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Pretrial Proceedings in Indonesian Criminal Procedure Law: Its Relation to Corruption Eradication

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Abstract: Pretrial proceedings play a strategic role in Indonesia's criminal justice system as a judicial oversight mechanism to ensure the legality of law enforcement actions and the protection of suspects' human rights. In corruption cases, however, pretrial motions are often exploited as procedural loopholes to invalidate ongoing investigations due to the absence of rigid legal standards and inconsistent interpretations by judges sometimes extending into the merits of the case, which should fall outside the scope of pretrial jurisdiction. This study examines the ideal concept of pretrial review using a normative juridical approach, emphasizing the due process of law principle, the primacy of lex specialis under Article 26A of the Anti-Corruption Law, and its harmonization with the Criminal Procedure Code (KUHAP). The research concludes that pretrial mechanisms should function solely as limited judicial review, restricted to evaluating procedural legality. Additionally, the study highlights the significance of establishing Preliminary Examination Judges (Hakim Pemeriksa Pendahuluan) as proposed in the Draft Criminal Procedure Code. These judges would proactively supervise investigative actions, ensuring procedural compliance and minimizing the misuse of pretrial remedies by corruption suspects. Strengthening normative frameworks and judicial guidelines is thus essential to foster coherent, fair rulings and support the integrity and effectiveness of anti-corruption law enforcement.

Keywords: Pretrial; Corruption; Due Process.

1. Introduction

To ensure the implementation of Article 28D of the 1945 Constitution of the Republic of Indonesia, Law No. 8 of 1981 on Criminal Procedure (KUHAP) plays a crucial role in establishing the mechanisms that regulate the rights and obligations of citizens within criminal proceedings. These mechanisms encompass all stages from the designation as a suspect, arrest, detention, prosecution, to court verdicts and their execution while upholding the principle of equality before the law as a manifestation of due process of law. Due process, as the ultimate goal of the criminal justice system, ensures fair legal proceedings. The application of KUHAP is particularly significant at the stage of suspect designation, where a suspect is defined as an individual who, based on sufficient preliminary evidence, is reasonably suspected of committing a criminal offense [1]. Arrest and detention may only be carried out if there is sufficient preliminary evidence. This evidence forms the basis for designating someone as a suspect, a decision under the authority of the police as the authorized investigative body [2].

Chandra M. Hamzah identifies two categories of preliminary evidence. First, sufficient preliminary evidence serves as the basis for suspecting that a crime has occurred, allowing the investigation to proceed. Second, sufficient preliminary evidence supports the suspicion that a specific individual committed the crime [3]. Horizontal oversight of coercive legal actions serves as a human rights safeguard for individuals facing wrongful legal processes. The state is responsible for the protection, advancement, enforcement, and fulfillment of human rights.

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Legal certainty requires that investigators conduct investigations according to established legal procedures, including examination, trial, and passive pretrial decisions.

The Constitutional Court's ruling legitimizes the expansion of pretrial objects and adds procedural stages, reflecting the need for legal adaptation over time. However, in practice, the regulation of pretrial in the Criminal Procedure Code (KUHAP) is seen by some practitioners and legal scholars as limited, as it mainly covers formal procedural aspects such as the legality of arrest and detention without addressing substantive issues, thus impacting the effectiveness of individual rights protection [4]. There are significant weaknesses in the implementation of pretrial decisions in Indonesia, as law enforcement officers sometimes ignore these rulings. Several cases that should be prosecuted for causing state financial losses have instead seen pretrial institutions act as a "double-edged sword" in law enforcement. Judges in pretrial cases have applied different legal principles sometimes using lex specialis, other times lex generalis leading to inconsistent decisions.

Examples include:

a. In Budi Gunawan's case (No. 04/Pid.Pra/2015/PN.Jkt.Sel), the judge ruled that the KPK lacked authority under Article 11 of the KPK Law and that the evidence did not meet the requirements of Article 184 of the Criminal Procedure Code (KUHAP), even delving into substantive matters, contrary to the formal nature of pretrial proceedings.
b. In Dahlan Iskan's case (No. 67/Pid.Pra/2015/PN.Jkt.Sel), the judge affirmed that suspect determination is a pretrial object, but the decision was controversial as prosecutors argued the Constitutional Court had overstepped its authority.
c. In Sahbirin Noor's case (No. 105/Pid.Pra/2024/PN.Jkt.Sel), the judge found the KPK's suspect determination arbitrary due to procedural flaws, expanding the interpretation of arbitrariness into substantive actions.
d. In Hasto Kristiyanto's case (No. 5/Pid.Pra/2025/PN.Jkt.Sel), the judge rejected the application on formal grounds, showing consistency in focusing on procedural aspects without addressing the case's substance.

These cases reveal a pattern of diverse pretrial rulings, resulting from differing judicial interpretations regarding the KPK's authority, the standard of evidence, and the scope of pretrial objects, as regulated by KUHAP, the KPK Law, and Constitutional Court decisions. This diversity underlines legal uncertainty, especially regarding:

a. The definition of valid evidence under KUHAP and the Corruption Law.
b. The interpretation of KPK's authority, especially after the 2019 amendment.
c. The scope of pretrial, which has expanded following Constitutional Court rulings.

The lack of coherent parameters in KUHAP and the KPK Law gives judges broad discretion, enabling judicial activism that may exceed the procedural limits of pretrial and cause disharmony between KUHAP, the KPK Law, and Constitutional Court decisions. This situation threatens the consistency of verdicts, the effectiveness of anti-corruption efforts, and creates contradictory precedents in Indonesia's legal system.

Historically, before pretrial institutions existed, Indonesia's criminal procedure law recognized the role of the examining judge (regter-commissaris) under the Reglement op de Strafvordering, who supervised the legality of coercive measures during preliminary investigations [5]. The concept of the "Hakim Komisaris" was similar to a concept found in the Reglement op de Strafvordering. However, this idea was later annulled by the State Secretariat and replaced by the pretrial institution (praperadilan), which was subsequently formalized in Law Number 8 of 1981. During the drafting of the 2011 Criminal Procedure Code Bill (RUU KUHAP), intended to replace the 1981 KUHAP, the concept of a "Commissary Judge" was reintroduced as a substitute for the pretrial institution, inspired by comparative studies in the Netherlands and adapted to Indonesian legal developments. Notably, the 2012 KUHAP Draft replaced the term "Commissary Judge" with "Preliminary Examination Judge" (HPP), granting broader and more comprehensive authority over coercive measures than the current KUHAP.

Fachrizal Afandi, in the Mimbar Hukum journal, compares the HPP concept in the 2012 Draft to the existing pretrial mechanism and Constitutional Court Decision No. 21/PUU-XII/2014. He highlights that pretrial judges have a passive role, intervening only upon request and not addressing the substance of criminal cases. In contrast, the HPP, positioned between investigators, prosecutors, and judges, can actively exercise authority on its own initiative under Article 111(1) of the Draft, except regarding the prosecutorial decision to bring a case to trial [6]. At first glance, the HPP procedural law appears superior to pretrial

procedures. However, Article 112(1) of the 2012 RKUHAP limits proceedings to just two days, which poses a serious challenge for HPP in uncovering material truth. This short duration means HPP will likely rely only on formal documentation when assessing the legality of law enforcement actions.

Therefore, this research is significant in examining the diversity of pretrial decisions in corruption cases involving the KPK, focusing on inconsistencies in legal norms, interpretation of evidence, and KPK's authority. The aim is to promote harmonization of criminal procedure law to better support anti-corruption efforts in Indonesia. This study also analyzes the effectiveness of pretrial arrangements and implementation, especially in corruption cases involving pretrial motions, and reviews the draft Criminal Procedure Code (KUHAP), which introduces the concept of the Preliminary Examination Judge (Hakim Komisaris).

Based on the background above, this research addresses two main issues:

a. The current application of pretrial in combating corruption, including the effectiveness of pretrial mechanisms in supervising law enforcement actions and protecting suspects' rights, especially regarding the validity of suspect designation, arrest, detention, and other coercive measures as expanded by Constitutional Court decisions and Article 77 of KUHAP;
b. The future concept and application of pretrial in corruption eradication, analyzing challenges, weaknesses, and opportunities for improving pretrial institutions to ensure substantive justice and human rights protection in a progressive and adaptive criminal justice system in Indonesia.

2. Literature Review

2.1. Legal Certainty Theory

Gustav Radbruch is a key figure in developing the theory of legal certainty as a fundamental goal of the legal system. According to Radbruch, legal certainty consists of four interrelated principles: (1) law is positive, meaning it is established through legislation; (2) law is based on verifiable facts; (3) legal facts must be formulated clearly to avoid misinterpretation and ensure effective implementation; and (4) positive law should not be easily altered. This theory emphasizes that legal certainty is a product of enacted law, aiming to provide clarity and consistency so individuals can anticipate the legal consequences of their actions. In the judicial context, legal certainty serves as a safeguard against arbitrary law enforcement and ensures predictability, fairness, and transparency in legal proceedings [7].

2.2. Legal Effectiveness Theory

Soerjono Soekanto developed the theory of legal effectiveness, which serves as a crucial foundation for assessing the success of law implementation in society. According to Soekanto, legal effectiveness refers to the extent to which a group can achieve its objectives, with law considered effective if it produces positive legal outcomes and successfully directs or changes human behavior into law-abiding conduct. This theory identifies five main factors influencing the effectiveness of law enforcement: the law itself (legislation), law enforcers (those who create and implement the law), supporting facilities and infrastructure, the community in which the law operates, and culture, which encompasses human creativity, taste, and initiative within social interactions. These five interrelated factors are essential for law enforcement and serve as benchmarks for evaluating the practical effectiveness of law implementation [8].

2.3. Progressive Law Theory

Satjipto Rahardjo introduced the theory of progressive law in 2002 as a response to dissatisfaction with the practice of positive law in Indonesia. Progressive law, according to Rahardjo, is a legal approach that liberates both legal thinking and action, based on the fundamental assumption that "law is for humans, not humans for law." This theory emphasizes that law should be pro-people, pro-justice, and aimed at achieving welfare and happiness, grounded in a good life, and characterized by responsiveness, conscience, spiritual intelligence, and liberation. Progressive law seeks rapid and fundamental changes in legal theory and practice, making breakthroughs to achieve greater goals such as human dignity,

happiness, and well-being. It rejects rigid legal formalism and prioritizes legal interpretation that upholds moral values and justice in society, relying on human reasoning and conscience [9].

3. Proposed Method

This research employs a qualitative method with a normative-empirical legal approach, combining legal norm analysis through literature studies (primary and secondary legal materials) and empirical observation of pretrial implementation in combating corruption, particularly regarding the Draft Criminal Procedure Code (RKUHAP) and related legislation. The approach includes statutory and conceptual analysis, as well as interviews with judges and legal practitioners to capture real-world practices. Descriptive-analytical in nature, the study aims to describe and analyze the effectiveness and legal implications of pretrial mechanisms in the context of corruption law enforcement. Data collection techniques involve document studies and interviews, with critical analysis of relevant arguments and theories, ultimately seeking to contribute to the development of fair and effective legal regulations and practices [10].

4. Results and Discussion

4.1. The Application of Pretrial Proceedings in the Eradication of Corruption Crimes at Present

4.1.1. Pretrial Proceedings in the Current Criminal Justice System

In academic legal terms, "praperadilan" does not simply refer to proceedings that occur before a court trial, despite its literal meaning of "pre-trial." Instead, praperadilan specifically denotes a legal mechanism that takes place prior to the examination of the main charges by the court, serving as a preliminary process to assess the legality of certain law enforcement actions before the substantive trial begins [11]. The authority of pretrial (praperadilan) in Indonesia is strictly limited by the current Criminal Procedure Code (KUHAP). According to Articles 77 and 78 of KUHAP, the District Court is empowered to examine and decide on the legality of arrests, detentions, termination of investigations or prosecutions, as well as compensation and/or rehabilitation for individuals whose criminal cases are discontinued at the investigation or prosecution stage. The main purpose of the pretrial institution is to uphold the law and protect the human rights of suspects during the investigation and prosecution process [12].

The existence of the pretrial institution reflects the principle of due process of law, aiming to ensure justice for suspects and defendants during legal proceedings. Pretrial also embodies the principle of functional differentiation, meaning that each law enforcement agency within the criminal justice system has its own distinct and separate duties and functions [13]. In Lawrence M. Friedman's Legal System theory, there are components of the legal system, namely legal structure, legal substance, legal culture. [14].

In the enforcement of anti-corruption law, pretrial proceedings play a vital role in preventing abuse of power by law enforcement agencies. Pretrial functions as an initial filter to assess whether the prosecution of corruption cases meets formal legal standards. Institutions like the Corruption Eradication Commission (KPK) must strictly adhere to these legal requirements, as any procedural errors can result in the annulment of a suspect's status through a pretrial court decision. The Constitutional Court's decision No. 21/PUU-XII/2014 expanded the scope of pretrial to include the legality of suspect designation, searches, and seizures, all of which can now be judicially reviewed. According to this ruling, naming someone as a suspect must be based on at least two valid pieces of evidence and a lawful investigation process, as stipulated in Article 184 of the Criminal Procedure Code. This expansion significantly impacts law enforcement, especially the KPK, since any procedural mistake in suspect designation can be overturned by the pretrial judge, regardless of the corruption case's substance. While this development strengthens human rights protection and upholds the principle of due process, it also creates opportunities for suspects to exploit pretrial mechanisms as a judicial technicality to invalidate criminal proceedings [15].

4.1.2. Diversification of Decisions in Pretrial Proceedings for Corruption Crimes

The phenomenon of diversified pretrial decisions in Indonesian corruption (Tipikor) cases reveals a critical problem in the criminal justice system. This diversity leads to legal uncertainty and erodes public trust in the effectiveness of the Corruption Eradication Commission (KPK). The main cause is the absence of rigid and prescriptive parameters in both the Criminal Procedure Code (KUHAP) and the KPK Law, before and after the 2019 revision, which allows judges broad interpretive freedom in assessing the legality of KPK suspect designations.

Normatively, KUHAP limits pretrial authority to procedural aspects such as arrest, detention, cessation of investigation or prosecution, and compensation or rehabilitation (Articles 77–83). However, Constitutional Court Decision No. 21/PUU-XII/2014 expanded this scope to include the legality of suspect designation, creating legal ambiguity as pretrial courts began intruding into substantive matters, which should belong to the main trial.

This lack of systemic coherence in criminal procedure law has resulted in inconsistent judicial approaches ranging from strict proceduralism to broad, substantive interpretations especially in high-profile KPK cases like Budi Gunawan (2015), Dahlan Iskan (2016), Sahbirin Noor (2024), and Hasto Kristiyanto (2025). Judges variably rely on KUHAP, the KPK Law, and Constitutional Court decisions, sometimes using a mix of procedural and substantive standards, which further deepens legal uncertainty.

The diversification of pretrial decisions in Indonesian corruption cases stems from the absence of clear, prescriptive legal standards in KUHAP and the KPK Law, leading to broad judicial discretion, legal uncertainty, and diminished public trust. This situation is exacerbated by the expansion of pretrial authority following Constitutional Court Decision No. 21/PUU-XII/2014, which allows pretrial judges to assess the validity of suspect designations without clear operational guidelines, resulting in inconsistent and unpredictable legal outcomes.

This principle underscores the urgent need for legislative reform to establish clear, binding parameters for pretrial procedures, ensuring consistency, legal certainty, and the effectiveness of anti-corruption efforts in Indonesia.

4.1.3. Time Series Analysis of the Diversification of Pretrial Decisions in Corruption Cases (2015–2025)

The phenomenon of diversified pretrial decisions in corruption cases in Indonesia over the past decade can be chronologically mapped into three main phases:

a. Phase I (2015–2016): Initial Expansion of Pretrial Scope
   1) Triggered by Constitutional Court Decision No. 21/PUU-XII/2014, this phase marked the beginning of broader pretrial authority, allowing judicial review of suspect designation.
   2) Judges, as in the Budi Gunawan and Dahlan Iskan cases, adopted a progressive approach, examining substantive evidence and expanding judicial discretion beyond formal procedural limits.
   3) This period saw a significant shift from a strictly formal to a more substantive approach, despite the absence of normative legal changes.
b. Phase II (2017–2023): Apparent Stability and Normative Inconsistency
   1) No revision of the Criminal Procedure Code (KUHAP) or new pretrial guidelines were issued following the Constitutional Court's decision.
   2) Judicial approaches fluctuated between strict formalism and substantive expansion, leading to normative stagnation and increasing inconsistency in decisions.
   3) The absence of clear judicial boundaries allowed for continued diversity in rulings, with no nationally prominent cases setting new precedents.
c. Phase III (2024–2025): Escalation of Diversification Post-KPK Law Amendment
   1) Following the amendment of the KPK Law (Law No. 19 of 2019), judicial polarization intensified.
   2) Some judges, as in the Sahbirin Noor case (2024), further expanded the interpretation of KPK authority and substantive review, while others, such as in the Hasto Kristiyanto case (2025), reverted to strict procedural formalism.

3) This phase highlighted the lack of harmonization between substantive and procedural law, resulting in even greater diversity and extremity in judicial approaches.

The time series analysis reveals that the diversification of pretrial decisions in corruption cases is not merely a case-by-case anomaly, but a systemic phenomenon driven by the absence of coherent normative parameters and uniform judicial guidelines. This legal vacuum threatens legal certainty, undermines the effectiveness of anti-corruption efforts, and erodes public trust in law enforcement institutions, particularly the Corruption Eradication Commission (KPK).

Judges in pretrial corruption cases should avoid ambiguous interpretations, especially regarding the application of general (lex generalis) and special (lex specialis) laws. Dual interpretations risk undermining due process of law, which demands fairness, rationality, and procedural integrity. Inconsistent legal interpretation such as prioritizing KUHAP over specific anti-corruption statutes can harm the protection of parties' rights and the collective interests of society as victims of corruption.

Ultimately, the lack of a single, coherent interpretation fosters disparities among courts, weakens the legitimacy of the criminal justice system, and creates the perception that the law can be manipulated for particular interests. Upholding the principles of legal clarity, proportionality, and the right to a fair trial is essential. In pretrial corruption cases, judges must prioritize coherent legal interpretation aligned with the spirit of anti-corruption and fundamental rights protection, rather than mere procedural formalism that opens avenues for manipulation.

4.2. The Concept and Application of Pretrial Proceedings in Combating Corruption Crimes in the Future

Pretrial in the perspective of due process of law, the concept of due process of law emphasizes the protection of individual rights against arbitrary actions by the state. In pretrial proceedings, this is realized by reviewing the legality of law enforcement procedures. However, the application of due process in pretrial for corruption cases (Tipikor) should not be interpreted absolutely, as it must also consider the effectiveness of combating corruption, which is regarded as an extraordinary crime [16].

The ideal future concept positions pretrial proceedings as a constitutional check with limited judicial review, focusing solely on procedural aspects without assessing the material evidence. This aligns with the principle of procedural due process, ensuring judicial oversight over law enforcement actions during investigation and detention, and safeguarding human rights and the legality of criminal proceedings. In corruption cases, this role is crucial due to the extraordinary nature of such crimes, requiring exceptional legal measures. However, differing judicial interpretations especially regarding the legitimacy of suspect designation by the Corruption Eradication Commission (KPK) have led to inconsistent rulings and legal uncertainty. Therefore, an ideal pretrial concept should uphold due process of law, prioritize lex specialis in evidence assessment as per Article 26A of the KPK Law, and integrate it functionally with the Criminal Procedure Code (KUHAP) as lex generalis, ensuring coherent and sustainable judicial decisions [14].

4.2.1. Urgency of Due Process of Law Approach in Corruption Pretrial

The principle of due process of law is a fundamental tenet in modern legal systems, aiming to protect individual rights throughout all judicial proceedings. In Indonesia, this principle is implicitly reflected in Article 28D(1) of the 1945 Constitution, which guarantees recognition, assurance, protection, and fair legal certainty for every citizen. The application of due process in pretrial proceedings requires not only adherence to formal procedures but also the pursuit of substantive justice in law enforcement actions. Pretrial judges must assess the legality of arrests or detentions both administratively and in the broader context of safeguarding the accused's rights and evaluating the validity and rationality of investigative actions. As Muladi emphasizes, due process serves as a crucial mechanism to limit state authority over individuals and to ensure accountability in criminal law through fair and proportional procedures [17].

Article 26A of the KPK Law embodies the principle of lex specialis derogat legi generali, meaning that special legal provisions override general ones when both regulate the same subject matter. This provision legitimizes the KPK to use investigative methods distinct

from those in the Indonesian Criminal Procedure Code (KUHAP), especially regarding the acquisition and management of evidence. However, in practice, pretrial judges often assess the validity of evidence obtained by the KPK using KUHAP standards, which are not fully compatible with the KPK's intelligence-based and strategic investigative approach.

Romli Atmasasmita emphasizes that corruption investigations cannot be equated with general criminal investigations, as corruption is a high-profile crime with high complexity. Therefore, in forming judgments, judges should adhere to the lex specialis principle as codified in Article 26A of the KPK Law. This ensures that KPK's legal actions remain valid and are not annulled solely due to procedural technicalities that differ from general criminal procedures [18].

Although Article 26A of the KPK Law functions as a lex specialis, it does not entirely displace the provisions of the Criminal Procedure Code (KUHAP), which remains the lex generalis and serves as a reference for matters not specifically regulated by the KPK Law. Therefore, pretrial judges must harmonize these two sets of norms systematically and consistently to avoid dualism in legal application. According to Satjipto Rahardjo, law is not merely a set of texts but a tool to achieve contextual substantive justice. Thus, legal interpretation should go beyond normative dogma and consider the structure of the entire legal system [9].

Failure to harmonize KUHAP and the KPK Law has led to inconsistent rulings in similar cases. For instance, in South Jakarta District Court Pretrial Decision No. 24/Pid.Prap/2016/PN.Jkt.Sel (Komjen Budi Gunawan), the judge allowed pretrial review of a KPK suspect designation, citing nonconformity with KUHAP. Conversely, in Decision No. 04/Pid.Prap/2020/PN.Jkt.Sel (Firli Bahuri), the judge held that KPK actions could not be reviewed due to the application of special rules. This inconsistency highlights the lack of coherence within the legal system. Therefore, integrating the principles of lex specialis and lex generalis within the framework of due process must be carried out in a structured manner to ensure uniform, accountable, and sustainable legal assessments.

4.2.2. The Direction of the Ideal Concept of Pretrial Proceedings in Corruption Crime Cases

In the context of combating corruption, pretrial judges must possess a thorough understanding of both substantive and procedural laws related to corruption offenses. The Judicial Commission notes that many judges lack the technical capacity to assess the substance of investigations, resulting in pretrial decisions that focus solely on formal aspects [19]. Romli Atmasasmita emphasizes that future pretrial judges must receive specialized training in evaluating preliminary evidence, including understanding the context and characteristics of extraordinary crimes such as corruption [18]. In the future, pretrial proceedings (Praperadilan) must not serve merely as administrative forums, but as strongholds protecting the constitutional rights of individuals against arbitrary actions by law enforcement. The ideal concept of pretrial proceedings should:

a. Balance the interests of law enforcement with the protection of human rights.
b. Provide swift and effective legal protection.

To achieve this, the material scope of pretrial proceedings should be reformulated to be more selective yet adaptive to evolving legal needs. The limitation of pretrial objects should focus on testing procedural fairness, rather than addressing the merits of the case. Although Constitutional Court Decision No. 21/PUU-XII/2014 has expanded the scope of pretrial (including the legitimacy of suspect designation), it must be emphasized that this authority should not be used to covertly examine the substance of the case.

Implementing measurable and transparent standard operating procedures (SOPs) is a preventive measure to minimize the misuse of pretrial as a tool for formal defect defense. Furthermore, integrating digitalized investigation and prosecution processes through a case management system can enhance accountability and reduce administrative errors that often become loopholes in pretrial proceedings.

The principle of due process of law aims to protect individual rights from arbitrary actions by the state. In Indonesian criminal law, this is realized through the pretrial mechanism, which serves as a form of judicial control over law enforcement authorities [18]. In corruption cases, the enforcement of due process should be confined to procedural due process, which entails judicial review of the legality and fairness of procedures, without

extending to the substantive assessment of evidence that properly belongs to the merits phase of the trial [20].

The ideal concept positions pretrial (praperadilan) as a form of limited judicial review, focusing solely on whether the procedures for suspect designation, arrest, or detention comply with applicable legal standards, without assessing the substance of the corruption case itself. Legally, the Indonesian Criminal Procedure Code (KUHAP, Law No. 8 of 1981) serves as the general procedural law (lex generalis) governing pretrial mechanisms for all criminal offenses, while the Corruption Eradication Commission Law (Law No. 19 of 2019) acts as a special law (lex specialis) for corruption cases. However, issues arise because KUHAP does not specifically regulate pretrial procedures for KPK cases, nor does the KPK Law provide detailed mechanisms for pretrial against KPK actions. As a result, the scope of pretrial in corruption cases still refers to KUHAP, despite the unique nature of corruption as an extraordinary crime. This leads to problems such as pretrial decisions being used to annul KPK suspect designations on administrative grounds, even when the substantive evidence is strong, and district court judges often applying KUHAP textually without adequately considering the special characteristics of the KPK Law [21].

It is essential to regularly evaluate pretrial decisions in corruption cases to ensure the consistent application of legal principles such as due process of law, legality, and the protection of suspects' rights. This evaluation can be conducted by the Supreme Court and the Judicial Commission through coordinated forums with law enforcement agencies like the KPK, Attorney General's Office, and the Police. In the long term, the establishment of a judicial commissioner as previously proposed in Article 111 of the Draft Criminal Procedure Code but later removed should be reconsidered as a structural strategy. Judicial commissioners could oversee investigations from the outset, minimizing procedural violations that often form the basis for pretrial motions. Thus, while pretrial remains a corrective mechanism, preventive oversight would be ensured by this new institution. Additionally, legal education and public outreach are crucial to prevent the misuse of pretrial forums and to strengthen public trust in the judicial process for corruption cases [22].

4.2.3. Challenges in the Implementation of Pretrial Proceedings in the Future

The application of pretrial proceedings in combating corruption faces significant challenges. Although pretrial serves as a normative legal control over law enforcement actions, in practice it often sparks debate, particularly when used to annul suspect status at the early investigation stage. A major issue is the lack of clear operational standards for assessing the validity of suspect designation, resulting in inconsistent pretrial rulings in corruption cases. Judges may differ in interpreting the extent to which evidence should be examined during pretrial, leading to disparities in the handling of similar corruption cases [23].

The main challenge in pretrial proceedings (praperadilan) is the strict seven-working-day limit from the first hearing, which often prevents judges from thoroughly examining complex cases, such as corruption involving extensive financial documents and investigative audits. This time constraint can hinder in-depth and objective review, fueling public perception that pretrial is exploited as a legal loophole to annul investigations. Additionally, there is potential for abuse, where suspects with strong legal resources use pretrial as a strategy to evade prosecution, sometimes leveraging media and public opinion to prematurely discredit investigations before substantive court examination. To address these issues, continuous improvement is needed so that pretrial can function optimally as a fair and accountable control mechanism, upholding due process of law and supporting national anti-corruption efforts [24].

Coherence in judicial decisions is essential for consistency and predictability in modern legal systems. In corruption pretrial cases, this coherence is reflected in uniform judicial interpretation and alignment between facts, legal grounds, and the ratio decidendi. As Jimly Asshiddiqie notes, inconsistent rulings without clear methodological basis undermine judicial legitimacy and raise suspicions of interpretive deviation or intervention. To ensure coherence, judges must adhere to due process of law, prioritize the lex specialis provisions of the Corruption Eradication Law (especially regarding evidence assessment), and use the Criminal Procedure Code (KUHAP) as a normative reference where it does not conflict with the principles of effective and efficient anti-corruption enforcement [25].

The ideal concept of pretrial in combating corruption should rest on three pillars: (1) due process of law as the foundation for fair and accountable law enforcement, (2) prioritization of lex specialis in the Corruption Eradication Law, particularly Article 26A on evidence, and (3) functional harmonization with KUHAP to maintain normative integration and procedural consistency. With these pillars, pretrial judges are expected to deliver coherent, measured decisions that uphold procedural justice and support the integrity of anti-corruption efforts.

4.2.4. Preliminary Examining Judge

The concept of the Preliminary Examining Judge (Hakim Pemeriksa Pendahuluan, HPP) has emerged as an ideal mechanism to reduce the prevalence of pretrial proceedings (praperadilan), particularly in the context of combating corruption in Indonesia. Although not yet adopted in the current Indonesian Criminal Procedure Code (KUHAP), the HPP previously referred to as the "commissary judge" draws inspiration from the supervisory model of Continental European legal systems. The idea was first introduced in the 2002 draft of the new Criminal Procedure Code (RKUHAP) and further elaborated in the 2012 draft, granting the HPP powers similar to, but broader and more independent than, those of the pretrial judge under the 1981 KUHAP. According to Article 1(7) of the RKUHAP, the HPP is authorized to evaluate the investigation and prosecution process and exercise other powers as stipulated by law, effectively replacing the pretrial function, which has been deemed suboptimal. The HPP stands between investigators/prosecutors and trial judges, with authority reaffirmed in Article 111 of the RKUHAP to determine the legality of arrests, detentions, searches, seizures, and wiretaps; to annul or suspend detention; to exclude evidence obtained unlawfully; to award compensation and rehabilitation; and to address violations of suspects' rights during investigation.

Coherence in judicial decisions is a fundamental principle in modern legal systems, ensuring consistency and predictability. In the context of pretrial proceedings for corruption cases, coherence is reflected in uniform judicial interpretation of norms, as well as in the alignment of facts, legal grounds, and reasoning in each decision. Jimly Asshiddiqie emphasizes that a judicial system loses legitimacy when its decisions conflict without clear methodological justification, leading to suspicions of interpretive deviation or intervention. To achieve coherence, judges must adhere to due process of law, prioritize the lex specialis provisions of the Corruption Eradication Law (especially regarding the evaluation of evidence), and use the KUHAP as a normative reference where it does not conflict with the principles of swift and effective corruption eradication. Thus, the ideal pretrial concept in corruption cases should rest on three pillars: the due process of law as the foundation for fair and accountable law enforcement; the primacy of lex specialis in the Corruption Eradication Law, particularly Article 26A on evidence assessment; and functional harmonization with the KUHAP to ensure normative integration and procedural consistency. These pillars are expected to enable pretrial judges to deliver coherent, measured, and unified decisions that support effective corruption eradication without sacrificing procedural justice [11].

The Preliminary Examination Judge holds extensive authority, exercised largely on their own initiative, reflecting a significant role and responsibility in the initial stage of criminal proceedings. However, this authority operates without a specific supervisory mechanism, as no institution is designated to oversee its exercise. This contrasts with pretrial proceedings, which are subject to public oversight through the principle of open court as stipulated in criminal procedural law. Consequently, the absence of supervision over the Preliminary Examination Judge does not resolve the practical issues that have arisen in the implementation of pretrial mechanisms under the current Criminal Procedure Code [26].

The establishment of the Preliminary Examination Judge (Hakim Pemeriksa Pendahuluan/HPP) as conceptualized in the Draft of the Indonesian Criminal Procedure Code (RUU KUHAP) represents a significant advancement in the protection of suspects' and defendants' rights. Compared to the current pretrial mechanism under KUHAP, the HPP is granted broader and more active authority, including ex officio powers, which enhances judicial oversight at the early stages of criminal proceedings. The HPP functions as a judicial intermediary between investigators, prosecutors, and trial judges, tasked with assessing the legality of investigative and prosecutorial actions before a case proceeds to trial (RUU KUHAP, Explanatory Note to Article 1 point 7). Procedurally, the RUU KUHAP introduces more detailed and systematic regulations, particularly regarding the supervision of law

enforcement officials. The academic draft of the RUU KUHAP highlights that the HPP is designed to address the limitations of the current passive pretrial system, which relies on external applications, by providing proactive judicial control to prevent abuses of power and human rights violations (Academic Draft RUU KUHAP, 2012, pp. 249–251). This mechanism is especially crucial in corruption cases, where suspects often exploit formal loopholes to undermine legal proceedings. Thus, the HPP serves as a corrective measure to existing weaknesses and embodies the principle of due process of law, balancing law enforcement interests with individual rights protection.

Empirical research at the South Jakarta District Court, including an interview with Judge Hendra Yuristiawan, S.H., M.H., underscores the constructive potential of the HPP (or "commissary judge") in enhancing the quality of preliminary examinations and allowing the main trial to focus on substantive issues. The presence of the commissary judge is expected to reduce procedural errors and ease the workload of trial judges, thereby promoting judicial efficiency and fairness. However, the effectiveness of this role depends on the competence and integrity of the appointed judges, who may serve ex officio as court chairpersons. Strategically, the commissary judge acts as a filter and supervisor, ensuring that investigations comply with legal and procedural standards, increasing accountability, and preventing procedural abuses. This mechanism can also preempt unnecessary pretrial motions, particularly in corruption cases where formal defects are often exploited. In summary, institutionalizing the commissary judge strengthens procedural justice and accountability in Indonesia's criminal justice system, supporting anti-corruption efforts and upholding due process and legal certainty, provided that robust regulations and qualified, ethical judges are in place [22].

6. Conclusions

Pretrial in the Indonesian legal system functions as an important control mechanism over the actions of investigators and public prosecutors to protect the fundamental rights of suspects and uphold the principle of due process of law. The development following Constitutional Court Decision No. 21/PUU-XII/2014 has expanded the scope of pretrial objects, but has also led to a diversification of rulings that impact legal uncertainty, particularly in corruption cases. The absence of clear parameters and guidelines for judges has resulted in inconsistencies between formal and material approaches, thereby potentially creating opportunities for suspects to abuse the pretrial mechanism.

In the context of eradicating corruption, pretrial should serve as a limited judicial review that only examines procedural legality aspects without delving into the substance of evidence. Judges are required to use Article 26A of the Corruption Eradication Commission (KPK) Law as the main reference in assessing evidence, while the Criminal Procedure Code (KUHAP) should still be applied functionally as long as it does not conflict with the needs of handling corruption cases. The presence of a Preliminary Examination Judge (Hakim Pemeriksa Pendahuluan, HPP) in the Draft Criminal Procedure Code (RUU KUHAP) is an important breakthrough to strengthen the protection of suspects' rights while maintaining the effectiveness of law enforcement, so that it is expected to create a more ideal, fair, and supportive pretrial mechanism for corruption eradication efforts in Indonesia.

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