

# The Criminal Pre-Trial System from a Human Rights Perspective

Ananda Nasirah<sup>1</sup>, Hadi Tuasikal<sup>2</sup>, A. Sakti R.S. Rakia<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Muhammadiyah Sorong, Indonesia

\*correspondence email: [anandanasirah51@gmail.com](mailto:anandanasirah51@gmail.com)

## Article History

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**Abstract:** The purpose of this research is to examine how the pretrial criminal system supervises and evaluates the legality of actions taken by law enforcement officials from a human rights perspective and to identify the factors influencing the pretrial system. The method used in this study is normative legal research with a legislative approach, analyzing laws and regulations related to the pretrial process. The novelty of this research lies in the pretrial system, which has not been extensively studied due to the arbitrariness of law enforcement officials, as well as an analysis of the implementation of regulations related to pretrial matters. The findings of this study indicate that the pretrial system has the authority to examine evidence and act proactively; in this case, the pretrial can identify abuses of process or violations of human rights at an early stage. This procedure aims to protect the human rights of innocent individuals. The pretrial system also serves to control actions by law enforcement officials that are contrary to human rights. However, there are factors that influence the pretrial criminal system in exercising its authority, which include aspects of substantive law, legal officials, and social society. These aspects are interconnected and cannot be separated. In conclusion, despite the factors influencing the pretrial criminal system, the presence of pretrial proceedings as a means to protect human rights can enhance oversight and accountability in the pretrial process to prevent abuse of power.

**Keywords:** Law Enforcement Officials; Human Rights; Pretrial

**Abstrak:** Tujuan dari penelitian ini adalah untuk mengkaji bagaimana sistem praperadilan pidana mengawasi dan mengevaluasi keabsahan tindakan yang diambil oleh aparat penegak hukum dari perspektif hak asasi manusia dan mengidentifikasi faktor-faktor yang mempengaruhi sistem praperadilan. Metode yang digunakan dalam penelitian ini adalah penelitian hukum normatif dengan pendekatan perundang-undangan, yang menganalisis dan peraturan perundang-undangan yang terkait dengan proses praperadilan. Kebaruan dalam penelitian ini terletak pada sistem praperadilan yang belum banyak diteliti akibat kesewenangan aparat penegak hukum, dengan analisis implementasi regulasi terkait praperadilan. Temuan dari penelitian ini menunjukkan bahwa proses sistem praperadilan memiliki kewenangan untuk memeriksa bukti dan bertindak secara proaktif dalam hal ini

*praperadilan dapat mengidentifikasi penyalahgunaan proses atau pelanggaran hak asasi manusia sejak dini prosedur ini bertujuan untuk melindungi HAM orang yang tidak bersalah. Sistem praperadilan ini sekaligus mengontrol tindakan aparat penegak hukum yang bertentangan dengan HAM. Namun, adapun faktor yang mempengaruhi sistem praperadilan pidana dalam menjalankan kewenangannya yang mana baik dari aspek hukum substantif, aparat hukum, maupun sosial masyarakat. Sebab aspek ini saling berkaitan dan tidak dapat dipisahkan. **Kesimpulan**, meskipun ada faktor yang mempengaruhi sistem praperadilan pidana, hadirnya praperadilan ini sebagai sarana untuk melindungi hak asasi manusia dapat ditingkatkan pengawasan dan akuntabilitas terhadap proses praperadilan untuk mencegah penyalahgunaan wewenang.*

**Kata Kunci** : Aparat Penegak Hukum; Hak Asasi Manusia; Praperadilan

## 1. INTRODUCTION

The recognition and protection of human rights are of paramount importance among the objectives of a state based on the rule of law, where the relationship between the people and the state must be balanced, with each party having rights and obligations that are regulated by law. Human rights and the rule of law form the basis of legal protection for every member of society against the actions of state authorities. In accordance with a state based on the rule of law, the purpose of criminal law enforcement is to reduce the likelihood of criminal acts and fulfill the sense of justice in society. The pretrial institution is one of the methods used.<sup>1</sup>

Criminal law enforcement is an important instrument in realizing and maintaining justice in society. The implementation of legal provisions must be based on the values of justice and human rights as elements of the criminal justice system. However, in practice, there are various challenges and dynamics that can affect the effectiveness of law enforcement, particularly in the criminal justice domain, which often raises concerns about potential human rights violations by law enforcement officials.<sup>2</sup>

Because human rights and the rule of law are significantly correlated, the purpose of the rule of law is to protect and uphold the rights of every citizen. One of the main objectives of the rule of law, particularly in Indonesia, is to regulate and uphold human rights, which are given high priority. "The protection of human rights in a state governed by the rule of law is reflected in the norms set forth in the constitution and laws, and enforced by judicial institutions as the executors of judicial power".<sup>3</sup>

This cannot be separated from the transformation of legal principles at the pretrial stage, particularly the inclusion of the legitimacy of naming suspects as subjects of material

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<sup>1</sup> Muladi, *Ham Dalam Perspektif Sistem Peradilan Pidana, Dalam Hak Asasi Manusia, Hakekat, Konsep Dan Implikasinya Dalam Perspektif Hukum Dan Masyarakat* (Bandung: Refika Aditama, 2007).

<sup>2</sup> Rusman Sumadi, "Praperadilan Sebagai Sarana Kontrol Dalam Melindungi Hak Asasi Manusia (HAM) Tersangka," *Jurnal Hukum Sasana* 7, no. 1 (2021): 149–62, <https://doi.org/10.31599/sasana.v7i1.597>.

<sup>3</sup> Bahder Johan Nasution, *Negara Hukum Dan Hak Asasi Manusia* (Bandung: Mandar Maju, 2014).

testing in the pretrial process, as reflected in various court decisions, which have generated mixed responses. Because this enhances the protection of human rights, some parties welcome this step as progress in criminal procedure regulations. However, others oppose this view, arguing that it contradicts the principle of legality because the designation of suspects is not mentioned in the Criminal Procedure Code (KUHP), which states that only matters specified therein may be subject to pre-trial proceedings. Therefore, the KUHP established the pre-trial institution to ensure the protection of human rights and to ensure that state officials act in accordance with the law.<sup>4</sup>

Pretrial hearings, as one of the legal instruments regulated in the Criminal Procedure Code, play an important role in providing protection to individuals who are subjects in criminal cases. Pretrial hearings allow individuals to challenge the validity of arrests, detentions, and other legal actions that are considered to violate their rights. Pretrial proceedings aim to uphold the law, legal certainty, and the guarantee of the fundamental rights of suspects, as stipulated in Law No. 8 of 1981 (KUHP). However, although pretrial proceedings are designed to serve as a means of control, their implementation is often suboptimal.<sup>5</sup>

An important development occurred after Constitutional Court (MK) Decision No. 21/PUU-XII/2014, which expanded the scope of pretrial proceedings to include the naming of suspects, searches, and seizures. This decision strengthened the position of pretrial proceedings as a protector of human rights, but also raised new challenges related to legal certainty and the limits of the authority of pretrial judges.

The case of Budi Gunawan's pretrial hearing is an important milestone in the history of pretrial hearings in Indonesia. In this case, the designation of Budi Gunawan as a suspect by the Corruption Eradication Commission (KPK) was challenged through pre-trial proceedings. Judge Sarpin Rizaldi ruled that the KPK's designation of Budi Gunawan as a suspect was invalid because it was deemed not based on sufficient evidence and procedurally flawed. This ruling overturned Budi Gunawan's status as a suspect and affirmed that the designation of a suspect can be challenged through pre-trial proceedings.<sup>6</sup>

This case sparked widespread debate because it broadened the scope of pretrial proceedings and highlighted the importance of protecting human rights in the law enforcement process. On the other hand, this ruling also raised concerns about the potential for abuse of pretrial proceedings to avoid substantive legal proceedings, thereby requiring a balance between the protection of human rights and the effectiveness of law enforcement.

Based on the above description, considering that in the Criminal Procedure Code,

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<sup>4</sup> Ervan Saropie, *Lembaga Hakim Literatur* (Fakultas Hukum Universitas Indonesia, 2009).

<sup>5</sup> A Sari, DP, & Rahman, "Praperadilan Dalam Sistem Peradilan Pidana: Tinjauan Terhadap Perlindungan Hak Asasi Manusia," *Jurnal Hukum Dan Pembangunan* 50(2) (2020): 123–45.

<sup>6</sup> I Made Wisnu Wijaya Kusuma, I Made Sepud, and Ni Made Sukaryati Karma, "Upaya Hukum Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73–77, <https://doi.org/10.22225/juinhum.1.2.2438.73-77>.

determining the invalidity of suspect status is not included in the authority of the pretrial court. However, in its consideration, the determination of a suspect as a form of coercive measure falls within the scope of the pretrial court. The judge reasoned that because the law does not clearly define what is meant by coercive measures, the judge has the right to interpret anything that is categorized as a coercive measure. The issue is that Judge Sarpin exceeded his authority by expanding the scope of the preliminary hearing to include the designation of a suspect as an object of the preliminary hearing.

Factors affecting the effectiveness of pretrial proceedings include the lack of public access to legal information, low awareness of legal rights, and a lack of understanding of the pretrial procedure itself. This results in many individuals who should be able to use pretrial proceedings to protect their rights failing to do so. Additionally, there are challenges in terms of support from institutions that often do not prioritize pre-trial cases, thereby reducing public trust in the legal system.

One of the most crucial legal institutions in the Indonesian criminal justice system is the pretrial institution. Pretrial proceedings serve as a watchdog for the implementation of criminal law, particularly with regard to the actions of law enforcement officials, including arrests, detentions, searches, seizures, and the termination of investigations or legal actions. In this case, it has caused significant repercussions because the pre-trial judge exceeded their authority by expanding the scope of the pre-trial review. Therefore, the author is interested in discussing how the criminal pre-trial review system operates from a human rights perspective, as well as the factors influencing the criminal pre-trial review system.

## **2. METHOD**

In this study, researchers used normative legal research methods, applying a statutory approach. Normative legal studies or literature studies are used to examine written regulations or other legal materials to resolve the issues under discussion. The Statute Approach examines regulations related to the criminal pretrial system from a human rights perspective, as well as factors influencing criminal pretrial proceedings. The legal materials used include primary legal materials, secondary legal materials, and tertiary legal materials.

## **3. DISCUSSION**

### **3.1. The Process of the Pretrial Criminal Justice System from the Perspective of Human Rights**

In the Indonesian legal system, pretrial refers to legal oversight of law enforcement officials. Pretrial is officially regulated in Chapter X, Article 1 of Law No. 8 of 1981 on Criminal Procedure, as part of the jurisdiction of the District Court to guarantee the protection of human rights and uniformity of responsibility of law enforcement officials. Law No. 8 of 1981 on Criminal Procedure establishes a supervisory mechanism through this pretrial institution with the aim of overseeing how law enforcement officials carry out their duties throughout the criminal justice system.

Pretrial proceedings are not an independent judicial institution, nor do they have the

authority to issue final decisions in criminal cases. This institution is inseparable from the district court. It exists solely within the structure of the District Court and does not operate on an equal footing or outside of that institution. In other words, the Preliminary Hearing is merely one division within the District Court. The purpose of granting this authority is to ensure the enforcement of law and justice in a simple, swift, and cost-effective manner, with the aim of restoring the dignity, capacity, and status of victims who feel wronged, as well as compensating them for any losses incurred.<sup>7</sup>

The objectives and purposes to be upheld and protected are as follows. Protection of human rights, especially those involved in criminal cases, particularly during the investigation and prosecution stages. Means of control over investigators or public prosecutors regarding abuse of authority by them.

The provisions regarding pretrial procedures contained in Articles 77 to 83 of the Criminal Procedure Code are one form of protection of human rights. Pretrial proceedings involve the transfer of some authority to the District Court, which serves to examine the validity of the procedures for handling criminal cases. Thus, the scope of pretrial proceedings is limited to formal and procedural aspects, not to the substance of the criminal case itself.

In accordance with the provisions set forth in the Criminal Procedure Code, specifically Article 77 concerning Preliminary Hearings, which states that: "The district court has the authority to examine and decide, in accordance with the provisions set forth in this Law, on matters related to: a) The legality of an arrest and/or detention at the request of the suspect or his/her family or other parties on behalf of the suspect; b) The validity of the termination of investigation or prosecution upon request for the sake of upholding law and justice; c) Claims for compensation or rehabilitation by the suspect or his/her family or other parties acting on his/her behalf whose cases have not been brought to court.

The pretrial court has the authority to conduct investigations and determine the validity of the termination of investigations or prosecutions carried out by investigators or public prosecutors. The pre-trial court may decide to halt the investigative process if it is found that the evidence available is insufficient to proceed with the case to the court level. A suspect or a person with an interest (such as the suspect's family) who believes that the investigator or prosecutor has violated their fundamental rights may file a pre-trial motion.<sup>8</sup>

During the pretrial process, a petition is submitted to the court to determine whether the actions of the prosecutor or investigator were unlawful. The petitioner and the public prosecutor will present their arguments and evidence before the pretrial court. The court may order the release of the suspect or a change in the suspect's status if it finds that there has

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<sup>7</sup> Roy Ronny Lembong and Vonny A Wongkar, "Pengimplementasian Hukum Pidana Terhadap Lembaga Praperadilan Dikaitkan Dengan Hak Asasi Manusia (HAM)," *Lex Administratum* X, no. 1 (2022): 219–28.

<sup>8</sup> Glendy J Kaurow, "Praperadilan Dalam Perspektif Hak Asasi Manusia Menurut Kitab Undang-Undang Hukum Acara Pidana," *Jurnal Lex Crimen* 4, no. 8 (2015): 44–50.

been a violation of the law or human rights.<sup>9</sup> To file a pretrial motion, a number of requirements must be met, including sufficient preliminary evidence of a violation of the law or human rights.

In carrying out its duty to examine pretrial cases, the pretrial court must be impartial and independent. The court may issue a pretrial human rights order or a compensation order for the petitioner if the court decides that the actions of the prosecutor or investigator violate the law or human rights.

Pretrial proceedings pursuant to Article 82 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law are stated as follows. Pretrial proceedings for matters referred to in Articles 79, 80, and 81 are determined as follows: a. Within three days of receiving the request, the appointed judge shall set a date for the hearing; b. In examining and deciding on the legality of an arrest or detention, the legality of the termination of an investigation or prosecution, claims for compensation and/or rehabilitation resulting from the illegality of an arrest or detention, the legality of the termination of an investigation or prosecution, and the seizure of items that are not considered evidence, the judge hears testimony from both the suspect or applicant and the authorized official; c. The examination shall be conducted expeditiously and the judge shall render a decision within seven days at the latest; d. in the event that a case has already begun to be examined by the district court, while the examination of the request for a pretrial hearing has not been completed, then the request shall be dismissed; e. A pretrial decision at the investigation stage does not preclude the possibility of conducting another pretrial examination at the examination stage by the public prosecutor, if a new request is submitted for that purpose.

Legal action against a pretrial ruling may be taken as stipulated in Article 83 of Law No. 8 of 1981 on Criminal Procedure, which states as follows: a. No appeal may be lodged against a pretrial ruling in the cases referred to in Articles 79, 80, and 81; b. Excluded from the provisions of paragraph (1) are pretrial decisions that determine the invalidity of the termination of investigation or prosecution, for which a final decision may be requested from the high court in the relevant jurisdiction.

The purpose of pretrial hearings is to protect human rights, stop judicial abuse, and ensure swift law enforcement. Pretrial hearings prevent abuse of the legal system and ensure that law enforcement is impartial and in accordance with the law. Law enforcement follows the law and operates fairly. It is one of the main tools in the Indonesian legal system to maintain justice and prevent human rights violations.

Pretrial hearings in Indonesia protect human rights in the criminal justice system. Pretrial proceedings often offer substantial advantages in defending human rights. Before a case reaches the main trial stage, it can be examined in the pretrial stage. This allows law enforcement officials to examine evidence and take proactive action. Pretrial proceedings can

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<sup>9</sup> Erna Ngamilatus Sholihah & Bambang Santoso, "PRAPERADILAN BERDASARKAN LEGALITAS PENETAPAN TERSANGKA KETIGA KALINYA," *Jurnal Verstek* 8, no. 3 (2020).

identify procedural abuses or human rights violations at an early stage.

Pre-trial protection against wrongful or prolonged detention without sufficient evidence is one of its main functions. Without sufficient evidence, the pre-trial court has the authority to order immediate release if the detention is found to be unlawful. By examining the conditions of detention and indications of torture, pre-trial proceedings can help prevent torture and other cruel treatment of detainees.<sup>10</sup>

The pretrial process can help avoid legal errors that could jeopardize human rights. The court can clarify any legal questions that arise during the pretrial. In fact, pretrial proceedings are a very effective instrument for defending human rights within the criminal justice system. Human rights within the legal system also require hard work to ensure that they function properly, thereby guaranteeing that the mechanisms of this system are sound and effective. Legal awareness among citizens, training for law enforcement officials and legal professionals, and legislative changes that strengthen human rights concepts within the legal system are some examples of this.<sup>11</sup>

The Pre-Trial Institution was established to protect human rights, particularly the right to liberty. These rights are of great assistance to suspects or defendants accused of criminal offenses. The criminal justice system establishes balanced procedures for coercive measures. In addition to protecting the human rights of suspects or defendants who are guilty, these procedures aim to protect the human rights of those who are innocent. Therefore, the presence of the pre-trial institution marks a turning point and fosters a new spirit, especially regarding the protection of the rights of the suspect due to transparency and public accountability, which are prerequisites for the establishment of a free and impartial judicial system that protects human rights.<sup>12</sup>

### **3.2. Factors Affecting the Criminal Pretrial System**

Pretrial hearings play a supervisory role as a mechanism for monitoring the investigation and prosecution stages carried out by law enforcement officials. Through this process, legal actions such as arrests, detentions, seizures, and the issuance of warrants can be reviewed by the court to ensure their validity and compliance with applicable legal procedures. This function plays an important role in preventing abuse of authority by law enforcement officials and ensuring the protection of the rights of defendants or suspects.

In the context of criminal procedure law in Indonesia, pretrial hearings are regulated in Articles 77 to 83 of the Criminal Procedure Code. Pretrial proceedings provide an opportunity for suspects, their families, or their legal counsel to raise objections to investigative actions or detentions deemed unlawful, as well as to the termination of investigations or prosecutions by

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<sup>10</sup> Juhaidy Rizaldy Roringkon, "Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014," *Jurnal Lex Administratum* 7, no. 2:3 (2020).

<sup>11</sup> Tumian Lian Daya Purba, "Praperadilan Sebagai Upaya Hukum Bagi Tersangka," *Papua Law Journal* 1, no. 2 (2018): 253–70, <https://doi.org/10.31957/plj.v1i2.591>.

<sup>12</sup> O.C. Kaligis, *PRAPERADILAN DALAM KENYATAAN – STUDI KASUS DAN KOMENTAR* (PT.Yarsif Watampone, 2021).

law enforcement authorities. However, in practice, the pretrial system is influenced by several factors, including substantive legal aspects, law enforcement agencies, and societal considerations.

One of the main factors affecting the pretrial system is the existence of limited regulations. The Criminal Procedure Code does not fully regulate all actions of officials that should be subject to pretrial review. Although the Constitutional Court, through its decisions, has expanded the scope of pretrial review (for example, in Constitutional Court Decision No. 21/PUU-XII/2014), its implementation still faces obstacles in practice. The limited scope of pretrial proceedings can lead to inequality in the protection of suspects' rights, especially when the actions of law enforcement officials violate procedures but cannot be reviewed through pretrial mechanisms.<sup>13</sup>

Developments in jurisprudence, particularly the decisions of the Constitutional Court and the Supreme Court, have had a significant impact on the scope and direction of pretrial proceedings. For example, the expansion of pre-trial authority occurred following the Constitutional Court's Decision No. 21/PUU-XII/2014, which stated that the review of the validity of the designation of suspects, searches, and seizures falls within the scope of pre-trial authority, thereby expanding such authority. The question that arises is whether the protection of human rights is the basis for the urgent need to expand the authority of pretrial proceedings.<sup>14</sup>

Is the expansion of pretrial authority based on the protection of human rights? The expansion of the scope of pretrial proceedings through the Constitutional Court's decision opens up new opportunities for suspects to challenge the determination of their status as suspects, which is deemed unlawful. However, inconsistencies in these decisions sometimes create legal uncertainty, which can confuse officials and the public in interpreting the limits of pretrial authority.

Pretrial authority can be abused, even though the expansion of pretrial authority is intended to improve the protection of human rights, this authority can be abused or encounter difficulties in its implementation. encounter difficulties when practicing it. The use of pretrial proceedings as a means to obstruct or delay law enforcement procedures is one possible abuse. Hindering law enforcement efforts. Suspects with the financial means to hire lawyers may file pretrial motions on technical grounds to prevent or delay the trial process, thereby using it to prolong legal proceedings by suspects who can afford legal representation.

In this case, the increased workload of the courts, which may be caused by an increase in pretrial motions, is another difficulty. This can slow down the overall processing of cases if not properly controlled. Strategies that can be implemented include hiring more judges and

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<sup>13</sup> M Muntaha, "Kedudukan Pra Peradilan Dalam Sistem Hukum Pidana Di Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 29, no. 3 (2018): 461, <https://doi.org/10.22146/jmh.22318>.

<sup>14</sup> Rahmad Riyan Choiruddin, Nyoman Serikat Putra Jaya, and Sukinta, "Tinjauan Yuridis Penetapan Status Tersangka Sebagai Perluasan Objek Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014," *Diponegoro Law Review* 5, no. 2 (2016): 1–15.



streamlining court administrative processes. Technological advances and suboptimal court administration systems are also factors that affect the effectiveness of pretrial proceedings. There are still many cases where case files are incomplete, court data management is not transparent, or important documents are not available to legal counsel. The incomplete implementation of an electronic court system (e-court) is also a separate obstacle, especially in remote areas. To address this, the court administration system must be improved, and judges must be encouraged to promptly make decisions on pending cases.

The factors that led to the request for a pretrial review began with allegations of errors committed by investigators and prosecutors. These errors can be seen in Article 77 of Law No. 8 of 1981 concerning the Criminal Procedure Code, namely errors in arrest, detention, termination of investigations, and termination of prosecutions. Subsequently, the designation of suspects, seizures, and searches were also established as subjects of pre-trial review in accordance with the Constitutional Court Decision No. 21/PUU-XII/2014.<sup>15</sup>

Law enforcement officials such as investigators, prosecutors, and judges play a crucial role in conducting pretrial proceedings. Improper investigative procedures, such as naming suspects without sufficient evidence, often form the basis for suspects to file pretrial motions. The quality of law enforcement human resources greatly determines whether their actions are lawful or not. The authority of investigators and prosecutors to detain and arrest someone accused of a criminal offense is so broad that it can jeopardize the human rights of suspects and also hinder justice. Although it is more often used on the basis of interest and law, this authority is sometimes exploited uncontrollably under the guise of legislation, either based on orders from superiors or based on interests.

Underlying bias has influenced the use of pretrial mechanisms throughout the criminal justice system, not only within the realms of investigation and prosecution. Judge Sarpin's ruling in the Budi Gunawan case illustrates this point. In that case, Judge Sarpin compared the determination of suspect status to the processes of arrest and detention in his decision. As stipulated in Article 77 of the Criminal Procedure Code (KUHAP), the law has actually established clear boundaries that limit the scope of pretrial proceedings within the criminal justice system. These boundaries include, among others, arrest and detention without two pieces of preliminary evidence, termination of investigation, and rehabilitation. Incompetent or non-independent pretrial judges may issue biased decisions, which can undermine public confidence in the justice system.

The impact of this decision expanded the scope of pretrial, allowing the designation of a suspect without sufficient preliminary evidence to be challenged through pretrial proceedings. However, Judge Sarpin did not rule that the determination of Budi Gunawan's suspect status was unlawful. It is important to note that when Judge Sarpin decided that the

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<sup>15</sup> R Rosiwa and M Iqbal, "Pelaksanaan Praperadilan Sebagai Bentuk Pengawasan Terhadap Penyidik Kepolisian," *Jurnal Ilmiah Mahasiswa Bidang Hukum 2*, no. November (2018): 637–48.

designation of a suspect fell within the scope of pretrial, his reasoning was not aligned with the applicable legal provisions. The Constitutional Court Decision No. 21/PUU-XII/2014, dated April 21, 2015, which stated that the determination of a suspect falls within the scope of pretrial, could not be used by Judge Sarpin to annul Budi Gunawan's suspect status, as his pretrial ruling was issued on February 16, 2015—prior to the Constitutional Court's decision.<sup>16</sup>

Another important factor is the independence of the judiciary. In the context of pretrial proceedings, judges have the authority to assess the actions of law enforcement officials. However, if judges lack independence or are subject to external pressure, the legitimacy and fairness of their decisions may be called into question. Judicial integrity is essential to ensure that pretrial rulings are truly based on facts and law, rather than external influence. The Judicial Commission emphasizes that judicial independence is not absolute freedom; it must be accompanied by accountability in order to prevent the abuse of judicial power.<sup>17</sup>

The role of legal counsel is very important in filing a pretrial motion. A lawyer who understands legal procedures and has good legal argumentation skills can provide maximum defense to the suspect. However, in reality, not all members of society, especially the poor, have access to adequate legal assistance. This causes the use of pretrial detention to be carried out only by those who have sufficient knowledge and resources, resulting in the rights of vulnerable groups often being neglected. Advocates act as a counterbalance to the coercive measures granted by law to law enforcement, and in providing legal assistance to the community in need, they do not discriminate based on religion, race, culture, descent, rank and position, or wealth.<sup>18</sup>

Besides legal factors, law enforcement officers, and the level of legal awareness in society also influence the extent to which pretrial proceedings are utilized. In a society with a low legal culture, actions by law enforcement officers that violate procedures are often considered normal and go unreported. The lack of public understanding of their rights as citizens makes the pretrial mechanism not optimally utilized as a tool to control the arbitrary actions of law enforcement officers.

The factors mentioned above do not stand alone; rather, they influence each other. For example, weak regulations can be exacerbated by unprofessional officials and low access to legal aid. Similarly, even though there are progressive Constitutional Court rulings, without independent judges, pretrial decisions can still be manipulated. Therefore, the reform of the pretrial system cannot be done partially, but must be comprehensive, touching on aspects of regulation, institutional, human resources, and public legal awareness.

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<sup>16</sup> Darwin Darwin, Dahlan Dahlan, and Suhaimi Suhaimi, "Analisis Yuridis Putusan Praperadilan Dalam Perspektif Sistem Peradilan Pidana," *Jurnal Mercatoria* 12, no. 1 (2019): 68, <https://doi.org/10.31289/mercatoria.v12i1.2363>.

<sup>17</sup> Lviano Maarial, "INDEPENDENSI HAKIM DALAMMEMUTUSPERKARA PRAPERADILAN MENURUT KUHP," *Lex Crimen* Vol. 4 No. (2015).

<sup>18</sup> Aista Wisnu Putra and Muhammaf Iftar Aryaputra, "Peran Advokat Dalam Penyelesaian Perkara Pidana Melalui Restorative Justice," *Unes Law Review* 6, no. 3 (2024): 8027–34.

#### 4. CONCLUSION

The process of the pretrial system in the perspective of human rights is regulated in Law Number 8 of 1981 concerning Criminal Procedure Law, specifically in Article 77 of the Criminal Procedure Code. The Pretrial Institution was established to protect human rights, especially the right to liberty. These rights are very helpful for suspects or defendants in criminal cases. And the criminal justice system establishes balanced procedures for coercive measures. Pretrial has the authority to examine evidence and act proactively. Pretrial can identify process abuses or human rights violations early on; this procedure aims to protect the human rights of innocent peopleactors affecting the pretrial criminal justice system include weak regulations, which can be exacerbated by unprofessional officials and low access to legal aid. Similarly, even though there are progressive Constitutional Court rulings, without independent judges, pretrial decisions can still be manipulated.

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