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## Legal Remedies and Protection Against the Dismissal of Pretrial Applications Concerning the Determination of Suspects by Investigators Following the Constitutional Court Decision of the Republic of Indonesia No. 21/PUU-XII/2014 Dated April 28, 2015

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### Abstract

*This study aims to examine the dynamics of legal protection concerning the dismissal of pretrial motions filed by suspects, especially following the Constitutional Court Decision of the Republic of Indonesia No. 21/PUU-XII/2014 dated April 28, 2015. The research employs a normative juridical method with a statutory and conceptual approach, and qualitative descriptive data analysis. Primary, secondary, and tertiary legal materials were examined to understand the rights of suspects within the context of Indonesian criminal procedural law. The findings indicate that, in practice, investigators often exploit legal loopholes to dismiss pretrial motions by delaying attendance at hearings and promptly transferring case files to prosecutors or courts. This strategy results in the pretrial motion being deemed void because the main case has already been heard. Consequently, the constitutional rights of suspects to justice and legal certainty are neglected. Therefore, revisions to the Criminal Procedure Code (KUHAP) and the strengthening of police regulations are necessary to ensure the protection of suspects' rights during investigations. In conclusion, pretrial proceedings as a supervisory mechanism over investigative actions remain ineffective due to weak technical regulations and insufficient internal and external oversight. Regulatory reform and integrity enhancement of law enforcement officers are recommended to uphold the principle of due process of law in Indonesia's criminal justice system.*

**Keywords:** media convergence era; broadcasters and presenters; dilemmas and opportunities; radio and television; digital technology

### Introduction

Indonesia is a state based on the rule of law (*rechtstaat*), making the concept of legal governance an identity, ideology, and guiding principle of the nation. The objectives of a rule-of-law state include public order, security, justice, and the welfare of its citizens. In such a state, legal certainty, equality before the law, and the protection of human rights are essential. These values establish limitations on state power to ensure a balance between the position and relationship of individuals and the state, thereby ensuring legal protection and certainty.

According to A.V. Dicey, a rule-of-law state requires the supremacy of law, equality before the law, and a constitution grounded in the protection of individual rights. Fredrich Julius Stahl emphasized that a legal state contains four core concepts: recognition and protection of human

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rights, separation of powers, governance based on law, and administrative justice (Gautama, 1983).

As a nation founded on the ideology of Pancasila, the legal system in Indonesia aims to regulate social life, provide legal certainty, and promote justice in accordance with Pancasila and human rights principles. The value of justice is central, as John Rawls emphasized equal opportunities for all citizens to enjoy justice under the law (Fauzan & Prasetyo, 2006). This concept is translated into criminal law by supporting legal development, enforcement, protection, order, and legal certainty in line with Pancasila and the 1945 Constitution (Hamid & Husein, 1997), particularly as stipulated in Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP).

However, in reality, deviations in criminal law enforcement still occur, requiring judicial examination to determine the guilt or innocence of a suspect. Effective criminal law enforcement demands oversight of law enforcement officers to guarantee the protection of suspects' rights in legal proceedings. One such safeguard is the **pretrial mechanism**, which serves to prevent legal violations by law enforcement officers and to ensure justice and legal certainty for suspects.

Over time, the scope of pretrial in Indonesia has expanded to include the “determination of suspect status” as an object of judicial review. This development stems from the South Jakarta District Court Decision No. 04/Pid.Prap/2015/PN.JKT.SEL dated February 16, 2015, involving Police Commissioner General Drs. Budi Gunawan, SH., MSI. That ruling was later justified by the Constitutional Court Decision No. 21/PUU-XII/2014 dated April 28, 2015. Including the “determination of suspect status” as a pretrial object has widened the authority of pretrial proceedings to address substantive issues, thereby enabling suspects to seek justice and legal certainty. If a judge grants the pretrial motion, the suspect status is annulled, and the individual’s civil rights are restored in accordance with Article 1 point 10 letter b of the KUHAP.

The pretrial examination process in Indonesia is limited to seven days, as mandated by Article 82 paragraph (1)(c) of KUHAP, which adheres to the principles of simplicity, speed, and low cost in judicial procedures. However, in practice, investigators often exploit legal loopholes to serve institutional interests or pursue performance rewards by criminalizing as many suspects as possible. Frequently, law enforcement officers fail to appear at the first and second pretrial hearings, only attending the third. This delay provides sufficient time to transfer the case file to the prosecutor or court, resulting in the dismissal of the pretrial motion filed by the suspect.

This situation was evident, for example, in the **E-KTP (the Indonesian Electronic Identity Card) corruption case** involving suspect Setya Novanto. The Corruption Eradication Commission (KPK), as the investigating authority, failed to attend the first and second pretrial hearings. As a result, the KPK had ample time to “exploit the legal loophole” and proceed to the main trial in the Corruption Court. Consequently, the pretrial motion filed by the suspect was dismissed on the legal grounds that the main case had already entered the trial stage.

In the **E-KTP corruption case** involving Setya Novanto, the judge initially granted the pretrial motion, thereby nullifying his suspect status. However, the KPK subsequently re-designated Setya Novanto as a suspect, prompting him to file a second pretrial motion. During the second pretrial process, Setya Novanto claimed to be ill while awaiting the decision. Nevertheless, the KPK immediately transferred the case file, causing the second pretrial motion to be dismissed pursuant to Article 82 paragraph (1)(d) of KUHAP, which states that: *"If a case has already begun to be examined in the District Court while a pretrial request is still under consideration, then the request shall be nullified."*

Another case is the **MeMiles fraud case**, in which Kamal Tarachand Mirchandani, President Director of PT Kam and Kam, filed two pretrial motions, both of which were dismissed. As a result, the main case was tried. In the main trial before the Surabaya District Court, Kamal Tarachand Mirchandani was acquitted. The Supreme Court also rejected the prosecution's appeal.

Another example is the **alleged corruption case** involving misuse of grant funds by the East Java Provincial Government from 2011 to 2014, in which La Nyalla Mattalitti was named a suspect. He submitted three pretrial motions, all of which were granted and led to the annulment of his suspect status. However, law enforcement authorities re-designated him as a suspect, leading to his detention for seven months with all his freedoms restricted until the final ruling. In the main trial at the Surabaya Corruption Court, La Nyalla Mattalitti was found not guilty.

These cases illustrate the importance of proper conduct and regulation by investigators when dealing with pretrial motions submitted by suspects, to ensure a balance in legal enforcement and the protection of the suspect's right to justice. Pretrial procedures should serve as a legal safeguard for suspects. However, this function has proven ineffective due to arbitrary actions by law enforcement officers and legal provisions that dismiss pretrial motions once the main case is heard in court. Even though a person is a suspect or defendant, they retain the right to seek legal remedies, including pretrial review, based on the principle of fair trial.

In Indonesia's criminal justice system, the **principle of due process of law** refers to a legal process that is fair, correct, and impartial. A fair trial guarantees all rights of suspects and defendants in accordance with legal provisions.

In practice, however, law enforcement officers often prioritize institutional interests justified under the pretext of public interest rather than upholding the legal rights of suspects. Investigators frequently use various strategies to expedite the prosecution and punishment of suspects. One such strategy is deliberately skipping the early pretrial hearings, leading to the dismissal of the suspect's right to pretrial review and the loss of legal protection. This practice undermines the suspect's right to justice and legal certainty, as pretrial motions which must be heard within seven days are rendered void once the case is transferred to court, regardless of the pretrial's legal substance.

## **Materials and Methods**

This study employs a **normative juridical research** method, which aims to examine legal principles, structures, history, and synchronization (Soekanto, 2007). Normative legal research considers law as a set of norms that guide human behavior in society (Ishaq, 2017) and is based on the analysis of literature and secondary data (Soekanto & Mamudji, 2015).

This research is built upon a **statutory approach**, reviewing pertinent laws and regulations (Marzuki, 2011), and a **conceptual approach**, informed by developed legal theories, doctrines, and principles.

The data for this research was gathered through **library research**, utilizing **secondary data** as indirect sources, as noted by Christiawan (2024). This secondary data set comprises three categories: first, **primary legal materials**, which encompass relevant laws and court decisions concerning pretrial procedures in Indonesia; second, **secondary legal materials**, such as books, academic journals, and expert commentaries that interpret legal norms; and third, **tertiary legal materials**, including legal dictionaries, encyclopedias, and indexes that offer guidance and

context for the other two material types. These materials were collected based on the research topic and examined comprehensively. The data were then systematically described to address the research problems using deductive logic, drawing conclusions from general legal norms to specific legal cases (Ibrahim, 2012).

For the data analysis, the study applied a qualitative descriptive analysis method, employing grammatical and systematic interpretation techniques. All collected data were analyzed qualitatively to explain the legal phenomena and answer the research questions.

## **Results**

### **Pretrial Remedies Following the Transfer of Case Files by Investigators to Prosecutors and Courts After the Constitutional Court Decision No. 21/PUU-XII/2014 Dated April 28, 2015**

#### **1. The Responsibility of Investigators in Ensuring Suspects' Rights in the Context of Pretrial Remedies in Indonesia**

Law enforcement represents the protection of human rights, the upholding of truth and justice, and the prevention of abuse of power and favoritism within the norms of society (Nawawi, 2001). Its purpose is to harmonize the relationship between the state and the public, ensuring that the law is enforced firmly and properly, thus preventing social disorder (Harahap, 2002). Achieving this requires synergy among law enforcement institutions and support from a robust legal system. Law enforcement officers play a critical role in realizing the practical objectives and ideals of law (Warasih, 2005).

However, a March 2023 survey by the Indonesian Survey Institute (LSI) revealed that 30% of the public perceives Indonesia's law enforcement as weak (Kristianto, 2024). Investigators are often criticized for ignoring basic principles of justice. Recently, tensions between law **enforcement institutions** have emerged due to institutional egos, resulting in poor coordination and supervisory efforts (Hukum Online, 2024). These egos are rooted in lack of communication, poor coordination, and inter-agency competition, all of which hinder effective law enforcement.

For instance, in the alleged corruption case involving misuse of grant funds by the East Java Provincial Government (2011–2014) with La Nyalla Mattalitti as the suspect, the investigators repeatedly issued investigation orders (SPDP) despite prior pretrial rulings in his favor. La Nyalla submitted three pretrial motions, all granted, annulling his suspect status. Nevertheless, law enforcement reappointed him as a suspect and detained him for seven months. In the end, the Corruption Court in Surabaya declared him not guilty.

Indonesian criminal law operates on an accusatorial principle, treating suspects and defendants as legal subjects rather than objects, which ensures their fair treatment (Harahap, 2002). This principle grants them equal standing with investigators, thereby protecting their human rights throughout the criminal justice process. The system also adheres to a due process model, emphasizing proper legal procedures and upholding the presumption of innocence, a cornerstone of criminal justice. Ultimately, a human rights-protective justice system necessitates processes rooted in legal protection and enforcement of those rights.

One such right is the right to justice and legal certainty through pretrial remedies. Pretrial serves as a human rights safeguard within the Indonesian Code of Criminal Procedure (KUHAP), examining whether coercive measures by law enforcement have complied with legal and human rights standards (Plangitan, 2013). The examples above illustrate that actions by the East Java Prosecutor's Office contradicted the objectives of justice enforcement, particularly in issuing

new investigation orders without presenting new facts—creating legal uncertainty.

The Constitutional Court has issued several decisions reinforcing this matter, including Decision No. 66/PUU-XVI/2018 dated October 30, 2018, and Decision No. 102/PUU-XIII/2015 dated November 9, 2016. These decisions underline the importance of law enforcement integrity and enthusiasm in the implementation of pretrial proceedings. They clarify that even the best-designed laws are ineffective without proper execution, and that law enforcement officers must understand their roles and responsibilities while upholding the objectives of justice.

## **2. Protection of Suspects' Rights Againstst the Dismissal of Pretrial Motions in Indonesian Criminal Law Enforcement**

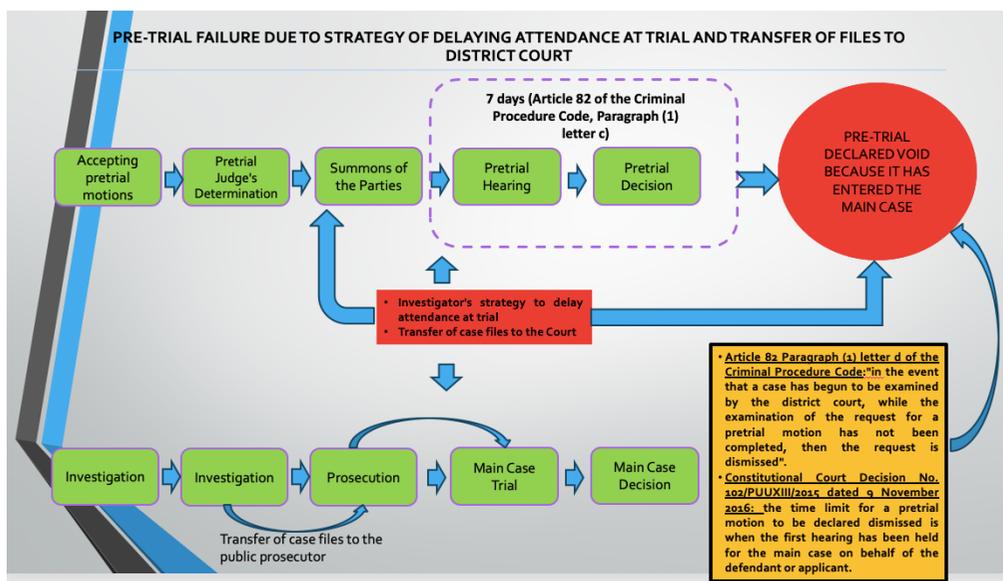
One of the core legal instruments in Indonesian criminal law is Law No. 8 of 1981 on Criminal Procedure (KUHAP), which governs the procedural relationship between the state and its citizens. Meanwhile, the Indonesian Penal Code (KUHP) regulates substantive criminal law. The implementation of both laws is based on the principles of legality, expedited trials, affordability, the presumption of innocence, equality before the law, and the application of due process of law in criminal proceedings, which must be upheld by both law enforcement and all citizens. Several fundamental rights of suspects in Indonesian law include: (1) The right not to self-incriminate; (2) Protection from deprivation of life, liberty, or property except in accordance with the law; (3) Protection of the individual, residence, and correspondence from unlawful search or seizure; (4) The right to confront witnesses (cross-examination); (5) The right to a prompt examination; (6) Equal protection and equal treatment under the law; (7) The right to legal counsel during defense.

While Indonesian law grants law enforcement officers special authority to take unilateral actions (e.g., investigation, search, arrest, detention, seizure), these actions must adhere to the principle of due process of law, ensuring fairness, impartiality, and substantial justice. This principle includes equal legal treatment, especially the presumption of innocence, where every individual is deemed innocent until proven guilty. Arrests, detentions, searches, and seizures must be lawful and based on written orders, and suspects must be informed of the charges brought against them. Courts must also oversee the execution of their decisions (Nasution et al., 2024).

The Indonesian criminal justice system also embraces the **accusatorial system**, meaning suspects/defendants are equal in status to their investigators or judges. Thus, even as a suspect or defendant, a person retains inherent rights. As outlined in KUHAP: “During investigation and court proceedings, suspects or defendants have the right to provide statements freely to investigators or judges” (Article 52); “Suspects or defendants shall not bear the burden of proof” (Article 66).

Articles 6 and 7 of KUHAP empower investigators to act unilaterally without suspect consent. However, KUHAP also regulates the rights of suspects during investigation, prosecution, and trial, including the right to legal certainty through pretrial remedies. Pretrial proceedings are designed to ensure that investigators respect human rights when exercising their duties. The pretrial institution thus functions as a supervisory mechanism over law enforcement, creating a check-and-balance system for fair criminal proceedings. Despite its importance, the effectiveness of pretrial has been undermined by vague legal norms and inconsistent enforcement. Many pretrial applications are either rejected or dismissed outright, limiting their ability to protect suspects' rights (Aprilia et al., 2023).

In practice, suspects' attempts to seek justice and legal certainty through pretrial motions are often thwarted by investigators' **deliberate absence** from the first and second court summons. This tactic provides time to complete and submit case files to the public prosecutor. By the time the pretrial motion is reviewed, the main case is already under trial—**rendering the motion null and void** under **Article 82 paragraph (1)(d)** of KUHAP, which states: *“In the event that a case has begun to be examined by the District Court while the request for pretrial is still under consideration, the request shall be nullified.”* Such investigative delays create a conflict of rights: while the **suspect has the right to seek justice**, the **investigator’s strategic absence** effectively eliminates that right. This is illustrated by the following scheme:



Source: Processed by Researchers, 2024

In the E-KTP corruption case, Setya Novanto successfully filed a pretrial motion at the South Jakarta District Court, which revoked his suspect status. However, the Corruption Eradication Commission (KPK) subsequently reinstated him as a suspect. He then filed another pretrial motion and claimed to be ill while waiting for the court's decision. However, the KPK proceeded to transfer the case file, resulting in the dismissal of Setya Novanto's pretrial motion, as the main trial had already commenced at the Jakarta Corruption Court. In another case, Kamal Tarachand Mirchandani, President Director of PT Kam and Kam, filed a pretrial motion in the MeMiles case, but his motions were rejected twice and ultimately dismissed, leading to the prosecution of the main case in court.

Another case involved alleged corruption in the misuse of grant funds by the East Java Provincial Government from 2011 to 2014, with La Nyalla Mattalitti as the suspect. In this case, La Nyalla Mattalitti filed three pretrial motions, all of which were granted, resulting in the annulment of his suspect status. However, law enforcement authorities again named him a suspect, leading to his imprisonment for seven months. Ultimately, La Nyalla Mattalitti was acquitted by the judges at the Surabaya Corruption Court in his main trial. This outcome highlights the state's responsibility to ensure a balance of rights and obligations between suspects and investigators. Crucially, a suspect's right to file a pretrial motion should not be undermined simply because an investigator delays appearing at a pretrial hearing.

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**Pretrial Data at the South Jakarta District Court**

**Period: 2022–2023**

Year	Number of Cases	Decision		Remarks
		Granted	Rejected	
2022	119	8	41	A total of 11 petitions were declared void; the remaining were withdrawn or deemed inadmissible
2023	144	21	63	A total of 9 petitions were declared void; the remaining were withdrawn or deemed inadmissible

**Source: South Jakarta District Court (2023)**

The pretrial data from the South Jakarta District Court above shows a yearly increase in pretrial applications. In 2022, a total of 119 pretrial cases were registered, and in 2023, the number rose significantly to 144 cases. A similar trend was observed at the Surabaya District Court, where the number of pretrial applications increased from 32 cases in 2022 to 39 cases in 2023.

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**DATA KEADAAN PERKARA PRAPERADILAN**  
**TAHUN 2022-2023**  
**DI PENGADILAN NEGERI SURABAYA KELAS IA KHUSUS**

NO	TAHUN	JUMLAH PERKARA MASUK	PUTUSAN	
			DIKABULKAN	DITOLAK
1	Tahun 2022	32	3	13
2	Tahun 2023	39	3	18
<b>TOTAL</b>		<b>71</b>	<b>6</b>	<b>31</b>

Surabaya, 7 Mei 2024  
 Penitera Muda Pidana  
  
 Uti Ashidi, S.H., M.H.  
 NIP. 197312151993032001

Based on the data, it can be concluded that the pretrial mechanism offers hope for suspects in seeking justice and legal certainty through a fast and efficient process, as hearings are required to be completed within seven days. However, in practice, suspects’ efforts through pretrial proceedings often fail midway due to the absence of investigators at pretrial hearings. This gives investigators sufficient time to immediately transfer case files, resulting in the dismissal of the pretrial motion because the main trial has already begun in the District Court. This is in accordance with Article 82 paragraph (1)(d) of the Criminal Procedure Code (KUHP), which states: *“If a case has begun to be examined by the District Court while the request for pretrial is still under consideration, the request shall be nullified.”*

The strategy of investigators to undermine suspects' rights by deliberately delaying their attendance at pretrial hearings reflects institutional egoism. By transferring the case to the public prosecutor, investigators attempt to evade responsibility. Referring to data from the South Jakarta and Surabaya District Courts, many pretrial motions were declared null and void because the main trial had already commenced. This strategy of deliberately avoiding pretrial hearings clearly violates Article 28D paragraph (1) of the 1945 Constitution, which states: "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law."

## **Discussion**

### **The Concept of Legal Protection for Suspects in Filing Pretrial Legal Remedies Within the Framework of Criminal Law Enforcement in Indonesia**

#### **1. The Balance of Legal Standing Between Law Enforcement and Suspects Based on the Principle of Due Process of Law and the Accusatory Procedure (Accusatorial System) in the Criminal Justice System**

In principle, investigators are obligated to enforce the law professionally to safeguard the rights of suspects and defendants. This aligns with Article 28G of the 1945 Constitution, which guarantees fundamental respect and protection for all citizens from the state and law enforcement. Nevertheless, violations by legal personnel continue to occur in practice. This ongoing issue necessitated the establishment of pretrial institutions under the purview of district courts. Their purpose is to oversee the coercive actions taken by investigators and public prosecutors against suspects (Harahap, 2019), thereby guaranteeing legal certainty and justice. This includes the critical power to annul suspect status, a power solidified by Constitutional Court Decisions No. 21/PUU-XII/2014 (April 28, 2015) and No. 102/PUU-XIII/2015 (November 9, 2016).

Indonesia's criminal justice system is moving away from the inquisitorial system, where suspects are treated as mere objects of investigation, and towards an accusatorial principle. Despite this shift, investigators frequently employ problematic tactics to nullify pretrial motions. For example, by only attending the third hearing, they cause suspects to lose their right to a fair pretrial process. This practice goes against the principles of justice and the rule of law, directly violating the accusatorial principle.

To fix this problem, we need an effective way to protect suspects' rights when they file pretrial motions. Investigators must understand the crucial need to balance suspects' rights with law enforcement's responsibilities within a legal state. They also need to carry out their duties fairly, especially since their tactic of only attending the third hearing unfairly causes suspects to lose their right to a fair pretrial process. This practice clearly goes against justice, the rule of law, and the accusatorial principle.

#### **2. Mechanism and Procedures of the Pretrial Process in Order to Achieve Justice and Legal Certainty Through the Revision of Law Number 8 of 1981 Concerning the Criminal Procedure Code ("KUHAP") and the Regulation of the Chief of the Indonesian National Police Number 06 of 2019 Concerning the Investigation of Criminal Acts ("Perkapolri 06/2019").**

a. **Surat Pemberitahuan Penyidik Kepada Tersangka Terkait Kelengkapan dan Jangka Waktu Pelimpahan Berkas Perkara Serta Aturan Sikap Penyidik Terhadap**

Article 1 point 10 of the Indonesian Criminal Procedure Code (KUHAP) regulates the mechanism and implementation of pretrial proceedings in Indonesia, particularly concerning the District Court's authority to examine pretrial petitions. Meanwhile, Articles 79 to 83 of KUHAP govern the suspect's right to file a pretrial motion. Both provisions affirm that pretrial proceedings are a legal right of the suspect to obtain justice and legal certainty. KUHAP guarantees the suspect's right to justice and legal certainty through judicial proceedings that are simple, prompt, and low-cost (Article 50 of Law Number 8 of 1981 on Criminal Procedure). The Constitutional Court of the Republic of Indonesia has also issued Decision Number 66/PUU-XVI/2018 dated 30 October 2018, which in its legal considerations under point 3.11 emphasizes the importance of ensuring legal certainty for suspects through a judicial process that is swift, simple, and inexpensive, in order to reduce potential abuse of power by law enforcement officers. These two legal instruments ensure that the investigation process is carried out based on the principle of legal certainty without sacrificing the principle of justice. A prolonged investigation process would be detrimental to the suspect and contradict the spirit of a judicial process that is fast, simple, and affordable.

In fact, once an investigation has reached the formal stage, it means that investigators have already identified a criminal act and only need to find at least two sufficient pieces of evidence to formally designate someone as a suspect. Logically, when investigators assign someone the status of suspect, sufficient evidence should have already been found to complete the case file, and thus it should not take long to transfer the file to the prosecution. However, in practice, investigators tend to submit the case file only when a pretrial motion is filed by the suspect and/or close to the expiration of the detention period, if the suspect does not file a pretrial motion. The availability of sufficient evidence in the case file after someone has been named a suspect should allow enough time for the suspect to consider whether to exercise the right to file a pretrial motion. If this right is not exercised, the investigator is obligated to promptly submit the case file to the prosecutor's office.

To ensure that the investigation process provides legal protection for the suspect's right to file a pretrial motion, internal regulations are needed to set a time limit for investigations so that the process becomes more efficient. There should also be an official notification to the suspect once the case file is complete, allowing the suspect to exercise the option of submitting a pretrial motion. In everyday legal practice, we are familiar with the *Notice of Investigation Progress Report* (*Surat Pemberitahuan Perkembangan Hasil Penyelidikan* or SP2HP) issued by investigators to the reported party, as well as the *Notice of Suspect Designation* given to the suspect. The SP2HP is mentioned in **Article 39 of Regulation Number 12 of 2009 issued by the Chief of the Indonesian National Police**, a regulation that details how criminal cases are supervised and controlled within the Indonesian National Police.

The provision stipulates that at least once a month, investigators are required to periodically provide a Notice of Investigation Progress Report (*Surat Pemberitahuan Perkembangan Hasil Penyelidikan* or SP2HP) to the complainant, whether requested or not. However, the Regulation of the Chief of the Indonesian National Police Number 14 of 2012 no longer regulates the timing of such delivery. Therefore, in order to obtain updates on the ongoing investigation process, the complainant may submit a request to the relevant police authority to be provided with an SP2HP, as stipulated in Article 11 paragraph (1) letter a of Regulation Number 21 of 2011 in conjunction with Article 12 letter c of Regulation Number 16 of 2010. In addition to the SP2HP, legal

practice in Indonesia also recognizes the *Notice of Commencement of Investigation* (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP), as regulated in Article 109 paragraph (1) of the Criminal Procedure Code (KUHAP), which states that investigators are obliged to notify the public prosecutor once an investigation into a criminal case has commenced.

Over time, there has been a shift whereby the delay in delivering the Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan* or SPDP) by investigators to the public prosecutor has created legal uncertainty and harmed the constitutional rights of both the reported party and the victim/complainant. In fact, both the reported party and the victim/complainant are entitled to receive the SPDP, as affirmed in the Constitutional Court Decision Number 130/PUU-XIII/2015 dated January 11, 2017. In its ruling, the Court stated that if the reported party receives the SPDP, it is expected that they will be able to prepare appropriate legal defense measures.

The strategy employed by investigators to delay their appearance in pretrial hearings and promptly submit the case file—thus shifting the matter to the main trial stage—results in the dismissal of the suspect’s pretrial motion. This practice stems from the lack of transparency in the process and timeline of case file completion. Therefore, it is necessary to issue a notification to the suspect stating that the case file has been completed and specifying when it will be submitted to the prosecutor. This would allow the suspect to properly consider whether to exercise their right to file a pretrial motion. Transparency in the case-filing process through such a notification would have a significant impact on calculating procedural timelines and safeguarding the suspect’s right to legal certainty and justice through the pretrial mechanism.

To anticipate investigative strategies that conflict with the objectives of law enforcement, an amendment to the Chief of Police Regulation is necessary to include the provision: “In the event that a pretrial motion is filed by a suspect, the investigator shall be prohibited from submitting the case file until a pretrial ruling has been issued.” Achieving this requires strong internal and external oversight of the police to prevent maladministration during investigations. Internal oversight of investigations within the police force, as stipulated in Article 36 of the Chief of Police Regulation Number 06 of 2019 on Criminal Investigations, states that supervision of criminal investigations shall be carried out by the investigator’s superior and officials responsible for the investigative oversight function.

Sanctions for investigators who violate the procedures of investigation and/or inquiry are regulated in Articles 42 to 44 of the Chief of Police Regulation Number 06 of 2019 on the Investigation of Criminal Acts. These provisions stipulate the imposition of administrative sanctions for procedural violations, criminal prosecution for investigators who commit criminal offenses during the investigation process, and preliminary examinations if elements of ethical or disciplinary violations are found. The function of investigative oversight and supervision may also be carried out by the Investigation Oversight Bureau (*Rowasidik*) through regular and extraordinary case reviews (*gelar perkara*). From the external side, oversight is conducted by the National Police Commission (*Komisi Kepolisian Nasional* or Kompolnas), as regulated in Article 3 of Presidential Regulation Number 17 of 2011 concerning the National Police Commission.

The imposition of sanctions on investigators who commit violations during the investigation and/or inquiry process is governed by Articles 42 to 44 of the Chief of Police Regulation Number 06 of 2019. These sanctions involve guidance and supervision by the immediate superior within the same institutional environment as the investigator. In practice, however, superiors often

attempt to conceal the investigator's misconduct to avoid negative consequences for themselves and for the institution's image. As a result, the check and balance mechanism becomes ineffective, since the oversight is conducted by a direct superior who may have a conflict of interest.

**b. Provisions in the Criminal Procedure Code (KUHAP) Regarding the Role of the Prosecutorial Reviewer and the Judge in the Event of a Pretrial Motion**

In practice, investigators often submit case files to the prosecutor's office and the District Court too quickly, resulting in the rejection of pretrial motions filed by suspects. Given this situation, the role of the prosecutor's office in determining the validity of the suspect's pretrial motion becomes necessary. In this development, on August 19, 2024, the Attorney General's Office of the Republic of Indonesia issued Letter Number: B-3452/E/Eku.3/08/2024 regarding the stance of the prosecutorial reviewer (P-16) on pretrial lawsuits filed by suspects. This letter brings a breath of fresh air regarding the prosecutorial reviewer's position in responding to pretrial motions submitted by suspects. Although it is encouraging, this regulation should also be reinforced within the Criminal Procedure Code (KUHAP) to serve as a guideline for all legal stakeholders who submit pretrial motions. The Attorney General's Letter Number B-3452/E/Eku.3/08/2024 regarding the stance of the prosecutorial reviewer (P-16) on pretrial lawsuits filed by suspects remains a key reference.

The Attorney General's Office Letter of the Republic of Indonesia Number: B-3452/E/Eku.3/08/2024 dated August 19, 2024 clearly regulates the stance of the prosecutorial reviewer, stipulating that if a pretrial motion is filed, the prosecutorial reviewer must wait until a pretrial decision is issued. Furthermore, if within seven (7) days from the submission of the case file to the prosecutorial reviewer the pretrial motion has not yet been decided by the court, the case file must be returned to the investigator. Although this regulation exists, there is a possibility that a pretrial motion may be filed after the case file has been declared complete (P-21) by the prosecutor's office and submitted to the court. The letter further states: "In the event that a pretrial motion is filed after the case has been declared complete (P-21), the prosecutorial reviewer should promptly submit the case file to the court."

In response, the upcoming revision of the Criminal Procedure Code (KUHAP) should include explicit provisions detailing the judge's position when ruling on pretrial motions filed by suspects regarding the prosecutor's submission of case files. In the event that the prosecutor submits the case file to the court while a pretrial motion has been filed by the suspect, the following rules regarding the judge's conduct are needed:

1. If a pretrial motion has been filed before the case file is submitted to the court, the judge may postpone the first hearing on the merits for a maximum of two (2) weeks from the scheduled date of the first hearing.

2. If a pretrial motion is filed after the case file has been submitted to the court, the judge may proceed with the trial on the merits.

The judge may proceed with the trial on the merits if a pretrial motion is filed after the case file has been submitted to the court because the suspect has already had ample opportunity to exercise their pretrial legal remedies during the investigation, pre-prosecution, and prosecution stages. However, since the suspect did not utilize this opportunity, the submission of a pretrial motion after the case file is already in court can be classified as a strategy to delay the examination of the merits. Besides the possibility that the pretrial motion may be dismissed when

the main case is tried, another potential scenario is that the pretrial judge may still grant the pretrial motion, even though the case file has already been submitted and the trial on the merits has just begun.

In such situations, Supreme Court Circular Letter Number 5 of 2021 (SEMA Number 5/2021), issued on December 28, 2021, is the applicable guideline. This circular explicitly states that a pretrial judge's decision to grant a pretrial motion does not stop the main case from proceeding. According to Section A, point 3 of SEMA Number 5/2021, the trial on the merits can continue even if the pretrial motion is granted.

The high number of pretrial motions in Indonesia is caused by the incomplete implementation of the principles of due process of law and the accusatorial principle within the criminal justice system. The lack of legal protection for suspects in filing pretrial motions in the enforcement of criminal law in Indonesia is also due to the application of functional differentiation within Indonesian criminal law, resulting in differing perspectives on law enforcement among investigators, prosecutors, and judges in the courts.

## **Conclusion**

The pretrial efforts submitted by suspects following the Constitutional Court of the Republic of Indonesia Decision Number: 21/PUU-XII/2014 dated April 28, 2015, have not been effective in providing justice and legal certainty for suspects. In practice, law enforcement often uses the submission of case files as a strategy to dismiss pretrial motions without considering the legal substance of the motions filed by the suspects. Therefore, it is proposed to add provisions in the Regulation of the Chief of the Indonesian National Police Number 06 of 2019 concerning the Investigation of Criminal Acts, whereby the investigation supervision involves external parties (the Police Investigation Supervisory Bureau and the Police Inspectorate) to ensure the effectiveness of the checks and balances process. Additionally, it is necessary to add an article to Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP) regulating that during the examination of case files at the Prosecutor's Office, the examining prosecutor coordinates with the investigator to obtain information regarding pretrial motions related to the case files under review. If a pretrial motion is filed during the case file examination before the court, the judge may postpone the first trial session on the merits for a maximum of two (2) weeks from the scheduled first session. If a pretrial motion is submitted after the case files have been submitted to the court, the judge may proceed with the trial on the merits.

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