



Pretrial Determination of Suspects in Corruption Cases: A Critical Analysis of Judge Sarpin Rizaldi's Decision and Its Implications for Combating Corruption in Indonesia

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Abstract

The pretrial decision in the BG case (No. 04/Pid.Prap/2015/PN.Jkt.Sel) represents a pivotal moment in Indonesian legal history, significantly impacting the landscape of pretrial mechanisms and the balance of power in law enforcement. This research delves into the implications of this landmark decision, examining its role in expanding the scope of pretrial authority to include the review of suspect designations, a move that has since been codified through amendments to the Criminal Procedure Code. The study further explores the decision's emphasis on upholding *the presumption of innocence*, a fundamental human right often overlooked in the pursuit of justice. Additionally, the research scrutinizes the decision's impact on the authority of the Corruption Eradication Commission, highlighting the need for a delicate balance between robust law enforcement and the protection of individual rights. By analyzing legal documents, scholarly literature, and the socio-political context surrounding the case, this research provides a comprehensive understanding of the decision's transformative effect on Indonesia's legal system and its broader implications for the fight against corruption.

Keywords: Suspect Designation, Pretrial, Human Rights, Independence of Law Enforcement, Conflict of Interest

Introduction

The designation of Budi Gunawan (BG) as a suspect by the Corruption Eradication Commission (KPK) in 2015, just prior to his confirmation hearing as the sole candidate for National Police Chief, ignited a contentious legal and political dispute. This pivotal event raised profound questions about the legality of suspect designations, the delicate balance between law enforcement's authority and individual rights, and the potential for political interference in Indonesia's legal processes. The ensuing pretrial ruling, No. 04/Pid.Prap/2015/PN.Jkt.Sel.,

which deemed the suspect designation invalid, sent shockwaves through the nation's legal and political landscape. This landmark decision not only overturned BG's suspect status but also catalyzed a broader examination of the powers vested in the KPK and the extent to which the rights of individuals under investigation are protected. The case brought to the forefront concerns regarding the misuse of legal mechanisms for political maneuvering and underscored the necessity for robust safeguards against arbitrary actions by law enforcement agencies.

The controversy surrounding this case stemmed from the timing of the KPK's decision, which occurred mere hours before BG's scheduled confirmation hearing in the House of Representatives (DPR). This temporal proximity fueled speculation about potential political motivations behind the KPK's actions, raising concerns about the independence and impartiality of the anti-corruption body. BG's subsequent challenge of his suspect designation through a pretrial motion further intensified the debate, as it tested the boundaries of pretrial jurisdiction and the extent to which judicial oversight could be exercised over the KPK's investigative powers. The controversy surrounding suspect designations has intensified due to the controversial amendments to the KPK Law (Republik Indonesia, 2019), which highlight debates over the independence of the KPK and the potential for abuse of power in law enforcement and handling of corruption cases, as explained by Manullang *et al.* (2023).

The legal complexities of this case extend beyond the immediate question of BG's suspect status. The pretrial ruling, which hinged on the interpretation of evidentiary thresholds and the KPK's jurisdiction, had far-reaching implications for Indonesia's legal framework. It prompted a reevaluation of the criteria for designating individuals as suspects and the mechanisms available for challenging such designations. Moreover, the case highlighted the ongoing struggle to maintain the delicate balance between empowering law enforcement agencies to combat corruption effectively and ensuring that these agencies operate within the bounds of the law, respecting due process and fundamental rights.

This research aims to provide a comprehensive analysis of the BG pretrial decision, examining its legal reasoning, its impact on the Indonesian legal system, and its broader implications for the fight against corruption. By delving into the intricacies of this landmark case, this study seeks to contribute to the ongoing discourse on the rule of law, human rights protection, and the challenges of combating corruption in a complex political environment.

Research on this case has been extensively reviewed, including by Marbun and Monica Sinaga (2022), who found that the principle of prudence in the Indonesian Criminal Procedure Code (KUHAP) now has a different meaning (Sujono *et al.*, 2024). Actions that are considered to violate this principle include (1) all subjective and objective actions of investigators during the investigation process, and (2) actions that lead to human rights violations of anyone drawn into the investigation area. This study provides further analysis of the sociological interpretation of the jurisprudence and the application of legal principles as a descriptive analysis tool for the jurisprudence of the pretrial case of BG vs. the KPK. Unlike Pratista's (2015) research, which focused on the juridical analysis of the expansion of pretrial objects and the protection of suspects' human rights, this study examines both juridical and socio-political dimensions as well as the impact of the pretrial decision on corruption eradication in Indonesia.

Literature Review

Essence of Suspect Designation

The designation of a suspect is a crucial stage in the criminal justice process in Indonesia. It marks the transition of an individual from being a reported party to a suspect, which carries significant legal consequences. The designation must be based on sufficient preliminary evidence, as stipulated in Article 1, Number 14 of the KUHAP. However, the interpretation and application of the "sufficient preliminary evidence" standard often spark debate, especially in cases involving public figures or state officials.

The process of suspect designation must uphold human rights principles. Human rights are a fundamental principle that should be respected in all aspects of law enforcement, including the designation of suspects. Sipayung *et al.* (2023) emphasize the importance of protecting human rights within the criminal justice system, a principle also relevant in pretrial proceedings where the rights of suspects must be upheld. Furthermore, Sipayung *et al.* (2024) assert that efforts by the Financial Audit Agency (BPK) in combating and preventing corruption must also be grounded in respect for human rights. This principle extends to the KPK, where the protection of suspects' rights should be a priority.

Previous research by Huda *et al.* (2024) has thoroughly examined the status of suspect designation as a pretrial object following Constitutional Court Decision No. 21/PUU-XII/2014. Lubis highlights how this ruling expanded the scope of pretrial authority, granting suspects the right to challenge the validity of their designation. This research provides a robust theoretical foundation for understanding pretrial mechanisms as a control against arbitrary suspect designations.

Pretrial as a Control Mechanism

Pretrial is a crucial legal instrument within the Indonesian criminal justice system. It provides suspects with the opportunity to challenge the legality of investigative actions taken by law enforcement authorities, including the validity of suspect designations. Article 77 of the KUHAP details the pretrial objects, which include arrest, detention, cessation of investigation, and cessation of prosecution.

The legal basis for the implementation of pretrial is firmly established and clearly regulated in several laws and jurisprudence, including the following:

No	Legislation / Jurisprudence and Its Regulation
1.	Law Number 8 of 1981 concerning the KUHAP Articles 77 to 83 (Republik Indonesia, 1981)
2.	Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court Article 45A; stipulates the prohibition of filing a cassation against a pretrial decision. (Republik Indonesia, 2009)
3.	Law Number 30 of 2002 concerning the KPK as amended by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the KPK Article 63 paragraph (2) states that in addition to claims for rehabilitation and/or compensation for a person who has been harmed as a result of an investigation, investigation, and prosecution conducted by the KPK, a pretrial lawsuit

No	Legislation / Jurisprudence and Its Regulation
	can also be filed if there are reasons for filing a pretrial as stipulated in Law Number 8 of 1981 concerning the KUHAP. (Republik Indonesia, 2009)
4.	Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2016 concerning the Prohibition of Judicial Review of Pretrial Decisions Pretrial decisions cannot be submitted for judicial review (PK). A request for PK against a pretrial decision is declared inadmissible by the determination of the Chief Justice of the District Court and the case file is not sent to the Supreme Court. The determination of the Chief Justice of the District Court cannot be appealed. (Mahkamah Agung, 2016a)
5.	Regulation of the Indonesian National Police Chief Number 6 of 2019 concerning the Revocation of the Indonesian National Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations the Indonesian National Police Regulation Number 14 of 2012 (now revoked) states that Case Expositions are carried out through regular case expositions and special case expositions. Special case expositions are conducted with the aim of: a. responding to reports/complaints from parties involved in the case; b. reopening investigations that have been terminated after new evidence is obtained; c. determining special police actions; or d. reopening investigations based on a final and binding pretrial decision. (Kepala Kepolisian Negara Republik Indonesia, 2019)
6.	Decision of the South Jakarta District Court Number 04/Pid.Prap/2015/PN.Jkt.Sel. Decision of the South Jakarta District Court: a. declares the Investigation Warrant Number: Sprin.Dik-03/01/01/2015 dated January 12, 2015, which named BG as a suspect by the KPK regarding the alleged criminal incident; b. declares the investigation conducted by the KPK regarding the alleged criminal incident to be invalid and without legal basis; c. declares the determination of BG as a suspect by the KPK to be invalid. (Mahkamah Agung, 2015)
7.	Constitutional Court Decision Number 65/PUU-IX/2011 Removes the right to appeal given to investigators and public prosecutors as referred to in Article 83 paragraph (2) of the KUHAP so that pretrial decisions can no longer be appealed. (Mahkamah Konstitusi, 2011)
8.	Constitutional Court Decision Number 21/PUU-XII/2014 Expands the authority of pretrial as referred to in Article 77 letter a of the KUHAP not only to the validity of arrest, detention, termination of investigation, or prosecution, but also to the determination of suspects, confiscation, and searches. (Mahkamah Konstitusi, 2014)

The Constitutional Court Decision No. 21/PUU-XII/2014 has brought significant changes to the scope of pretrial processes. This ruling expands the objects of pretrial review to include the designation of suspects, searches, and seizures, thereby advancing the protection of suspects' human rights and ensuring that the law enforcement process adheres to *due process* principles.

In addition to the controversy surrounding the expansion of pretrial objects, Judge Sarpin's decision has sparked discussions about transparency and accountability in the judicial process. Sipayung and Prasetyo (2023), in their research on case cost audits at the Supreme Court, emphasize the importance of financial transparency in judicial management. In the context of pretrial processes, transparency in decisions and their underlying reasons can enhance public trust in the legal system and ensure that these decisions are regarded as robust jurisprudence.

Research by Dinda *et al.* (2021) analyzes pretrial suspect designations in light of Constitutional Court Decision No. 21/PUU-XII/2014. This study highlights how the decision offers greater protection for suspects' rights and promotes accountability among law enforcement officials. This aligns with the article under revision, which also emphasizes the importance of pretrial processes as a control mechanism in law enforcement.

Independence of Law Enforcement and Conflicts of Interest

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The independence of law enforcement is a crucial pillar in a democratic criminal justice system. It is essential that law enforcement remains free from political interference or personal interests to ensure fairness and impartiality. However, in practice, this independence often faces challenges, especially in cases involving public figures or state officials.

The case of BG exemplifies how conflicts of interest and power interventions can influence the law enforcement process. BG's designation as a suspect, occurring just before his confirmation hearing as the Chief of Police candidate, raised suspicions of political motives behind the KPK's actions. This case highlights the importance of maintaining the integrity and independence of law enforcement officials, including KPK leaders, from political interventions to ensure a fair and objective legal process (Sipayung, Ibrani, *et al.*, 2023). It underscores the vulnerability of law enforcement independence to interference from parties with specific interests.

Waruwu's (2015) research evaluates the impact of Constitutional Court decisions on the development of pretrial mechanisms in Indonesia. The article focuses on the influence of four Constitutional Court rulings on the expansion of pretrial objects, such as suspect designations, searches, and seizures, and their implications for human rights protection and law enforcement. Additionally, the article examines the obligation to issue a Letter of Commencement of Investigation (SPDP) to the reported party and victims/complainants, and the legal consequences of non-compliance with this procedure. Important examples of criminal law developments, such as Constitutional Court Decision No. 21/PUU-XII/2014, as discussed by Bagaskoro *et al.* (2023), illustrate ongoing efforts to balance human rights protection with effective law enforcement. This research significantly contributes to understanding how pretrial mechanisms can enhance the independence of law enforcement in Indonesia.

Research Method

This research employs a qualitative approach with a case study method to delve into the specific legal phenomenon of pretrial decision No. 04/Pid.Prap/2015/PN.Jkt.Sel. related to the designation of BG as a suspect by the KPK. The study not only relies on normative juridical analysis of relevant laws and jurisprudence but also considers the socio-political dimensions surrounding the case. The novelty of this research lies in its in-depth analysis of the implications of the pretrial decision on the dynamics of corruption eradication in Indonesia, particularly concerning the independence of the KPK and the protection of suspect's human rights. This study specifically examines how Judge Sarpin Rizaldi's decision, who presided over the pretrial hearing, contributes to the development of jurisprudence related to pretrial and suspect designation.

The research utilizes a combination of document studies and literature studies to collect data. Document studies involve analyzing the pretrial decision, relevant laws and regulations (KUHAP, KPK Law, Constitutional Court Decisions), as well as other pertinent legal documents. Literature studies include a critical review of previous research, books, journals, articles, and opinions of legal experts to enrich the analysis and provide a comprehensive

perspective. Data analysis is conducted using a comprehensive legal interpretation approach, involving content analysis of legal documents and related literature. This analysis aims to uncover the meanings, implications, and legal principles underlying the pretrial decision, as well as its impact on law enforcement and corruption eradication in Indonesia.

Result and Discussion

The determination of suspects in corruption cases has a strong legal basis within Indonesian legislation. Suyanto *et al.* (2023), through their comparative analysis of the new Penal Code and the Anti-Corruption Law, provide a comprehensive understanding of the legal basis for determining suspects in corruption cases. This understanding is crucial for analyzing the validity of the determination of BG as a suspect by the KPK and its implications for combating corruption in Indonesia.

Article 1, number 10 of the KUHAP states that "Pre-trial is the authority of the district court to examine and decide, according to the procedures outlined in this law, on: (a) the legality of an arrest and/or detention upon request by the suspect or their family or another party authorized by the suspect; (b) the legality of the cessation of investigation or prosecution upon request for the sake of law and justice; (c) requests for compensation or rehabilitation by the suspect or their family or another party authorized by them if the case is not submitted to the court."

Furthermore, Article 77 of KUHAP provides that "The District Court is authorized to examine and decide, according to the provisions set forth in this law, on: (a) the legality of arrest, detention, cessation of investigation, or prosecution; (b) compensation and rehabilitation for someone whose criminal case is terminated at the investigation or prosecution stage." Article 95, paragraph (1) of KUHAP stipulates: "A suspect, defendant, or convict has the right to claim compensation for being arrested, detained, prosecuted, and tried or subjected to other actions, without a legal basis or due to errors based on law or errors regarding the person or the law applied."

Pre-trial is a legal institution introduced in KUHAP to oversee the activities of investigators during the investigation and prosecution process. This institution is vital because investigators from the Police and the Prosecutor's Office are responsible for terminating investigations and prosecutions. Prior to KUHAP, Indonesia used the *Herzien Inlandsch Reglement* (HIR), which offered minimal recognition and protection of human rights (HAM) and adopted an *inquisitorial* system that treated suspects as mere objects. KUHAP, as the first Indonesian-made procedural law, is considered a significant work that protects human rights. According to Hari Sasangka, the pre-trial institution was established to ensure oversight of the protection of the rights of suspects/defendants, given that these rights might need to be restricted for the sake of the investigation, but must always be based on legal provisions (Hari, 2007, p. 16).

The rights regulated in KUHAP align with the spirit and intent mandated by Article 17 of Law No. 39 of 1999 on Human Rights (Republik Indonesia, 1999), which guarantees every

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individual's right to justice without discrimination through a fair and impartial judicial process. Article 28D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Republik Indonesia, 2004) also guarantees every person the right to recognition, guarantee, protection, and legal certainty that is fair and *equal before the law*. Moreover, KUHAP emphasizes in its consideration that Indonesia is a rule of law state that upholds human rights and guarantees *equality before the law* for all citizens without exception. Thus, it is clear that the 1945 Constitution and KUHAP outline fair legal protection and certainty, reflecting the spirit of human rights protection in the Indonesian legal system.

Article 77 of KUHAP explicitly limits the pre-trial authority to examining the legality of arrest, detention, cessation of investigation, cessation of prosecution, and claims for compensation and rehabilitation if the case is terminated at the investigation or prosecution stage. This provision does not include the examination of the legality of suspect determinations, as KUHAP sets the boundaries for pre-trial authority accordingly. Consequently, actions beyond these provisions are not included in the scope of pre-trial. KUHAP requires that the determination of suspects be based on sufficient preliminary evidence; however, the standards and parameters of preliminary evidence are often assessed unilaterally by investigators without adequate testing mechanisms. This results in inequality between investigators and suspects and opens up opportunities for abuse of power (Yahya, 2002, p. 36).

The pre-trial decision highlights the potential institutional conflict between the KPK and the Police in suspect determinations, as discussed by Siburian *et al.* (2023) concerning the impact of arbitrary use of authority. In practice, suspects may be determined unilaterally by investigators without clear time limits, and although the determination of suspects is not explicitly regulated as a pre-trial object, judges cannot dismiss cases solely due to a lack of legal basis, according to Article 5, paragraph (1) and Article 10, paragraph (1) of Law No. 48 of 2009 on Judicial Power. Judicial experience shows that judges often find laws related to investigators' or public prosecutors' actions, including suspect determinations, such as in Pre-trial Decision No. 38/Pid.Prap/2012/PN.Jkt.Sel., which stated that the determination of suspects was legally invalid

The issuance of Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., a *landmark decision* in Indonesian law by Judge Sarpin Rizaldi, has generated significant debate. Judge Sarpin granted BG's pre-trial request, arguing that suspect determination falls within the scope of pre-trial, thereby allowing the South Jakarta District Court to examine the legality of the determination based on Investigation Order No. 03/01/01/2015. Judge Sarpin concluded that BG's position as Head of the Career Development Bureau (Karobinkar) did not fall under the KPK's authority since Karobinkar is neither a law enforcement officer nor a state organizer. This decision introduced new limitations in KUHAP and was followed by Constitutional Court Decision No. 21/PUU-XII/2014, which added suspect determination as a pre-trial object. The Constitutional Court affirmed that pre-trial aims to protect suspects from arbitrary actions by investigators or prosecutors and to test the legality of suspect determinations to safeguard individual rights from abuse of power (Haposan Dwi Pamungkas Saragih, 2016, p. 104).

Judge Sarpin Rizaldi's pre-trial decision No. 04/Pid.Prap/2015/PN.Jkt.Sel. regarding BG's suspect determination by the KPK has had a significant impact on Indonesian law, triggering controversy and diverse opinions among legal experts. Attorney General AM Prasetyo views the decision as not yet applicable as jurisprudence due to its being a singular court ruling (Novianti, 2015, p. 3). In contrast, the Chairman of the Judicial Commission, Suparman Marzuki, emphasizes that the ruling broadly affects the criminal justice system, particularly concerning the duties of investigators (Novianti, 2015).

The pre-trial decision regarding Surya Dharma Ali's determination as a suspect in the hajj corruption case has opened opportunities for other suspects to file similar lawsuits, given the previous pre-trial decision No. 38/Pid.Prap/2012/PN.Jkt-Sel., which granted Bachtiar Abdul Fatah's request and declared the suspect determination invalid (Mahkamah Agung, 2012). The Hadi Poernomo case, involving alleged tax corruption by the KPK, also reflects challenges to the independence of the agency (Mahkamah Agung, 2016b; Mahkamah Konstitusi, 2015). These cases underscore the need for correction of unlawful actions by investigators or prosecutors and serve as important references for preventing abuse of power and ensuring effective law enforcement and anti-corruption efforts in Indonesia.

The BG pre-trial decision not only affects the specific case but also stimulates debate on accountability and transparency in law enforcement, particularly regarding KPK's management of legal enforcement involving certain legal subjects. Manullang *et al.*, (2024), in their analysis of audit aspects of Participating Interest (PI) in the Mahakam Block management, highlight the importance of oversight and accountability in resource management as the KPK manages legal processes involving specific legal subjects. This aligns with the spirit of the BG pre-trial decision, which promotes transparency and accountability in law enforcement.

Judge Sarpin Rizaldi's decision can be seen as an instance of *negative legalism*, where the law acts not only as a tool to achieve specific goals but also as a limiter of state power. As Sipayung, Hamongpranoto, *et al.* (2024) suggest, legislative studies are relevant in formulating laws to ensure a balance between effective law enforcement and human rights protection. In this context, pre-trial serves as a crucial instrument to assess whether law enforcement actions align with legal principles and do not infringe on suspects' rights.

The BG pre-trial decision represents a significant moment in advancing transparency and accountability in Indonesian law enforcement. This aligns with Sipayung dan Wahyudi's (2022) research on applying *good governance* principles to improve public service quality in BPK. *Good governance* principles, including transparency and accountability, are also relevant in the context of KPK's law enforcement.

This ruling also reinforces the principles of *equality before the law* and *the presumption of innocence* in the legal process. Judge Sarpin's decision reminds investigators to exercise caution when designating suspect status, emphasizing that such designations must be based on sufficient preliminary evidence, not mere suspicion or conjecture. Quoting Holmes in Prof. Achmad Ali's writings, law cannot be found solely through legal rules but must also consider the broader social context (Ali, 2008, p. 194). This pretrial ruling expands the scope of pretrial review, which previously only examined the legality of arrests, detentions, termination of

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investigations, or prosecution discontinuance, to also include the validity of suspect designations. Furthermore, the BG case and the ensuing pretrial ruling underscore the crucial role of jurisprudence as a social control instrument against potential abuse of power, providing justice in individual cases and promoting systemic reform in law enforcement, as emphasized by Sipayung and Cristian (2022) in their research on the impact of regional autonomy on local financial management. This is vital for protecting suspects' human rights and preventing abuse of authority by law enforcement officials, demonstrating that the KPK must respect these rights and follow applicable legal procedures.

This decision has not yet deterred the KPK from improperly designating suspects, showing that courts have the authority to annul unlawful suspect designations, as seen in the case of Eddy Hiariej, former Deputy Minister of Law and Human Rights (Chaterine & Setuningsih, 2024). However, despite decisions supporting suspects' rights to challenge their designations, significant changes in KPK's overall practices have not been achieved. While the decision upholds suspects' rights, fundamental challenges regarding the effectiveness of law enforcement and human rights protection in corruption contexts persist. There is no concrete evidence that this ruling has directly enhanced overall human rights protection, necessitating systemic improvements and increased transparency in law enforcement processes to provide better protection.

The designation of suspects in corruption cases often places law at a crossroads between legal and political interests, requiring high independence and integrity from law enforcers. In this context, the role of pretrial judges is crucial to ensure that legal processes are fair and unaffected by political pressure. The dilemma between providing legal certainty to suspects and maintaining the effectiveness of anti-corruption efforts is a challenge that must be addressed. Therefore, the KPK must continue to strengthen its independence and professionalism to face challenges in eradicating corruption in Indonesia.

Conclusion

The case of the designation of BG as a suspect by the KPK marked a significant milestone in the history of law enforcement in Indonesia. The pretrial ruling that granted BG's petition expanded the scope of pretrial review, reinforced the *presumption of innocence* principle, and limited the authority of the KPK. This case revealed the complexities of the political-legal dynamics in Indonesia, where conflicts of interest and power interventions can distort the law enforcement process. This jurisprudence strengthened human rights protection within the KUHAP and served as a check and balance mechanism from society. Additionally, the application of the principle of *restitutio in integrum* through the approval of the rehabilitation petition demonstrated efforts to restore the rights of individuals harmed by the arbitrariness of law enforcement officers. To prevent similar issues in the future, several recommendations were proposed, such as strengthening the independence of the KPK to carry out its duties without political interference, protecting the human rights of suspects, including the *presumption of innocence* and the right to file pretrial motions, and increasing transparency and accountability in law enforcement, particularly in the designation of suspects.

Declaration of conflicting interest

The authors declare that there is no conflict of interest in this work.

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