Analysis of rulings in former pretrial applications
Chairman of the Corruption Eradication Commission (KPK)

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<td>Revision: <em>2024-02-27</em>__</td>
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| Keywords: |
| Pretrial of Former KPK Chairman |

| Abstract |
| Pretrial in the Indonesian judicial system always raises subjective views, therefore the decisions of many times of misapplication of the law are included in the pretrial application of the former chairman of the FB Corruption Eradication Commission, which was later rejected by the panel of judges on unprofessional grounds, but even when the corruption case was suspected by the Corruption Eradication Commission and allegedly filed a pretrial even granted, that it can be perceived as if there is such a grudge that the subjective view is used in an unfair way, why is it so that pretrial petition. That the pretrial filed by the FB applicant at the South Jakarta Neferi Court not only pays attention to what is regulated in the Criminal Code, Criminal Procedure Code but there are laws above it, namely the 1945 Constitution, the Judicial Power Law then the Criminal Code and the Criminal Procedure Code, by looking at the hierarchy of laws and regulations mentioned above, there will be no legal process without going through the 1945 Constitution, therefore it refers to the 1945 Constitution. Because it is regulated in article 27 of the 1945 Constitution, the law and its derivatives also regulate as a manifestation of the 1945 Constitution, where in the framework of Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code letter (a reads: that human rights are basic rights that are inherently inherent in human beings, including the right to obtain legal certainty and equality of position in the country. in law, the rights of expression, association and assembly based on Pancasila and the 1945 Constitution; |
1. Introduction

As a country of law, Indonesia is obliged to provide protection of rights for every citizen without exception, especially in the context of Corruption Eradication which has been in the public spotlight. The Corruption Eradication Commission (KPK) as an independent institution tasked with eradicating corruption in Indonesia is often at the forefront of handling corruption cases involving high-ranking state officials. However, it should also be noted that in carrying out the KPK's duties, it will not be spared from various challenges and controversies, including pretrial legal issues that can involve its own officials.

The word Pretrial, according to terminology, consists of two words, namely pre-trial and judicial which means the trial process before the main trial of the case is heard. Pretrial does not stand alone in an authority given by law. In the pretrial process, only the procedures for investigation and prosecution and are not authorized to examine criminal cases.

Pretrial is an effort to find justice in a projustitia process, pretrial is the task of a judicial institution at the first level, namely the District Court, to conduct or examine and decide on the validity of arrest, detention, termination of investigation, termination of prosecution and decision on requests for compensation and rehabilitation whose criminal cases cannot be continued in the presence of the trial requested by the suspect or who has become a defendant or the complainant or his family and the suspect's legal advisor can also submit a pretrial request.

Pretrial is the sole authority of the District Court to examine and decide whether or not an arrest and/or detention of a person suspected of having committed an unlawful act is legal. A person who has the right to file a Pretrial is a suspect to test the validity according to Article 21 of the Criminal Procedure Code, or past the time limit as referred to in Article 24 of the Criminal Procedure Code, the Investigator, and the Public Prosecutor or a third party in this case is the victim's witness.

According to the provisions of Article 1 point (10) of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) states that Pretrial itself is the authority owned by the District Court to examine and also decide according to the procedures that have been regulated in the Criminal Procedure Code on:

1. Whether or not an arrest and/or detention is lawful at the request of the suspect or his family or other parties on the suspect's behalf;
2. Whether or not the termination of the investigation or the termination of the prosecution at the request is valid for the sake of upholding law and justice;

3. A request for compensation or rehabilitation by the suspect or his family or another party on his or her behalf whose case is not submitted to court. Pretrial is not regulated in the provisions of the HIR (Herziene Inlands Reglement).¹

That in the Criminal Procedure Code pretrial is regulated, and there are additions to the validity or not of the determination of suspects, confiscation, and search as in the Constitutional Court's decision in Decision Number 21/PUU-XII/2014.² In the implementation of pretrial, the District Court is given additional authority to examine and decide cases that are in the process of investigation under the authority of coercive efforts by investigators or public prosecutors.

In the pretrial lawsuit, of course, there are two parties, both the applicant and the respondent itself, in the pretrial investigation regarding the material test of the validity of the arrest, determination of the suspect, detention, as well as requests for compensation and rehabilitation, basically the person who submits the pretrial application is the suspect, the suspect's family or his legal representative.

One of the cases that attracted attention was a pretrial application filed by the former Chairman of the KPK related to the determination of suspects by the police. This process is important to ensure that human rights are maintained and legal procedures are carried out in accordance with applicable regulations. We see in the case of the former chairman of the FB Corruption Eradication Commission who recently filed a pretrial application at the South Jakarta District Court, but the FB pretrial was not accepted on the grounds that the material submitted for the pretrial was not in accordance with the purpose of the pretrial, namely Judge Imelda argued that the basis for the pretrial application of the former chairman of the FB Corruption Eradication Commission was vague or unclear, so the panel of judges also argued that the respondent's exclusion was have legal reasons and should be granted. Therefore, the strength of the evidence is studied in depth so that the evidentiary power that will be presented before the trial can strengthen or be relevant to the application submitted by the suspect.

¹ Master of Postgraduate Law, University of Medan Area https://mh.uma.ac.id/apa-itu-praperadilan/
The analysis of this pretrial decision is important because it provides insight into how
the law is applied in concrete situations, especially in cases involving important figures in the
field of corruption eradication. This decision not only has an impact on the individuals involved,
but also has broader implications for law enforcement practices in Indonesia. While in the Law
on the Eradication of Corruption Crimes and the KPK Law, there is not a single article that
explains the determination of suspects, which is especially true when talking about how the
authority of the KPK in terms of determining the status of suspects in corruption crimes, this
is inseparable from Pretrial as one of the efforts that can be taken to enforce the law and protect
the rights of suspects in investigations and prosecutions. However, it should be noted that
one of the cases that attracted attention was a pretrial application filed by the former Chairman
of the Corruption Eradication Commission related to the determination of suspects by the
police. As is known, Pretrial is a matter for suspects or defendants to test the legality of arrest,
detention, termination of investigation or termination of prosecution carried out by law
enforcement officials.

In fact, this pretrial decision provides insight into the law applied in concrete
situations, especially in cases involving important figures in the field of corruption eradication.
Although the determination of suspects cannot be examined in the Pretrial hearing, the
determination of suspects cannot be done arbitrarily. The court session only examines and
sends criminal cases filed by the public prosecutor or pretrial applicant which therefore the
actions of law enforcement must not deviate from the provisions of the criminal procedure
law because it will have an impact on the court's decision related to truth and justice. In other
words, a new arrest can be continued with detention if there is a strong suspicion that a
criminal act has been committed based on sufficient preliminary evidence and in the event of
circumstances that give rise to the law that it will flee, stab, and eliminate evidence.

As is known in the case of the Pretrial application submitted by the former Chairman
of the KPN, it has great significance, not only for the individuals involved but also for the


integrity and credibility of the KPK as an institution. The KPK administratively cannot in fact terminate the investigation in the corruption case, especially since the KPK is not authorized to issue an Investigation Termination Order (SP3) in an ongoing corruption case investigation.6

2. Research Methods

This study focuses on the aspect of the idea of pluralism in criminal law in Indonesia and describes a new orientation towards Indonesian criminal law that prioritizes the synergy between customary criminal law and national criminal law. Juridical-normative law research emphasizes the doctrinal aspect of a legal analysis that prioritizes coherence between principles, theories, concepts, and legal norms. (A’an Efendi 2015) The materials used in this case are the 1945 Constitution and the Criminal Code, the secondary legal materials used are: journal articles, books, and other references related to and studying legal pluralism and criminal law reform, while non-legal materials are language dictionaries. The approach used is a legislative and conceptual approach.

3. Results and Discussion

Rare Pretrial of Former Chairman of the Corruption Eradication Commission

As we know that in the case of the former chairman of the FB Corruption Eradication Commission who has been designated as a suspect by the Metro Jaya Police, FB does not accept that he is designated as a suspect and considers that the Metro Jaya Police are wrong and violate the procedure in determining him as a suspect therefore FB is carrying out a legal resistance by filing a pretrial application, this pretrial application was first filed at the registered South Jakarta District Court based on a search on the South Jakarta District Court Case Tracking Information System with Register Number 129/Pid.Pra/2023/PN JKT. CELL. date, 24 Nov. 2023. 7

The case of the pretrial application filed by the former Chairman of the KPK has great significance, not only for the individuals involved but also for the integrity and credibility of the KPK as an institution. This pretrial decision has the potential to set an important precedent in

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https://shorturl.asia/g67i4

7 South Jakarta District Court Case Tracking Information System https://sipp.pn-jakartaselatan.go.id/list_perkara/search
the application of the law in Indonesia, especially in cases involving public figures and high-ranking officials.\(^8\) An analysis of these rulings is needed to understand how the law is applied in sensitive and complex cases and to evaluate the effectiveness of pretrial mechanisms in protecting the rights of suspects.

As is known, the former Chairman of the KPK submitted a pretrial application to the District Court on the grounds that the determination of himself as a suspect by the police was invalid.\(^9\) Where this application was filed with the argument that the procedure for determining the suspect was not in accordance with the applicable legal provisions and the preliminary evidence used was insufficient.

As for the pretrial application submitted by the former chairman of the Corruption Eradication Commission as the first pretrial application in this case where the defendant is the Metro Jaya Police Chief, the following is the petition for the FB pretrial application as follows:

a. Granting the applicant's pretrial application in its entirety.

b. Declaring the respondent's action in designating the applicant as a suspect in a lawsuit for corruption in the form of extortion or receipt of gratuities or receipt of gifts or promises by civil servants or state administrators related to the handling of legal problems at the Ministry of Agriculture of the Republic of Indonesia in 2020 to 2023 as referred to in Article 12 e or Article 12 B or Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Article 65 of the Criminal Code (KUHP) based on the Decree on the Determination of Suspects Number: S.Tap/325/XI/RES.3.3./ Ditreskrimsus dated November 22, 2023 in the name of Firli Bahuri is invalid and unfounded by law, and therefore does not have binding force.

c. Declaring an investigation warrant number: SP. Sidik/6715/X/RES.3.3./2023/Ditreskrimsus, dated October 9, 2023 in conjunction with Investigation Warrant Number: SP. Sidik/7539/XI/RES.3.3/2023/Ditreskrimsus


\(^{9}\) Andi, s, *Pretrial in the Perspective of Human Rights Enforcement*, Journal of Law and Justice, 2020, pp. 45-60
dated November 23, 2023, issued by the respondent is invalid and unfounded by law, and therefore does not have binding force issued by the respondent is invalid and unfounded by law, and therefore does not have binding force.

d. Declaring that the investigation carried out by the respondent on allegations of corruption in the form of extortion or receipt of gratuities or receipt of gifts or promises by Civil Servants or State Administrators related to the handling of legal issues at the Ministry of Agriculture of the Republic of Indonesia in 2020 to 2023 as referred to in Article 12 e or Article 12 B or Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended and Coupled with Law Number 20 of 2001 concerning the Eradication of Corruption in conjunction with Article 65 of the Criminal Code (KUHP), it is invalid and has no basis in law, and therefore does not have binding force.

e. Ordering the respondent to stop the investigation of the applicant.

f. Declaring Police Report Number: LP/A/91/X/2023/SPKT. DIRESKRIMSUS POLDA METRO JAYA dated October 9, 2023 is revoked, invalid and invalid.

g. Declaring the respondent to issue an Investigation Termination Order (SP3) against Police Report Number: LP/A/91/X/2023/SPKT. DIRESKRIMSUSPOLDAMETRO JAYA October 9, 2023.

h. Declare invalid any decision or determination issued further by the respondent related to the determination of the suspect against the applicant.

i. Ordered the respondent to no longer issue an investigation warrant related to a quo legal event.

j. Punishing the respondent to pay the costs of the case arising in the a quo case.10

That in the petition for pretrial application of the former chairman of the FB Corruption Eradication Commission has been unraveled in the pretrial application posita, but the single judge, Imelada Herawati, has a different opinion on the alleged crime of corruption and extortion against the suspect of the former chairman of the FB Corruption Eradication Commission against former Minister of Agriculture Syahrul Yasin Limpo.

Single judge Imelada Herawati on the pretrial application of the former chairman of

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10 South Jakarta District Court Case Tracking Information System https://sipp.pn-jakartaselatan.go.id/list_perkara/search
the FB Corruption Eradication Commission was not accepted and after listening to the respondent's exclusion, witness statements and expert witness statements, the judge of the South Jakarta District Court held a different opinion and stated that the FB pretrial lawsuit could not be accepted and the determination of himself as a suspect was declared valid.

The South Jakarta District Court judge granted the exception of the Metro Jaya Police, and stated that FB’s pretrial application mixed formal mater with material outside the formal aspect. With the consideration of the panel of judges that referring to the legal reasons for the pretrial application submitted by the FB a quo application, the judge has found that there are legal postulates that cannot be used as a legal basis for the pretrial application, namely the reason for the inclusion of the subject matter of the case. In addition, the pretrial judge also assessed the validity of the procedure for determining the suspect based on preliminary evidence, arrest and detention procedures carried out by investigators. The judge also considered whether the action violated the applicant's human rights.

Furthermore, the former chairman of the FB Corruption Eradication Commission again submitted a pretrial application for the second time over the designation of himself as a suspect by the Java Metro Police in the extortion case against former agriculture minister Syahrul Yasin Limpo. The pretrial application has been registered and registered at the South Jakarta District Court with Case Number: 17/Pid.Pra/2024/PN JKT. SEL on Jan 22, 2024.

In the second pretrial application, it was again withdrawn on the grounds that the revocation of the application was solely due to the substance of the application material that had to be enriched and this was solely due to technical considerations of the application material that had been constructed. Including There are several important materials and technical strategies that need and are important to be further elaborated, by paying attention to the existing legal rules, pretrial materials will be enriched to be more elementary. that the

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11 Kusuma D, The Effectiveness of Pretrial as an Effort to Protect Human Rights, Journal of Human Rights no. 2, 2017 p. 89
12 South Jakarta District Court Case Tracking Information System http://sipp.pn-jakartaselatan.go.id/list_perkara/search
A pretrial applicant has fulfilled the pretrial mechanism where the applicant has submitted a request for an examination of the legality or not of an arrest or detention of the applicant as a suspect, and the submission of a pretrial application can be submitted by the suspect or his family or attorney to the chairman of the South Jakarta District Court by stating the reason. On that basis, the South Jakarta District Court will test the validity of the investigator in order to comply with the law that has been outlined and if it is proven that the determination of the suspect does not comply with the laws and regulations, the suspect can submit a request for compensation and/or rehabilitation due to the invalidity of the determination of the suspect of the former Chairman of the Corruption Eradication Commission, due to the illegality. The validity of the termination of the investigation or prosecution is submitted by the suspect, his family or his or her attorney.

In the implementation of the pretrial hearing submitted by the former Chairman of the Corruption Eradication Commission, it is presided over by a single judge appointed by the chairman of the South Jakarta District Court and assisted by a clerk and within 3 days after the receipt of the pretrial request, the judge appointed by the chairman of the South Jakarta Court is obliged to set a hearing date. Likewise, in examining the subject matter of the case and deciding the case about the validity or not of the determination of the defendant. That day; in order to examine the pretrial application, the judge conducts a trial with a maximum time span of 7 working days, and the judge must have read the decision. In the pretrial decision by the South Jakarta District Court, if Tersanka's application is granted, it is possible for investigators to conduct a re-examination. However, in this case, the application of the pretrial applicant stipulates that the determination of the defendant is valid, so the investigators of the Metro Jaya Police must immediately take the next steps, whether the defendant is detained or whether the case file of the suspect is transferred to the Public Prosecutor depends on the investigator's assessment because the transfer of the case file is the subjective right of the Metro Jaya Police investigator.

Although we know that the demand for the use of pretrial is getting stronger in the community that is indicated to be accused of committing a criminal act. Because in various criminal cases that have occurred so far, it shows that pretrial shows protection, not only
regarding justice, but also for the protection of human rights. This is because the pretrial material on the determination of suspects is not included in the scope of pretrial as regulated in the Criminal Code. Therefore, this pre-regulation process emphasizes the importance of transparency, accountability and justice in the law enforcement system because this includes the right to obtain clear information about the reasons for the determination of suspects and the right to provide information before determination.

Analysis of the South Jakarta District Court's Decision

The decision of the panel of judges of the South Jakarta Court on the pretrial application of the former chairman of the FB Corruption Eradication Commission against former Minister of Agriculture Syahrul Yasin Limpo. FB did not accept the designation of him as a suspect by the Metro Jaya Police, then FB filed a pretrial application at the South Jakarta District Court, but the judge considered that FB’s pretrial application was not in accordance with the mechanism or irrelevant because it mixed formal and non-formal materials. In fact, the FB asked in its application that the designation of him as a suspect by the Metro Jaya Police was invalid.

If we listen to the reason of the panel of judges of the South Jakarta District Court who stated that the FB pretrial application is irrelevant because it mixes formal and non-formal materials, we compare it with the material of the pretrial lawsuit by the former Minister of SOEs and President Director of PLN, Dahlan Iskan, on Tuesday, August 4, 2015. Dahlan Iskan was designated as a suspect by the Jakarta High Prosecutor's Office in the case of alleged corruption in the construction of the Java substation, Bali, and Nusa Tenggara, in the decision of the South Jakarta District Court that the pretrial application filed by Dahlan Iskan was granted, the Judge stated that the Investigation Warrant Number: Prin-752/O.1/Fd.1/06/2015 issued on June 5, 2015 by the Jakarta High Prosecutor's Office which designated Dahlan Iskan as a suspect was invalid and not based on the law so that it did not have binding force.

That the decision of the panel of judges shows too much resentment towards the institution of the Corruption Eradication Commission, because if you pay attention to the last

16 Iqbal Parikesit et al., *A Review of Pretrial Objects in the Criminal Justice System in Indonesia*, Journal vol 6 no 1, Dipenogoro, 2017, p. 1
few verdicts, it is very sad that those who have been determined by the Corruption Eradication Commission have all decided that the determination of suspects by the investigators of the Corruption Eradication Commission is invalid, we see that the last verdict is that there is Prof. Eddy, Deputy Minister of Law and Human Rights, and several previous pretrial applications such as Ilham Arif sirajuddin, former mayor of Makassar, Hadi Poernomo, former Chairman of BPK and other pretrial applications.

We try to see a rule regarding arrest must be accompanied by a warrant of arrest or detention, but sometimes the judge argues that it is impossible to leave the suspect and then go to court to apply for an arrest permit, of course the perpetrator runs away, because from a positive point of view, the legal steps taken by the police certainly sometimes justify a lot, because based on subjective considerations are sometimes justified by the institution itself, but in the case of Firli Bahuri's pretrial application, only the application mechanism is considered wrong by the panel of judges so that Firli Bahuri’s pretrial application is rejected even though it should be by looking at the position and facts in the field, including not being able to witness directly, directly as referred to in article 184 paragraph (1) of the Criminal Procedure Code regarding valid evidence, namely: 1) witness testimony 2) expert testimony 3) letter 4) instructions 5) The defendant's testimony, in the witness statement, is evidence in a criminal case regarding a criminal event that he heard for himself, saw for himself, experienced himself. In measuring Firli Bahuri's pretrial application, it can be themed with several underlying factors, about the testimony of witnesses who according to KHUAP are inappropriate, but it seems that there is revenge between an institution that was once under Firli Bahuri.

The following is the consideration of the panel of judges Considering, referring to the reasons for the pretrial application submitted by the a quo application, the judge found that there were postulates or legal reasons that could not be used as a basis for the pretrial submission, namely in the letter A reasons numbers 2, 3, and 5 because they are the subject matter of the case," said Single Judge Imelda Herawati at the South Jakarta District Court, Tuesday (19/12/2023). That against the decision of the South Jakarta District Court, it

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18 Ranata Chirtha Auli Legal Evidence According to Article 184 of the Criminal Procedure Code https://www.hukumonline.com/klinik/a/alat-bukti-sah-menurut-pasal-184-kuhap-lt657ae25924ac9
19 Kompas.com, Rejecting Firli Bahuri's Pretrial Lawsuit, Judge Calls Evidence Irrelevant and Mixed https://shorturl.at/ijMT2
should conduct an objective assessment of the legal norms and rules referred to in Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1) reads as follows:

*Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that live in society.*

What has been decided by the panel of judges does not reflect the attitude of the profession towards the treatment of citizens who have the right to get justice in the eyes of the law, the professional attitude is also regulated in the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (2) reads as follows:

*Judges and constitutional judges must have integrity and personality that is irreproachable, honest, fair, professional, and experienced in the field of law.*

That it is clear that the judge has guidelines for the implementation of the regulation on the dismissal of the pretrial application submitted by the former chairman of the Corruption Eradication Commission, the judge as referred to in article 5 paragraph (2) is negligent and unprofessional so that it can be attributed that the judge is not satisfied with what he has decided in the pretrial lawsuit of the former chairman of the KPK.

That legally the submission of the pretrial application has met the numbers and legal rules, but in the case of the South Jakarta District Court led by the single Judge of the South Jakarta District Court, Imelda Herawati, argued that the determination of the suspect by the Metro Jaya Police was valid. That the panel of judges Imelda Herawati forgot about the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power in Article 5 is clearly stated that judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that live in society, this is what is ignored by judges and does not see the norms or legal rules that need to be explored by laws that live in the community, Justice is required if it is clear that the suspect did not commit an act as alleged by the Metro Jaya Police investigators, the judge must make a decision that the determination of the suspect is invalid. Judges determine the fate of everyone's lives, especially those who face the law, therefore, there are judges who must have an independent and subjective view, that an independent view that is subjectively regulated in the law, judicial

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20 Data from the Regulation of Law of the Republic of Indonesia No. 48 of 2009 concerning Judicial Power, https://shorturl.at/tGIV7
power, this rule in order to find a sense of justice for justice seekers. Judges are the spearhead of law enforcement in Indonesia, if judges are not able to be independent, then the sense of justice that seekers of justice fight for, including pretrial applicants, former Chairman of the Corruption Eradication Commission (KPK).

Examining the unprofessional decision of the South Jakarta District Court is very detrimental to Indonesian citizens in general and the applicant in particular because it is unable to translate, encompass the meaning of the law on judicial power as previously stated, indeed not all judges are able to process and think scientifically in applying the legal values contained both directly implied in the law and the law that itself lives in the In the midst of society, these two things are sometimes ignored by the judge in every consideration, and many erroneous decisions made by the judge, we take the example in other cases that the Court of Appeal often annuls the decision of the District Court because of the unprofessionalism of a judge who decides the cases he handles.

That judges' decisions often cause legal uncertainty because of two things, the first is 1) because of lack of professionalism 2) because there is intervention, both of these things can be translated as less professional because of lack of experience, lack of education and training, human resources are indeed insufficient so that to become a judge only because of force, because of kinship so that they can occupy their position as judges and the second is because of intervention, Because this intervention causes a lot of blindness in making intervention decisions can occur from direct superiors or other parties involved, with various interests there are those who commit bribery and gratuities, this has been proven from past experiences in the face of many judges who have been arrested and thrown into prison

A judge who decides professionally is a judge who really measures justice based on two sources of law, both written legal sources and unwritten legal sources, when a judge is able to collaborate these two laws in considering a decision, then the result of the decision will have a high quality, so that a person who is dissatisfied with the decision and proposes legal remedies, It is very difficult to be overturned by the Court of Appeal or the Court of Cassation because everything is based on the law and facts of the trial. So the pretrial is carried out based on the principle of justice as stipulated in the 1945 Constitution as the main reference in the hierarchy of legislation, then Law Number 48 of 2009 concerning Judicial Power, the Criminal Code, the Criminal Code must be a guideline for judges to measure justice based on scientific
assessment in making a decision. Let's take a look at the Types and Hierarchy of Laws and Regulations according to article 7 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations as follows:

**Article 7 paragraph (1) Types and hierarchies of Laws and Regulations consist of:**

- **a.** the Constitution of the Republic of Indonesia in 1945;
- **b.** Decree of the People's Consultative Assembly;
- **c.** Government Laws/Regulations in Lieu of Laws;
- **d.** Government Regulations;
- **e.** Presidential Regulation;
- **f.** Provincial Regional Regulations; and
- **g.** Regency/City Regional Regulations.

Types and hierarchies of Laws and Regulations are seen in Table 1

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<td>Decree of the People's Consultative Assembly</td>
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<td>Law/PP in lieu of law;</td>
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<td>Government Regulations;</td>
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<tr>
<td>Presidential Regulation;</td>
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<tr>
<td>Pro vincial Regional Regulations; and</td>
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<td>Regency/City Regional Regulations</td>
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Laws and regulations according to the type and hierarchy of laws and regulations as mentioned above are a guideline where the 1945 Constitution is the basis for making laws and regulations under it, including with the implementation or application of them in law enforcement, that Law Number 48 of 2009 concerning Judicial Power, and Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code.

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(KUHP) and Criminal Procedure Code (KUHAP) Number 8 of 1981, is only a derivative of the 1945 Constitution, because the laws and regulations under it do not conflict with the laws and regulations above, the laws and regulations are passed and used as the basis for law enforcement. In table 2, the hierarchy of pretrial proceedings in its implementation is as follows:

**Table 2 Hierarchy of Laws and Regulations for Pretrial Implementation**

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<th>1945 Constitution</th>
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<td>Criminal Procedure Code</td>
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In terms of regulations of a pretrial institution, a good and effective strategy is needed in a policy taken by policy formulators. The policy is outlined in the form of good necessary laws and regulations where it is necessary to consider how to achieve a balance between legal certainty and justice, the interests of individuals and the community and are inseparable from the government's efforts. In the process of the pretrial examination hearing, of course, the facts will be considered both juridically and materially. Viewed in terms of the structure and composition of the pretrial which is not an independent court institution. Nor is it a judicial-level institution that has the authority to make the final decision on criminal cases.

As is known, the pretrial filed by the FB applicant at the South Jakarta Neferi Court not only pays attention to what is regulated in the Criminal Code, the Criminal Code but there are laws on it, namely the 1945 Constitution, the Judicial Power Law, then the Criminal Code and the Criminal Code, by looking at the hierarchy of laws and regulations mentioned above, there will be no legal process without going through the 1945 Constitution. by Akrena refers to the 1945 Constitution Article 27 paragraph (1) which reads:

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22 Dede Saputera, *Pretrial Arrangements in the Criminal Procedure Code that Cause Multiple Interpretations in Judges' Decisions*, *Journal*, Faculty of Law, Kalimantan Islamic University Muhammad Arsyad Al Banjari, p. 4 [https://shorturl.asia/ZQp1P](https://shorturl.asia/ZQp1P)
All citizens have the same position in the law and government and are obliged to uphold the law and government without exception.\(^{23}\)

Because it is regulated in article 27 of the 1945 Constitution, the law and its derivatives also regulate as a translation of the 1945 Constitution, where in the consignment of Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code letters (a) reads:

\[(a) \text{ that human rights are basic rights that are inherently inherent in human beings, including the right to obtain legal certainty and equality of status in the law, the right to express opinions, association and assembly based on Pancasila and the 1945 Constitution;}\]

that the judiciary as an institution that supervises and exercises its authority and guarantees the protection of human rights as referred to in the concert of letter (a) n above. For this reason, a judicial institution that is controlled by a judge and bears the phrase "Your Majesty", is not appropriate to make a decision that must confuse justice seekers. However, we see that there is also a judicial decision after 4 decisions of the Constitutional Court in the introduction which reads:

\[\text{The scope of pretrial has actually been limited in the provisions of Article 77 of the Criminal Procedure Code, but it turns out that legal developments in the last 5 (five) years have broken through these boundaries and even preceded the discussion of the Draft Criminal Procedure Code. The development of law is a tangible manifestation of the implementation of reposive theory that describes law as a means of responding to social provisions and people's aspirations. The expansion of the scope of pretrial, especially regarding the determination of suspects, had begun before the issuance of the Constitutional Court Decision (MK) Number 21/PUU-XII/2014.}^{24}\]

The emergence of the judiciary after the 4 decisions by the Constitutional Court shows that pretrial is often misinterpreted as violating the law because it does not have any relevance in responding to the laws and regulations that exist on it but only interprets the rules that are parallel, especially on the issue of the authority of judges in the law Judicial power that regulates the responsibilities of a judge in the judicial world. A judge is appointed based on Law Number 48 of 2009 concerning Judicial Power, because a judge cannot hold the hammer of the trial without fulfilling the conditions specified in the judicial law, for that reason the

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\(^{23}\) The Indonesian House of Representatives, UUD1945, https://www.dpr.go.id/jdih/uu1945

\(^{24}\) Riki Perdana Raya Waruwu, Pretrial After 4 Constitutional Court Decisions https://shorturl.at/agBKY
judge cannot be separated from the 1945 Constitution and then the law on intellectual power. It is not uncommon for judges in deciding cases to be more fearful, or intervene in the verdict they will make.

In the Pretrial regulation based on the provisions of the applicable laws in Indonesia which are contained in law number 8 of 1981 concerning the Criminal Procedure Law or KUHAP CHAPTER X concerning the authority of the court to adjudicate, starting from article 77 to article 83 of the Criminal Code. making laws and regulations democratically where it contains criminal provisions that must be formulated appropriately (lex certa). This democratic process also needs to be held openly (transparent/transparent) and accountable (accountable). The goal is for the general public (whose interests are actually voiced by the legislature) to understand and understand why a certain act is then declared prohibited and threatened with criminal sanctions for the violator.

4. Conclusion

The conclusions of this study are as follows:

That pretrial in the Indonesian judicial system always raises subjective objections, therefore the decisions of the wrong application of the law are included in the pretrial application of the former chairman of the FB Corruption Eradication Commission, which was then rejected by the panel of judges on unprofessional grounds, but even when the corruption case that was suspected by the Corruption Eradication Commission and the suspect filed a pretrial application was even granted, that it can be felt as if there is a grudge so that the subjective view is used in an unfair way, why is it that the pretrial plea. That the pretrial filed by the FB applicant at the South Jakarta Neferi Court not only pays attention to what is regulated in the Criminal Code, the Criminal Code but there are laws above it, namely the 1945 Constitution, the Judicial Power Law and then the Criminal Code and the Criminal Code, by looking at the hierarchy of the laws and regulations mentioned above, there will be no legal process without going through the 1945 Constitution, by which it...

https://shorturl.asia/WX8G7

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refers to the 1945 Constitution Article 27 paragraph (1) which reads:

“All citizens have the same position in the law and government and are obliged to uphold the law and government without exception.”

Because it is regulated in article 27 of the 1945 Constitution, the law and its derivatives also regulate as a translation of the 1945 Constitution, where in the consignment of Law of the Republic of Indonesia Number 27 of 1999 concerning Amendments to the Criminal Code letters (a) reads:

(b) that human rights are basic rights that are inherently inherent in human beings, including the right to obtain legal certainty and equality of status in the law, the right to express opinions, association and assembly based on Pancasila and the 1945 Constitution;

that the judiciary as an institution that supervises and exercises its authority and guarantees the protection of human rights as referred to in the concert of letter (a) n above. For this reason, a judicial institution that is controlled by a judge and bears the phrase "Your Majesty", is not appropriate to make a decision that must confuse justice seekers. However, we see that there is also a judicial decision after 4 decisions of the Constitutional Court in the introduction which reads:

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27 The Indonesian House of Representatives, UUD1945, https://www.dpr.go.id/jdih/uu1945
28 Riki Perdana Raya Waruwu, Pretrial After 4 Constitutional Court Decisions https://shorturl.at/agBKY
References


Andi, s, *Pretrial in the Perspective of Human Rights Enforcement*, Journal of Law and Justice, 2020, pp. 45-60


Dede Saputera, *Pretrial Arrangements in the Criminal Procedure Code that Cause Multiple Interpretations in Judges' Decisions*, Journal, Faculty of Law, Islamic University of Kalimantan Muhammad Arsyad Al Banjari https://shorturl.asia/ZQpIP


The Indonesian House of Representatives, UUD1945, https://www.dpr.go.id/jdih/uu1945


Iqbal Parikesit et al., *A Review of Pretrial Objects in the Criminal Justice System in Indonesia*, Journal vol 6 no 1, Dipenogoro, 2017

Kompas.com, Rejecting Firli Bahuri's Pretrial Lawsuit, Judge Calls Evidence Irrelevant and Mixed https://shorturl.at/ijMT2

Kusuma D, *The Effectiveness of Pretrial as an Effort to Protect Human Rights*, Journal of Human Rights no. 2, 2017

Master of Postgraduate Law, University of Medan Area https://mh.uma.ac.id/apa-itupraperadilan/


Ranata Chirtha Auli Legal Evidence According to Article 184 of the Criminal Procedure Code https://www.hukumonline.com/klinik/a/alat-bukti-sah-menurut-pasal-184-kuhap-lt657ae25924ac9


Riki Perdana Raya Waruwu, Pretrial After 4 Constitutional Court Decisions https://shorturl.at/agBKY

South Jakarta District Court Case Tracking Information System https://sipp.pn-jakartaselatan.go.id/list_perkara/search
