Kertha Patrika
P-ISSN 0215-899X E-ISSN 2579-9487

Reactualisation of the Pretrial Role in Guaranteeing a Fair Trial in Indonesia: Lessons from the Pegi Setiawan Case

Nathanael Gabriel David[1], Fines Fatimah[2], Rizki Emil Birham[3]

[1]Faculty of Law, Universitas Pancasila, E-mail: nathanaelgabrieldavid@gmail.com
[2] Géza-Marton Doctoral School of Legal Studies, University of Debrecen, E-mail: finesfatimah@mailbox.unideb.hu
[3] General Secretariat of the Indonesia House of Representative, E-mail: rizki.birham@dpr.go.id

Article Info
Submitted: 21 September 2025
Accepted: 16 December 2025
Published: 30 December 2025

Keywords:
Criminal Procedure; Constitutional Court; Indonesia; Pre-trial; Suspects.

Corresponding Author:
Nathanael Gabriel David, E-mail: nathanaelgabrieldavid@gmail.com

DOI:
https://doi.org/10.24843/KP.2025.v47.i03.p01

Abstract

Constitutional Court Decision Number 21/PUU-XII/2014 has become an important milestone in expanding the scope of pretrial proceedings in Indonesia. The ruling confirms that the designation of suspects, searches, and seizures can be challenged through pretrial mechanisms, even though this norm was not explicitly stated in Article 77(a) of Law No. 8 of 1981 on Criminal Procedure (KUHAP). Interestingly, in judicial practice, Decision Number 10/Pid.Pra/2024/PN Bdg in the case of Pegi Setiawan actually used the Constitutional Court's legal considerations, not just the verdict, as the basis for the sole judge's argument. This reveals a shift in methodology in the use of Constitutional Court decisions by first instance judges. This article examines the position of legal considerations in Constitutional Court Decision Number 21/PUU-XII/2014, including dissenting opinions and concurring opinions, as well as their implications for pretrial practice. This research is a type of normative juridical research with a legal material collection technique using a document study or literature research method. This analysis is also directed at the need to reformulate pretrial norms in Indonesian criminal procedure law in the future so that they are in line with the principles of legal certainty, protection of human rights, and the principle of due process of law.

1. Introduction

Historically, Indonesian criminal procedure law has been greatly influenced by the criminal procedure law enforced by the Dutch colonial government. The criminal procedure law currently in force is Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Previously, the *Strafvordering* (Rv) applied to Europeans and the Inland Reglement (IR), which was updated to the *Herziene Indische Reglement* (HIR) for indigenous people. The Rv contained provisions on pretrial hearings, while

the HIR did not contain any clear provisions. Therefore, when the Proclamation of Indonesian Independence remained the basis for the application of the HIR after colonialism, the provisions on pretrial proceedings in Indonesia also became unclear. Provisions regarding pretrial hearings were later included in the Criminal Procedure Code (KUHAP) and, in practice, became an instrument for reviewing the actions of law enforcement officials, particularly in the determination of suspects. One court decision that attracted public attention was the Bandung District Court Decision Number 10/Pid.Pra/2024/PN Bdg in the case of Pegi Setiawan. In 2025, Indonesia passed a new Criminal Procedure Code that marked a milestone in the reform of Indonesian criminal procedure law, replacing colonial legacy, strengthening human rights protection, balancing law enforcement powers, and modern principles of justice.

Behind Decision Number 10/Pid.Pra/2024/PN Bdg on the pre-trial submitted by Pegi Setiawan, a person named as a suspect in the murders of Eky and Vina in Cirebon in 2016, there is an interesting fact stated in the legal considerations section. The single pretrial judge, Eman Sulaeman, constructed his legal considerations based on the arguments in the legal considerations of Constitutional Court Decision Number 21/PUU-XII/2014, not solely on the verdict itself. Quoting a passage from the legal considerations of Decision No. 10/Pid.Pra/2024/PN Bdg, Judge Eman Sulaeman considered that even though the examination of the suspect was not included in the verdict but only mentioned in the considerations, the Constitutional Court's decision was final and binding, so the entire contents of the decision must be complied with, especially by law enforcement officials.[1]

Judge Eman Sulaeman carefully assessed that the Investigator of the West Java Regional Police Criminal Investigation Directorate had named Pegi Setiawan as a suspect based on Suspect Determination Letter Number S.Tap/90/V/ RES.1.24./ 2024/Ditreskrimum dated 21 May 2024, so that the examination of Pegi Setiawan on 22 May 2024 and 12 June 2024 was conducted after he had been named a suspect. Therefore, the determination of Pegi Setiawan's status as a suspect must be declared invalid and null and void. This is not in accordance with the legal considerations of Constitutional Court Decision Number 21/PUU-XII/2014, which states that in determining a suspect, in addition to two pieces of evidence, an examination of the suspect must also be carried out beforehand. This requirement is intended to fulfil the principle of legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945) and also to fulfil the principles of *lex certa* (the formulation of criminal offences must be clear) and *lex stricta* (the formulation of criminal offences must be interpreted strictly without analogy). There is one more principle that complements the principles of *lex certa* and *lex stricta*, namely the principle of *lex scripta*, which means that the main element in positive law punishment must be based on legislation. These three principles form the foundation of the principle of legality.[2]

---

1 Putusan Nomor 10/Pid.Pra/2024/PN Bdg (Bandung District Court).

2 M Nabiel Fadlilah et al., 'Tinjauan Yuridis Mengenai Pertentangan Hukum Yang Hidup Dalam Masyarakat Dalam Pasal 2 Pada Rancangan Kitab Undang-Undang Hukum Pidana Dengan Asas Legalitas', *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 505–14, https://doi.org/10.37680/almanhaj.v4i2.1790.

It was interesting to note that in Constitutional Court Decision Number 21/PUU-XII/2014, out of a total of nine constitutional judges, five judges agreed to grant the petition in part, one judge also agreed to grant the petition in part, but with a different reasoning (concurring opinion), and three judges dissented (dissenting opinion) that the Constitutional Court should reject the petition. This means that the constitutional judges' opinions on the constitutionality of the scope of pretrial proceedings were not unanimous, but the final decision was to expand the scope of pretrial proceedings as stipulated in Article 77 letter a of Law No. 8 of 1981 on Criminal Procedure Law (KUHAP), which originally only covered arrest, detention, termination of investigation or termination of prosecution, to also include the designation of suspects, searches, and seizures.

Several scholars have conducted studies on pretrial proceedings in Indonesian law, including Marbun,[3] Badeng, et. al,[4] and Firmansyah and Farid.[5] Marbun conducted research on Constitutional Court Decision Number 21/PUU-XII/2014, which imposed restrictions on the discretionary actions of investigators in naming someone as a suspect. This study focuses on the trichotomy pattern in reducing the meaning of "investigation of suspects" in the pretrial process.[6] Badeng et al. also conducted research on pretrial proceedings, but their research focused on the case of Pegi Setiawan.[7] This study analyzes the application of arrest procedures and pretrial mechanisms in ensuring the fulfillment of the suspect's human rights and their connection with substantive justice. Furthermore, Firmansyah and Farid conducted research on the politics of pretrial law as an instrument to protect the rights of suspects based on Constitutional Court Decision Number 21/PUU-XII/2014.[8]

Although three previous studies discussed pretrial hearings, this study has significant differences. Our study focuses on the reactivation of pretrial hearings to ensure fair trials. Many lessons can be learned from the Pegi Setiawan case. Therefore, our study uses the Pegi Setiawan case as a lesson learned that can reflect the actual role of pretrial hearings.

---

3 Rocky Marbun, 'Trikotomi Relasi Dalam Penetapan Tersangka: Menguji Frasa "Pemeriksaan Calon Tersangka" Melalui Praperadilan', *Undang: Jurnal Hukum* 4, no. 1 (2021): 159–90, https://doi.org/10.22437/ujh.4.1.159-190.

4 Ayu Anjeli Sandra Badeng et al., 'Eksistensi Praperadilan Dalam Kasus Upaya Paksa Yang Tidak Sesuai Prosedur Hukum Oleh Pihak Penyidik Terhadap Pegi Setiawan Sebagai Korban Salah Tangkap', *Animha Law Journal* 1, no. 1 (2024): 40–47.

5 Shandy Herlian Firmansyah and Achmad Miftah Farid, 'Politik Hukum Praperadilan Sebagai Lembaga Perlindungan Hak Tersangka Ditinjau Dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Mengenai Penetapan Tersangka', *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 2 (2022): 90–103, https://doi.org/10.18196/jphk.v3i2.15195.

6 Marbun, 'Trikotomi Relasi Dalam Penetapan Tersangka'.

7 Badeng et al., 'Eksistensi Praperadilan Dalam Kasus Upaya Paksa Yang Tidak Sesuai Prosedur Hukum Oleh Pihak Penyidik Terhadap Pegi Setiawan Sebagai Korban Salah Tangkap'.

8 Firmansyah and Farid, 'Politik Hukum Praperadilan Sebagai Lembaga Perlindungan Hak Tersangka Ditinjau Dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Mengenai Penetapan Tersangka'.

The pretrial case of Pegi Setiawan is interesting to examine because it presents a complex intersection between criminal procedure law, human rights protection, and the dynamics of law enforcement in old cases. Unlike pretrial cases in general, which are filed immediately after a suspect is named, this case arose years after the criminal incident occurred, raising serious questions regarding the validity of evidence, the continuity of the investigation, and the principle of legal certainty. This situation opens up room for discussion on the limits of investigators' authority in reopening old cases and the standards of proof that should be applied.

Another unique aspect is the position of the pretrial hearing as an arena for testing the quality of the investigation, rather than merely testing procedural formalities. This petition challenges law enforcement practices that rely on confessions or constructions of events that are not supported by new objective evidence. This distinguishes the Pegi Setiawan case from many other pretrial hearings, which are generally dismissed on formal grounds or considered to be part of the main case.

Furthermore, this case is relevant in relation to developments in jurisprudence, particularly following Constitutional Court Decision No. 21/PUU-XII/2014, which broadened the scope of pretrial hearings, as well as the new Criminal Procedure Code, which will come into effect in 2026 and strengthens the principles of due process of law and judicial control over investigations. Thus, this case is not only casuistic in nature, but also representative in testing the direction of reform of Indonesian criminal procedure law.

This article will analyse the legal considerations in Constitutional Court Decision Number 21/PUU-XII/2014, including the concurring opinion and dissenting opinion that formed the basis for Decision Number 10/Pid.Pra/2024/PN Bdg. For this purpose, various references have been studied. In this regard, this article explores the following research questions: what is the position of the legal considerations in Constitutional Court Decision No. 21/PUU-XII/2014, which actually formed the basis of Decision No. 10/Pid.Pra/2024/PN Bdg? After obtaining answers to these questions, the next question is how will the content of pre-trial proceedings be regulated in future laws governing criminal procedure? This is important to answer considering that Constitutional Court Decision No. 21/PUU-XII/2014, which was issued on 28 April 2015, has expanded the scope of pretrial proceedings, but to date, this has not been followed up by lawmakers.

2. Research Methods

This research is a type of normative legal research in which researchers inventory interpret, systematise, and evaluate all positive laws (authoritative texts) that apply in a particular society or country based on concepts (definitions), categories, theories, and methods that are specifically formulated and developed to conduct all these activities. All these activities are aimed at preparing efforts to find legal solutions to legal problems that arise in society. Researchers examine and analyse all primary, secondary, and tertiary legal materials to answer the questions that are the focus of the research. The approach used in this study is the case approach, which involves examining cases related to legal issues in court decisions that have permanent force. The case approach in normative legal research aims to study the norms or rules of law

that are conducted in legal practice. When using the case approach, researchers need to understand the ratio decidendi, which are the legal reasons used by judges to reach their decisions. Legal decisions on the cases in question are studied to obtain an overview of the normative dimension of a legal rule, which is then analysed to provide input for legal explanation.[9]
The technique of collecting legal materials is conducted using the document study or library research method, which involves collecting materials by conducting library research on a number of literature, documents, expert opinions, and articles that can clarify legal concepts. All legal materials that have been successfully collected are then inventoried, classified, and analysed descriptively and analytically, which involves conducting accurate measurements and reporting the connection between the different aspects of the phenomena being studied or attempting to answer the questions of who, what, when, where, and how in order to answer the issues that are the focus of the research.

3. Result and Discussion

Pretrial hearings in the Indonesian criminal justice system serve as a legal instrument designed to monitor and limit potential abuse of authority by law enforcement officials.[10] Through this mechanism, every suspect and other parties with legal interests are given the opportunity to challenge actions that are considered to violate human rights or contradict the principle of due process of law.[11] Normatively, the existence of pretrial hearings is regulated in Articles 77 to 83 of the Criminal Procedure Code, which not only affirms constitutional guarantees of individual rights in criminal proceedings, but also positions them as a legal bulwark that maintains a balance between the authority of investigators and prosecutors and the protection of citizens' rights. Thus, pretrial proceedings are not merely a formal procedure, but a symbol of the rule of law's commitment to the principle of substantive justice.[12]

Prior to 2012, the determination of suspect status was not included in the objects that could be appealed through the pre-trial mechanism. However, legal developments subsequently showed a bold paradigm shift through the decision of Judge Suko Harsono, S.H., at the South Jakarta District Court. In the Pre-trial Case No. 38/Pid.Prap/2012/PN.Jkt.Sel, which was decided on 27 November 2012, it was stated that the validity of suspect status could be tested through pre-trial proceedings. This ruling marked an important moment in the dynamics of Indonesian criminal procedure law, as it expanded the function of pretrial proceedings from mere procedural oversight to a more progressive corrective mechanism in guaranteeing the protection of citizens' constitutional rights.

---

[9] M Hajar, *Model-Model Pendekatan Dalam Penelitian Hukum Dan Fiqh* (Fakultas Syariah dan Hukum Universitas Islam Negeri Sultan Syarif Kasyim Riau, 2015).

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

[11] Firmansyah and Farid, 'Politik Hukum Praperadilan Sebagai Lembaga Perlindungan Hak Tersangka Ditinjau Dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Mengenai Penetapan Tersangka'.

[12] Erdianto Effendi, *Hukum Acara Pidana (Perspektif KUHAP Dan Peraturan Lainnya)* (Refika, 2021).

When discussing the constitutional rights of citizens, it is impossible to ignore the Constitutional Court. On 26 February 2014, the Constitutional Court received a petition to review Article 1 paragraph 2, Article 1 paragraph 14, Article 17, Article 21(1), Article 77(a), and Article 156(2) of the Criminal Procedure Code against Article 1(3) and Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, submitted by Bachtiar Abdul Fatah, an employee of PT Chevron Pacific Indonesia. Eight and thirteen months later, on 28 October 2014 and 16 March 2015, respectively, the Constitutional Court handed down its decision on the constitutionality of the aforementioned articles of the Criminal Procedure Code in Constitutional Court Decision Number 21/PUU-XII/2014.

In Constitutional Court Decision Number 21/PUU-XII/2014, it is stated that the Judges' Deliberation Meeting by nine Constitutional Judges to decide on the constitutionality of the provisions of the Criminal Procedure Code was conducted twice. The first deliberation was chaired by Constitutional Judge Hamdan Zoelva, who at that time served as Chairman, while the second was chaired by Constitutional Judge Arief Hidayat, who at that time served as Chairman. For information, based on Article 1 point 10 of Constitutional Court Regulation Number 7 of 2025 concerning Procedures in Law Review Cases, a deliberation meeting is a closed session to discuss and decide on law review cases attended by nine or at least seven Constitutional Court Judges.

3.1. The Position of Legal Considerations in Constitutional Court Decision Number 21/PUU-XII/2014, which Forms the Basis of Reference for Decision Number 10/Pid.Pra/2024/PN Bdg

In the construction of Indonesian constitutional law, the position of Constitutional Court decisions is fundamental, especially when it comes to reviewing laws against the 1945 Constitution of the Republic of Indonesia. Based on Article 57 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law), it is emphasised that if the Constitutional Court's ruling states that a norm in the form of an article, clause, and/or part of a law is contrary to the 1945 Constitution of the Republic of Indonesia, then that norm loses its binding legal force. This applies in the context of material review, namely review related to the substance of the law. Furthermore, Article 57 paragraph (2) of the Constitutional Court Law stipulates that if the verdict states that the formation of a law is not in accordance with the provisions on the formation of legislation according to the 1945 Constitution of the Republic of Indonesia, then the entire law is declared to have no binding legal force. This provision applies in the realm of formal review, namely review related to the legislative process.

It has a strong correlation with both articles, Article 10 paragraph (1) letter d and its explanation from Law Number 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law - Law No. 12 of 2011 on the Formation of Legislation (Law on the Formation of Legislation), which states that the follow-up to the formulation of the substance of laws amended based on the decision of the Constitutional Court is the article, articles, and/or sections of the law that are explicitly stated in the Constitutional Court's

decision to be contrary to the 1945 Constitution of the Republic of Indonesia. Based on these provisions, it reveals that only the operative part of a Constitutional Court decision should be used as a reference for the House of Representatives or the President to initiate a cumulative open draft law resulting from a Constitutional Court decision to be included in the national legislation programme (*Program Legislasi Nasional*).

However, in reality, the legal considerations of Decision Number 10/Pid.Pra/2024/PN Bdg not only refer to the verdict in Constitutional Court Decision Number 21/PUU-XII/2014 but also refer to the legal considerations in the decision. Philosophically, the principle applied by the single judge in the pretrial hearing, Eman Sulaeman, demonstrates recognition of the supremacy of the constitution, which places the Constitutional Court's decision as a guide for law enforcement officials in delivering justice. The pre-trial ruling on the designation of Pegi Setiawan as a suspect not only succeeded in creating legal certainty, but also served as a tangible form of respect for the principle of checks and balances in the constitutional system.

Similarly, in the context of legislative functions, particularly in following up on Constitutional Court decisions that result in open cumulative draft legislation, legislators need to understand the legal reasoning behind Constitutional Court decisions. This legal reasoning is contained in the Legal Considerations of the Decision. According to Michael Zander, a legal expert from the United Kingdom, legal reasoning is defined as 'a proposition of law which decides the case, in the light or in the context of the material facts'.[13] A similar definition is put forward by another British legal expert, Sir Rupert Cross and J.W. Harris, who define legal reasoning as 'any rule expressly or impliedly treated by the judge as a necessary step in reaching his conclusion'.[14]

When the opinions of legal experts are summarised, the legal grounds contained in the Legal Considerations of the Decision are referred to as the reason for a court's decision or, in Latin, *ratio decidendi*. The Legal Considerations section in Constitutional Court decisions is located before the verdict, which contains the Constitutional Court's argumentative description in assessing the constitutionality of a legal norm. This section is important because it contains binding precedents that must be obeyed, not only by the parties in the case, but also by state institutions in the process of legislation and further implementation of legal policies.

The validity of legal considerations, particularly the ratio decidendi, which has the same binding force as the verdict (legally binding), is fully in line with the position of the Constitutional Court as the guardian of the constitution and the sole interpreter of the constitution.[15] Legal considerations cannot be viewed as complementary elements, but must be understood as an integral and inseparable part of the Court's final and

---

13 Michael Zander, *The Law-Making Process* (Cambridge University Press, 2004).

14 Sir Rupert Cross and J.W. Harris, *Precedent in English Law*, Clarendow Law Series (Clarendon Press, 1991).

15 Nabitatus Sa'adah, 'Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review', *Administrative Law and Governance Journal* 2, no. 2 (2019): 235–47, https://doi.org/10.14710/alj.v2i2.235-247.

binding decisions. Thus, every interpretation set forth by the Court in its legal considerations is a form of affirmation of its function as the final interpreter of the constitution.[16]

This position is even more relevant when linked to constitutional practice, where since the establishment of the Constitutional Court to date, the characteristics of its decisions have continued to evolve in response to the dynamics and constitutional issues raised by the Petitioners.[17] This is evident in Decision Number 21/PUU-XII/2014, in which the legal considerations are perfectly binding on the addressee of the decision, namely the pretrial judge in adjudicating the legality of the determination of Pegi Setiawan's status as a suspect by the Investigator of the West Java Regional Police Criminal Investigation Directorate. In this context, constitutional court decisions are an important source of law, alongside written regulations, not only in their verdicts but also in their constitutional interpretations.[18] Based on this description, it can be concluded that at the conceptual and practical levels, based on the implementation of Constitutional Court Decision Number 21/PUU-XII/2014, the legal considerations in the decision also have binding legal force so that they can become a formal source of law in the preparation of pretrial decisions.[19]

A consistent understanding of the legal considerations behind Constitutional Court rulings, which also serve as normative references, paves the way for more orderly, transparent and constitutional legislative practices in the future. Legislators and the government are encouraged not only to formally follow up on Constitutional Court rulings, but also to use them as a moment of reflection to strengthen the quality of legislation. In this way, each Constitutional Court decision is not only seen as a correction to unconstitutional norms, but also as an opportunity for legal transformation towards a more responsive, democratic legislative system that is oriented towards protecting the constitutional rights of citizens.

3.2. Provisions Regarding Pre-trial Material in the Criminal Procedure Code Bill

Our research argues that the legal considerations that form the ratio decidendi of a ruling can also be found in concurring opinions (the same ruling, but with different reasons) and dissenting opinions (a different ruling with different reasons). In Decision Number 21/PUU-XII/2014, Constitutional Judge Patrialis Akbar submitted a

---

[16] Muchamad Ali Safaat et al., 'Pola Penafsiran Konstitusi Dalam Putusan Mahkamah Konstitusi Periode 2003 - 2008 Dan 2009 - 2013', *Jurnal Konstitusi* 14, no. 2 (2017): 234, https://doi.org/10.31078/jk1421.

[17] Intan Permata Putri and Mohammad Mahrus Ali, 'Karakteristik Judicial Order Dalam Putusan Mahkamah Konstitusi Dengan Amar Tidak Dapat Diterima', *Jurnal Konstitusi* 16, no. 4 (2020): 883, https://doi.org/10.31078/jk16410.

[18] Berly Geral Tapahing, 'Akibat Hukum Putusan Mahkamah Konstitusi Terkait Pengujian Undang-Undang Terhadap Undang-Undang Dasar Dalam Sistem Pembentukan Peraturan Perundang-Undangan', *Lex Administratum* 6, no. 1 (2018).

[19] Gunawan A. Tauda, 'Kekuatan Mengikat Pertimbangan Hukum Putusan Mahkamah Konsitusi Dalam Perkara Pengujian Undang-Undang (Studi Putusan Nomor 20/PUU-XIX/2021)', *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 2 (2024): 358–83, https://doi.org/10.20885/iustum.vol31.iss2.art6.

concurring opinion which essentially stated that he supported and agreed with the Constitutional Court's decision in the case in question, but that it would be more appropriate if the selection of pre-trial objects that do not conflict with the constitution be left to the legislators, considering that this is an open legal policy of the legislators. In line with the reasoning of Constitutional Judge Patrialis Akbar, there was a dissenting opinion from Constitutional Judge Aswanto, who also stated that if the designation of a suspect is considered to better respect and protect the suspect's human rights, then this idea could be incorporated into the provisions of the law by the legislators in accordance with their inherent authority.

From the two views of the constitutional judges who assessed whether the content of the suspect's indictment was included or not as part of the scope of pretrial proceedings, ideally it should be an open legal policy of the lawmaker, which becomes relevant when contextualised with the implementation of the legislative function currently being focused on by Commission III of the Indonesian House of Representatives, namely the discussion of the Draft Law on Criminal Procedure. The Deputy Minister of Law stated that on 19 March 2025, the Ministry of Law and the Ministry of State Secretariat received a letter from the President to discuss the Draft Law on Criminal Procedure with the House of Representatives of the Republic of Indonesia.[20] Furthermore, in a KOALISI release published on the Institute for Criminal Justice Reform website, it was stated that on 23 June 2025, the government officially signed the draft of the List of Issues (DIM) for the Criminal Procedure Code Bill, and the deliberations would then be conducted.[21]

The newly adopted Indonesian Criminal Procedure Code expands and clarifies the position of pretrial proceedings as an instrument of judicial oversight of the actions of investigators and public prosecutors. Pretrial proceedings are no longer understood solely as a formal review mechanism, but also as a means of guaranteeing the protection of suspects' human rights through the review of the validity of suspect designations, arrests, detentions, and other coercive measures. This regulation codifies and reinforces the principles previously established through Constitutional Court Decision No. 21/PUU-XII/2014, which expanded the scope of pretrial hearings. Its relevance to the Pegi Setiawan pre-trial case lies in the examination of minimum standards for evidence and compliance with the principle of due process of law, particularly in the handling of cold cases, thus reflecting the direction of reform of Indonesian criminal procedure law.

Another important matter related to the determination of suspects that must be accommodated in the Bill on Criminal Procedure Law is the examination of suspects, which must also be carried out by investigators in addition to collecting at least two pieces of evidence. This is because the examination of suspects is actually relevant in

[20] Ady Thea DA, 'Klarifikasi Wamenkum Prof Eddy Soal RUU KUHAP Dikebut 2 Hari Dan Partisipasi Publik', *Hukumonline.Com*, 28 July 2025, https://www.hukumonline.com/berita/a/klarifikasi-wamenkum-prof-eddy-soal-ruu-kuhap-dikebut-2-hari-dan-partisipasi-publik-lt6886fd31c9fd4/.

[21] Institute for Criminal Justice Reform, 'Meaningful Manipulation RUU KUHAP: Rancangan Kitab Undang-Undang Harapan Palsu, . Diakses 31 Agustus 2025.', *Www.Icjr.or.Id*, 9 July 2025, https://icjr.or.id/meaningful-manipulation-ruu-kuhap-rancangan-kitab-undang-undang-har/.

law enforcement and in order to ensure legal certainty.[22] It is important to note that the term 'prospective suspect' should not be associated with the term 'reported person'. This is because a person who is reported in a criminal investigation is not necessarily a suspect. The term 'prospective suspect' is more accurately defined as a person who, before becoming a "suspect", has first been examined in the Investigation Report as a 'witness'.[23]

This research are aware that there has been criticism of Decision Number 21/PUU-XII/2014 based on the results of previous studies, some of which have stated that making the determination of suspects the subject of pretrial proceedings will have implications for the implementation of procedural law in Indonesia, which is based on the principles of swift, simple and inexpensive justice. In addition, there are concerns that the quality of investigators' performance in resolving criminal cases will decline because their concentration is divided by pretrial hearings that come at any time. Not to mention the long-term impact of a wave of pretrial hearing requests.[24] However, upon deeper reflection, accommodating the substance of suspect designation into the object or scope of pretrial proceedings will strengthen the protection of individual interests (the suspect's human right to defend themselves from possible legal errors during the investigation stage) and public interests (the community's interest in law enforcement) in a balanced manner. Furthermore, it would actually increase the caution and professionalism of investigators so that acts that give rise to presumption of guilt are not conducted in the process of determining suspect status.

4. Conclusion

From the description above, it can be confirmed that the final and binding nature of the Constitutional Court's decision applies not only to the verdict, but also to the legal considerations containing the ratio decidendi. These legal considerations are an important instrument in shaping the direction of criminal procedure law reform in Indonesia because it is there that constitutional interpretation finds its actualisation. The applicability of the Constitutional Court's legal considerations affirms the strategic role of this institution as the sole interpreter of the constitution and guarantor of the principle of due process of law. Through Decision Number 21/PUU-XII/2014 and its application in pretrial cases, particularly in Decision Number 10/Pid.Pra/2024/PN Bdg, the vitality of the constitution in addressing constitutional issues and protecting the constitutional rights of citizens is manifested. Therefore, normative reform through the reformulation of pretrial regulations in the Criminal Procedure Code is an urgent necessity to ensure harmony between judicial practice and the principles of due process of law and the protection of human rights as the foundation of a contemporary democratic state based on the rule of law.

---

[22] Erdianto Effendi, 'Relevansi Pemeriksaan Calon Tersangka Sebelum Penetapan Tersangka', *Undang: Jurnal Hukum* 3, no. 2 (2020): 267–88, https://doi.org/10.22437/ujh.3.2.267-288.

[23] Marbun, 'Trikotomi Relasi Dalam Penetapan Tersangka'.

[24] Andi Hakim Lubis and Rismanto J Purba, 'Interpretasi Hukum Terhadap Frasa Pemeriksaan Calon Tersangka Pada Ratio Decidendi Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Dalam Dinamika Praperadilan Di Indonesia', *Judge: Jurnal Hukum* 06, no. 02 (2025), https://doi.org/doi.org/10.54209/judge.v6i02.1374.

References

Book

Cross, Sir Rupert, and J.W. Harris. *Precedent in English Law*. Clarendow Law Series. Clarendon Press, 1991.

Effendi, Erdianto. *Hukum Acara Pidana (Perspektif KUHAP Dan Peraturan Lainnya)*. Refika, 2021.

Hajar, M. *Model-Model Pendekatan Dalam Penelitian Hukum Dan Fiqh*. Fakultas Syariah dan Hukum Universitas Islam Negeri Sultan Syarif Kasyim Riau, 2015.

Zander, Michael. *The Law-Making Process*. Cambridge University Press, 2004.

Journal

Badeng, Ayu Anjeli Sandra, Yakoba Yosar E Buto, Dioninsus Sunlety, and Stevanus Joefando M. Kayep. 'Eksistensi Praperadilan Dalam Kasus Upaya Paksa Yang Tidak Sesuai Prosedur Hukum Oleh Pihak Penyidik Terhadap Pegi Setiawan Sebagai Korban Salah Tangkap'. *Animha Law Journal* 1, no. 1 (2024): 40–47.

Effendi, Erdianto. 'Relevansi Pemeriksaan Calon Tersangka Sebelum Penetapan Tersangka'. *Undang: Jurnal Hukum* 3, no. 2 (2020): 267–88. https://doi.org/10.22437/ujh.3.2.267-288.

Fadlilah, M Nabiel, Siti Sa'adah Fauziah, and Andian Achya D.K. 'Tinjauan Yuridis Mengenai Pertentangan Hukum Yang Hidup Dalam Masyarakat Dalam Pasal 2 Pada Rancangan Kitab Undang-Undang Hukum Pidana Dengan Asas Legalitas'. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 505–14. https://doi.org/10.37680/almanhaj.v4i2.1790.

Firmansyah, Shandy Herlian, and Achmad Miftah Farid. 'Politik Hukum Praperadilan Sebagai Lembaga Perlindungan Hak Tersangka Ditinjau Dari Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Mengenai Penetapan Tersangka'. *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 2 (2022): 90–103. https://doi.org/10.18196/jphk.v3i2.15195.

Gunawan A. Tauda. 'Kekuatan Mengikat Pertimbangan Hukum Putusan Mahkamah Konsitusi Dalam Perkara Pengujian Undang-Undang (Studi Putusan Nomor 20/PUU-XIX/2021)'. *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 2 (2024): 358–83. https://doi.org/10.20885/iustum.vol31.iss2.art6.

Lubis, Andi Hakim, and Rismanto J Purba. 'Interpretasi Hukum Terhadap Frasa Pemeriksaan Calon Tersangka Pada Ratio Decidendi Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 Dalam Dinamika Praperadilan Di Indonesia'. *Judge: Jurnal Hukum* 06, no. 02 (2025). https://doi.org/doi.org/10.54209/judge.v6i02.1374.

Marbun, Rocky. 'Trikotomi Relasi Dalam Penetapan Tersangka: Menguji Frasa "Pemeriksaan Calon Tersangka" Melalui Praperadilan'. *Undang: Jurnal Hukum* 4, no. 1 (2021): 159–90. https://doi.org/10.22437/ujh.4.1.159-190.

Putri, Intan Permata, and Mohammad Mahrus Ali. 'Karakteristik Judicial Order Dalam Putusan Mahkamah Konstitusi Dengan Amar Tidak Dapat Diterima'. *Jurnal Konstitusi* 16, no. 4 (2020): 883. https://doi.org/10.31078/jk16410.

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

Sa'adah, Nabitatus. 'Mahkamah Konstitusi Sebagai Pengawal Demokrasi Dan Konstitusi Khususnya Dalam Menjalankan Constitutional Review'. *Administrative Law and Governance Journal* 2, no. 2 (2019): 235–47. https://doi.org/10.14710/alj.v2i2.235-247.

Safaat, Muchamad Ali, Aan Eko Widiarto, and Fajar Laksono Suroso. 'Pola Penafsiran Konstitusi Dalam Putusan Mahkamah Konstitusi Periode 2003 - 2008 Dan 2009 - 2013'. *Jurnal Konstitusi* 14, no. 2 (2017): 234. https://doi.org/10.31078/jk1421.

Tapahing, Berly Geral. 'Akibat Hukum Putusan Mahkamah Konstitusi Terkait Pengujian Undang-Undang Terhadap Undang-Undang Dasar Dalam Sistem Pembentukan Peraturan Perundang-Undangan'. *Lex Administratum* 6, no. 1 (2018).

Laws and Regulations

Law Number 8 Year 1981 on the Criminal Procedure Code
Law Number 12 Year 2011 on the Formation of Legislation
Constitutional Court Decision Number 21/PUU-XII/2014
District Court Decision No. 10/Pid.Pra/2024/PN Bdg

Internet Sources

Institute for Criminal Justice Reform. 'Meaningful Manipulation RUU KUHAP: Rancangan Kitab Undang-Undang Harapan Palsu'. Diakses 31 Agustus 2025. *www.icjr.or.id*, 9 July 2025. https://icjr.or.id/meaningful-manipulation-ruu-kuhap-rancangan-kitab-undang-undang-har/.

Thea DA, Ady. 'Klarifikasi Wamenkum Prof Eddy Soal RUU KUHAP Dikebut 2 Hari Dan Partisipasi Publik'. *Hukumonline.Com*, 28 July 2025. https://www.hukumonline.com/berita/a/klarifikasi-wamenkum-prof-eddy-soal-ruu-kuhap-dikebut-2-hari-dan-partisipasi-publik-lt6886fd31c9fd4/.