

# Transformation and Effects of Human Rights Protection on Determining Corruption Suspects as a Pretrial Object under the Indonesian Criminal Justice System

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## Abstract

This study explores the transformation of human rights understanding and legal enforcement within the Indonesian criminal justice system, focusing on expanding the scope of pre-trial elements. The debate centers around balancing citizens' rights to protection with the public's demand for legal certainty under the Indonesian Criminal Code (KUHP). This research presents a coherent approach to address this dilemma, aiming to establish legal certainty and justice in line with Article 28 of Indonesia's 1945 Constitution. The central legal issue is the lack of clarity and certainty in the determination of suspects, particularly in corruption cases, due to legal gaps in the Indonesian Criminal Procedure

Code (KUHAP). This uncertainty prevents victim compensation and rehabilitation, making it impossible for victims to seek legal redress. The study argues for a review of Law No. 8 of 1981 to strengthen victim protection in such cases. Findings reveal the crucial role of human rights in reforming pre-trial procedures, notably the inclusion of suspect determination as a pre-trial element under Constitutional Court Decision No. 21/PUU-XII/2014. This shift ensures that suspects' rights are safeguarded, especially in corruption cases, aligning with Indonesia's obligation to uphold human rights and minimize unjust detentions. The study's contribution extends to both national and global contexts, offering insights into the importance of legal reforms that safeguard human rights while ensuring justice and legal certainty. It recommends that the government implement legal measures to provide compensation and rehabilitation for victims of wrongful corruption suspect determinations.

**KEYWORDS** *Pretrial, Determination of Suspect, Human Rights*

## Introduction

The pretrial object in the provisions of Article 77 point (a) of the Indonesian Code of Criminal Procedures (hereinafter referred to as the *KUHAP*) has undergone development.<sup>1</sup> Originally, it was in relation to the lawfulness of arrest, detention, termination of investigation or termination of prosecution and subsequently it is expanded to include determination of suspects by virtue of the decision of the Constitutional Court Number: 21/PUU-XII/2014.<sup>2</sup> This raises problems in the criminal procedural law itself, especially regarding the issue of compensation and rehabilitation for unlawful determination of suspects. With the expansion of the determination of suspects

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<sup>1</sup> Darwin, Darwin, Dahlan Dahlan, and Suhaimi Suhaimi. "Analisis Yuridis Putusan Praperadilan dalam Perspektif Sistem Peradilan Pidana." *Jurnal Mercatoria* 12, no. 1 (2019): 68-79; Kusuma, I. Made Wisnu Wijaya, and Ni Made Sukaryati Karma. "Upaya Hukum Praperadilan dalam Sistem Peradilan Pidana di Indonesia." *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73-77.

<sup>2</sup> Choiruddin, Rahmad Riyan, and Sukinta Nyoman Serikat Putra Jaya. "Tinjauan Yuridis Penetapan Status Tersangka Sebagai Perluasan Objek Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014." *Diponegoro Law Journal* 5, no. 2 (2016): 1-19; Setiawan, Agus. "Reconstruction of Judge Authorities on Pretrial in Indonesia Based on Justice Value." *Scholars International Journal Law Crime Justice* 4, no. 1 (2021): 11-18.

as set out in Article 77 point (a) of the Code of Criminal Procedures, the issue is that whether the victim of the wrong determination of suspects can demand compensation and/or rehabilitation. Can the demands for compensation and/or rehabilitation as set out in the KUHAP be applied to the wrong determination of suspects? Bearing in mind that the KUHAP does not yet set out the determination of suspects, the demand for compensation and rehabilitation cannot be requested to the court.<sup>3</sup>

The judges at the Constitutional Court (hereinafter referred to as MK Judges) have the view that it is necessary to include the determination of a suspect as a pretrial object as a manifestation of achieving the ideals of the state and creating a just legal certainty and that the applicable criminal law is not sufficient to realize fair legal certainty as stipulated in Article 28 of the 1945 NRI Constitution, which states that the Government is obliged to create a just legal certainty by forming laws. Therefore, in case of any problem in criminal law, the Constitutional Court considers that the criminal law in force is not sufficient to create a just legal certainty, as stipulated in the provisions of Article 9 of Law Number 48 of 2009 concerning Basic Principles of Judicial Power. Determination of suspects as deprivation of freedom is part of the investigative process which is categorized as violation of human rights. Thus, it is the authority of the judiciary at the investigation stage to determine whether the act of forcible deprivation of liberty with regard to determination of suspects has been undertaken in accordance with the current vision.<sup>4</sup>

The issue of determining whether there is an element of "*abuse of power*" is a fundamental question that needs to be addressed. It is necessary to examine whether there is a legal basis that was violated in the designation of a corruption suspect.<sup>5</sup> This is a consequence of adhering to the principle of legality. If further investigated, the designation of a corruption suspect should be made only after an investigation, not before the investigation and inquiry processes have been

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<sup>3</sup> See Supriyono, Supriyono, M. Arief Amrullah, and I. Gede Widhiana Suarda. "Pretrial In Indonesian Criminal Law." *International Journal of Educational Research & Social Sciences* 4, no. 3 (2023): 562-565.

<sup>4</sup> Setiawan, "Reconstruction of Judge Authorities on Pretrial in Indonesia Based on Justice Value". See also Faisal, Fitriah. "Pre-Trial in Indonesia: Why it Should be Reformed." *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 10, no. 2 (2023): 70-80.

<sup>5</sup> See Toerino, Nanda Riko Hendy. "Pretrial and Its Contribution to Protection of the Rights of Suspectives." *International Journal of Educational Research & Social Sciences* 3, no. 2 (2022): 607-621. Also see Malarangeng, Andi Bau. "Solusi Praperadilan oleh Hakim Komisararis Berdasarkan RUU KUHAP." *Pandecta Research Law Journal* 7, no. 1 (2012): 31-45.

carried out. The inadequacy of procedures in examining corruption suspects can lead to abuse of power. Such abuse can occur during the investigative stage, as it is at this stage that a person's status can be elevated to that of a suspect. The designation of a corruption suspect must be based on sufficient preliminary evidence to facilitate the examination and proof. In practice, there have been conflicts regarding the procedural examination of corruption suspects.

In Ukraine, the pretrial investigation process is structured to ensure that the tasks outlined in the Ukrainian Criminal Procedure Code (CPC), specifically Article 2 of Law No. 4651-VI (2012), are carried out effectively. Article 2 emphasizes the need for investigations to be efficient, comprehensive, and impartial. These core principles aim to ensure that the investigative process upholds both the rights of the individuals involved and the integrity of the legal system.<sup>6</sup>

The key focus of Article 2 is to ensure that investigators are able to properly assess the scope of the case and determine the necessary procedural actions. This means identifying the number of steps, inquiries, and activities needed to complete the investigation effectively. The process requires an objective and thorough examination, where each action is scrutinized for its relevance and contribution to achieving the case's resolution.<sup>7</sup>

The law stresses the need for investigations to be carried out with efficiency, which involves managing resources and time in a way that avoids unnecessary delays and optimizes the investigative process. At the same time, investigations must be comprehensive, meaning that all aspects of the case, including any exculpatory evidence, must be explored. Investigators cannot simply focus on evidence that supports the prosecution's case but must consider all available evidence that may impact the final decision.

Moreover, the principle of impartiality is crucial. Investigators must remain neutral, conducting their work without bias, prejudice, or undue influence. This impartiality is crucial to ensure fairness and prevent wrongful

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<sup>6</sup> See Mudrak, Inna, Oleksandr Podobnyi, and Olesia Vashchuk. "Compensation of damages to victim of criminal offence under Criminal Procedure Code of Ukraine." *Juridical Tribune/Tribuna Juridica* 9, no. 2 (2019): 377-391; Horoshko, Valentyna, Yehor Nazymko, and Yurii Pavliutin. "Criminal procedure law of Ukraine in the context of European integration: problematic economic and legal issues, ways of reforming." *Baltic Journal of Economic Studies* 8, no. 3 (2022): 48-52.

<sup>7</sup> See Sopilnic, R. "Law and procedure appeal of making the criminal procedure code Ukraine." *Закон и Жизнь* 261, no. 9/2 (2013): 277-288; Popovych, Ruslan, and Mykhaylo Klymchuk. "Procedural opportunities of the victim in a criminal trial." *Visegrad Journal on Human Rights* 2 (2023): 99-104.

convictions or unjust legal outcomes.<sup>8</sup> Importantly, the standards for the effectiveness of investigations in Ukraine are influenced by the jurisprudence of the European Court of Human Rights (ECHR). This means that Ukrainian law and legal practices are aligned with international human rights standards. The ECHR plays a significant role in shaping the quality of investigations, with its rulings offering guidance on what constitutes a fair, efficient, and impartial investigation. For example, the ECHR has established the necessity of investigating certain types of crimes (such as those involving state officials or serious violations of human rights) with due diligence and thoroughness.<sup>9</sup>

Thus, Article 2 of the Ukrainian CPC sets a framework for investigations that aims to safeguard both individual rights and the overall integrity of the justice system. By ensuring investigations are conducted impartially, comprehensively, and efficiently, Ukraine adheres to both its own legal standards and international human rights norms, particularly those outlined by the ECHR.

As an illustration of the application of principles outlined in the Indonesian legal system concerning the protection of human rights and fairness in the investigative process, the case of Supreme Court Decision Number 04/Pid/Prap/2015/PN.Jkt.Sel, dated January 13, 2015, involving the defendant Budi Gunawan, serves as a pertinent example. This is evident in Supreme Court Decision Number 04/Pid/Prap/2015/PN.Jkt.Sel, dated January 13, 2015, involving the defendant Budi Gunawan. In this case, the Corruption Eradication Commission (KPK) had designated Budi Gunawan as a suspect in a corruption crime under Article 12 letter a or b, Article 5 paragraph (2), Article 11, or Article 12 of the Corruption Law, based on suspected unusual transactions and/or the receipt of gifts or promises. In designating the suspect, the KPK never provided any notification or document to Budi Gunawan regarding the allegations under the relevant articles and the criminal events leading to his designation as a suspect. The KPK stated that the investigation had been conducted in July 2014, and only on Monday, January 12, 2015, did the KPK declare that there was a corruption crime committed by Budi

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<sup>8</sup> Tumanlyants, A. R. "Judicial control at the stage of pre-trial investigation in the criminal proceedings of Ukraine." *Preliminary Investigation* 1 (2020): 32-39. See also Oliynyk, Svitlana. "The Criminal Justice System of Ukraine." Resource Material Series No. 92, 155<sup>th</sup> International Training Course, *United Nations Asia and Far East Institute*, 2013. Online at [https://unafei.or.jp/publications/pdf/RS\\_No92/No92\\_11PA\\_Oliynyk.pdf](https://unafei.or.jp/publications/pdf/RS_No92/No92_11PA_Oliynyk.pdf)

<sup>9</sup> Derdiuk, Bohdan, et al. "Reasonable Time in Criminal Proceedings of Ukraine in the Context of the European Court of Human Rights Case Law." *Revista Gestão Inovação e Tecnologias* 11, no. 2 (2021): 701-715.

Gunawan during the period from 2004 to 2006 when he was the Head of the Human Resources Development Bureau of the National Police. Budi Gunawan had never been questioned by the KPK regarding the case of giving gifts or bribery from 2004 to 2014.<sup>10</sup>

Another example that can be cited is South Jakarta District Court Decision Number 32/Pid.Prap/2015/PN.Jkt.Sel., dated May 12, 2015, concerning the defendant Ilham Arief Sirajuddin (Petitioner). The decision essentially stated that the designation of Ilham Arief Sirajuddin as a suspect by the Corruption Eradication Commission (KPK) was invalid because it did not meet the requirement of having two valid pieces of evidence at the time the investigation was conducted. Therefore, the decision restored Ilham Arief Sirajuddin's rights, status, dignity, and honor, and rehabilitated his position and dignity as stated in the court's ruling. In this case, Ilham Arief Sirajuddin was never questioned as a suspect, and there was insufficient evidence to designate him as a suspect in a corruption case. The designation of the petitioner as a suspect in the corruption case was deemed arbitrary and contrary to the principle of legal certainty.<sup>11</sup>

The research aims to outline the points regarding the existence of the pretrial institution within the provisions of Article 77 of the Criminal Procedure Code (KUHP), which has been expanded by the Constitutional Court decision No. 21/PUU-XII/2014 related to the legality of suspect determination, searches, and seizures. The focus of the discussion is on the determination of corruption suspects, as pretrial applications are predominantly centered around this issue.

The central focus of this study is the legal protection afforded to individuals who are wrongfully designated as suspects in corruption cases,

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<sup>10</sup> See Susak, Oktein Josephus. "Perspektif Keadilan dan Kepastian Hukum dalam Putusan Praperadilan Nomor: 04/Pid. Prap/2015/PN. Jkt. Sel. Tahun 2015." *Arena Hukum* 9, no. 1 (2016): 53-72; Simbolon, Gomgoman, et al. "Analisis Hukum Atas Penetapan Tersangka Tindak Pidana Korupsi Dalam Kaitan Dengan Wewenang Lembaga Peradilan (Studi Kasus: Perkara Peradilan dalam Putusan Pengadilan Negeri Jakarta Selatan Nomor: 04/Pid. Prap/2015/PN. Jkt. Sel.)." *USU Law Journal* 4, no. 2 (2016): 153-164; Nandani, Afrizia Aditya. "Tinjauan Yuridis Atas Putusan Praperadilan dalam Perkara No. 04/Pid. Prap/2015/PN. Jkt. Sel. (Studi Kasus Putusan Praperadilan untuk Tidak Sahnya Status Tersangka Budi Gunawan atas Kasus Korupsi)." *Novum: Jurnal Hukum* 2, no. 2 (2015): 107-115.

<sup>11</sup> See Pratiwi, Nur Ayu. "Penetapan Tersangka Korupsi oleh KPK Tanpa Bukti Permulaan Yang Cukup Sebagai Dasar Permohonan Praperadilan Ditinjau dari Asas Due of Process (Studi Putusan Pengadilan Negeri Jakarta Selatan Nomor: 32/Pid. Prap/2015/PN. Jkt. Sel.)." *Verstek* 5, no. 3 (2017).

particularly the demands for compensation and rehabilitation following a court ruling that declares such a designation unlawful. This issue raises several pertinent legal questions, notably: the weaknesses associated with pretrial judges' decisions to invalidate corruption suspect determinations; the basis for Constitutional Court judges to expand the scope of pretrial examination under Article 77(a) of the Indonesian Criminal Procedure Code (KUHAP); and the concept of compensation and rehabilitation for individuals whose designation as corruption suspects has been declared unlawful by the court. The research employs a normative approach, utilizing statutory law, conceptual, and case law approaches to provide a comprehensive analysis. The primary focus of this study lies in examining the concept of legal protection for victims of wrongful designation as corruption suspects, specifically within the context of pretrial motions and applications. The research aims to explore how statutory regulations and expert opinions in criminal law define legal protection for individuals in such circumstances. Since the current KUHAP does not explicitly address the compensation and rehabilitation of suspects whose designation has been ruled unlawful, the study further investigates relevant case law on pretrial decisions in corruption cases where suspect designations were annulled.

The scope of the research is specifically limited to the issue of compensation and rehabilitation for individuals wrongfully identified as corruption suspects, a matter that has become increasingly significant due to the growing concerns over arbitrary or unlawful designations. The ultimate goal of this study is to offer recommendations for developing a legal framework that would ensure victims of wrongful designation in corruption cases are entitled to compensation and rehabilitation, a legal provision currently absent from KUHAP, which hinders their ability to seek redress. The research advocates for the establishment of specific legal regulations and implementing rules that would allow adjudicating judges to ensure that victims of wrongful corruption suspect designations are granted appropriate compensation and rehabilitation.

## **Concept of Legal Protection, Human Rights and Pretrial Suits**

The concept of legal protection evolves from the concept of recognition of human rights as stated explicitly in points (a) and (c) of the Considering Preamble of the KUHAP. It aims to provide certainty, justice and benefits to the public against the authorities' acts that are arbitrary and contrary to societal norms. Legal protection is provided by the government through policies set forth in laws and regulations. It constitutes an embodiment of a nation of laws

that prioritizes legal protection in accordance with the UN charter regarding the 1948 Universal Declaration of Human Rights, which protects the public from arbitrary acts committed by the authorities contrary to the prevailing norms.

The problem of legal protection as stated by Iwoeng Geovani, Siti Nurkhotijah, Harry Kurniawan, Feby Milanie and Rico Nur Ilham is given to legal subjects as a form of protection by the state in relation to prevention and coercion in order to enforce legal regulations<sup>12</sup>. The principles governing legal protection of human honor and dignity are set out in Law on Basic Principles of Judicial Power, and further set out in the Elucidation of the KUHAP. The presence of a pretrial institution is a manifestation of the provision which guarantees the protection of human rights. According to Luhut M. Pangaribuan, the presence of a pretrial institution as set out in the KUHAP is identical to that of the United States that applies the *Habeas Corpus* principle, meaning that in principle the government shall always guarantee an individual's right to independence.<sup>13</sup>

As Satjipto Raharjo puts it, the theory of legal protection originates in God and is universal in nature which is law and morals. Law and morals cannot be separated from the rules of human life. Law aims to integrate and coordinate a variety of interests within the society. Interests are protected by limiting various human interests; thus, laws have the highest authority to determine what should be regulated and protected. Furthermore, according to Satjipto Raharjo, legal protection is protection for human rights that are harmed by other people and protection for the public, so that they can enjoy all the rights granted by laws.<sup>14</sup> The aspect of legal protection aims to provide justice and certainty, including providing protection for fundamental rights.

Based on the above, the purpose of the pretrial institution is a mechanism for objecting to the law enforcement process, which is closely related to the protection of human rights. Thus, pretrial is part of the Criminal Procedure Code, in which it appears that the pretrial institution cannot function optimally. Therefore, the role of the court to supervise the pretrial institution is

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<sup>12</sup> Geovani, Iwoeng, et al. "Juridical Analysis of Victims of The Economic Exploitation of Children Under the Age to Realize Legal Protection From Human Rights Aspects: Research Study At The Office of Social and Community Empowerment In Batam City." *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 1, no. 1 (2021): 45-52.

<sup>13</sup> See Pretrial Decision on determination of the suspect Budi Gunawan in Case Number 04/Pid,Prap/2015/Pid Jkt, Tue, 16 February 2015, 4.

<sup>14</sup> Raharjo, Satjipto. *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000), p. 54.



only post facto, meaning that it does not end with the examination and testing of the institution, and the testing is only formal, determining the objective aspects and leaving the subjective aspects unchecked<sup>15</sup>.

According to Fitzgerald, legal protection integrates and coordinates various interests within the society against certain interests by limiting those of the parties.<sup>16</sup> Therefore, the use of authority by law enforcement officials must be controllable and its legality can be tested as a correction to the use of authority. Control is intended to guarantee protection of human rights, including in terms of Suspect in a corruption crime. Thus, determination of suspects by investigators can be tested and corrected in order to guarantee protection of human rights; therefore, law has the highest authority to determine human interests that need to be regulated and protected.<sup>17</sup> The expansion of the scope of pretrial examination represents a significant advancement in the administration of the rule of law, particularly in providing legal protection against coercive measures and arbitrary actions by law enforcement authorities in the designation of suspects. The function of pretrial institutions resembles that of examining judges (Rechter Commissaries), in that they oversee whether a coercive measure is lawful or not. Therefore, legal protection is always linked to the state's actions in ensuring the certainty of individual or group rights. The function of legal protection creates an orderly and balanced society by distributing rights and obligations through the allocation of authority, resolving legal issues, and maintaining legal certainty. In relation to the use of authority, Phillipus M. Hadjon states that government actions can be both preventive and responsive.<sup>18</sup>

Legal protection functions as an orderly and balanced society in order to create legal certainty over rights and obligations. However, according to Inqilab Shahbazov and Elsever Muradov there are deviations from the guidelines by the judiciary, prosecutors and investigators at the pre-trial stage, and the lack of

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<sup>15</sup> Luter, Albertus, Ramlani Lina Sinaulan, and Mohamad Ismed. "Pre-Trial: The Suspects' ultimate Weapon and Correction Tool for Investigators to Be More Professional from the Perspective of Legal Expediency." *Policy, Law, Notary and Regulatory Issues* 1, no. 2 (2022): 73-84.

<sup>16</sup> Luter, et.al., p. 53.

<sup>17</sup> Luter, et.al., p. 54.

<sup>18</sup> Geme, MariaTheresia. *Perlindungan Hukum terhadap Masyarakat Hukum Adat (Woe) dalam Pengelolaan Cagar Alam Watu Ata Kabupaten Ngada Provinsi Nusa Tenggara Timur*. Diss. Universitas Brawijaya, 2012.

judicial independence is the main reason behind the excessive use of pre-trial detention<sup>19</sup>.

Pretrial is a criminal justice system that applies in Indonesia and is part of law enforcement. As the main instrument of material and formal criminal law, according to McCay Vernon, Lawrence J. Raifman, Sheldon F. Greenberg, Brendan Monteiro, the role of the police in the federal government system, the police and prosecutors are each role players with an interest in convicting guilty defendants. The police are responsible for making arrests and developing sufficient evidence to obtain a conviction beyond a reasonable doubt. The prosecutor reviews the evidence and makes the decision to proceed with the trial, the goal of which is to convict the accused.<sup>20</sup> Thus, the problem of law enforcement both *in abstracto* and *in concreto* is an actual problem that has recently received sharp attention from the public.<sup>21</sup>

In practice, the utilization of pretrial institutions in terms of providing legal protection to the public is often ignored. This is exemplified in the South Jakarta District Court Decision Number: 32/Pid.Prap/2015/PN.Jkt.Sel. dated 12 May 2015 with the suspect Ilham Arief Sirajuddin, essentially stating that determination by the KPK of the suspect Ilham Arief Sirajuddin is unlawful since it does not meet the requirements of 2 (two) legal means of proof during the investigation and the position and dignity of Ilham Arief Sirajuddin shall be rehabilitated by restoring his rights as stated in the decision.<sup>22</sup> The second decision comes from the South Jakarta District Court regarding the suspect Gazalba Saleh against the Corruption Eradication Commission (KPK) in case No. 110/Pid.Pra/2022/PN.Jkt dated January 20, 2022. Gazalba Saleh was designated as a suspect in a corruption case related to the alleged "arrangement" of case No. 326.K/Pid/2022 at the Cassation level. Subsequently, the KPK

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<sup>19</sup> Shahbazov, Inqilab, and Elsever Muradov. "Excessive use of pre-trial detention in Azerbaijan: Examination of the causes." *International Journal of Law, Crime and Justice* 57 (2019): 1-12.

<sup>20</sup> Vernon, McCay, et al. "Forensic pretrial police interviews of deaf suspects avoiding legal pitfalls." *International Journal of Law and Psychiatry* 24, no. 1 (2001): 43-59.

<sup>21</sup> Supriyono, Supriyono, M. Arief Amrullah, and I. Gede Widhiana Suarda. "Pretrial In Indonesian Criminal Law." *International Journal of Educational Research & Social Sciences* 4, no. 3 (2023): 562-565. See also Banuati, Nabilla. "The Complicated Conditions on Indonesian Law Enforcement: A Book Review Kumpulan Catatan Hukum, Dr. Reda Manthovani SH LLM, Bhuana Ilmu Populer (Kelompok Gramedia), Jakarta, 2017, 234 pages, ISBN 978-602-394-630-3." *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 267-276.

<sup>22</sup> See Decision of the South Jakarta District Court in Case Number 32/Pid,Prap/2015/PN.Jkt.Sel dated 12 May 2015.

issued a Notification of the Commencement of Investigation No. B/714/DIK.00/23/11/2022 dated November 1, 2022. In this matter, the panel of judges at the South Jakarta Court stated in their ratio decidendi as follows.

Considering that, according to the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2016 regarding the Prohibition of Judicial Review of Pretrial Decisions, Article 2 paragraphs 2 and 4, the pretrial examination regarding the illegitimacy of suspect determination only assesses formal aspects, namely whether there are at least two valid pieces of evidence. Page 151 of the ruling 110/Pid.Pra/2022/PN Jkt.Sel does not enter the substance of the case, and the pretrial hearing regarding the illegitimacy of suspect designation, seizure, and search was led by a single judge due to its brief nature and the evidence only examining formal aspects.

Considering that since the respondent's exception has been granted, there is no need to further consider the substance of this pretrial application, and it suffices to state that the applicant's pretrial request cannot be accepted, thereby imposing no costs on the applicant for this case; taking into account the provisions of Law No. 8 of 1981 on Criminal Procedure, the Regulation of the Supreme Court of the Republic of Indonesia No. 4 of 2016, and other relevant legislation.

## Human Rights Development in Indonesian Criminal Justice System

Previously, criminal law enforcement was carried out based on HIR (*Het Herziene Inlandsh Reglement*) Staadblad 1941 Number 44, and RBg (*Rechtreglement voor de Buitengewesten*) Staadblad 1927 Number 227. Article 1 of the Transitional Rules of the 1945 Constitution. According to Sugeng Sutrisno, these two laws have not provided legal protection and human rights, especially for suspects, because both the HIR and RBg do not expressly regulate the restrictions on the authority of officials conducting investigations to carry out forced efforts such as arrest, detention, search, seizure for investigation, or prosecution<sup>23</sup>.

The issue of protecting human rights is among the formal requirements of a nation of laws, both according to Julius Stahl's continental concept and AVDicey's Anglo-Saxon concept. In addition to the right to life, the most important human right is the right to personal freedom, thereby determination

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<sup>23</sup> Sutrisno, Sugeng. "Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia." *International Journal of Business and Social Science Research* 2, no. 11 (2021): 1-9.

of a corruption suspect can be interpreted as a deprivation of freedom. The right to life and the right to personal freedom are fundamental principles relating to humans as individuals, as emphasized in Article 28A of the 1945 Constitution of the Republic of Indonesia and Article 9 of Law Number 39 of 1999. Determination by investigators of suspects constitutes deprivation of freedom, which is also deprivation of human rights (suspects) as stated in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 21 of the KUHAP in conjunction with Article 9 paragraph (1) in conjunction with Article 10 paragraph (1) of the International Covenant on Civil and Political Rights. In principle, these provisions set out the right to protection and fair legal certainty and equal treatment before the law. All forms of criminal acts, including determination of corruption suspects as depriving a person of freedom, are violations of human rights, so they can be tested against a judicial institution. The latter serves to examine actions taken by law enforcement officials, whether the actions of investigators are in accordance with the principle of due process the law, in line with the development of the principle of legality which protects individuals from arbitrary judgment by authorities and judge.<sup>24</sup>

Following the Constitutional Court Decision Number 21/PUU-XII/2014, which addresses the expansion of pretrial authority at the investigation and prosecution stages, there is a greater emphasis on the interests of the suspect in efforts to establish a balance in the protection of human rights for corruption suspects. This development provides optimism for an integrated criminal justice system with more explicit formulations prioritizing the interests of corruption suspects. This effort underscores the principle of balance in the protection of human rights for suspects, as outlined in Article 28G, paragraph (1) of the 1945 Constitution of the Republic of Indonesia. It is further reinforced in the Criminal Procedure Code (KUHAP), which states that the judiciary functions to examine the actions taken by law enforcement officials to determine whether the investigators' actions comply with the principles of due process of law.<sup>25</sup>

In criminal law there is a principle of legality, which is to protect individuals from arbitrary judgments, both by judges and by executives and even by head of state; thus, this principle belongs to in fundamental principles. In addition to the principle of legality, due process of law is also developed in the science of law which protects individual rights against state action. Due

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<sup>24</sup> Marzuki, Peter Mahmud. *Teori Hukum* (Jakarta: Prenada Media, 2020), p. 55.

<sup>25</sup> Gombos, Katalin. "Europeanisation effects in the court jurisprudence." *International and Comparative Law Review* 19, no. 1 (2019): 261-275.

process of law is a fundamental principle. In general, according to this principle, one's rights cannot be taken away without a fair and lawful procedure.<sup>26</sup> In fact, due process of law originates from Aristotle's idea of the rule of law, which basically states that the best state is governed by law, rather than by people.<sup>27</sup> However, historically, it cannot be denied that the provisions regarding due process of law originated from Magna Charta.<sup>28</sup>

The development of pretrial proceedings in the Criminal Procedure Code (KUHAP) is considered no longer capable of delivering justice, particularly for the suspects and their families, in the context of human rights protection. Therefore, the presence of Constitutional Court Decision Number 21/PUU-XII/2014 is expected to prioritize the interests of the suspect in an effort to establish a principle of balance in the protection of human rights for corruption suspects, particularly through the expansion of pretrial authority at the investigation stage within an integrated criminal justice system.<sup>29</sup>

The actions of investigators in designating a corruption suspect that contravene the Criminal Procedure Code (KUHAP) can be said to fail to deliver a sense of justice for both the suspect and their family, and such actions cannot be allowed to go uncorrected. For example, in the Supreme Court Decision of the Republic of Indonesia No. 38/Pid.Prap/2012/PN.Jkt.Sel, concerning the defendant Bachtiar Abdul Fatah in a corruption case related to the bioremediation of PT Chevron, the ruling stated: "*The designation of the suspect and the detention of Bachtiar Abdul Fatah is unlawful because it constitutes coercive action not based on sufficient evidence, as stipulated in Article 21, paragraph (1) of KUHAP in conjunction with Article 184, paragraph (1) of KUHAP.*" Another example can be found in the Supreme Court Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel concerning the defendant Budi Gunawan, a law enforcement officer and public official. In this ruling, it was stated, "*The designation of suspect status against Budi Gunawan by the Corruption Eradication Commission (KPK) is unlawful, and he does not qualify as a law enforcement officer.*"

Several pretrial decisions have sparked both support and opposition regarding the designation of corruption suspects. The designation of a suspect in a corruption case through media reporting constitutes a violation of the presumption of innocence, as it publicly reveals an individual's status as a

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<sup>26</sup> Marzuki, *Teori Hukum*.

<sup>27</sup> Marzuki.

<sup>28</sup> Marzuki.

<sup>29</sup> See Decision of the South Jakarta District Court in the pretrial case with case number 04/Pid.Prap/2015/PN.Jkt.Sel.

corruption suspect without prior confirmation and without conducting witness examinations related to the case by the investigator.

The protection of human rights is a fundamental requirement of a rule-of-law state, as articulated in Julius Stahl's<sup>30</sup> and A.V. Dicey's.<sup>31</sup> Among the core human rights, the right to personal freedom stands as one of the most crucial, second only to the right to life. Consequently, the deprivation of freedom in the context of a corruption case directly pertains to the protection of human rights, particularly the rights of individuals who are suspected of involvement in such offenses. Therefore, suspect in a Corruption case, which deprives of freedom, relates to human rights.<sup>32</sup> Some examples of pretrial rulings can serve as jurisprudence regarding the actions of investigators in designating suspects who disregard the rights of corruption suspects without following the procedures outlined in the Indonesian Criminal Procedure Law (KUHAP). Announcement to the media is an act of violating the presumption of innocence since it discloses to the public the status of a person as a corruption suspect whose allegation is never confirmed by the corruption suspects and witnesses of the a quo cases have not been examined by investigators.<sup>33</sup>

A mistake in identifying a corruption suspect is a violation of the sense of justice, and this action can be tested through an independent and impartial judicial process. Considering that the KUHAP contains the principle of presumption of innocence as a form of legal protection for an individual's human rights where a person is considered innocent, provided that there has not been a judge's decision stating otherwise, as stated in the Elucidation of Article 3 point c of the KUHAP. This provision is based on the provision of legal protection against determination of a corruption suspect while respecting the basic rights of corruption suspects and providing a fair legal certainty.

Despite the public trust in the mandate of the constitution in terms of providing legal protection for everyone in numerous laws and regulations, there remains a pessimism about legal protection in terms of the use of pretrial institutions.<sup>34</sup> The public prefers resolving disputes through reconciliation,

<sup>30</sup> See Stahl, Friedrich Julius. *Das monarchische Princip: eine staatsrechtlich-politische Abhandlung*. Mohr, 1845.

<sup>31</sup> Dicey, Albert Venn. *The Law of the Constitution*. Vol. 1. OUP Oxford, 2013.

<sup>32</sup> Gathii, James Thuo. "Defining the Relationship between Human Rights and Corruption." *University of Pennsylvania Journal of International Law* 31, no. 1 (2009): 125-202.

<sup>33</sup> See Decision of the South Jakarta District Court in a pretrial case with Case Number 04/Pid.Prap/2015/PN.Jkt.Sel.

<sup>34</sup> Hidayat, Arif, and Zaenal Arifin. "Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia." *Jurnal Ius Constituendum* 4, no. 2 (2019): 147-159.

rather than lawsuits in everything since they want harmony among the parties. Therefore, the existence of pretrial institution remains requiring an initiative of those who are disadvantaged to utilize pretrial institution which is heavily affected by socio-cultural conditions (legal culture), attitudes, beliefs, and the public's expectations of the trial process which are felt to be far from expectations. In addition, there is concern and fear for people to demand their rights against the wrong determination of corruption suspects and it will take a lengthy process.

The existence of this pretrial institution forces investigators to be more careful in determining suspects while still being guided by the provisions in force. Nur Basuki Minarno argues that in criminal law the principle of legality is a worldwide, universal principle. Every criminal law around the world always adopts the principle of legality since, basically, it aims to protect human rights/nature. Deprivation of natural human rights must be done in democratic ways.<sup>35</sup>

Determination of corruption suspects by investigators with the issuance of an Investigation Warrant (*Sprindik*) can be interpreted as a form of deprivation of freedom. How is the implementation of the Constitutional Court's decision? Can an individual whose determination of a corruption suspect has been annulled can request compensation and/or rehabilitation where there are already regulations for arrest and detention? Decisions rendered are expected to provide a value of justice, benefits and legal certainty, as the essence of the ideals of law, especially in protecting the rights of corruption suspects in accordance with the UN charter regarding the 1948 Universal Declaration of Human Rights.

In the practice of law enforcement, the designation of a corruption suspect through the issuance of an investigation warrant (*Sprindik*) can lead to controversies that may be interpreted as a form of deprivation of liberty. An example of this can be seen in the case of the defendant Syahrul Yasin Limpo, in case No. 114/Pid.Pra/2023/PN.Jkt.Sel. dated November 14, 2023, where the request was denied. In the ruling of the South Jakarta District Court, the judges stated in the *ratio decidendi*:

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<sup>35</sup> Minarno, Nur Basuki. *Penyalahgunaan Wewenang dalam Pengelolaan Keuangan Daerah yang berimplikasi Tindak Pidana Korupsi*. (Surabaya: Laksbang Mediatama, 2011). See also Sommaliagustina, Desi. "Implementasi otonomi daerah dan korupsi kepala daerah." *Journal of Governance Innovation* 1, no. 1 (2019): 44-58; Muslim, Mohammad Buchori, and Achmad Hariri. "Peran Pemerintah Daerah dalam Mereduksi Tindak Pidana Korupsi di Daerah." *Mendapo: Journal of Administrative Law* 4, no. 1 (2023): 63-74.

*"Based on all the considerations above, the applicant's designation as a suspect was based on two valid pieces of evidence, as per the Constitutional Court Decision No. 21/PUU-XII/2014 dated April 28, 2015, and Article 2 paragraph (2) of the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) No. 4 of 2016."*

Another example can be seen in the Supreme Court Decision No. 97/Pid.Prap/2017/PN.Jkt.Sel., dated September 29, 2017, in the pretrial case of Setya Novanto against the Corruption Eradication Commission (KPK). In this ruling, the judges stated in the ratio decidendi:

*"The existence of Investigation Warrant No. Sprin.Dik-56/01/07/2017 dated July 17, 2017, regarding the designation of Setya Novanto as a suspect, in connection with all the evidence obtained by the KPK, is legally flawed, as it does not meet the requirement of having at least two valid pieces of evidence, given that it was not based on the procedures and regulations outlined in Law No. 30 of 2002 concerning the Corruption Eradication Commission, the Criminal Procedure Code (KUHP), and KPK Standard Operating Procedures (SOP). Therefore, the designation of Setya Novanto as a suspect, as issued by the KPK based on Letter No. 310/23/07/2017 dated July 18, 2017, is unlawful."*

As a consequence of the designation of a suspect based on Letter No. 310/23/07/2017 dated July 18, 2017, which was declared unlawful, the Pretrial Judge ordered the KPK to cease the investigation against Setya Novanto based on Investigation Warrant No. Sprin.Dik-56/01/07/2017 dated July 17, 2017, and mandated that the KPK bear the court costs, which amounted to zero.

Based on the above circumstances, a question arises regarding the application of the Constitutional Court Decision No. 21/PUU-XII/2014: Can Setya Novanto, whose designation as a corruption suspect has been annulled by the Pretrial Judge, file for compensation and/or rehabilitation, especially given the absence of specific regulations on this matter? This raises the potential for the decisions made by the Pretrial Judges to deliver justice, utility, and legal certainty, which are essential elements of the legal framework, particularly in protecting the rights of corruption suspects in accordance with the United Nations Universal Declaration of Human Rights of 1948.



## Effects Human Rights on Improving the Quality of Criminal Law Enforcement

Improving the quality of law enforcement cannot be separated from the state's responsibility for providing legal protection to its citizens. The State obligation is related to the obligation to provide answers for something that has happened and obligation to provide damages may be incurred.<sup>36</sup> The principle of state obligation has a close relationship with human rights enforcement, since the state is the main entity responsible for protecting human rights. The state obligation to uphold the constitutional rights can be seen in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social and Cultural Rights.<sup>37</sup>

Furthermore, the Pretrial Institution is an oversight effort as stated in points (a) and (c) of the Considering Preamble of the KUHAP, which in essence stating that a nation of laws based on Pancasila and the 1945 Constitution upholds human rights and guarantees that all citizens have the same position before law and government and is obligated to uphold the law and government with no exceptions. This is in accordance with the principles originating from the Habeas Corpus rights in the Anglo Saxon justice system, which provide fundamental guarantees for human rights. Indonesia has ratified the International Covenant on Civil and Political Rights through Law Number 12 of 2005 concerning Ratification of International Covenant On Civil and Political Rights.<sup>38</sup>

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<sup>36</sup> Chirwa, Danwood Mzikenge. "State responsibility for human rights." In *International Human Rights Law*. (London: Routledge, 2016), pp. 413-426; Ssenyonjo, Manisuli. "Reflections on state obligations with respect to economic, social and cultural rights in international human rights law." *The International Journal of Human Rights* 15, no. 6 (2011): 969-1012.

<sup>37</sup> Mishra, Anumeha. "State-centric approach to human rights: Exploring human obligations." *Revue québécoise de droit international* (2019): 49-66; Ssenyonjo, Manisuli. "Reflections on state obligations with respect to economic, social and cultural rights in international human rights law." *The International Journal of Human Rights* 15, no. 6 (2011): 969-1012; Vijapur, Abdulrahim P., and K. Savitri. "The International Covenants on Human Rights: An Overview." *India Quarterly* 62, no. 2 (2006): 1-37.

<sup>38</sup> See Lubis, Arief Fahmi. "The Right to a Fair Trial: Comparative Analysis of International Human Rights Standards." *The Easta Journal Law and Human Rights* 1, no. 3 (2023): 116-126; Tornado, Anang Shophan. "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian case study." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022).

The implementation of investigative duties in designating someone as a corruption suspect without following the procedures outlined in the Criminal Procedure Code (KUHAP) results in the violation of an individual's reputation and freedom. Another consequence is the potential for travel bans. Therefore, it is essential to correct the use of such authority by investigators as a means of control to protect human rights. This principle is rooted in Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>39</sup> The development of criminal procedural law aims to ensure that society understands its rights and obligations and to enhance the conduct of law enforcement officials in accordance with their functions and authorities, promoting the rule of law, justice, and the protection of human dignity, as well as legal certainty, to uphold a legal state as mandated by the 1945 Constitution.

Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights emphasizes the state's promise to guarantee remedies for individuals whose rights have been violated in relation to law enforcement duties and the protection of human rights, as outlined in Article 17 of the Human Rights Law and Article 2, paragraphs 3(a) and (b) of the ICCPR, which has been ratified through the International Covenant Law.

The 1945 Constitution of the Republic of Indonesia asserts that Indonesia is a legal state (*rechtsstaat*/constitutional state) that upholds human rights (HAM) and guarantees equality before the law and government for all citizens. As stated in Article 28D, paragraph (1) of the 1945 Constitution, "Everyone has the right to recognition, guarantee, protection, and fair legal certainty." Furthermore, Law No. 39 of 1999 on Human Rights states that one of the human rights, according to the United Nations Universal Declaration of Human Rights of 1948, is the right to legal protection.

In relation to human rights, the provisions of Article 56 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power sets put the rights of criminal suspects and defendants have the right to obtain legal assistance. Since a person is designated as a corruption suspect, he has the right to receive legal

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<sup>39</sup> Ceswara, Dicky Febrian, and Puji Wiyatno. "Implementation of Human Rights Values in the Pancasila Precepts." *Lex Scientia Law Review* 2, no. 2 (2018): 227-240. For another cases and more comprehensive related to the Pancasila values translation and human rights in Indonesia, *also see* Widyawati, Anis, et al. "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks." *Unnes Law Journal* 6, no. 2 (2020): 259-286; Musa, Muhammad Rafhael Purnawan, et al. "Human Rights and Pancasila: A Case of Tionghoa Ethnic Discrimination in Indonesia." *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 119-170; Amin, Choerul. "Implementation of Legal Aid for the Poor as a Form of Practicing Pancasila Values." *The Indonesian Journal of International Clinical Legal Education* 3, no. 2 (2021): 235-244.

assistance and the state bears the court costs for justice seekers who cannot afford it. Furthermore, Article 9 paragraph (3) of Law Number 48 of 2009 is an embodiment of Article 77 letter a of the KUHAP. as a step forward in the implementation of life as a nation of laws in Indonesia and is also a manifestation and appreciation of human rights in the criminal justice process, especially law enforcement officers. Likewise, the International Covenant on Civil and Political Rights was ratified by Law Number 12 of 2005 concerning Ratification of International Covenant on Civil and Political Rights. Thus, developments of human rights are complied with as an effort to prevent abuse of power.

The 1945 Constitution of the Republic of Indonesia emphasizes that Indonesia is a nation of laws (*rechtsstaat/constitutionalstate*) that upholds human rights and guarantees that all citizens have the same position before law and government, as emphasized in Article 28 paragraph (1) letter D of the 1945 NRI Constitution, which states, “Everyone has the right to fair recognition, guarantees, protection and legal certainty”. Furthermore, Law Number 39 of 1999 concerning Human Rights states that one of the human rights according to the UN charter on the 1948 Universal Declaration of Human Rights is the right to obtain legal protection.

The development of criminal procedural law is intended to lead people to live up to their rights and obligations and to improve the attitude of law enforcement officials in accordance with their respective functions and authorities towards upholding law, justice and protection of human honor and dignity, order and legal certainty for the sake of the conduct of a nation of laws. In addition, Law Number 12 of 2005 concerning Ratification of International Covenant on Civil and Political Rights states that the state provide guarantees to make remedies for a person whose rights have been violated in relation to law enforcement officials’ performing their duties and protects human rights as stated in Article 17 of the Human Rights Law and Article 2 point 3 letters a and b of the ICCPR which have been ratified through the International Covenant Law. However, in practice, law enforcement of the rights set out in these provisions are often ignored.

An example of protection of human rights can be seen in the Decision of the South Jakarta District Court Number 04/Pid/Prap/2015/PN.Jkt.Sel, dated 13 January 2015 in the case of Budi Gunawan. The decision states that the KPK’s action in determining the corruption suspect is unlawful<sup>40</sup> since the

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<sup>40</sup> See the Indonesian Supreme Court Decision in case Number 04/Pid/Prap/2015/PN.Jkt.Sel, 13 January 2015.

evidence indicating the existence of a criminal act of corruption had never been brought to trial. In addition, the act of the corruption suspect receiving gifts was related to abuse of authority, not related to state losses. Thus, what was done by Budi Gunawan (Petitioner) did not cause losses to state finances, thereby the qualifications in Article 11 letter c of the KPK Law were not met. Likewise, the decision of the Kisaran District Court Number 6/Pid.Pra/2022/PN Kis, dated 22 June 2022 for the corruption suspect Muhammad Yahya states that the determination of corruption suspect is declared unlawful since the a quo determination of corruption suspect did not have a binding legal force.

Therefore, determination by investigators of a person as a corruption suspect with the issuance of a sprindik can also be interpreted as a form of deprivation of human rights which greatly affects the quality of law enforcement as the implementation of Article 9 of Law Number 48 of 2009 and must be in line with Law Number 29 of 1999 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination.

## **Authority of the Constitutional Court in Deciding Pretrial Petition**

The Constitutional Court is among the state institutions that serves as an independent judicial power in interpreting the constitution as stated in the Constitution of the Republic of Indonesia. In addition, the MK constitutes an institution that administers justice to uphold law and justice; thus, the positions of the Constitutional Court (MK) and the Supreme Court (MA) are equal as set out in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The duties and powers of the Constitutional Court include, firstly, to try at the first and final instances whose decisions are final to review laws against the Constitution, secondly, to decide disputes over the authority of state institutions whose powers are granted by the Constitution, thirdly, to decide on the dissolution of political parties, fourthly, to decide disputes about the results of general elections.

The authority of the Constitutional Court can be increased due to *fundament rechts*. This is undertaken to provide protection to people who are threatened by social conflicts so that the Constitutional Court must interfere with and handle it. Therefore, the Constitutional Court has the authority to add or reduce articles that in the public's opinion can provide a just and fair legal certainty. In this regard, Peter Mahmud Marzuki states,....“Unwritten

laws are habits and practices developed by the people so that they are close to the people's sense of justice.<sup>41</sup>

The provisions of Article 28 of the 1945 Constitution of the Republic of Indonesia states that the government is obliged to create a just legal certainty by making laws. When problems are found in the procedural law regulations, the Court considers that the criminal law in force is not sufficient to create a just legal certainty in accordance with the 1945 Constitution of the Republic of Indonesia. Therefore, the Constitutional Court expands it by adding the to make it coherent so that the law is relevant and becomes an instrument of embodiment of Article 28 of the 1945 Constitution of the Republic of Indonesia as a mandate. According to the Constitutional Court, Article 77 letter a of the KUHAP is deemed inadequate in creating a fair legal certainty so that it conflicts with a sense of justice, thereby corrections must be made to the provisions of the article. This represents a progress towards achieving the goal of a nation of laws. Thus, victims of unlawful determination of corruption suspects can demand that investigators who have committed detrimental actions be punished while at the same time providing compensation and rehabilitation as the embodiment of a nation of laws that prioritizes legal protection according to the UN charter on the 1948 Universal Declaration of Human Rights

Sacipto Raharjo argues that the idea of a progressive law motivates judges to explore the depth of the norm to determine the substance of justice, rather than violating the norm. Thus, a progressive judge uses all thoughts, concentration, imagination and so on designed to offer good reasoning solutions from the personality of justice, rather than violating the current norms. Additionally, the Judicial Powers Law sets out the legal way of thinking by judges as based on word of mouth that judges are bound to the applicable norms or rules, such as all practices that occur in handling cases must be decided on the basis of dogmatics. Judges must look for dogmatics or rules and then interpret which rules are used next. When they find a solution, they interpret it again in order to determine a higher grade of the rule found or must be structured.

According to Junville, those grades are structured by considering the rule with greater benefits, which is the rule of high. There has been a good legal way of thinking for this. This discussion has been found by legal experts. Therefore, in addition to exploring dogmatics, judges also explore theoretical foundations as a basis for making decisions. In terms of theoretical basis, there is a coherence

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<sup>41</sup> Marzuki, *Teori Hukum*.

theory which requires 3 (three) elements: consistency, comprehensiveness, and a significant correlation among the components. Therefore, judges can make an irrefutable decision. Hence, judges are bound to a standard legal way of thinking, so they cannot make decisions without thinking legally.

The concept of autonomous law states law has its own autonomy, way of thinking, way of making its own conclusions, way of making its own doctrine and so on. Judges cannot make decisions based on an emotional approach or make decisions based on a sociological or anthropological approach, but they must rely on a legal way of thinking. In addition, judges cannot make decisions immediately without being based on legal ethics. Hence, to make a decision judges must rely on legal ethics, legal way of thinking, and then the law in force. When Supreme Court Judges make a decision that deviates from the Constitutional Court's decision, it means the judges has diverged from the legal way of thinking. Judges must pay attention to the Constitutional Court's decision to prevent from dualism in law development between the Supreme Court and the Constitutional Court since it will have implications for the quality of law development.

According to the Constitutional Court, determination of suspects is part of the investigative process that deprives of suspects' freedom, so that legal protection can be requested through pretrial institutions. This is solely to protect someone from the arbitrary actions of investigators which are likely to occur when someone is determined as a suspect. Thus, the pretrial institution can examine and decide them as well as serving as a check and balance system for the actions of investigators in determining suspects and as a testing mechanism for the lawfulness of the acquisition of evidence, as in judges' considerations stating, "the criminal justice procedural law has not fully applied the due process of law principle since the investigators' searching for and finding evidence did not involve a test of the lawfulness of the evidence obtained.

In practice, there have been mistakes with the presence of several MK decisions which were then deviated by the MA by issuing a Circular Letter against the MK decision, basically stating they waiving the MK decision. This actually cannot be made since judges cannot rule out a constitution that has been decided by the Constitutional Court and constitutes an interpretation of the existence of the constitution. Therefore, judges at the Supreme Court must comply with and carry out the decisions of the Constitutional Court and not make a clause "*waiving*" the decisions of the Constitutional Court. Thus, the legal way of thinking refers to what the MK decides, since the MK is "*the guardian of the constitution*". Ronald Dworkin introduced the concept of the hole in donuts. It is likened to the domain of a judge who can only use all of his

potential, information, wisdom, norms and so on if the judge is within the area of the donut. The judge is bound to the wall of the donut, so the judge cannot make a decision that tears the wall of the donut. Those donut walls represent the norms preventing the judge from bumping into them to make progressive rules.<sup>42</sup>

In principle, the existence of a pretrial institution is a form of oversight and a mechanism for objections to law enforcement processes in terms of guarantees for the protection of human rights. Protection of human rights is among the formal requirements of a nation of laws. Thus, unlawful determination of a corruption suspect can be categorized as a form of deprivation of freedom. The provisions of Article 77 of the KUHAP governing the determination of suspects are deemed inadequate in creating fair legal certainty, thus contradicting a sense of justice. Based on the decision of the Constitutional Court Court Number: 21/PUU-XII/2014, the formulation of Article 77 of the KUHAP is expanded to include the determination of suspects in the pretrial object. In its considerations, the Constitutional Court states that determination of suspects is part of the investigative process and a violation of human rights.

## **Pre-trial Institutions in Indonesia: Contemporary Development and Challenges**

### **A. Pretrial Institutions in the KUHAP**

The administration of justice in criminal cases begins with the determination of a person as a corruption suspect at the stage of investigation by investigators. For someone who is arrested and detained before the case has been tried in court, the arrest and detention can be filed for a pretrial hearing, and the KUHAP has provided the means called a pre-trial institution as stipulated in Article 77 of the KUHAP. Based on the Constitutional Court decision Number: 21/PUU-XII/2014 the pretrial object is expanded in such a way that the determination of corruption suspect could also be filed for pretrial hearing. A person whose status is raised to a corruption suspect can demand compensation or demand that an official who has committed an act that harms him be punished.

The Constitutional Court's decision expands the pretrial object to include the determination of corruption suspects; therefore, an unlawful

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<sup>42</sup> See Dworkin, Ronald. "Judicial discretion." *The Rule of Law and the Separation of Powers*. (London: Routledge, 2017), pp. 157-171.

determination of corruption suspects could be tested for legitimacy of the investigator's use of authority in determining the suspect. The test in the KUHAP includes (a) whether or not the arrest, detention, termination of investigation or termination of prosecution are legal; and (b) compensation and/or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution. The expansion of pretrial objects through the Constitutional Court's decision constitutes a step forward. The initiative to utilize this pretrial institution remains requiring the initiative of those who are harmed by the use of forced deprivation of freedom who are determined as suspects and is also influenced by the socio-cultural conditions of those concerned. According to Nur Basuki Minarno, the principle of legality is a worldwide, universal principle in criminal law. Every penal regulation around the world has always adopted the principle of legality since, basically, the principle of legality aims to protect human rights and human nature. Deprivation of natural human rights must be done in democratic ways.<sup>43</sup>

The administration of criminal justice starts from the corruption suspect being arrested, but after the Constitutional Court Decision Number: 21/PUU-XII/2014 a criminal case starts an individual being determined as a suspect based on a *sprindik*. The issuance of a *sprindik* is interpreted as a form of deprivation of one's freedom. The KUHAP does not set out the determination of suspects, the arrest and detention, as well as demands for compensation and/or rehabilitation. Therefore, it is difficult to determine whether or not the investigators' actions in determining someone as a corruption suspect have gone through correct legal procedures. In practice, law enforcement has resulted in violations of an individual's human rights, while on the other hand it is a basis for seeking evidence that someone has committed a crime.<sup>44</sup>

Upon further examination, Article 1, paragraph 2 of the Criminal Procedure Code (KUHAP) provides the basis for investigators to search for and collect evidence to clarify the criminal act and identify the suspect. Investigators must first seek and gather evidence to ensure that the criminal act is clear. Once the criminal act and evidence have been established, a corruption suspect can then be designated. In practice, this process is often neglected. Examples can be found in court decisions No. 04/Pid. Prap/2015/PN.Jkt.Sel. Court decisions No.32/Pid.Prap/2015/PN.Jkt.Sel, and No. 38/Pid.Prap/2012/PN.Jkt.Sel. In

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<sup>43</sup> Minarno, Nur Basuki. *Penyalahgunaan Wewenang dalam Pengelolaan Keuangan Daerah yang berimplikasi Tindak Pidana Korupsi*. (Surabaya: Laksbang Mediatama, 2011).

<sup>44</sup> Hakim, Lukman, Tegar Mukmin Alamsyah Putra Paidjo, and Tegar Mukmin Alamsyah Putra. "Perlindungan Hukum Korban Salah Tangkap oleh Kepolisian Republik Indonesia." *Jurnal Hukum Magnum Opus* 3, no. 1 (2020): 35-45.



these cases, the Pretrial Judges of the South Jakarta District Court stated that the designation of a suspect was made based on evidence that had not yet been gathered, resulting in the designation of the corruption suspect being declared unlawful. This was deemed an arbitrary action that contradicted principles of justice and propriety, as well as violating human rights and human dignity.

The administration of justice is not merely a procedure in the courtroom; it encompasses a broad range of processes that begin once a case is handled through adjudication. Criminal cases start when a suspect is arrested, according to the provisions of the Criminal Procedure Code (KUHAP). However, following the decision No. 21/PUU-XII/2014, which expands the scope of Article 77(a) of Law No. 8 of 1981, criminal proceedings now commence when an individual is designated as a corruption suspect. The designation of a suspect based on an investigation warrant (*sprindik*) is interpreted as a form of deprivation of liberty, infringing upon human rights. This raises the question of whether a person who has been designated as a corruption suspect and subsequently declared unlawful can file for compensation and rehabilitation, given that the KUHAP does not currently regulate this.

The existence of the pretrial institution represents a significant advancement. However, the initiative to utilize this institution still requires actions from those who are adversely affected, and it is also influenced by their socio-cultural conditions. Article 56, paragraph (1) of Law No. 48 of 2009 on Judicial Power stipulates that suspects and defendants in corruption cases are entitled to legal assistance. From the moment an individual is designated as a corruption suspect, they should have the opportunity to be accompanied by legal counsel or receive legal aid. The state bears the costs for those seeking justice who are unable to afford it. Furthermore, the provisions of Article 9, paragraph (3) of Law No. 48 of 2009 are a realization of Article 77(a) of the KUHAP. This article must be acknowledged as a step forward in the governance of a legal state in Indonesia and represents a commitment to respecting human rights within the criminal justice process, which should be upheld by all parties, particularly law enforcement officials. The International Covenant on Civil and Political Rights has been ratified through Law No. 12 of 2005, ensuring that developments in human rights are respected to prevent abuse of power.

The establishment of the pretrial institution should be appreciated and fully utilized. In our society, many individuals still hesitate to use the pretrial mechanism due to social conditions and the fear that filing for pretrial might prolong the process and prove disadvantageous. The KUHAP has detailed provisions concerning the protection of human rights against the deprivation of an individual's liberty. Article 48, paragraph (3) of Law No. 48 of 2009 further

regulates the implementation of protections against the deprivation of liberty. Therefore, when a designation of a corruption suspect is declared unlawful, the judge's ruling will directly grant the request for compensation, so that the victim of the wrongful designation does not need to file a civil suit in court for compensation due to unlawful acts committed by authorities.

## **B. Post-Constitutional Court Decision Pretrial Institution**

The basis of the court's authority in examining and deciding pretrial claims, on the validity of the determination of suspects before and after the enactment of the Constitutional Court Decision Number: 21/PUU-XII /2014. Indicates that the decision of the Constitutional Court is final and binding and no legal remedy can be taken. This means that it automatically changes the provisions of Article 77 of the Criminal Procedure Code. The object of pretrial before the enactment of Constitutional Court Decision Number: 21/PUU-XII/2014, consisted of: the validity or invalidity of coercive measures (in the form of: arrest, detention, search, and seizure); the validity or invalidity of termination of investigation or termination of prosecution; and compensation or rehabilitation of pretrial objects. After the enactment of Constitutional Court Decision Number: 21/PUU-XII/2014, the Constitutional Court has expanded the determination of suspects as pretrial objects. This implies that the Constitutional Court Decision, in determining a corruption suspect must be based on objective requirements from the investigator; through two pieces of evidence and examination of prospective corruption suspects in the corruption suspect to fulfill the alleged existence of "preliminary evidence and sufficient evidence"<sup>45</sup>.

The pretrial institution functions to examine the validity of the authority exercised by investigators, while also ensuring the protection of the human rights of every individual, particularly in cases of the designation of corruption suspects. The Criminal Procedure Code (KUHAP) is a legislative product that manifests the democratic process concerning individuals involved in criminal acts, as based on Article 3 of KUHAP. Following the Constitutional Court Decision Number 21/PUU-XII/2014, which expanded the scope of pretrial proceedings, the ruling stated that the provisions of Article 77, letter (a) of KUHAP do not have binding legal force unless interpreted to include the

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<sup>45</sup> Nazarudin, Moch Isa, and Umar Ma'ruf. "Comparison of the Implementation of Pre-Court Process Before and After the Constitutional Court Decision Number: 21/PUU-XII/2014 in the Batang State Court." *Jurnal Daulat Hukum* 3, no. 1 (2020): 191-198

designation of suspects, searches, and seizures. The ratio decidendi of the Constitutional Court indicates that the designation of a suspect is part of the investigative process, which constitutes a deprivation of human rights. Therefore, the designation of a suspect by investigators should be an object that can seek protection through pretrial proceedings.

This is primarily intended to protect individuals from arbitrary actions by investigators, which are likely to occur when someone is designated as a corruption suspect.

In Indonesia, human rights are fully regulated after the amendment with the inclusion of a chapter on human rights in the constitution, this means that Indonesia has given these rights the status of fundamental rights. State actions that violate fundamental rights can be overturned by the Constitutional Court. Fundamental rights are regulated in Article 28D paragraph (1) of the 1945 Constitution. Therefore, all criminal case settlement processes starting from arrest, detention, search, seizure and conviction must be based on the constitution. This shows that legal certainty and equal treatment before the law must be upheld in order to protect human rights<sup>46</sup>.

Expansion of pretrial objects through the decision of the Constitutional Court Number: 21/PUU-XII/2014 must be recognized as a step forward in the conduct of life as a nation of laws. In its considerations, the Constitutional Court states: "determination of suspects is part of the investigative process which is a deprivation of human rights, so determination of suspects by investigators shall be objects that can be requested for protection through a pretrial institution in order to protect someone from arbitrary actions by investigators that are likely to occur when an individual is determined as a suspect. The existence of a pretrial institution to test the lawfulness of the use of authority by investigators in order to ensure the protection of human rights of everyone, including in terms of determination of suspects.

The expansion of this pretrial object has consequences for the provisions of the KUHAP, since determination of suspects has not yet been set out, creating obstacles to law enforcement. The first obstacle is the problem of compensation and rehabilitation for unlawful determination of a suspect, where compensation and/or rehabilitation cannot be requested. Second, in terms of the parameter for determining the request for compensation and rehabilitation, can the current guidelines be used for wrongful arrest and detention? Third,

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<sup>46</sup> Usman, Anwar, Nalom Kurniawan, and Bahtiyar Efendi. "The Role of the Indonesian Constitutional Court in Providing the Protection of the Constitutional Rights for Its Citizens' through Changes in Indonesian Criminal Procedure Law and Enlarging the Authority of Pretrial Institutions." *Webology* 18, no. 6 (2021).

proving a request for compensation and/or rehabilitation is difficult, since assessing whether there is a mistake in determining a corruption suspect is very much related to a factual matter. Thus, in practice, filing a claim for compensation and/or rehabilitation cannot be separated from the interests of an individual who has been harmed and the government financial capacity.

The authority of the pretrial court in Article 77 of the KUHAP must be interpreted broadly, namely from the time the case is handled by the investigators, that is, starting from the time a person is determined as a suspect. Hence, caution is required to determine a person as a corruption suspect since it is related to the use of force. Indriyanto Seno Adji argues that formulation of Article 77 of the KUHAP is basically to protect a person in a preliminary examination of police actions and supervision of the use of coercive measures committed by investigators within certain limits.<sup>47</sup>

As a consequence of expanding the pretrial object in Article 77 of the KUHAP, it is necessary to prepare a set of legal rules and the implementing regulations for victims of unlawful determination of suspects to obtain compensation and/or rehabilitation, as well as determining the same by the judge who tried them. The Constitutional Court's decision constitutes the legal basis for establishing whether determination of suspects is unlawful since the examination of witnesses, experts, suspects, searches and confiscations is made after determination of suspects, resulting in non-fulfilment of 2 (two) evidence. In practice, a pretrial lawsuit can be filed more than once and cannot be categorized as *ne bis in idem* since it does not yet involve the merits of case.

The implementation of criminal justice begins with the determination of an individual as a corruption suspect at the investigation stage; thus, the legal remedy that can be used is a pretrial lawsuit. Through this institution, an individual who is determined as a corruption suspect can demand compensation and can also demand that an official who has committed a detrimental act be punished. One example is the pretrial case with the suspect Budi Gunawan in case number 04/Pid.Prap/2015/PN. Jkt.Sel, dated 16 February 2016. In his decision, judge Sarpin stated that determination of corruption suspect for the suspect Budi Gunawan was unlawful by virtue of the Constitutional Court decision Number: 21/PUU-XII/2014.

The existence of a pretrial institution must be recognized as a step forward in the conduct of state life and is a manifestation of honor for human rights in the criminal justice process which must be upheld by all parties,

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<sup>47</sup> See Decision of the Supreme Court of the Republic of Indonesia Number 04/Pid.Prap/2015/PN.Jkt.Sel, dated 16 February 2015, 6.

especially law enforcement officials. Criminal procedural law is enforced on the basis of statutory provisions whose current developments no longer consider a retributive function but also pay attention to developments in human rights as emphasized in Chapter X of the KUHAP. This is in accordance with Article 9 paragraph (1) of the International Covenant on Civil and Political Rights which states, “Everyone has the right to personal freedom and security. No one may be arbitrarily arrested or detained. No one can be deprived of his freedom except for lawful reasons in accordance with procedures established by law”. Furthermore, Article 10 paragraph (1) of the International Covenant on Civil and Political Rights states that every individual who is deprived of his freedom must be treated humanely and with respect for the dignity inherent in human beings.

## **C. Decision of the Pretrial Court for Wrongful Determination of Suspects**

The existence of a Pretrial Institution, as stipulated in Chapter X Part One of the KUHAP and Chapter XII Part One of the KUHAP is clearly intended as a means of horizontal control or supervision to test the lawfulness of the use of authority by law enforcement officials, investigators and public prosecutors. It serves as a correction to the use of authority which is contrary to the purpose or objectives expressly specified in the KUHAP.

At the Pretrial Institution it is possible to test whether the act of coercion committed by the investigator/public prosecutor is in accordance with the law. The investigators’ or public prosecutors’ investigations or prosecutions as implied in the elucidation of Article 80 of the KUHAP are to uphold the law, justice, and truth through horizontal supervisory means. Thus, the essence of pretrial institution is to supervise acts of coercion committed by investigators or public prosecutors against suspects, which is properly undertaken in accordance with the provisions of law and in a professional manner. The existence of a pretrial institution is a legal protection for victims of determination of suspects in cases of pretrial petition. The KUHAP does not provide an explanation, but it is implicit in several pretrial decisions.

This is aligned with Article 1 point 10 of Law No. 1 of 2023 on the National Criminal Code, which aims to protect law enforcement from coercive measures. This means that all actions of law enforcement officers in performing their functions or authority at the examination level must be in accordance with human rights. Therefore, any form of torture in the examination process is not

legally justified. In addition, Article 8 of Law No.48/2009 on Judicial Power essentially prohibits the use of coercive measures<sup>48</sup>.

In a study of court decisions, in judicial practice it was found that human rights were neglected by determining suspects without showing objective reasons that could be used to determining the suspects. Suspects were determined by using subjective reasons that are contrary to the legal basis. There was also neglect and disregard for cooperation during the investigation process. The pretrial institution concerns whether or not the investigators' acts are lawful in the investigation. Results of the theoretical review of judicial practice as mentioned above indicate that the determination of corruption suspects is not based on the law as stipulated in Articles 77 to 83 of the KUHAP. The existence of this institution serves to test whether or not the acts committed by investigators are lawful, and whether or not the acts committed by the investigators are appropriate and have been completed with careful investigation administration.

Studies of several Supreme Court jurisprudences regarding the application of the concept of legal protection for victims of unlawful corruption suspect determination indicate several differences in interpretation of the meaning and parameters of protection of victims of unlawful corruption suspect determination in efforts to demand compensation and/or rehabilitation. This is shown in several pretrial decisions regarding determination of suspects, including decisions No.04/Pid.prap/2015/PN.Jkt.Sel., No.32/Pid.prap/2015/PN.Jkt.Sel., and No. 38/Pid.prap/2012/PN.Jkt.Sel, which basically state that determination of a corruption suspect based on evidence that has not been collected but a corruption suspect is already determined is unlawful. Arbitrarily determining a corruption suspect as an object of investigation is an act that is contrary to the values of justice and decency and violates human rights and dignity. This is in consideration that the KUHAP has stipulated legality principle with investigation approach system in all instances by placing corruption suspect in every level of investigation as a human being who has human rights and dignity.

In the court decisions No. 04/Pid.Prap/2015/PN.Jkt.Sel, No. 32/Pid.Prap/2015/PN.Jkt.Sel, and No. 38/Pid.Prap/2012/PN.Jkt.Sel, the Pretrial Judges at the South Jakarta District Court concluded that the designation of a suspect based on evidence that had not yet been collected was unlawful. Designating a corruption suspect as the subject of an investigation

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<sup>48</sup> Dharmawan, Fito Hartley. "Upaya Hukum Praperadilan Penetapan Tersangka Tindak Pidana Korupsi." *Constitutum Jurnal Ilmiah Hukum* 1, no. 1 (2022).

arbitrarily contradicts the values of justice and propriety and violates human rights and dignity. The Criminal Procedure Code (KUHAP) establishes the principle of legality, requiring a systematic approach to examinations at all levels, which recognizes the corruption suspect as a person with inherent rights and dignity.

In conducting investigations, it is essential to first search for and gather evidence to clarify the nature of the crime. Once the crime is clearly defined and the evidence has been collected, a suspect can then be determined. However, this principle is often overlooked in practice. Examples can be found in court decisions No. 04/Pid.Prap/2015/PN.Jkt.Sel, No. 32/Pid.Prap/2015/PN.Jkt.Sel, and No. 38/Pid.Prap/2012/PN.Jkt.Sel. In these cases, the Pretrial Judges at the South Jakarta District Court stated that the designation of a corruption suspect based on evidence that has not yet been fully collected is unlawful. Arbitrarily designating a corruption suspect as an object of examination contradicts the values of justice and propriety and violates human rights and dignity.

Considering that the Criminal Procedure Code (KUHAP) establishes the principle of legality, it approaches the examination process at all levels by treating corruption suspects as individuals with inherent rights and dignity.

## **Consequences of a Humane and Civilized Nation of Law for Upholding Criminal Law**

### **A. Legal Protection and Rights of Victims of Unlawful Determination of Suspects**

The existence of a pretrial institution in the KUHAP is to protect the rights of victims of unlawful determination of suspects in the preliminary investigation against the acts of investigators as well as serving as a supervisory institution against coercive measures committed by investigators. The existence of this supervisory institution aims to guarantee the protection of the rights of victims of unlawful determination of suspects as stated in points (a) and (c) of the Considering Preamble of the KUHAP.

Related to the above, Khudzaifah Dimiyati and Angkasa stated that the neglect of victims of suspect determination has implications for two things; first, victims do not get legal protection, and second, the judge's decision does not fulfill a sense of justice. Therefore, with this condition, providing solutions is necessary for the protection of victims as mandated by the Criminal Justice System Constitution. In relation to the legal protection of court decisions,

judges can provide a sense of justice by guaranteeing legal protection for victims directly in their decisions<sup>49</sup>.

Legal protection is the obligation and responsibility of the state for its people to safeguard and protect people's rights from a variety of arbitrary acts, one of which is to provide legal protection for the rights of victims of unlawful suspect determination. In the event that determination of a suspect is later declared as unlawful, the use of all authorities by investigators that base the determination of the suspect are also unlawful. In this regard, Bagir Manan is of the opinion that the judge in his decision must clearly indicate the legal provisions applied to a case and make a decision in order to provide justice.<sup>50</sup> This is a logical consequence in thinking about law and also a form of protection of human rights which is among the formal requirements of a nation of laws.

As a nation of laws, Indonesia is based on a constitution that upholds human rights and guarantees that all citizens have the same status before law and government and are obliged to uphold the law and government without exception. The material consequence of law enforcement in performing its functions and authorities is an effort to protect citizens from the arbitrariness of law enforcement official actions. This is a consequence of the ratification of the International Convention on human rights, one of the rights protected as a form of the implementation of human rights as emphasized in the UN charter regarding the 1948 Universal Declaration of Human Rights, which was further set out in Law Number 39 of 1999 concerning Human Rights.

There are no means for legal protection for victims of unlawful determination of corruption suspects, so that their demands for compensation and rehabilitation cannot be filed to the court. The policy for regulating demands for compensation and/or rehabilitation for victims of unlawful determination of corruption suspects court should absolutely be contained in the legal provisions of the KUHAP. It is necessary to work on preparing legal instruments and the implementing regulations for victims of unlawful determination of corruption suspects to obtain compensation and rehabilitation. This is because the state is obliged and responsible for safeguarding and protecting its people's rights from measures that can harm its people, both physically and spiritually.

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<sup>49</sup> Dimiyati, Khudzaifah, and Angkasa Angkasa. "Victimological Approaches to Crime of Rape in Indonesian Criminal Justice System." *Hasanuddin Law Review* 4, no. 3 (2019): 366-376.

<sup>50</sup> Rumadan, Ismail. "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 69-87.



Legal protection for victims of unlawful determination of corruption suspects in question is to protect their basic rights, starting from a preliminary investigation of the acts of the investigators/prosecutors that violate laws and harm the corruption suspect. There is a need for supervision over the acts of investigators in determining corruption suspects so as not to violate human rights and dignity which can be detrimental to victims. In addition, the use of authority must also be supervised in order to ensure the protection of the victims' rights. Law enforcement officials should be careful in the performance of their duties and rely on the KUHAP.

This raises questions, can the acts of investigators who unlawfully determined a corruption suspect can be said to have committed a crime? What is the basis for the investigators' authority to determine someone as a corruption suspect? Does this belong to administrative or criminal law? There is a need for a study on this. Therefore, every act of investigators can be tested for lawfulness in terms of determining corruption suspects. This is a correction to the acts of investigators in their use of authority in order to prevent from deprivation of freedom and violation of human rights, especially those victims of unlawful determination of corruption suspects. This is because the pretrial function is to test whether the forced acts/efforts committed by investigators are in accordance with the KUHAP. It is necessary to prepare a set of legal rules and the implementing regulations for victims of unlawful determination of corruption suspects to obtain compensation and rehabilitation based on the decision by the judge who tried them.

## **B. Compensation and Rehabilitation in Wrong Determination of Corruption Suspects**

Article 77 letter a of the KUHAP is expanded through the decision of the Constitutional Court Court Number: 21/PUU-XII/2014 to include determination of corruption suspects in the pretrial object. Victims of unlawful determination of corruption suspects have not received adequate legal protection in the KUHAP, creating an obstacle to demanding compensation and rehabilitation. Compensation and rehabilitation is an effort to protect citizens determined as corruption suspects without being supported by sufficient evidence as set out in the KUHAP. Demand for compensation and rehabilitation for victims of unlawful determination of corruption suspects cannot be filed to the court. Compensation filed to the court should carefully consider the interests of the injured person and also the financial capacity of the government. Compensation and/or rehabilitation is an effort to protect citizens

who are corruption suspected of committing crimes without being supported by accurate evidence, so that the state is responsible for this.

As an example of a pretrial decision relating to a demand for compensation and/or rehabilitation is the decision of the South Jakarta District Court in case Number 38/Pid/Prap/2012/PN.Jkt.Sel., dated 12 March 2012 regarding determination of the corruption suspect Bachtiar Fatah by the Corruption Eradication Commission. This case was one of alleged corruption in the procurement of a bioremediation project at PT Chevron Pacific Indonesia. Another example is the decision of the Kisaran District Court Number 6/Pid.Pra/2022/PN Kis, dated 22 June 2022. In addition, the decision of the South Jakarta District Court regarding determination of the corruption suspect Hadi Purnomo by the KPK in the PT. Bank Central Asia (BCA) tax objection corruption case, which in essence states, “*the determination of the corruption suspect by the KPK is contrary to statutory regulations.*”

Still another example is the case of Ilham Arief Sirajuddin in relation to rehabilitation. The decision of the South Jakarta District Court with case number: 32/Pid.Prap/2015/PN.Jkt.Sel., in essence states: “in the event that a person is harmed as a result of an investigation, further investigation and prosecution committed by the Corruption Eradication Commission in contravention of this law or laws in force, the person concerned has the right to file a lawsuit for rehabilitation and/or compensation. Due to the fact that the compensation demanded is IDR 1,000,- (one thousand rupiah), the Petitioner’s petitum regarding this matter is not proven, so the petitum will be rejected. Since the determination of the Petitioner as a corruption suspect by the Respondent is declared unlawful, the petition for rehabilitation is based on law and, therefore, it is fair to be granted and the Petitioner rights are restored in terms of position, dignity and status which will be pronounced in this decision”.<sup>51</sup>

As a supervisory institution, the pretrial institution serves to guarantee the protection of human rights, especially the rights of a person who has been violated by providing compensation and/or rehabilitation. This is in accordance with the general principles adhered to in the principle of due process of law which is guaranteed in Article 1 paragraph (3) of the 1945 Constitution as an embodiment of the recognition of human rights which places the principles of legal protection in the criminal justice process which must be upheld by all law enforcement officials. In relation to this issue, Bagir Manan is of the opinion

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<sup>51</sup> See Decision of the Supreme Court of the Republic of Indonesia in Case Number 32/Pid/Prap/2015/PN.Jkt.Sel, dated 12 May 2015.

that the judge in his decision must clearly indicate the legal provisions applied to a case and make a decision in order to provide justice.<sup>52</sup>

The pretrial object in Article 77 of the KUHAP which is expanded by the decision of the Constitutional Court Court Number: 21/PUU-XII/2014 is practiced by judges by granting the petitioner's demand for rehabilitation and restoring his rights in terms of position, honor and dignity, and the decision is pronounced at the same time as the stipulation that the determination of the is unlawful.<sup>53</sup> This constitutes a progress in the law enforcement process since corruption suspects no longer need to file a civil lawsuit and they do not need to look for evidence to justify their lawsuit as adhered to in civil procedural law.

## Conclusion

This study finally concluded that the Constitutional Court Decision Number: 21/PUU-XII/2014 has expanded the scope of pretrial examinations, specifically addressing the lawfulness of investigators' actions in determining suspects. This expansion reinforces the principle of legality, ensuring that all criminal procedures, including the designation of suspects, protect human rights throughout the investigation process. Given that the designation of a corruption suspect entails the deprivation of personal freedom, which is a core human right, it is essential that legal systems minimize such deprivation. Consequently, human rights must be formally protected through legal mechanisms that prevent arbitrary and unlawful restrictions on personal freedom, particularly in corruption cases.

As evidenced by several pretrial decisions, victims of unlawful corruption suspect determinations, who were previously not adequately protected under the KUHAP, have successfully obtained compensation and rehabilitation through judicial rulings that simultaneously invalidated the unlawful designation of suspects. This highlights the urgent need for comprehensive legal regulations that provide clear provisions for compensation and rehabilitation for individuals wrongfully identified as suspects. In response to these developments, it is recommended that legal rules and implementing regulations be established to ensure victims can receive proper redress. Additionally, the KUHAP should be amended to include more explicit regulations for the

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<sup>52</sup> Ismail Rumadan, Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian, *Jurnal Rechts Vinding*, Media Pembinaan Hukum Nasional, 6, No. 1 (2017): 69

<sup>53</sup> See Decision of the Supreme Court of R.I. in Case Number 32/Pid/Prap/2015/PN.Jkt.Sel, dated 12 May 2015.

determination of corruption suspects, simplifying the process for victims to seek compensation without the need for complex civil lawsuits.

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