



CHARACTERISTICS OF THE DECISION TO CANCEL THE DETERMINATION OF A CORRUPTION ERADICATION COMMISSION SUSPECT THROUGH PRE-TRIAL (Study of the Political-Legal Relationship of the Corruption Eradication Commission Institution)

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Article Info	Abstract
<p>Article History Received : 2025-04-01 Revised: 2025-04-16 Published: 2025-05-01</p> <p>Keywords: <i>Legal Politics, Suspect Designation, Corruption Eradication Commission, Pretrial.</i></p>	<p><i>This research analyzes the characteristics of pretrial rulings that annul the suspect designation by the Corruption Eradication Commission (KPK) and its implications for the performance and independence of the institution. Regulatory changes through Law No. 10 of 2015 and Law no. 19 of 2019 pose challenges related to the principles of justice, legal certainty, and the integrity of legal processes. Pretrial decisions that invalidate the suspect designation emphasize the importance of adherence to legal procedures and the protection of human rights in the enforcement of anti-corruption laws. Judicial oversight through pretrial is necessary to maintain a balance between KPK's independence and the protection of individual rights. The findings underscore the need for clearer and more accountable regulations to ensure effective and fair anti-corruption efforts.</i></p>

I. INTRODUCTION

The Corruption Eradication Commission (KPK) was established with the main objective of eradicating corruption which is considered to be one of the most serious problems hampering development in Indonesia. (Sitepu and Piadi 2019) The KPK is given broad authority to investigate, prosecute, and prosecute corruption crimes, including determining suspect status, which is an important step in the legal process. The establishment of the KPK is in line with the historical principle of law in forming aspirational regulations, and is part of the post-New Order legal reform influenced by the development of Indonesian law since the colonial era. The establishment of the KPK as an independent institution reflects efforts to improve the legal system and fulfill the aspirations of the community. Pre-trial is a mechanism to test the actions of the KPK, but the unclear definition of abuse of authority can weaken the eradication of corruption. This study emphasizes the need for legal clarity to strengthen the role of the KPK. (Huda and Ruslie 2023)

However, in recent years, a number of pre-trial decisions that annul the determination of suspects by the KPK have caused various controversies and debates. Pre-trial is a legal mechanism that allows suspects or interested parties to file objections to the actions of law enforcement officers, including the determination of suspect status, before the court. Several pre-

trial decisions that annul the determination of suspects by the KPK are considered to have intervened in the KPK's authority, raising questions about the independence and effectiveness of the institution in carrying out its duties. (Saragih, Prasetyo, and Hafidz 2018)

The pretrial decision that annulled the determination of a suspect by the KPK raises several important questions, including the characteristics and legal basis of the decision, as well as the institutional impact on the KPK. This analysis aims to assess whether the decision is based on objective legal reasons or influenced by political interests. The cancellation of the determination of a suspect can damage the credibility of the KPK and hinder efforts to eradicate corruption. In addition, the political-legal relationship that influences the pretrial decision also needs to be evaluated to understand its impact on the independence of the KPK. This study examines the applicable regulations, the characteristics of the decision, and its impact on the KPK to strengthen the legal and institutional framework in eradicating corruption.

II. RESEARCH METHODS

This study uses a normative legal research type, which focuses on the analysis of applicable legal norms. Normative legal research aims to evaluate laws, doctrines, and legal theories that are relevant to the topic being studied. (Indra

Utama Tanjung 2024) In the context of research on the characteristics of the decision to cancel the determination of suspects by the Corruption Eradication Commission (KPK) through pre-trial, this study will examine in depth the provisions of Law Number 30 of 2002 concerning the KPK, the Criminal Procedure Code (KUHAP), and relevant pre-trial decisions. This study also considers the legal principles underlying the process of determining suspects and the pre-trial mechanism. This study uses two main approaches: the legislative approach and the case approach.

III. RESULTS AND DISCUSSION

A. Characteristics of Pre-Trial Decisions That Cancel the Determination of Suspects by the Corruption Eradication Commission

The discussion on the characteristics of pretrial decisions that annul the determination of suspects by the Corruption Eradication Commission (KPK) reveals several important aspects of the law enforcement system in Indonesia. These decisions not only highlight the procedures for determining suspects that are not in accordance with applicable legal provisions, but also emphasize the importance of protecting human rights, the principle of collective collegiality in decision-making, and judicial oversight of law enforcement actions. This analysis provides an in-depth understanding of how procedural and substantive validity affect the validity of legal actions taken by the KPK, as well as the implications of these decisions for public trust and the integrity of the justice system. (Saragih and Sahlepi 2019)

Karakteristik Putusan Pra Peradilan yang Membatalkan Penetapan Tersangka oleh Komisi Pemberantas Korupsi

Putusan	Alasan Pembatalan Penetapan Tersangka	Aspek Hukum yang Diperhatikan	Tabun Putusan
67/Pid.Pra/2015/PN Jakarta Selatan	Bukti permulaan yang tidak cukup	1. Bukti permulaan yang cukup (Pasal 183 KUHAP) 2. Prosedur penyidikan (KUHAP)	2015
04/Pid.Pra/2016/PN Jakarta Selatan	Baru ada satu alat bukti yang sah	1. Bukti permulaan yang cukup (Pasal 184 KUHAP) 2. Prosedur penyidikan (KUHAP)	2016
108/Pid.Pra/2017/PN Jakarta Selatan	Bukti proses prosesnya tidak sah	1. Bukti permulaan yang cukup (Pasal 183 KUHAP) 2. Prosedur penyidikan (KUHAP)	2017

Source: Supreme Court Decisions Directory

1. Decision of the South Jakarta District Court Number. 36/Pid.Prap/2015/PN.JKT.Sel.

The South Jakarta District Court Decision Number 36/Pid.Prap/2015/PN.JKT.Sel began with the KPK investigation regarding alleged corruption in the 1999 tax objection. The suspect filed a pretrial motion, arguing that the tax objection was an administrative legal remedy, not a criminal one, so it should be the authority of the Tax Court, not the KPK. In addition, state losses could not be calculated because the tax objection decision was not final. The court considered the criminal procedural law procedures and the suspect's right to be examined immediately, and referred to the Constitutional Court Decision No. 21/PUU-XII/2014 which stated that the determination of a suspect can be tested through a pretrial motion. Based on this, the KPK's determination of Hadi Poernomo as a suspect was declared invalid.

2. Pretrial Decision Number 67/Pid.Prap/2015/PN.JKT.SEL

The determination of suspects by the KPK often comes under scrutiny, especially in high-

profile cases such as the South Jakarta District Court's pretrial decision number 67/Pid.Prap/2015/PN.JKT.SEL. The court granted the pretrial motion and declared the determination of suspects invalid because the KPK did not meet the formal requirements and did not have sufficient preliminary evidence. Based on the Criminal Procedure Code, the determination of suspects must be supported by sufficient evidence, but in this case, the procedure was not carried out properly. The pretrial mechanism functions as a control on the actions of law enforcement agencies to protect the basic rights of individuals, as expanded by the Constitutional Court Decision number 21/PUU-XII/2014.

3. Decision of the South Jakarta District Court Number: 15/Pid.Prap/2017/PN.Jkt.Sel.

The South Jakarta District Court Decision Number 15/Pid.Prap/2017/PN.Jkt.Sel. began with the determination of a suspect by the KPK on December 6, 2016 related to alleged violations of Article 12 letter i and Article 12 B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption. The suspect filed a pretrial motion because he considered the determination was not based on sufficient evidence, and felt that he had never been given the opportunity to provide information as a witness. (Judge and Tanjung 2024) He also argued that, as the Regional Head, he was not directly involved in the alleged project. The court reviewed whether the procedures carried out by the KPK were in accordance with the law, including the validity of the Sprindik, initial evidence of suspect determination, and the seizure and search procedures carried out.

4. South Jakarta District Court Decision Number: 97/Pid.Prap/2017/PN.Jkt.Sel.

South Jakarta Court Decision Number: 97/Pid.Prap/2017/PN.Jkt.Sel., was submitted regarding the determination of a suspect by the KPK in the corruption case of the E-KTP procurement. The suspect rejected the determination made by the KPK on July 17, 2017 through the Investigation Order Letter (SPRINDIK) and the Notification Letter of Commencement of Investigation (SPDP), on the grounds that the process was invalid and did not comply with applicable procedures. The suspect considered that his determination as a suspect was not based on a valid investigation and

sufficient initial evidence, and that the KPK did not conduct an initial examination in accordance with legal procedures. The legal framework used in this case includes Article 77 letter a of the Criminal Procedure Code, which authorizes the court to decide whether or not the determination of a suspect is valid, as well as Constitutional Court Decision Number 21/PUU-XII/2014 which expands the object of pretrial to include the determination of suspects, searches, and confiscations. The South Jakarta District Court assessed that the determination of a suspect by the Corruption Eradication Committee must be based on at least two valid pieces of evidence as regulated in Article 184 of the Criminal Procedure Code, but it was found that the determination was made without a complete investigation process and was not supported by adequate preliminary evidence.

5. Decision of the South Jakarta District Court Number 2/Pid.Pra/2024/PN Jkt.Sel

The South Jakarta District Court Decision Number 2/Pid.Pra/2024/PN Jkt.Sel relates to the alleged receipt of gratification related to legal administration at the Ministry of Law and Human Rights. The suspect filed a pretrial motion arguing that his determination as a suspect by the KPK did not comply with the collective collegial principle, where important decisions must be approved by the five KPK leaders, while at that time only four leaders were active. He also argued that the determination was not preceded by a legitimate investigation process and was not based on sufficient preliminary evidence. The absence of significant investigative activities between September and November 2023 indicates that the determination of the suspect was carried out suddenly. The court found that the KPK did not comply with legal procedures, especially regarding the collective collegial principle and preliminary evidence, and emphasized the protection of human rights in the law enforcement process. Therefore, the determination of the suspect was canceled by the court. (Aldivie et al. 2024)

That the case under review shows that the court annulled the determination of a suspect by the KPK because the KPK did not follow the correct legal procedures. This includes the absence of two valid pieces of evidence or sufficient preliminary evidence as stipulated in Article 183 of the Criminal Procedure Code. Therefore, witness examination and evidence

collection must be carried out during the investigation stage, not before or after, including after the determination of a suspect. In addition, the determination of a person as a suspect must be carried out after the investigation has taken place, not at the same time as or before the issuance of the Investigation Order which marks the start of the investigation.

Praperadilan Decision No. 04/Pid.Pra/2015/PN.JKT.SEL stated that the determination of suspects by the KPK was carried out without sufficient evidence and did not follow legal procedures, emphasizing that legal action must be based on strong evidence and a fair process. These decisions emphasize the importance of protecting human rights in determining suspects to avoid arbitrary actions. The rights of suspects, including the right to be examined promptly and not to be detained arbitrarily, must be protected. In Praperadilan Decision No. 97/Pid.Pra/2017/PN.JKT.SEL, for example, the court found violations of the legitimate investigation process, which violated the suspect's human rights, emphasizing that protection of rights is an important element in law enforcement. (Zarzani, Aspan, and Lubis 2021)

Several cases show that KPK decisions must be made by all leaders collectively. Failure to comply with this principle is one of the reasons for cancellation. The principle of collective collegiality ensures that important decisions are taken together by all KPK leaders to ensure legitimacy and accountability. In the South Jakarta District Court Praperadilan Decision Number 2/Pid.Pra/2024/PN Jkt.Sel, the court found that the determination of suspects was not carried out in accordance with the principle of collective collegiality, which is a violation of KPK internal procedures. This emphasizes that decisions involving the determination of suspects must go through a transparent and accountable decision-making mechanism.

In some cases, the court considers that the matter being investigated is not the object of a criminal investigation. For example, in Praperadilan Decision No. 36/Pid.Pra/2015/PN.JKT.SEL, the tax objection decision should not be the object of a criminal investigation and is more appropriately resolved through a tax or administrative court. A clear understanding of the object of investigation is important to determine the jurisdiction and competence of the authorized law enforcement agency. This shows that not all administrative actions or decisions can be used as a basis for a

criminal investigation, and it is important to distinguish between administrative and criminal violations.

These decisions demonstrate the important role of the courts in overseeing the actions of law enforcement and ensuring that their actions are in accordance with the law and the constitution. Judicial oversight is important to maintain public trust in the legal system and ensure that law enforcement is carried out fairly and in accordance with procedures. In the Pretrial Decision Number 08/Pid.Pra/2021/PN.JKT.SEL, the court emphasized that without a real and definite calculation of state losses, the determination of suspects by the KPK is invalid. This emphasizes that the courts play an important role in overseeing the actions of law enforcement to prevent abuse of authority and ensure that legal actions are carried out based on valid evidence and correct procedures. (Saragih, Prasetyo, and Hafidz 2018)

The characteristics of the decision to annul the determination of a suspect by the KPK through pre-trial are related to normative legal aspects, evidentiary procedures, and challenges in enforcing corruption law. This pre-trial process emphasizes supervision and evaluation of evidence to ensure that the KPK's actions remain legitimate and fair, in line with the application of money laundering laws which also require strong evidence. The complexity of corruption must be carried out with strict judicial supervision to maintain transparency and accuracy of legal procedures.

The pretrial decision that annulled the determination of suspects by the KPK emphasizes the importance of implementing strict legal procedures and protecting human rights in the law enforcement process. It also shows that the principle of collective collegiality and a proper understanding of the object of investigation are essential to ensure the legitimacy of legal actions taken by law enforcement agencies. Judicial oversight plays a key role in maintaining justice and legal certainty in the law enforcement process in Indonesia.

B. Political Legal Relationship of Pre-Trial Decisions to the Determination of Suspects by the Corruption Eradication Commission

1. Legal Policy Institutional Position

Legal politics plays an important role in assessing whether the KPK regulations are in accordance with the principles of justice, legal certainty, and benefit. Changes to the KPK

regulations through Law Number 10 of 2015 and Law Number 19 of 2019 reflect the dynamics of politics and evolving legal needs. From a legal theory perspective, these changes need to be analyzed to see their impact on the performance and independence of the KPK, while still ensuring that the law combines aspects of truth and justice for the welfare of society. (Saragih, Prasetyo, and Hafidz 2018) In the context of the cancellation of the determination of suspects by the KPK, the pre-trial court plays a role in supervising the KPK's actions so as not to violate individual rights and to ensure a balance between eradicating corruption and protecting human rights. This ensures that legal action is not only formal, but also morally and ethically fair. (Wiriadinata 2012)

According to the theory of justice, the law must reflect the values of justice that apply in society. John Rawls, in his theory of "Justice as Fairness," emphasized that every individual should have equal opportunities and fair basic rights. In the context of the KPK, changes through Law Number 10 of 2015 and Law Number 19 of 2019 need to be analyzed whether they meet this principle of justice. For example, the formation of a Supervisory Board that has the authority to grant wiretapping permits must be seen whether it provides justice for all parties involved, including suspects whose rights must be protected during the investigation process. (Zarzani, Aspan, and Lubis 2021)

In addition to justice, the theory of legal certainty, which is heavily influenced by Hans Kelsen's thinking, emphasizes that the law must be clear, consistent, and can be applied with certainty. Legal certainty provides a sense of security for the public that the law is unchanging and can be relied upon. Changes in the KPK's regulations, such as the appointment of temporary members by the President in Law Number 10 of 2015 and changes in the KPK's employee status in Law Number 19 of 2019, need to be reviewed from a legal certainty perspective. The existence of a clear and transparent mechanism in the appointment and dismissal of KPK leaders is very important to ensure that this institution can function without undue interference and intervention. (Setyawan 2014)

The theory of utilitarianism pioneered by Jeremy Bentham and John Stuart Mill states that the law should aim to achieve the greatest happiness for the greatest number of people. Furthermore, the theory of institutional independence emphasizes that an institution formed to carry out the functions of supervision

and law enforcement must be free from executive, legislative, and judicial intervention. In this case, the KPK must have the freedom to carry out its duties without pressure or influence from any party. The change in employee status to ASN in Law Number 19 of 2019 and the authority of the Supervisory Board need to be analyzed whether it can affect the independence of the KPK. This theory helps to understand whether these changes threaten the freedom of the KPK in carrying out its duties. (Ancient 2006)

Overall, the legal theory analysis of the KPK regulations shows that the changes made through Law Number 10 of 2015 and Law Number 19 of 2019 have complex implications. From the perspective of the theory of justice, legal certainty, utilitarianism, and institutional independence, an in-depth evaluation is needed to ensure that these regulations not only improve the effectiveness and governance of the KPK but also maintain important basic legal principles. Thus, the KPK regulations must continue to be adjusted to applicable legal principles to achieve the goal of eradicating corruption fairly and effectively. A comparison of legal politics related to the institutional position of the KPK shows the dynamics between independence and control over this institution. Law Number 30 of 2002 emphasizes the full independence of the KPK, which operates without influence from the executive, legislative, or judicial branches of power, to ensure effectiveness and integrity in eradicating corruption. (Puluhulawa, Puluhulawa, and Ismail 2020)

The change in the KPK's position is based on the Constitutional Court Decision Number 36/PUU-XV/2017, which stipulates that the KPK is part of the executive branch of power, but still carries out its duties independently without influence from other powers. This is in line with the principle of checks and balances in the legal system, which ensures that no branch of power has absolute authority. (Wiriadinata 2012)

Article 3 of Law No. 19 of 2019 states that the KPK is a state institution in the executive branch. This is in line with the Constitutional Court Decision Number 36/PUU-XV/2017, which states that the KPK carries out executive functions, including investigations, inquiries, and prosecutions. Although under the executive, the KPK is still required to carry out its duties independently and free from the influence of any power. However, this provision creates a contradiction because institutionally the KPK is included in the executive, but on the other hand it

is expected to remain independent in carrying out its duties and authorities, thus potentially reducing the meaning of the KPK's independence. (Juliani and Lubis 2023)

The legal relationship between the KPK and the executive and legislative branches is reflected in the process of appointing leaders, where Law Number 30 of 2002 and Law Number 10 of 2015 involve selection by the DPR and appointment by the President, reflecting a balance of power. Law Number 19 of 2019 increases executive control through a supervisory board, but maintains independence with a tighter oversight mechanism. This law also strengthens internal and external oversight to improve the accountability of the KPK, in line with the theory of good governance which prioritizes transparency and accountability.

2. Legal Policy of the Position of Investigators

The Constitutional Court (MK) Decision and Law Number 19 of 2019 emphasize the importance of a clear and competent background for KPK investigators. In the Constitutional Court Decision Number 109/PUU-XIII/2015, the Court is of the opinion that KPK investigators, as regulated in Article 45 paragraph (1) of Law 30/2002, do not have to come from the Police institution as regulated in Article 6 paragraph (1) of the Criminal Procedure Code. The Court emphasized that the KPK has the authority to appoint its investigators independently. Article 45 of Law Number 19 of 2019 provides flexibility in appointing investigators from various institutions with the same competency standards, subject to criminal procedure law, and under the authority of the KPK leadership. This provision ensures the professionalism and accountability of investigations, although the challenges of harmonization between investigators from various institutions still need to be anticipated.

Both the Constitutional Court Decision and Law Number 19 of 2019 emphasize the importance of a transparent and accountable process for appointing and dismissing investigators. The Constitutional Court Decision emphasizes that this process must be carried out by considering the principles of independence and professionalism. Law Number 19 of 2019 stipulates that investigators are appointed and dismissed by the KPK Leadership, not by other agencies. This provision ensures that the KPK has full control over its investigators, which aims to

maintain integrity and independence in the investigation process.

The Constitutional Court Decision and Law Number 19 of 2019 emphasize the importance of legal certainty and independence in the determination of suspects by the KPK. This law regulates the competency standards of investigators, including minimum education, investigation training, and moral integrity, to ensure that investigations are carried out professionally and in accordance with the law. Both regulations also emphasize the independence of KPK investigators, ensuring that they are free from external intervention. In addition, the Constitutional Court Decision expands the object of pretrial to test the validity of suspect determination, providing a legal basis for suspects to ensure that their determination is valid and based on sufficient evidence, making pretrial an effective control tool against the abuse of KPK authority.

3. Legal Political Implications of Constitutional Court Decision Number 21/PUU-XII/2014

Constitutional Court Decision Number 21/PUU-XII/2014 has a significant impact on the regulation and implementation of pretrial motions in Indonesia, especially in terms of suspect determination. This decision changes the paradigm by emphasizing the importance of sufficient preliminary evidence in determining a suspect. This can be seen in the following pretrial motion decisions.

Pretrial decision No. 97/Pid.Prap/2017/PN.Jkt.Sel. annulled the determination of Setya Novanto as a suspect by the KPK because it did not meet the standard of proof, referring to Constitutional Court Decision No. 21/PUU-XII/2014. Decision No. 36/Pid.Prap/2015/PN.Jkt.Sel. stated that the determination of the suspect was invalid because it was carried out by a retired investigator, emphasizing the importance of a legitimate investigator according to the law. Meanwhile, Decision No. 15/Pid.PRAP/2017/PN.Jkt.Sel. rejected the pretrial motion, stating that the investigation by the KPK had been in accordance with procedures and supported by sufficient evidence, in line with the principles of Constitutional Court Decision No. 21/PUU-XII/2014.

Constitutional Court Decision No. 21/PUU-XII/2014 strengthens individual legal protection in the determination of suspects, demanding sufficient preliminary evidence and legitimate

investigators. This decision serves as a reference in pretrial motions, emphasizing the importance of due process of law. The cancellation of the determination of KPK suspects through pretrial motions reflects the dynamics of law enforcement and legal politics in Indonesia, as well as the importance of a clear interpretation of abuse of authority so as not to weaken efforts to eradicate corruption. On the other hand, this dynamic also underlines the need for transparency and accountability in KPK legal procedures to maintain its credibility as the vanguard in fighting corruption, without reducing the function of pretrial motions as a checks and balances mechanism. (Saragih 2017)

IV. CONCLUSIONS AND RECOMMENDATIONS

The role of the KPK in eradicating corruption shows that regulatory changes through various laws, such as Law Number 10 of 2015 and Law Number 19 of 2019, have had a complex impact on the performance and independence of the KPK. The establishment of the KPK as an independent institution is in line with efforts to improve the legal system in Indonesia and fulfill the aspirations of the community for transparency and justice. However, a number of pretrial decisions that annul the determination of suspects by the KPK show gaps in the implementation of the principle of justice, due to the unclear definition of abuse of authority and inconsistencies in legal procedures.

Pretrial decisions that annul the determination of suspects by the KPK also underscore the importance of protecting human rights, legal certainty, and the integrity of the legal process. Judicial oversight through pretrials plays an important role in maintaining the balance between the independence of the KPK and the protection of individual rights, ensuring that law enforcement is not carried out arbitrarily. Going forward, it is important for the KPK's regulations to continue to be adjusted to applicable legal principles, ensuring more transparent and accountable internal and external oversight mechanisms so that the goal of eradicating corruption can be achieved effectively and fairly.

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