



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

Ronny Yoesfianda<sup>1</sup> Henry Aspan<sup>2</sup> T. Riza Zarzani<sup>3</sup>

<sup>123</sup> Universitas Pembangunan Panca Budi

Email : [ronnyaceh1@gmail.com](mailto:ronnyaceh1@gmail.com) [henryaspan@dosen.pancabudi.ac.id](mailto:henryaspan@dosen.pancabudi.ac.id) [rizazarzani@dosen.pancabudi.ac.id](mailto:rizazarzani@dosen.pancabudi.ac.id)

Article Info	Abstract
<b>Article History</b> Received : 2025-04-01 Revised: 2025-04-16 Published: 2025-05-01  <b>Keywords:</b> <i>Legal Politics, Determination of Suspects, Corruption Eradication Commission, Pre-Trial.</i>	<p>Several suspect determinations by the Corruption Eradication Commission (KPK) were annulled by pretrial motions due to non-compliance with applicable legal provisions, such as insufficient preliminary evidence and procedures for determining suspects that were inconsistent with criminal procedural law. These decisions emphasize the importance of protecting human rights, the principle of collective collegiality in decision-making, and judicial oversight of law enforcement actions. The research uses normative legal methods, examining the provisions of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK), Law Number 10 of 2015, Law Number 19 of 2019, and the Criminal Procedure Code (KUHP). Pretrial motions are also examined to understand the application of the law in concrete cases involving the annulment of suspect determinations by the KPK.</p> <p>Regulatory changes through Law No. 30 of 2002, Law No. 10 of 2015, and Law No. 19 of 2019 demonstrate efforts to balance the independence of the Corruption Eradication Commission (KPK) with the need for oversight and accountability. While aimed at increasing the KPK's effectiveness and accountability, these changes present challenges such as the potential for politicization and intervention. Constitutional Court Decision No. 21/PUU-XII/2014 emphasized the importance of sufficient preliminary evidence in determining suspects, which has become the basis for many pretrial decisions that have overturned the KPK's suspect determinations. Furthermore, research evaluates how the principle of collective collegiality and a proper understanding of the object of investigation are crucial to ensuring the legitimacy of the KPK's legal actions.</p>

## I. INTRODUCTION

The Corruption Eradication Commission (KPK) was established with the primary goal of eradicating corruption, considered one of the most serious problems hindering development and good governance in Indonesia. Since its inception, the KPK has been given broad authority to conduct investigations, inquiries, and prosecutions of corruption crimes. One of the KPK's key powers is to determine suspect status in corruption cases, which is the initial and crucial step in the legal process to uncover and prove the perpetrator's involvement in unlawful acts.

However, in recent years, a number of pretrial rulings overturning the Corruption Eradication Commission (KPK) suspect designations have sparked controversy and debate. Pretrial proceedings are a legal

mechanism that allows suspects or interested parties to file objections to the actions of law enforcement officials, including the determination of suspect status, in court. Several pretrial rulings overturning the KPK's suspect designations have been deemed to interfere with the KPK's authority, raising questions about the institution's independence and effectiveness in carrying out its duties.

This controversy raises several important questions. First, what are the characteristics of pretrial decisions that overturn suspect designations by the Corruption Eradication Commission (KPK)? Are these decisions based on strong and objective legal grounds, or are there other elements, such as political pressure or vested interests, that influence the judges' decisions? A thorough analysis of the

characteristics of these pretrial decisions is crucial for understanding the patterns and trends in decisions overturning suspect designations by the KPK.

Second, what are the legal and institutional impacts of pretrial rulings on the function of the Corruption Eradication Commission (KPK)? The annulment of suspect determinations could undermine the integrity and credibility of the KPK as an independent and strong anti-corruption agency. This could also have a deterrent effect on the KPK's law enforcement efforts, given the possibility that these rulings could be exploited by interested parties to evade the legal process. In this context, it is important to evaluate how pretrial rulings impact the KPK's institutional function and overall anti-corruption efforts.

Third, how do political-legal relations influence the pretrial decision regarding the determination of suspects by the Corruption Eradication Commission (KPK)? Political-legal relations refer to the interaction between law and politics in the formation and implementation of law. In this context, political-legal relations encompass the power dynamics between various state institutions, including the judiciary and the KPK, as well as the influence of political interests on the legal process. Examining these political-legal relations is important for understanding how political interests can influence pretrial decisions and how this impacts the independence and effectiveness of the KPK.

The legal basis for this research includes several key regulations. Law Number 30 of 2002 concerning the Corruption Eradication Commission grants the Corruption Eradication Commission (KPK) broad authority to conduct inquiries, trials, and prosecutions of corruption crimes. Furthermore, the Criminal Procedure Code (KUHAP) regulates pre-trial procedures as a mechanism for monitoring the actions of law enforcement officers during the investigation process. An analysis of relevant pre-trial decisions will also be conducted to understand how the law is applied in concrete cases involving the KPK's revocation of suspect status.

Against this backdrop, this study aims to comprehensively examine the characteristics of pretrial decisions that overturn the Corruption Eradication Commission (KPK)'s suspect designation, their legal impact on the KPK's institutional functions, and how political-legal relations influence these decisions. The results are expected to provide deeper insights and

constructive recommendations for strengthening the legal and institutional framework for eradicating corruption in Indonesia.

## **II. RESEARCH METHODS**

This research uses normative legal research, which focuses on the analysis of applicable legal norms. Normative legal research aims to evaluate laws and regulations, doctrines, and legal theories relevant to the topic being researched. In the context of research on the characteristics of decisions to annul suspect determination by the Corruption Eradication Commission (KPK) through pre-trial, this research 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 research also considers the legal principles underlying the suspect determination process and pre-trial mechanisms. This research uses two main approaches: the statutory approach and the case approach.

## **III. RESULTS AND DISCUSSION**

### **A. Characteristics of Pre-Trial Decisions that Cancel the Determination of a Suspect by the Corruption Eradication Commission**

This discussion of the characteristics of pretrial rulings annulling the Corruption Eradication Commission's (KPK) suspect determinations reveals several important aspects of Indonesia's law enforcement system. These rulings not only highlight the inconsistent procedures for suspect determination, but also emphasize the importance of human rights protection, the principle of collective collegiality in decision-making, and judicial oversight of law enforcement actions. This analysis provides a deeper understanding of how procedural and substantive validity influence the validity of legal actions taken by the KPK, as well as the implications of these rulings for public trust and the integrity of the judicial system.

**Table. Characteristics of Pre-Trial Decisions That Cancel the Determination of a Suspect by the Corruption Eradication Commission**

Case	Position	Reasons for Cancellation of Suspect Determination	Legal Aspects to be Considered	Year of the Decision
Dahlan Iskan	Former Minister of State-Owned Enterprises	1. Lack of sufficient preliminary evidence. 2. The procedure for determining the suspect does not comply with applicable law.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Procedure for determining suspects (KUHAP)	2015
Budi Gunawan	Former Head of BIN	1. The suspect was named without sufficient evidence. 2. The determination is not in accordance with legal procedures.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Procedure for determining suspects (KUHAP)	2015
Hadi Poernomo	Former Director General of Taxes	1. No two pieces of evidence are sufficient. 2. Tax objection decisions are not the object of criminal investigation.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Absolute competence of the Tax Court (Articles 25, 26, 36 of Law No. 9 of 1994)	2015
Setya Novanto	Former Speaker of the House of Representatives	1. Determination of suspects without a legitimate investigation process. 2. Initial evidence is insufficient.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Procedure for determining suspects (KUHAP)	2017
Siman Bahar	President Director of PT Loco Montrado	1. Determination of a suspect without two valid pieces of evidence. 2. There is no real and definite calculation of state losses.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Calculation of state losses (MK Decision No. 003/PUU-IV/2006)	2021
Prof. Dr. Edward Omar	Former Deputy Minister of Law and Human Rights	1. The determination of the suspect was not based on sufficient preliminary evidence. 2. The determination process does not conform to the principle of collective collegiality.	1. Sufficient preliminary evidence (Article 183 of the Criminal Procedure Code) 2. Collegial collective principle (KPK Law)	2023

3. There is no legitimate investigative process.	3. Investigation procedures (KUHAP)
--	-------------------------------------

*Source: Supreme Court Decisions Directory*

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

The Hadi Poernomo case began with an investigation conducted by the Corruption Eradication Commission (KPK) into alleged corruption in the tax objection process of PT Bank Central Asia (BCA) Tbk. in 1999. Hadi Poernomo, who at that time served as Director General of Taxes, was suspected of having abused his authority by accepting a tax objection request from PT BCA, which had the potential to harm state finances. The KPK named Hadi Poernomo as a suspect on April 21, 2014. In his petition, Hadi Poernomo filed a pretrial motion to test the validity of his designation as a suspect by the KPK. The applicant argued that tax objections were not the object of tax investigations because they were not criminal acts, but rather administrative legal remedies that were not yet final. Therefore, absolute competence should lie with the Tax Court, not the KPK. In addition, Hadi Poernomo also submitted that state losses could not be calculated from the tax objection decision because the decision was not final and could be revised according to applicable regulations.

The legal framework used in this case includes a number of articles in the Law and other provisions that regulate the authority of the Corruption Eradication Commission (KPK), pretrial procedures, and criminal procedural law. The applicant refers to Articles 25, 26, and 36 of Law No. 9 of 1994 concerning General Provisions and Tax Procedures (KUP), which state that tax objection decisions are the authority of the Director General of Taxes and are not the object of criminal investigation. In addition, the applicant also refers to Article 39 paragraph (3) of Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK), which stipulates that KPK investigators must come from the police. According to Article 11 letter c of Law No. 30 of 2002, the KPK has the authority to investigate corruption crimes involving state losses of at least one billion rupiah, but in this case, state losses cannot be calculated because the tax objection decision is not final.

The court considered that the determination of a suspect must comply with the correct

procedures in accordance with criminal procedural law to ensure the principle of legal certainty and the protection of human rights. The court also referred to Constitutional Court Decision No. 21/PUU-XII/2014 which states that the determination of a suspect is the object of a pretrial. Another consideration was that KPK investigators did not immediately examine Hadi Poernomo for more than 11 months after being named a suspect, which contradicts Article 50 of the Criminal Procedure Code which states that a suspect has the right to be immediately examined. Based on these considerations, the court ruled that the determination of Hadi Poernomo as a suspect by the KPK was invalid.

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

The Corruption Eradication Commission (KPK)'s designation of suspects often draws significant legal scrutiny, particularly in high-profile cases involving public figures. One such case is the South Jakarta District Court's pretrial ruling in the case of Dahlan Iskan, a former high-ranking official. In pretrial case number 67/Pid.Prap/2015/PN.JKT.SEL, Dahlan Iskan challenged the KPK's designation as a suspect. Dahlan Iskan, who served as Minister of State-Owned Enterprises (BUMN) at the time, was named a suspect in an alleged corruption case related to the procurement of electric cars. The court, represented by Judge Haswandi, granted Iskan's pretrial motion and declared the KPK's designation as a suspect invalid. This ruling was based on procedural grounds, where the KPK was deemed to have failed to meet the formal requirements for designating a suspect. The judge found that the KPK lacked sufficient preliminary evidence and failed to follow the procedures for designating a suspect in accordance with applicable law. This reflects the importance of adherence to legal procedures at every stage of the investigative process.

The legal framework underpinning this decision encompasses several important aspects. According to the Criminal Procedure Code (KUHAP), the determination of suspect status must be based on sufficient preliminary evidence. Article 1, number 14 of the KUHAP defines "investigation" as a series of actions taken by investigators to seek and collect evidence that



sheds light on the crime and to identify the suspect. In this case, the court found that the Corruption Eradication Commission (KPK) failed to follow the required procedural steps, including the proper collection and presentation of evidence, before naming Iskan a suspect. The pretrial mechanism serves as a horizontal check on the power of law enforcement agencies, ensuring that fundamental individual rights are protected, such as the right to be free from arbitrary detention. This principle is emphasized in the decision, reflecting the judiciary's role in upholding human rights standards. The Constitutional Court's decision in case number 21/PUU-XII/2014 expanded the scope of pretrial hearings to include reviewing suspect status determinations, granting the judiciary greater authority to scrutinize the actions of investigative bodies more rigorously.

**3. South Jakarta District Court Pre-Trial Decision Number: 04/Pid.Prap/2015/PN.Jkt.Sel.**

This case began when Police Commissioner General Drs. Budi Gunawan was named a suspect by the Corruption Eradication Commission (KPK) for alleged corruption. The KPK named him a suspect on the grounds of suspicious transactions and the acceptance of gifts or promises made by Budi Gunawan during his tenure as Head of the Human Resources Career Development Bureau at the National Police Headquarters. The KPK stated that the investigation had been underway since July 2014 and on January 12, 2015, they were confident they had found sufficient evidence to name Budi Gunawan a suspect. The determination was announced to the public on January 13, 2015, through a press conference.

Budi Gunawan then filed a pretrial motion with the South Jakarta District Court, arguing that his suspect designation was invalid because it did not comply with the procedures stipulated in the Criminal Procedure Code (KUHP). He also stated that the Corruption Eradication Commission (KPK)'s decision to name him a suspect was made without prior investigation and confirmation. Furthermore, Budi Gunawan objected to the KPK's decision being legally flawed because it was not implemented by the five KPK commissioners, as stipulated in Article 21 of the KPK Law.

The legal framework underlying this case is Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHP) and Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK Law). According to the KUHP,

the determination of a person as a suspect must go through an investigation and inquiry process in accordance with legal procedures. This process includes gathering sufficient evidence to clarify the crime and identify the suspect.

In addition, Article 21 paragraph (5) of the Corruption Eradication Commission Law stipulates that every decision made by the Corruption Eradication Commission must be carried out collectively by five KPK commissioners. In this case, Budi Gunawan argued that the KPK's determination of him as a suspect was legally flawed because the decision was only taken by four commissioners, thus not fulfilling applicable legal provisions.

The South Jakarta District Court, in its ruling, granted Budi Gunawan's pretrial motion, arguing that the suspect designation violated legal procedures and was arbitrary. The court also declared the KPK's actions invalid because they lacked a proper investigative process and were not carried out collectively by the five commissioners, as stipulated in the KPK Law.

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

The case involving the Regent of Nganjuk, Drs. H. Taufiqurrahman, began with the naming of the suspect by the Corruption Eradication Commission (KPK). On December 6, 2016, the KPK officially announced the naming of Taufiqurrahman as a suspect for alleged violations of Article 12 letter i and Article 12 B of Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning the Eradication of Corruption. This suspicion arose after the KPK conducted a search and confiscation of items in the Nganjuk Regent's office and his official residence on December 5, 2016. A search was also conducted at PT. Sinar Abadi Citra Sarana (SACS), a company associated with Taufiqurrahman. The KPK issued an Investigation Warrant (Sprindik) on November 23, 2016, but Taufiqurrahman had not yet testified as a witness when the warrant was issued.

Taufiqurrahman's pretrial motion stemmed from dissatisfaction with the Corruption Eradication Commission (KPK)'s suspect determination and search and seizure procedures. Taufiqurrahman argued that his suspect determination was not based on sufficient evidence and did not follow applicable legal procedures. He also stated that as Regent, he was not directly involved in the management and

supervision of the project in question, as these duties were carried out by the Commitment Making Officer (PPK) and other procurement units.

In this context, it is important to review Article 12 letter i and Article 12 B of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which form the basis of the suspicion. Article 12 letter i regulates civil servants or state administrators who participate in contracting, procurement, or leasing related to their duties, while Article 12 B concerns gratuities received by civil servants or state administrators. Taufiqurrahman questioned the validity of the Sprindik because he felt he was never given the opportunity to testify as a witness before being named a suspect, which he said violates the principle of due process of law.

The South Jakarta District Court then examined the evidence presented by both parties, including documents and witness statements. In its ruling, the court considered whether the procedures followed by the Corruption Eradication Commission (KPK) complied with applicable law and whether Taufiqurrahman's suspect status was supported by sufficient preliminary evidence. Furthermore, the court also assessed whether the KPK conducted seizures and searches in accordance with procedures stipulated in the Criminal Procedure Code (KUHP) and other relevant regulations.

#### **5. South Jakarta Court Decision Number: 97/Pid.Prap/2017/PN.Jkt.Sel.**

The pretrial motion filed by Setya Novanto relates to his designation as a suspect by the Corruption Eradication Commission (KPK) in the Electronic Identity Card (E-KTP) corruption case. Setya Novanto, who at that time served as Speaker of the Indonesian House of Representatives (DPR), rejected the KPK's designation as a suspect, deeming it invalid and not in accordance with procedures. On July 17, 2017, the KPK issued an Investigation Order (SPRINDIK) and a Notice of Commencement of Investigation (SPDP) naming Setya Novanto as a suspect. Novanto then filed a pretrial motion, arguing that his designation as a suspect was not based on a legitimate investigation process and sufficient preliminary evidence. He also argued that the KPK had named him a suspect without going through the proper examination process.

The legal framework in this case refers to Article 77 letter a of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP),

which authorizes the district court to examine and decide on the validity of suspect determination, arrest, detention, and termination of investigation or prosecution. In addition, Constitutional Court Decision Number 21/PUU-XII/2014 expanded the objects of pretrial to include suspect determination, searches, and seizures. The South Jakarta District Court considered that suspect determination must be based on at least two valid pieces of evidence as stipulated in Article 184 of the Criminal Procedure Code. In the Setya Novanto case, the court found that the Corruption Eradication Commission (KPK) named Novanto as a suspect without a complete investigation process and without sufficient preliminary evidence. The KPK was accused of naming Novanto as a suspect based on assumptions and evidence originating from another case, namely the Irman and Sugiharto case related to the E-KTP (electronic ID card) case, in which Novanto's name was not mentioned in the judge's considerations in the decision.

Based on these considerations, the South Jakarta District Court ruled that the KPK's designation of Setya Novanto as a suspect was invalid and null and void because it failed to comply with applicable procedures and provisions and was not supported by sufficient preliminary evidence. This decision demonstrates the importance of applying strict procedural principles in suspect designation to maintain justice and legal certainty.

#### **6. South Jakarta District Court Decision Number 2/Pid.Pra/2024/PN Jkt.Sel**

This pretrial case began with the naming of Prof. Dr. Edward Omar Sharif Hiariej as a suspect by the Corruption Eradication Commission (KPK). Prof. Dr. Edward Omar Sharif Hiariej, who is the former Deputy Minister of Law and Human Rights of the Republic of Indonesia, was named a suspect for alleged acceptance of gratuities or bribes related to the administration of general law at the Ministry of Law and Human Rights. The report against him was filed by Helmut Hermawan through his attorney, Sugeng Teguh Santosa, who is also the Chairman of Indonesia Police Watch (IPW). Helmut Hermawan reported that Prof. Dr. Edward, along with two other suspects, Yogi Arie Rukmana and Yosi Andika Mulyadi, had accepted bribes to influence decisions related to the ownership dispute of PT Citra Lampia Mandiri (CLM).

The Corruption Eradication Commission (KPK) determined that Prof. Dr. Edward, as a civil

servant or state administrator, jointly accepted gifts or promises to induce him to do or not do something in his position that was contrary to his obligations. This determination then triggered a pretrial motion from Prof. Dr. Edward, who claimed that the KPK's suspect-naming process was carried out illegally and arbitrarily, without following applicable legal procedures.

In his pretrial motion, Prof. Dr. Edward presented several legal arguments as the basis for overturning his suspect designation. First, he highlighted the KPK's failure to adhere to the principle of collective collegiality in decision-making. Under the KPK Law, every important decision, including the designation of a suspect, must be approved by all five KPK leaders. However, at the time of his suspect designation, the KPK only had four active leaders because the then-Chairman, Firli Bahuri, had been temporarily suspended.

Furthermore, Prof. Dr. Edward also highlighted that his suspect designation was not preceded by a legal investigation. According to him, the Corruption Eradication Commission (KPK) lacked sufficient preliminary evidence to name him as a suspect, which should have been based on at least two valid pieces of evidence. He also highlighted that there was no investigative activity against him between September 27, 2023, and November 24, 2023, thus making his suspect designation sudden and without a solid basis.

In its legal considerations, the court assessed that the suspect designation of Prof. Dr. Edward did not comply with applicable legal procedures, particularly regarding the principle of collective collegiality and the existence of sufficient preliminary evidence. The court also emphasized the importance of protecting human rights in the law enforcement process, as well as the necessity to ensure that every legal action is carried out based on legal and fair procedures. Therefore, the court decided to annul the suspect designation of Prof. Dr. Edward Omar Sharif Hiariej by the Corruption Eradication Commission (KPK).

The case under review shows that the court overturned the Corruption Eradication Commission (KPK)'s determination of a suspect because the KPK failed to follow proper 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. The investigation process must be carried out properly according to procedures, including the collection of sufficient

evidence before determining someone as a suspect. In the Budi Gunawan case (No. 04/Pid.Pra/2015/PN.JKT.SEL), for example, the court ruled that the determination of a suspect was made without sufficient evidence and did not follow procedures established by law. This emphasizes that legal action must be based on strong evidence and a fair process to ensure the validity of the determination of a suspect.

These decisions emphasize the importance of human rights protection in the suspect-determination process. Suspect determination must be based on clear and fair legal procedures to avoid arbitrary action. The suspect's rights must be protected from unlawful actions, including the right to a prompt examination and to be free from arbitrary detention. In the Setya Novanto case (No. 97/Pid.Pra/2017/PN.JKT.SEL), for example, the court found that the suspect's determination was carried out without a legitimate investigation process, violating the suspect's human rights to a fair legal process. This emphasizes that human rights protection is a crucial element in law enforcement.

Several cases demonstrate that KPK decisions must be made collectively by the entire leadership. Failure to comply with this principle is one of the grounds for annulment. The principle of collective collegiality ensures that important decisions are taken jointly by all KPK leaders to ensure legitimacy and accountability. In the case of Prof. Dr. Edward Omar Sharif (South Jakarta District Court Decision No. 2/Pid.Pra/2024/PN Jkt.Sel), the court found that the suspect determination was not carried out in accordance with the collective collegiality principle, which constitutes a violation of KPK internal procedures. This emphasizes that decisions involving suspect determination must go through a transparent and accountable decision-making mechanism.

In some cases, the courts consider that the matter under investigation is not the subject of a criminal investigation. For example, in the Hadi Poernomo case (No. 36/Pid.Pra/2015/PN.JKT.SEL), the tax objection decision should not be the subject of a criminal investigation and should be resolved through the tax or administrative courts. A clear understanding of the subject of an investigation is important for determining the jurisdiction and competence of the authorized law enforcement agency. This demonstrates that not all administrative actions or decisions can be used as the basis for a criminal investigation, and it is

important to distinguish between administrative and criminal violations.

These decisions demonstrate the courts' crucial role in overseeing law enforcement actions and ensuring they comply with the law and the constitution. Judicial oversight is crucial for maintaining public trust in the legal system and ensuring that law enforcement is conducted fairly and procedurally. In the *Siman Bahar* case (No. 08/Pid.Pra/2021/PN.JKT.SEL), the court emphasized that without a concrete and definitive calculation of state losses, the KPK's designation of a suspect is invalid. This underscores the courts' crucial role in overseeing law enforcement actions to prevent abuse of authority and ensure that legal action is based on valid evidence and proper procedures.

The pretrial ruling overturning the Corruption Eradication Commission's (KPK) suspect designation underscores the importance of implementing strict legal procedures and protecting human rights in law enforcement. It also demonstrates the importance of collective collegial principles and a thorough understanding of the subject of investigation to ensure the validity of legal actions taken by law enforcement agencies. Judicial oversight plays a key role in maintaining justice and legal certainty in Indonesia's law enforcement process.

## **B. The Political-Legal Relationship between Pre-Trial Decisions and the Determination of Suspects by the Corruption Eradication Commission**

### **1. Legal Politics Institutional Position**

In the context of the legal regulation of the Corruption Eradication Commission (KPK) in Indonesia, legal policy plays a crucial role in evaluating whether existing regulations comply with basic legal principles such as justice, legal certainty, and expediency. KPK regulations have undergone several significant changes through Law No. 10 of 2015 and Law No. 19 of 2019, reflecting political dynamics and evolving legal needs. Through a legal theory perspective, we can analyze the implications of these changes on the KPK's performance and independence.

According to the theory of justice, the law should reflect the values of justice prevailing 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 Corruption Eradication Commission (KPK), the amendments

made through Law No. 10 of 2015 and Law No. 19 of 2019 need to be analyzed to determine whether they meet this principle of justice. For example, the establishment of a Supervisory Board with the authority to grant wiretapping permits must be examined to see whether it provides justice for all parties involved, including suspects whose rights must be protected during the investigation process.

In addition to justice, the theory of legal certainty, heavily influenced by the thinking of Hans Kelsen, emphasizes that laws must be clear, consistent, and enforceable. Legal certainty provides a sense of security for the public that the law is unchanging and reliable. 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 KPK employee status in Law Number 19 of 2019, need to be reviewed from a legal certainty perspective. A clear and transparent mechanism for the appointment and dismissal of KPK leaders is crucial to ensuring that this institution can function without undue interference and intervention.

The theory of utilitarianism, pioneered by Jeremy Bentham and John Stuart Mill, states that law should aim to achieve the greatest happiness for the greatest number of people. In this context, KPK regulations should be assessed based on the extent to which these changes increase the effectiveness of corruption eradication and provide the greatest benefit to society. The establishment of a Supervisory Board, changes to wiretapping mechanisms, and changes in employee status need to be evaluated to determine whether they truly improve KPK performance and provide greater benefits to corruption eradication efforts in Indonesia.

Furthermore, the theory of institutional independence emphasizes that an institution established to carry out oversight and law enforcement functions must be free from intervention by the executive, legislative, and judicial branches. In this regard, the Corruption Eradication Commission (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 to see whether they could affect the KPK's independence. This theory helps understand whether these changes threaten the KPK's freedom in carrying out its duties.



Overall, a legal theory analysis of the KPK regulations shows that the changes made through Law No. 10 of 2015 and Law No. 19 of 2019 have complex implications. From the perspective of the theories of justice, legal certainty, utilitarianism, and institutional independence, a thorough 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. Therefore, KPK regulations must continue to be adjusted to comply with applicable legal principles to achieve the goal of fair and effective corruption eradication.

A comparison of legal policy related to the institutional status of the Corruption Eradication Commission (KPK) demonstrates the dynamic 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 government, to ensure effectiveness and integrity in eradicating corruption. According to the legal theory of independence, an institution free from external influence can carry out its oversight and law enforcement functions more objectively and efficiently. This aligns with the principle of checks and balances in the legal system, which ensures that no branch of government has absolute authority. However, a problem that arises is that the KPK often faces challenges in establishing cooperation with other institutions, as its strong independence can create friction with other law enforcement agencies.

Law No. 10 of 2015 maintains the principle of the Corruption Eradication Commission (KPK)'s independence but introduces executive intervention in emergency situations, such as filling leadership vacancies, to maintain the institution's operational continuity. This demonstrates that while the KPK's independence is maintained, there is a recognition of the need for executive intervention in critical situations to ensure its continued functioning. According to public administration theory, such intervention is necessary to ensure the continuity and effectiveness of state institutions' operations in emergency situations. The problem that arises is that executive intervention in emergency situations could be interpreted as an attempt to control or influence the KPK, which in turn could threaten its independence.

Law Number 19 of 2019 changed the approach by placing the Corruption Eradication

Commission (KPK) within the executive branch of government, while maintaining its independence in carrying out its duties and authorities. This was achieved by adding a layer of oversight through the establishment of a supervisory board. This measure strengthens internal and external control and accountability, while still ensuring the KPK's independence from the influence of illegitimate powers. The theory of social control in law states that effective oversight can prevent abuse of authority and ensure that state institutions act in accordance with the law and the public interest. However, a problem that arises is that the supervisory board can become a tool of political control used to hinder or intervene in the KPK's work, especially if its members are selected based on political considerations.

The interaction between the Corruption Eradication Commission (KPK) and the executive and legislative branches is evident in all these laws, particularly in the process of appointing KPK leaders. Law No. 30 of 2002 and Law No. 10 of 2015 indicate that the appointment of leaders involves selection by the House of Representatives (DPR) and appointment by the President, reflecting a balanced interaction between the two branches of government. Law No. 19 of 2019 enhances the executive's role by placing the KPK within the executive branch and introducing a supervisory board, demonstrating increased executive control over the KPK while maintaining the principle of independence through stricter oversight mechanisms. This aligns with legal system theory, which emphasizes the importance of a balance between operational freedom and accountability of state institutions. A potential problem is the potential for politicization in the appointment of leaders and the supervisory board, which could impact the KPK's independence and objectivity.

In terms of authority and accountability, Law No. 30 of 2002 granted the Corruption Eradication Commission (KPK) broad powers with little external oversight, allowing it to operate with considerable freedom. Law No. 10 of 2015 maintained the KPK's broad powers but emphasized mechanisms for quickly filling vacancies to maintain the institution's operations. Law No. 19 of 2019 increased internal and external oversight, including the establishment of a supervisory board, to enhance the KPK's accountability. This step was taken to ensure that the KPK could continue to operate effectively, but with stricter oversight to prevent abuse of authority. According to good governance theory,

transparency and accountability are key elements in ensuring that state institutions function well and serve the public interest. The problem is that additional oversight and layers of bureaucracy could slow down the KPK's work processes and reduce its efficiency in handling corruption cases.

## **2. Legal Policy of the Position of Investigators**

The Constitutional Court (MK) ruling and Law No. 19 of 2019 emphasize the importance of a clear and competent background for KPK investigators. The MK ruling states that investigators must be from the Indonesian National Police (Polri) or certain civil servants with special authority under the law. Law No. 19 of 2019 expands this provision to include investigators from the police, prosecutors, civil servant investigators with special authority, and KPK investigators who have met specific requirements. This demonstrates the need for adjustments and harmonization in regulations to ensure that KPK investigators possess adequate competence and come from institutions with the authority and expertise in investigations.

Both the Constitutional Court Decision and Law No. 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 with due regard to the principles of independence and professionalism. Law No. 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, aiming to maintain integrity and independence in the investigative process.

The Constitutional Court's ruling emphasized the importance of legal certainty in determining suspects. Law No. 19 of 2019 accommodates this by stipulating that KPK investigators must comply with criminal procedural law mechanisms and meet the same competency standards. Investigators must have at least a bachelor's degree, graduate from investigative training, be physically and mentally healthy, and possess high moral integrity. These provisions demonstrate an effort to ensure that every investigative action is conducted based on clear law and in accordance with high professional standards, thereby providing legal certainty for all parties involved.

These two regulations emphasize the importance of the independence of KPK investigators. The Constitutional Court's ruling

emphasized that investigators must be free from unauthorized intervention to maintain the objectivity and integrity of the investigative process. Law No. 19 of 2019 reinforces this principle by stipulating that investigators are appointed and dismissed by the KPK leadership. This ensures that investigators are not subject to pressure or influence from external parties, allowing them to carry out their duties independently and free from conflicts of interest.

The Constitutional Court's ruling expanded the scope of pretrial motions to include suspect determination, providing a basis for suspects to challenge the validity of their determination through pretrial motions. Law No. 19 of 2019, by further regulating the status of investigators, ensures that the KPK's investigation process can be challenged through pretrial motions based on clear legal standards. This provides legal protection for suspects and ensures that suspect determinations are conducted legally and based on sufficient preliminary evidence. Thus, pretrial motions serve as an effective control tool to prevent arbitrary actions in suspect determination by the KPK.

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

Constitutional Court Decision No. 21/PUU-XII/2014 significantly impacted the regulation and implementation of pretrial proceedings in Indonesia, particularly regarding suspect determination. This decision shifted the paradigm by emphasizing the importance of sufficient preliminary evidence in determining a suspect. This is evident in the following pretrial decisions.

The Setya Novanto pretrial ruling (No. 97/Pid.Prap/2017/PN.Jkt.Sel.) refers directly to the Constitutional Court Decision No. 21/PUU-XII/2014. The Corruption Eradication Commission (KPK) declared Setya Novanto a suspect invalid because it failed to meet the minimum standards of proof required before determining a suspect. This confirms that the KPK must comply with applicable legal provisions in the suspect-determination process.

The Budi Gunawan pretrial case (No. 04/Pid.Prap/2015/PN.Jkt.Sel.) also highlights the importance of sufficient evidence in determining a suspect. The pretrial judge ruled that Budi Gunawan's suspect determination was invalid because it was not supported by sufficient preliminary evidence, in accordance with the principles emphasized in Constitutional Court

Decision No. 21/PUU-XII/2014. This demonstrates that the evidentiary standards used by the Corruption Eradication Commission (KPK) must be in line with the provisions outlined by the Constitutional Court.

Furthermore, in Dahlan Iskan's pretrial ruling (No. 67/Pid.Prap/2015/PN.Jkt.Sel.), the court rejected Dahlan Iskan's pretrial motion, arguing that the suspect's determination had been based on sufficient evidence and in accordance with procedures. Although the motion was rejected, this ruling still emphasized the importance of standards of proof in accordance with Constitutional Court regulations.

The Hadi Poernomo case (No. 36/Pid.Prap/2015/PN.Jkt.Sel.) demonstrates that the determination of a suspect by a retired KPK investigator was declared invalid. This demonstrates the application of the principle of due process of law as affirmed in Constitutional Court Decision No. 21/PUU-XII/2014, where every investigative action must be carried out by a legally authorized investigator. This reaffirms the importance of compliance with legal procedures in the investigative process.

Finally, in Taufiqurrahman's pretrial ruling (No. 15/Pid.PRAP/2017/PN.Jkt.Sel.), the court decided to reject the pretrial motion, affirming that the investigation into Nganjuk Regent Taufiqurrahman was conducted in accordance with applicable procedures and supported by sufficient preliminary evidence. This reaffirms the principle outlined by Constitutional Court Decision No. 21/PUU-XII/2014 regarding the importance of sufficient evidence in determining a suspect.

Overall, Constitutional Court Decision No. 21/PUU-XII/2014 strengthens legal protection for individuals in the suspect-determination process. This decision requires sufficient preliminary evidence and ensures that investigative procedures are carried out by legitimate and competent investigators. This is reflected in various pretrial decisions that refer to the principles outlined by the Constitutional Court, emphasizing the importance of due process of law in Indonesia's criminal justice system.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

A discussion of the characteristics of pretrial decisions that annul the Corruption Eradication Commission's (KPK) suspect designations reveals that the KPK's suspect designations are often annulled due to legal inconsistencies, such as a

lack of sufficient preliminary evidence and procedures inconsistent with criminal procedural law. This underscores the importance of protecting human rights, the principle of collective collegiality in decision-making, and judicial oversight of law enforcement actions. An analysis of Law No. 30 of 2002, Law No. 10 of 2015, and Law No. 19 of 2019 demonstrates efforts to balance the KPK's independence with the need for oversight and accountability.

These regulatory changes reflect the evolution of legal politics aimed at improving the effectiveness and accountability of the Corruption Eradication Commission (KPK), although they present challenges such as potential politicization and intervention. The legal political relationship between pretrial rulings and KPK regulations demonstrates that judicial oversight plays a key role in maintaining justice and legal certainty. The pretrial rulings emphasize the importance of strict legal procedures and the protection of human rights, and demonstrate that the principle of collective collegiality and a proper understanding of the object of investigation are crucial to ensuring the legitimacy of the KPK's legal actions.

#### **REFERENCE LISTAN**

- Amdani, Yusi, 'Implications of the Interpretation of the Law by Pre-Trial Judges in Corruption Cases', *Law Forum - Faculty of Law, Gadjah Mada University*, 27.3 (2015), 459-71
- Amin, Khoirul, 'Legal Protection Against the Determination of Suspect Status Reviewed from a Human Rights Perspective', *JOSH: Journal of Sharia*, 3.01 (2024), 1-18
- Bagaswara, Muhammad Arif, Suharso Suharso, Dyah Adriantini Sintha Dewi, and Habib Muhsin Syafingi, 'Implications of Changes to the Corruption Eradication Commission Law on the Independence of the Corruption Eradication Commission (Normative Legal Study of Independence from an Institutional Perspective)', *Borobudur Law and Society Journal*, 1.6 (2022), 32-44
- Desianto, Ratman, 'Disputes over Investigative Authority in the Context of Corruption Eradication', *KERTHA WICAKSANA*, 16.2 (2022), 123-39
- Dinda, Claudia Permata, Usman Usman, and Tri Imam Munandar, 'Pretrial Against the Determination of Corruption Crime Suspect Status by the Corruption Eradication

- Commission', PAMPAS: Journal of Criminal Law, 1.2 (2020), 82–103
- Fadilah, Olivia Nur, Achmad Irwan Hamzani, and Tiyas Vika Widyastuti, *Corruption Court: A Comparison of Indonesia and Russia* (NEM Publishers, 2023)
- Febriansyah, Ferry Irawan, 'Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation', *DiH: Journal of Legal Studies*, 13.25 (2017), 368780
- Fihim, Mohammad, "Reconstruction of Wiretapping Authority Regulations in the Context of Human Rights Protection Based on Justice Values" (SULTAN AGUNG ISLAMIC UNIVERSITY, 2022)
- Fodhi, Azhari Sellomitha, Eky Lestari, Tyara Fridayanti Nuramalina, and Ghaida Raisya As-Syifa, 'The Importance of Separation of Powers in Maintaining Balanced Government', *JOURNAL OF LAW, POLITICS AND SOCIAL SCIENCES*, 3.3 (2024), 26–37
- Habibi, Muhammad, 'The Independence of the Corruption Eradication Commission's Authority Following the Amendment to the Corruption Eradication Commission Law', *Cepalo*, 4.1 (2020), 41–54
- Julyano, Mario, and Aditya Yuli Sulistyawan, 'Understanding the Principle of Legal Certainty Through the Construction of Legal Positivism Reasoning', *Crepido*, 1.1 (2019), 13–22
- Kafara, Safrun, 'Legal Analysis of the Implementation of the Pretrial Decision in the Setya Novanto Case by the Corruption Eradication Commission (Number 97/Pid. Prap/2017/PN. Jkt-Sel Date 29 September 2017)', *Journal of Law Enforcement and Justice*, 1.1 (2020), 81–94
- Manullang, Sardjana Orba, Yessy Kusumadewi, Verawati Verawati, Henry Kristian Siburian, Hendro Siburian, and Baren Sipayung, 'Legal Problems in the Formation of the Second Amendment to the Corruption Eradication Commission Law', *Journal on Education*, 5.2 (2023), 4885–97
- Nurisman, Eko, and Risiko Fitriano, 'Legal Analysis of the Implications of Changes to the Law on Corruption Eradication in Indonesia', *Jurnal Komunitas Yustisia*, 4.2 (2021), 712–24
- Oce Madril, SH, 'RESEARCH REPORT ON THE FUTURE PROJECTION OF CORRUPTION ERADICATION EXAMINING THE RETAILING OF THE REVISION OF THE KPK LAW', 2020
- Putri, Nur Talita Prapta, and Ananda Aulia, 'The Application of Hans Kelsen's Positivism Theory in Indonesia', *Das Sollen: Journal of Contemporary Studies of Law and Society*, 2.01 (2024)
- Siregar, Riri Stephanie, Marlina Marlina, and Ibnu Affan, 'THE POLITICS OF CRIMINAL LAW IN CORRUPTION ERADICATION AFTER THE REVISION OF THE CORRUPTION ERADICATION COMMISSION LAW', *Jurnal Ilmiah METADATA*, 5.3 (2023), 355–75
- Suryana, Dede, 'TRANSFORMATION OF LEGAL PROTECTION FOR SUSPECTS IN PRETRIAL DECISIONS' (UNIVERSITY OF PASUNDAN, 2023)
- Suyatmiko, Wawan Heru, and Alvin Nicola, 'Assessing Anti-Corruption Institutions: A Study of the Performance Review of the Corruption Eradication Commission', *Integritas: Jurnal Antikorupsi*, 5.2 (2019), 35–56
- Triadi, Irwan, Akhfa Kamilla Sulaeman, Cristella Zevanya, Rasyanda Audra, Amudi Panigori Rangoraja, and Aura Nasya Madhani Harahap, 'Implementation of Democratic Principles in the Indonesian Constitutional Law System', *LANCAH: Journal of Innovation and Trends*, 2.2 (2024), 420–28
- Triyudiana, Andra, and Putri Neneng, 'The Implementation of the Principle of Justice as Fairness According to John Rawls in Indonesia as a Manifestation of Pancasila', *Das Sollen: Journal of Contemporary Studies of Law and Society*, 2.01 (2024)
- Waluyo, Bambang, *Law Enforcement in Indonesia* (Sinar Grafika, 2022)
- Wicaksana, Yuristyawan Pambudi, 'Implementation of the Principle of Ius Curia Novit in the Legal Interpretation of Judges' Decisions Regarding the Validity of the Determination of Suspects', *Lex Renaissance*, 3.1 (2018), 3
- Widodo, Hananto Hananto, 'LEGIDAL ANALYSIS OF CONSTITUTIONAL COURT DECISION NUMBER 70/PUU-XVII/2019 ON THE JUDICIAL REVIEW OF THE CORRUPTION ERADICATION COMMISSION LAW', *Novum: Jurnal Hukum*, 2022, 92–106
- Yanto, Andri, *Schools of Law: An Introduction to Understanding the Dimensions of Legal Thought* (Segap Pustaka Publishers, 2021)