions by investigators or public prosecutors in carrying out arrests, searches, seizures, investigations, prosecutions, termination of investigations, and termination of prosecutions, whether accompanied or not accompanied by requests for compensation and/or rehabilitation. In addition, pretrial lawsuits aim to safeguard and protect the human rights of suspects/defendants during investigations and prosecutions. This mechanism is considered a form of horizontal oversight of the rights of suspects/defendants in preliminary investigations (Jumadi, 2018).

Pretrial can be filed by suspects or interested parties (e.g., the suspect's family) who feel that their human rights have been violated by the actions of investigators or prosecutors. Pretrial aims to test the validity of arrests, detentions, or searches that are considered unlawful or violate human rights. Pretrial is also used to test whether a suspect meets the requirements to be a suspect in a case. Several conditions must be met to file a

pretrial motion, such as sufficient preliminary evidence of a violation of the law or human rights. The pretrial court must be independent and objective in carrying out its duties to examine pretrial cases. If the pretrial court decides that the actions of investigators or prosecutors violate the law or human rights, they can issue a compensation order for the applicant (Sholihah & Santoso, 2020).

One indicator of the ineffectiveness of pretrial hearings as a mechanism for suspects to fight for their human rights is the existence of obstacles that cause the pretrial examination process to take a long time. This is in line with the provisions of Article 82 paragraph (1) letter d, which states that a pretrial petition becomes void if the main case has begun to be examined in court.

In practice, there is a general understanding that investigators and prosecutors tend to expedite the examination process so that cases are immediately submitted to court and pretrial motions are automatically rejected. This condition shows that in certain situations, the legal system does not pay sufficient attention to the rights of suspects to know the legality of their arrest and detention.

In addition, the burden of proof in pretrial hearings is a crucial issue. The Criminal Procedure Code stipulates that the element of urgency, namely specific concerns, is the authority of investigators or prosecutors to apply coercive measures. Therefore, it would be fairer if the party responsible for proving the existence of urgency in a pretrial hearing were the official who took the action.

However, with reference to the principle of civil procedure, whereby whoever makes a proposition must prove it, the burden of proof is placed on the Petitioner. The consequences of this rule are quite significant, because in addition to the evidence generally being in the hands of the relevant officials, the Petitioner will also find it difficult to prove the existence of alarming circumstances, given that this is subjective and within the authority of the officials who apply coercive measures.

Inconsistency in judges' decisions in assessing whether the designation of a suspect is valid or not. Several cases show that pretrial judges often make controversial decisions, such as in Supreme Court Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel, which revoked the status of a suspect without sufficient evidence. On the other hand, in a pretrial case filed by Tom Lembong, the judge rejected the petition because the substance of the objection had entered the realm of the case material. This creates legal uncertainty in the pretrial petition process.

Pretrial hearings are a mechanism for monitoring the actions of investigators and prosecutors in determining suspect status, and their effectiveness is often questioned, especially in the context of human rights protection. In practice, the effectiveness of pretrial hearings needs to be measured from several aspects, such as the speed of the process, legal certainty, and the security of the suspect's rights. However, many cases show that the pretrial process produces decisions that are contrary to the principles of human rights protection, for example in cases where a judge decides with minimal consideration of substantive justice. The limitation of a single judge in comprehensively assessing the validity of the investigation and examination process is one of the factors that makes this mechanism less effective. The imbalance between the authority of law enforcement

officials and the protection of suspects in pretrial proceedings also creates legal uncertainty, as decisions are often inconsistent and potentially violate individual rights.

As a form of more adaptive legal reform, other alternatives that better guarantee legal certainty and the protection of human rights need to be considered. The sentencing negotiation system implemented in various countries can be a solution by providing more flexible options for case resolution, especially for suspects who cooperate in the legal process. In addition, a restorative justice approach can also be applied in the context of investigation and examination so that the resolution of legal disputes is more oriented towards restoring the rights of victims and balancing legal interests.

Therefore, pretrial mechanisms that are considered ineffective can be replaced with systems that guarantee substantive justice. This reform also needs to be supported by strengthening internal mechanisms at the investigation and examination stages, so that every action taken by law enforcement officials can be better controlled without having to go through a lengthy and not always effective pretrial process. The absence of a supervisory mechanism for investigators is also a factor that reduces the effectiveness of pretrial proceedings.

Investigators still have broad authority to name suspects without clear standards regarding objectivity parameters. Several cases show that suspects can be named without prior investigation, which has the potential to lead to human rights violations. Therefore, in order for pretrial hearings to be more effective in supervising investigators, stricter regulations are needed regarding the requirements and procedures for naming suspects, as well as increased independence for judges in handling pretrial cases.

The Impact of Expanding the Authority of Pretrial Proceedings on the Criminal Justice System in Indonesia

Law enforcement is not easy because the legal system is very complex, and the relationship between the legal system and the social, political, economic, and cultural systems of society is also complicated. As a process, law enforcement is a variable that is related to other factors.

Provisions regarding pretrial institutions in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) are regulated in Article 1 paragraph (10) and Chapter X Part I, which covers Articles 77 to 83. Article 1 paragraph (10) of the KUHAP defines pre-trial as the authority of the District Court to assess and decide, based on the provisions of the law, on several matters, namely:

1. The validity of arrest or detention based on a request from the suspect, their family, or other parties authorised by the suspect.
2. The validity of the termination of an investigation or prosecution in order to uphold law and justice.
3. Requests for compensation or rehabilitation by the suspect, their family, or other parties authorised by them, in cases where the case is not brought to court.

The formulation in Article 1 paragraph 10 of the Criminal Procedure Code is further explained in Article 77 of the Criminal Procedure Code, which states that the District Court has the authority to examine and decide on the validity of arrests, detentions, termination

of investigations or prosecutions, as well as requests for compensation and rehabilitation for individuals whose cases have been terminated at the investigation or prosecution stage.

The KUHAP further explains in Article 77 letter a that the termination of prosecution is not the same as the withdrawal of a case in the public interest, which is the authority of the Attorney General. Meanwhile, Article 80 of the Criminal Procedure Code stipulates that a request to assess whether the termination of an investigation or prosecution is valid may be submitted by the investigator, public prosecutor, or interested third party to the Head of the District Court, with clear reasons.

This provision is a horizontal oversight mechanism to ensure law enforcement, justice, and truth. Therefore, it is reasonable for public prosecutors to try to avoid pretrial hearings as stipulated in Article 80 of the Criminal Procedure Code. In practice, cooperation between public prosecutors and investigators in carrying out their duties and authorities smoothly and optimally can reduce the possibility of involvement in pretrial hearings.

In addition, Article 82 paragraph (1) letter c of the Criminal Procedure Code stipulates that judges have a time limit of seven days to decide on pretrial cases. However, this provision does not explicitly explain when the time limit begins—whether from the date of receipt or revocation. This ambiguity can lead to different interpretations in its application. In practice, there have been cases where pretrial decisions were issued after the seven-day time limit. Unfortunately, the Criminal Procedure Code does not regulate the legal consequences or sanctions for judges who decide pretrial cases late.

In addition, there is also a provision in Article 82 paragraph (1) letter d of the Criminal Procedure Code which states that a pretrial motion will be rejected if the examination of the main case has begun in the District Court. The consequence of this rule is that if the pretrial process has not been completed but the main case has entered the trial stage, the pretrial motion becomes void. As a result, the legal assessment of the pretrial examination, which could be the basis for the suspect's release, is lost, so the suspect remains in detention. The judicial system should be able to guarantee legal certainty with complete decisions and not prejudice the suspect's right to obtain justice through the pretrial mechanism.

If the purpose of filing a pretrial motion to terminate an investigation or prosecution is to correct and horizontally monitor possible errors or arbitrary actions in the process, then according to Yahya Harahap, there are strong reasons that both the will of the legislator and the public interest require that interested third parties include the wider community. The public can be represented by non-governmental organisations (NGOs) or civil society organisations (CSOs) (Panjaitan, 2024).

Institutional oversight itself is divided into two types, namely internal oversight and external oversight. Internal oversight is carried out by agencies or organs within the hierarchical government structure. Meanwhile, external oversight is carried out by parties outside the government structure that still have a role in oversight. This external oversight covers various forms, such as financial audits carried out by the State Audit Agency (BPK), social oversight by the community through NGOs, the mass media, and judicial monitoring groups, as well as political oversight by the House of Representatives (DPR) and the

People's Consultative Assembly (MPR) of the government. In addition, other bodies also carry out supervisory functions, such as the Ombudsman Commission and the Judicial Commission (Panjaitan, 2024).

The role of the public in law enforcement has been accommodated in various laws and regulations, including the Criminal Procedure Code, which stipulates that the public can participate in monitoring legal processes. The application of a broader interpretation of interested third parties ( ) aims to increase the effectiveness of monitoring the termination of investigations and prosecutions. If the interpretation of interested third parties is too narrow, then only a few parties can object to the unilateral termination of investigations or prosecutions without accountability from investigators or public prosecutors (Panjaitan, 2024).

When there is a discrepancy in the termination of an investigation or prosecution, law enforcement officials, such as investigators or public prosecutors, do not have the authority to file a pretrial motion. Therefore, an overly narrow interpretation of interested third parties can hinder the effectiveness of Article 80 of the Criminal Procedure Code in providing room for broader oversight.

In general, Article 1 Paragraph 10 of the Criminal Procedure Code explains that pretrial is the authority of the district court to examine and decide on the validity or invalidity of arrests, detentions, termination of investigations and prosecutions, as well as requests for compensation or rehabilitation for cases that are not brought to court. Basically, the establishment of pretrial proceedings aims to uphold the law and protect the human rights of suspects/defendants at the investigation and prosecution stages. However, in its application, pretrial proceedings only focus on administrative requirements, so that substantive justice is not realised. Substantive justice focuses on fair and contextual outcomes. In its application, this justice is often faced with the dilemma of strictly adhering to formal rules and adjusting them to achieve morally and socially just outcomes. There are several weaknesses in the pretrial process that can hinder the realisation of substantive justice (Bandeng et al, 2024):

a. The pretrial process is post factum, meaning that it can only be filed after coercive measures have been taken. This makes it impossible for pretrial judges to effectively supervise the authority of investigators from the outset.
b. The pre-trial examination process tends to focus on administrative aspects. Judges generally only evaluate the completeness of documents without an in-depth review of the substance or material aspects of the case.
c. Pre-trial judges only act when a petition is filed. As a result, oversight of the authority of investigators is limited, so that the main objective of establishing a pre-trial institution may not be achieved.
d. When the main trial takes place, the pretrial process is considered irrelevant or is automatically cancelled. This practice risks eliminating the defendant's right to challenge the legality of law enforcement actions, thereby raising doubts about the principle of justice.
e. Although pretrial hearings are part of criminal procedure law, their implementation often uses civil procedure mechanisms, causing uncertainty in

practice.

f. The short time limit for completing pretrial hearings, only seven days, is often not balanced with effective case management. This situation is exacerbated by the absence of investigators or prosecutors at the hearings.
g. The effectiveness of pretrial hearings is highly dependent on the involvement of legal counsel ( ). However, there is no strict obligation to obtain legal assistance, while many suspects lack understanding of legal aspects. This often renders pretrial hearings ineffective.

Based on this, referring to the expansion of pre-trial authority based on Constitutional Court Decision No. 21/PUU-XII/2014, which adds pre-trial objects related to the validity of suspect determination, search and seizure, has a significant impact on the criminal justice system in Indonesia. A positive impact of this expansion of authority is increased protection of suspects' human rights from arbitrary actions by investigators. Prior to this ruling, suspects had no legal mechanism to test the validity of their status before trial. With the expansion of pretrial objects, suspects can challenge the validity of their status and avoid unfounded criminalisation. However, this expansion of authority also raises several problems. One of these is the tendency to abuse pretrial hearings as a tool to thwart legal proceedings. Some suspects in corruption cases have used pretrial hearings to overturn their suspect status on the grounds of unlawful procedures, as in the case of Setya Novanto. In this case, the pretrial judge rejected the use of KPK recordings as evidence because the evidence had already been included in the main case, thereby hampering the effectiveness of corruption eradication.

The expansion of pretrial authority has an impact on legal aspects and can disrupt the stability of the judicial system. On the one hand, pretrial hearings can be an effective horizontal oversight tool to prevent arbitrary actions by law enforcement officials, especially in relation to arrests, detentions, and the termination of investigations or prosecutions. However, this expansion of authority can create legal uncertainty without a clearer mechanism regarding time limits, sanctions for judges who exceed time limits, and a more detailed definition of interested third parties. Inconsistencies in pretrial decisions can also open loopholes for certain parties to manipulate the legal process for their own interests, thereby undermining the principle of justice that must be upheld. Therefore, revisions and strengthening of regulations are necessary so that pretrial hearings remain an effective control tool without disrupting the stability of the criminal justice system in Indonesia.

4. Conclusion

Pretrial hearings are designed as a horizontal oversight mechanism for investigators and prosecutors during the investigation and prosecution stages, in order to guarantee the protection of suspects' human rights. However, in practice, the effectiveness of this mechanism has not been optimal. The presence of a single judge in the pretrial process is often unable to provide strong guarantees for the protection of suspects' rights. Many pretrial decisions actually create legal uncertainty due to differences in interpretation,

limitations in the scope of examination, and weak standards of objectivity in determining suspects. As a result, the function of control over investigators and prosecutors does not work as it should.

This situation shows that the current pretrial mechanism needs fundamental reform. The process of supervising investigators' actions should no longer rely on a pretrial mechanism that is limited to administrative and formal aspects, but should instead be directed towards a more substantive, transparent, and accountable model of supervision under the direct supervision of a court judge. In this context, strengthening the role of judges at the investigation and preliminary examination stages is important to ensure legal certainty and prevent abuse of authority by law enforcement officials.

As a direction for reforming criminal procedure law in Indonesia, a more progressive system can be adopted through restorative justice or plea bargaining mechanisms, which have been effectively implemented in various countries. These mechanisms enable the resolution of cases that are more oriented towards the restoration of rights, substantive justice, and a balance between the interests of victims, perpetrators, and society. In addition, criminal law reform must also strengthen procedural standards in investigations, examinations, evidence, and the determination of suspects, so that legal processes can run fairly, professionally, and transparently without having to rely on pretrial stages, which often cause controversy and legal uncertainty.

Thus, the elimination or restructuring of the pretrial mechanism needs to be considered as part of national criminal law reform. The aim is not merely to simplify the process, but to ensure the achievement of the principles of due process of law, protection of human rights, and legal certainty in line with the legal ideals (rechtsidee) of Indonesia as a country based on the rule of law.

Based on the results of research that has been conducted, the effectiveness of pretrial in the Indonesian criminal law system still faces various fundamental obstacles that require structural and normative reform. Therefore, the government and the legislature need to reformulate the provisions on pretrial hearings in the Criminal Procedure Code (KUHAP). This reformulation should be aimed at expanding the function of pretrial hearings so that they are not only administrative but also substantive, thereby ensuring the protection of human rights and the implementation of the principle of due process of law. In the upcoming revision of the KUHAP, the pretrial mechanism should be integrated into the pre-trial hearing system under the direct supervision of district court judges. Thus, any coercive measures such as detention, search, and seizure can only be carried out with judicial authorisation, not entirely based on the discretion of investigators.

In addition to reformulating the Criminal Procedure Code, the role of Supervisory and Observer Judges (Hakim Wasmat) as stipulated in Law No. 48 of 2009 on Judicial Authority needs to be expanded so that it is not only administrative but also substantive. Hakim Wasmat needs to be given preventive and corrective powers to supervise the actions of investigators and public prosecutors from the initial stage of investigation to prosecution. Thus, supervision of the actions of law enforcement officials is no longer reactive through a pre-trial mechanism, but can be carried out proactively to prevent violations of the rights of suspects from an early stage. This model of oversight will strengthen the principles of accountability and transparency in the criminal justice process.

Furthermore, it is necessary to establish implementing regulations that are *lex specialis* regarding the standards of objectivity in determining suspects. These standards must regulate the minimum amount and quality of evidence that can be used as a legal basis for determining a person as a suspect. Thus, investigators will not have excessive discretion and can avoid practices of abuse of authority that potentially violate the principle of *presumption of innocence*. The determination of suspects must be carried out carefully by considering the proportionality of evidence, legal interests, and protection of human dignity. This standardisation will strengthen the legitimacy of the legal process and close opportunities for baseless criminalisation.

In addition to strengthening regulations, improving the capacity of law enforcement officials is equally important. Continuous training for investigators, prosecutors, and judges needs to focus on the application of human rights principles, due process of law, and scientific evidence-based investigation techniques. The competence and integrity of officials must be maintained so that every legal action can be accounted for professionally and ethically. In this context, progressive and ethics-based legal education must be a priority in building a judicial system that is both ethical and responsive to developments in modern law.

As a form of more adaptive criminal law reform, the mechanisms of restorative justice and plea bargaining can be adopted to strengthen Indonesia's criminal justice system. These two mechanisms provide alternatives for faster, fairer case resolutions that are oriented towards restoring the rights of victims and the social responsibility of perpetrators.

The implementation of restorative justice is also in line with the objectives of progressive law, which prioritises a balance between the interests of victims, perpetrators, and society. Meanwhile, the application of plea bargaining will reduce the caseload in courts and promote the efficiency of legal processes without neglecting the principle of substantive justice. Furthermore, external oversight of law enforcement processes also needs to be strengthened by involving the participation of the public and independent institutions.

The government may consider establishing a Legal Process Supervisory Commission (KPPH) as a new institution to monitor and assess the actions of investigators and prosecutors in a transparent and accountable manner. This commission could collaborate with existing institutions, such as the Judicial Commission, the National Human Rights Commission, and the Ombudsman of the Republic of Indonesia, to ensure that law enforcement is carried out in accordance with the principles of the rule of law (*rechtstaat*). The involvement of civil society, academics, and non-governmental organisations (NGOs) must also be expanded in the process of public oversight of the performance of law enforcement officials, so that the judicial system is not closed and remains under the social control of the community.

With the implementation of these measures, the reform of the pretrial system will have a significant impact on improving the effectiveness and legitimacy of Indonesian criminal law. These changes are not only aimed at simplifying procedures, but also at strengthening the protection of citizens' constitutional rights and ensuring a balance between legal certainty, substantive justice, and social benefits. Thus, the renewal of the

pretrial mechanism is an important part of national criminal law reform towards a modern, fair, and human rights-oriented judicial system.

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