

Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia

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Abstract: The Indonesian criminal justice system faces critical issues with the repeated designation of individuals as suspects, which compromises legal certainty and the protection of human rights. This study provides a critical analysis of the procedural and ethical consequences of repeated suspect designations within the framework of Indonesia's Criminal Procedure Code. This study employs a doctrinal legal research methodology, incorporating statute, case and conceptual approaches. The results show that pretrial judges assess the validity of suspect designations based on procedural and formal principles. Their authority is confined to reviewing formal aspects. These limitations underscore that pretrial proceedings focus solely on administrative and procedural compliance rather than the substantive merits of the case. This formalist perspective follows civil procedural principles, emphasizing procedural correctness over material truth. While pretrial judges can annul a suspect designation, investigators can re-designate the person as a suspect if new evidence is presented. Such a reform would ensure a more balanced relationship between judicial oversight and investigative authority, minimizing arbitrary practices and enhancing procedural fairness. However, the recurring practice of re-designating suspects raises a significant flaw in the system, undermining legal certainty and eroding public trust.

Keywords: Criminal Law; Legal Certainty; Prosecutor; Pretrial; Repeated Suspect

1. Introduction

The criminal justice system plays a crucial role in maintaining the rule of law and ensuring justice for all. One of the primary objectives of law is to ensure legal certainty, a key aspect of which is the predictability of legal outcomes.¹ In Indonesia's legal framework, legal certainty is integral to human rights protection, as enshrined in Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, which states, "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty..." However, despite pretrial decisions that annul a suspect designation, the current legal framework allows for the repeated designation of individuals as suspects. Despite the establishment of pretrial mechanisms to ensure checks and balances, their limited scope—focused solely

¹ Van Meerbeeck, Jérémie. "The principle of legal certainty in the case law of the European court of justice: from certainty to trust." *European Law Review* 41, no. 2 (2016): 275-288.

on procedural validity—has proven insufficient in addressing the broader implications of repeated suspect designations. This issue not only affects the rights of individuals but also highlights systemic gaps in safeguarding the integrity of investigations.

Under Indonesia's current criminal procedural law, no horizontal control mechanism exists to enable pretrial judges to oversee repeated suspect designations. This absence significantly undermines the principle of legal certainty, eroding the predictability and fairness of the justice process. A critical analysis of this issue is vital to addressing such legal challenges and reinforcing the principles of justice and legal certainty within the criminal justice system.

The Constitutional Court Decision No. 21/PUU-XII/2014, issued on March 16, 2016, marked a turning point in recognizing the legality of suspect designation, searches, and seizures as pretrial matters. This decision, which resulted from a judicial review of Article 77(a) of the Indonesian Criminal Procedure Code (KUHAP), expanded the scope of pretrial review, particularly concerning suspect designation. This study narrows its focus to pretrial examinations of the legality of suspect designation, a critical area with far-reaching implications for human rights and procedural fairness.

Pretrial judges, in exercising their authority, are limited to evaluating formal aspects of a case. This procedural constraint profoundly influences their ability to assess the legality of suspect designations comprehensively. The formalistic approach is institutionalized through Supreme Court Regulation No. 4 of 2016 on the Prohibition of Judicial Review of Pretrial Decisions (PERMA 4/2016). Article 2(2) of PERMA 4/2016 explicitly restricts pretrial judges to reviewing formal aspects, thereby excluding substantive considerations. Furthermore, Article 2(3) of PERMA 4/2016 permits the repeated designation of a suspect if a reinvestigation produces at least two new pieces of valid evidence, provided they are distinct from previously presented evidence.

This framework raises profound legal and ethical questions about the balance between procedural formalism and substantive justice. The ability to repeatedly designate a suspect, even after a pretrial ruling invalidates the initial designation, creates a cyclical vulnerability in the justice system.² This loophole not only diminishes the principle of legal certainty but also risks infringing on fundamental human rights by exposing individuals to prolonged legal uncertainty and potential abuse of power.

Entrusting law enforcement to the criminal justice system signifies citizens' desire for a peaceful life, free from fear, crime, and violence. A key assurance of peace lies in the protection of human rights, even for individuals designated as suspects.³ Human rights

² Fernando, Zico Junius. "The Anomaly of Pretrial Authority In Indonesian Law Enforcement: An Analysis of Decision Number 24/PID/PRA/2018/PN. JKT. SEL." *Jurnal Yudisial* 17, no. 2 (2024): 269-294.

³ Dhami, Mandeep K. "From discretion to disagreement: Explaining disparities in judges' pretrial decisions." *Behavioral sciences & the law* 23, no. 3 (2005): 367-386.

violations are particularly vulnerable during the investigation phase, as investigators aim to identify and determine suspects.⁴ To this end, criminal procedural law, as the formal framework for the criminal justice system in Indonesia, outlines several rights for suspects and defendants to prevent human rights violations. The Indonesian Code of Criminal Procedure (KUHAP) introduces innovations absent in its predecessor, the Dutch *Reglement Inlandsche Rechtsvordering* (RIB), such as the establishment of pretrial institutions (praperadilan). These institutions are designed to reflect the state's commitment to human rights in criminal justice and ensure that the relevant judicial bodies uphold these rights.⁵

Previous studies have explored various aspects of suspect designation. For example, Erdianto Effendi,⁶ examined the rights that should be afforded to potential suspects, asserting that such rights are inherently attached to them. Shandy Herlian Firmansyah and Achmad Miftah Farid,⁷ identified instances of arbitrary suspect designation practices. Robiatul Adawiyah and Evi Retno Wulan found that, under Police Regulation No. 6 of 2019 on Suspect Designation, suspects may be designated even before investigations commence, specifically upon the issuance of a Notification of Investigation Commencement.⁸ Rizqy Nugraha Ramadhan,⁹ highlighted the absence of regulations governing suspect designation in cases of mutual assault, where self-defense by one party might be a valid consideration. Also, Bahran's research revealed the lack of provisions establishing a time limit for designating someone as a suspect.¹⁰

Despite these contributions, none of these studies have addressed the issue of preventing repeated suspect designations. This highlights a significant legal gap that needs to be filled, necessitating research focused on the parameters used by pretrial judges to evaluate the legality of suspect designation under the Indonesian Criminal

⁴ Kären M Hess, *Introduction to Law Enforcement and Criminal Justice* (United States of America: Wadsworth Cengage Learning Customer, 2009). p. 22.

⁵ I Suarda, Gede Widhiana and Moch Taufiqurrohman, "Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System," *Indon. L. Rev* 11, no. 137 (2021): 137. <https://doi.org/DOI:10.15742/ilrev.v11n2.2>.

⁶ Effendi, Erdianto. "Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka." *Undang: Jurnal Hukum* 3, no. 2 (2020): 267-288. <https://doi.org/10.22437/ujh.3.2.267-288>.

⁷ 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.

⁸ Adawiyah, Robiatul, and Evi Retno Wulan. "Keabsahan Penetapan Tersangka dalam Peraturan Kapolri No 6 Tahun 2019 Tentang Penetapan Tersangka," *Iblam Law Review* 4, no. 1 (2024), <https://doi.org/10.52249/ilr.v4i1.317>.

⁹ Ramadhan, Rizqy Nugraha. "Kepastian Hukum Penetapan Tersangka Terhadap Kasus Saling Laporan Tindak Pidana Penganiayaan." *Jurnal Penegakan Hukum Indonesia* 3, no. 1 (2022): 40-58. <https://doi.org/10.51749/jphi.v3i1.58>

¹⁰ Bahran, "Penetapan Tersangka Menurut Hukum Acara Pidana dalam Perspektif Hak Asasi Manusia," *Syariah Jurnal Hukum dan Pemikiran* 17, no. 2 (2018), <https://doi.org/10.18592/sy.v17i2.1972>.

Procedure Code (KUHP), a critical analysis of repeated suspect designations, and the development of an ideal regulatory framework to prevent such occurrences.

This study aims to delve deeper into the complex intersection of human rights protection and procedural fairness, particularly in the context of repeated suspect designations within Indonesia's criminal justice system. The frequent and unchecked practice of designating individuals as suspects not only undermines the principle of legal certainty but also erodes public confidence in the justice system and risks violating constitutional rights. Addressing these challenges necessitates a critical examination of the parameters employed by pretrial judges, alongside a reevaluation of existing practices and regulatory frameworks.

By highlighting the structural gaps in Indonesia's pretrial process, this study advocates for enhanced oversight mechanisms to strengthen accountability. Drawing on comparative insights from international models such as the examining magistrate system in the Netherlands, it underscores the importance of introducing preliminary case reviews by judges. Such a reform would ensure a balanced interplay between the investigative authority and judicial oversight, reducing the risks of arbitrary practices and promoting procedural fairness.

To achieve these objectives, the study proposes comprehensive amendments to KUHP aimed at enhancing the scope and effectiveness of pretrial judicial oversight. These amendments seek to establish robust safeguards for legal certainty and fundamental rights, reflecting Indonesia's constitutional mandate to uphold human dignity and justice. Furthermore, this research emphasizes the need to harmonize domestic practices with international human rights standards, fostering a more equitable and transparent criminal justice process. By addressing these pressing legal challenges, the study aspires to contribute to the development of a justice system that is both procedurally sound and substantively fair, reaffirming the rule of law as a cornerstone of democracy.

2. Method

This study employs a doctrinal legal research methodology, incorporating statute, case and conceptual approaches.¹¹ By combining these approaches, the research aims to provide a thorough and descriptive analysis of the legal issues surrounding repeated suspect designations. It examines the current legal framework, evaluates its implications for justice and human rights, and identifies potential areas for reform. The descriptive nature of the study ensures clarity in presenting the complexities of legal norms and practices, ultimately offering constructive recommendations to improve Indonesia's criminal justice system.

¹¹ Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, ed. 4 (Yogyakarta: Mirra Buana Media, 2021), p. 142.

3. Pretrial Judges' Parameters for Assessing the Legality of Suspect under the Indonesian Criminal Procedure Code

Pretrial proceedings in Indonesia are inspired by the principle of *habeas corpus* principle, which originates from the Anglo-Saxon legal system. As a fundamental human rights guarantee, particularly regarding individual freedom. The term 'habeas corpus', derived from Latin, means "you may have the body" – essentially stating that the state must justify the detention of an individual with valid grounds. This principle provides individuals the right to challenge the lawfulness of their detention in court.

A writ of *habeas corpus* is a legal order that requires authorities to bring a detained individual before the court to determine the validity of the detention. If the court finds the detention unlawful, it orders the immediate release of the detainee. In Chile, the principle of habeas corpus is embedded in the Constitution, while not directly naming *habeas corpus*, introduces a similar concept by affirming that any person detained unlawfully has the right to petition the court.¹² The court must then ensure that the detention is legal and, if found unlawful, order the individual's release. Similarly, international human rights documents, such as Article 5(4) of the European Convention on Human Rights (ECHR), guarantee that any person deprived of liberty through arrest or detention can seek judicial review to determine the lawfulness of their detention, and if it is deemed unlawful, they must be released.¹³

In Indonesia, the principle of habeas corpus is reflected through the institution of pretrial procedures. Prior to the Constitutional Court's Decision No. 21/PUU-XII/2014, pretrial judges were involved in legal discovery (*rechtsvinding*) to assess the legality of suspect designations, as exemplified in the case of Budi Gunawan in Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel. The inclusion of suspect designation as an object of pretrial review, established by Constitutional Court Decision No. 21/2014, emerged amidst debates regarding whether the designation of a suspect constitutes a coercive action. However, the primary purpose of pretrial review of suspect designation is to protect individual liberty, as the designation of a suspect is a critical initial step leading to the possibility of arrest and detention. In accordance with Article 1(20) of the Criminal Procedure Code (KUHAP), a suspect is defined as an individual who may be subjected to arrest or detention.

The addition of suspect designation to the list of objects for pretrial review was a significant development in Indonesia's criminal justice system. It aligns with broader international human rights principles, ensuring that individuals' freedoms are not violated

¹² Rivera-Pérez, Willmai. "What the Constitution got to do with it: expanding the scope of constitutional rights into the private sphere." *Creighton Int'l & Comp. LJ* 3 (2012): 189.

¹³ Lan, Nguyen Thi, and Nguyen Hoang Ngan. "The Presence of the Defense Lawyer in Vietnam's Criminal Justice System: Substantive or Cosmetic?." *Hasanuddin Law Review* 9, no. 1 (2023): 20-38. DOI: <http://dx.doi.org/10.20956/halrev.v9i1.4121>

without judicial scrutiny. However, it also raises critical legal questions about the balance between ensuring public safety and maintaining individual rights. The legal framework for pretrial proceedings and its focus on formal legality – such as the procedural correctness of suspect designations – has implications for how the criminal justice system interacts with constitutional rights. Specifically, the question remains whether pretrial review is sufficiently robust in guaranteeing that the exercise of investigative powers does not violate legal certainty, fairness, and the protection of human rights.¹⁴ In this context, this study delves into the parameters used by pretrial judges to assess the legality of suspect designations under KUHAP. It aims to evaluate whether current judicial practices align with Indonesia's commitment to protecting individual freedoms, as enshrined in its constitution and international human rights law, and whether the legal framework adequately addresses the risks of repeated and unwarranted suspect.

The inclusion of suspect designation as a pretrial object through Constitutional Court Decision No. 21/2014 serves, among other things, as a means of protecting the human rights of the suspect, ensuring that pretrial procedures align with the mandates of Pancasila and the 1945 Constitution of the Republic of Indonesia. The Indonesian Criminal Procedure Code (KUHAP) adheres to an accusatory system, which functions as a control mechanism to prevent arbitrary actions by investigators or prosecutors. However, KUHAP lacks a check-and-balance system for suspect designation. KUHAP follows the principle of due process of law, and the designation of a suspect is fundamental to guaranteeing that an individual's rights are protected by ensuring "recognition, protection, and legal certainty in a just manner, with equal treatment before the law."

Suspect designation is a part of the investigative process, which can be understood from the definition of investigation in Article 1(2) of KUHAP, which states that an investigation is a series of actions by investigators, in the manner prescribed by law, to search for and gather evidence that clarifies the occurrence of a criminal act and identifies the suspect. From this definition, one of the actions in an investigation is to "find the suspect." Kusumastuti also argues that the designation of a suspect is "part of the investigation."¹⁵ Therefore, the authority to designate a suspect belongs to investigators. Article 1(1) of KUHAP defines an investigator as an official from the Indonesian National Police or a specific civil servant authorized by law to carry out investigations. Consequently, if a suspect is designated by someone who is not yet an investigator, that designation is considered invalid.

¹⁴ Lan, Nguyen Thi, and Nguyen Hoang Ngan. "The Presence of the Defense Lawyer in Vietnam's Criminal Justice System: Substantive or Cosmetic?." *Hasanuddin Law Review* 9, no. 1 (2023): 20-38. doi: <http://dx.doi.org/10.20956/halrev.v9i1.4121>

¹⁵ Kusumastuti, Ely. "Penetapan Tersangka Sebagai Obyek Praperadilan." *Yuridika* 33, no. 1 (2018): 1-18.

Article 2(2) of Supreme Court Regulation No. 4/2016 stipulates that when reviewing the legality of a suspect designation, the judge may only assess whether there are at least two pieces of evidence. The provision regarding suspect designation is based on the requirement for "at least two pieces of evidence," as explained in the Constitutional Court Decision No. 21/2014, which interprets "preliminary evidence" as "sufficient initial evidence" or "sufficient evidence."

Eva Achjani,¹⁶ in her ruling in Decision No. 119/Pid.Prap/2015/PN.Jkt.Sel, argued that the "preliminary evidence" referred to in the Constitutional Court Decision No. 21/2014 consists of "two pieces of evidence that clarify the main elements which are essential." According to this interpretation, the designation of a suspect must be based on two determining pieces of evidence (material aspects). However, the formalistic nature of pretrial judges means they do not examine the material aspects. As Muntaha pointed out, the introduction of PERMA 4/2016 further emphasizes the role of pretrial judges as solely assessing formal aspects, excluding any substantive review of the evidence. This highlights the tension between the procedural formality and the need for substantive justice in ensuring the legality of suspect designation.¹⁷

As result, based on Supreme Court Regulation No. 4/2016, there are several guidelines that serve as the foundation for pretrial judges to assess the legality of a suspect designation made by investigators:

- a. Pretrial proceedings only examine formal aspects – This means that the pretrial judge's role is limited to reviewing whether the necessary documents are present, without delving into the substantive aspects of the case.
- b. Pretrial judges only assess the quantity of evidence – Specifically, the judge examines whether the suspect designation is supported by "two pieces of evidence."

With a limited timeframe of just seven days, the truth sought in a pretrial hearing is purely formal, focusing on whether the correct procedures have been followed. The legal framework for pretrial proceedings primarily considers formal proof because the procedural law governing pretrial hearings follows civil law principles. This means that the object of pretrial examination is formally administrative.¹⁸ The procedural rules of pretrial hearings, when interpreted systematically according to the Indonesian Criminal

¹⁶ Rocky Marbun, "Trikotomi Relasi dalam Penetapan Tersangka: Menguji Frasa 'Pemeriksaan Calon Tersangka' Melalui Praperadilan," *Undang: Jurnal Hukum* 4, no. 1 (2021): 171-172.

¹⁷ Muntaha, Maria. "Pengaturan Praperadilan dalam Sistem Hukum Pidana di Indonesia." *Mimbar Hukum* 29, no. 3 (2017): 461-473.

¹⁸ Zulkarnain and Rocky Marbun, "Symbolic Domination in the Regulation of the Indonesia Supreme Court Number 4 of 2016 Concerning the Prohibition of Reviewing Pre-Trial Decisions," in *Proceedings of the 2nd International Conference on Law Reform (INCLAR)* (Atlantis Press, 2021), 57–62.

Procedure Code (KUHAP), align with civil law procedures, which are designed to establish "formal truth."

The principle of formal truth refers to the truth established purely through formal evidence presented in court, in line with "the preponderance of evidence theory."¹⁹ When the pretrial examination follows civil procedure mechanisms, two main consequences arise. First, the truth being pursued is formal (not substantive), where documentary evidence is the main form of proof in civil proceedings. Second, pretrial hearings are fundamentally procedural, focusing on the conditions for implementing coercive measures (such as searches, seizures, arrests, and detentions). Therefore, it is possible for coercive actions to occur without an official order, and the order may be issued after the action has been carried out, often with a backdated signature to validate the action. This creates a situation where, although the order may be legally valid on paper, its material validity is questionable. Consequently, many pretrial requests are rejected due to these formal issues.²⁰

Despite the challenges raised by formal proof in pretrial hearings, this analysis does not delve into those broader issues. The use of formal proof is foundational to pretrial procedures because they adhere to civil procedural law, as interpreted systematically. The pretrial judge primarily evaluates two formal criteria to determine the validity of a suspect designation: first, the individual issuing the designation must be an authorized investigator; and second, the designation must be backed by at least two pieces of evidence, along with formal documentation validating the action. This analysis underscores a significant tension within Indonesia's criminal justice system, highlighting the conflict between the procedural formalism required in pretrial hearings and the need for substantive justice. The challenge lies in ensuring that suspect designations and subsequent actions are legally and supported by adequate evidence while maintaining the integrity of the procedural framework.

4. A Critical Examination of Repeated Suspect Status: Toward an Ideal Model with Legal Certainty

The Indonesian Criminal Procedure Code (KUHAP) was not only aimed at protecting human rights but also at ensuring legal certainty, as emphasized in the Considerations section and the General Explanation of Article 3 of KUHAP. Fundamentally, the law seeks to protect human interests, and legal certainty is essential in this regard. Legal certainty safeguards individuals against the arbitrary exercise of power.²¹ This principle of certainty

¹⁹ Muqaddas, Busyro. "Mengkritisi Asas-asas Hukum Acara Perdata." *Jurnal Hukum Ius Quia Iustum* 20, no. 9 (2002): 18-31.

²⁰ Didik Endro Purwoleksono, *Hukum Acara Pidana* (Surabaya: Airlangga University Press, 2015). p. 90.

²¹ Elif Acar and Sugeng Sudrajat, "Effectiveness of Applying Principles of Legal Certainty of Justice In The Handling Of Criminal Case," *Jurnal Pembaharuan Hukum* 5, no. 3 (2018): 443.

is not only embedded in the written law but must also be realized in practice. Ideally, a judge's ruling should not create new legal issues later on, and the quality of the decision directly impacts public trust in the judicial system, as well as the authority and credibility of the courts.²²

In Spanish legal literature, the term "*seguridad jurídica*" refers to legal certainty as a fundamental value in a rule-of-law system. Legal certainty is an abstract concept, and its manifestation in practice includes principles like legality, the hierarchy of regulations, non-retroactivity, and *res judicata*, among others.²³ KUHAP is not only grounded in the aim to provide legal certainty but also in the principle of legality, as enshrined in Article 3, which states that "the judiciary shall be conducted in accordance with the procedures established by this law." However, law cannot regulate every aspect of public life. When law enforcement fails to provide certainty based on unclear legal foundations, constitutional means such as judicial review by the Constitutional Court (MK) offer a solution. KUHAP has undergone multiple judicial reviews, with the Constitutional Court reaffirming certain provisions to ensure that the norms within the law deliver legal certainty. For example:

- a. Constitutional Court Decision No. 3/PUU-XI/2013 clarified the timeframe for delivering an arrest warrant to the suspect's family, interpreting "immediately" in Article 18(3) KUHAP as "immediately, and no later than 7 days."
- b. Decision No. 98/PUU-X/2012 defined "interested third parties" who can file a pretrial motion regarding the legality of a termination of investigation or prosecution, as described in Article 80 KUHAP, and clarified that these parties include victims, reporters, and NGOs.
- c. Decision No. 130/PUU-XIII/2015 clarified the timeline and parties required to be notified when an investigation begins under Article 109 KUHAP, mandating notification within 7 days of issuing the investigation order.
- d. Decision No. 28/PUU-XX/2022 clarified that if a prosecutor's indictment is annulled by the judge, it can be corrected and resubmitted once, subject to further objections.

Aside from these decisions, numerous other rulings have reinforced or provided legal certainty regarding KUHAP provisions. However, in this context, only four are presented to highlight the legal framework guiding Indonesian criminal law, which aims to ensure that legal norms and their application provide certainty.

²² Sholahuddin Al-Fatih dan Zaka Aditya, "Hoax and The Principle of Legal Certainty in Indonesian Legal System," in *Proceedings of the 1st International Conference on Business, Law And Pedagogy, ICBLP 2019, 13-15 February 2019, Sidoarjo, Indonesia, 2019*, <https://doi.org/10.4108/eai.13-2-2019.2286165>. p. 6.

²³ Lifante-Vidal, Isabel. "Is legal certainty a formal value?." *Jurisprudence* 11, no. 3 (2020): 456-467.

A significant issue in the Indonesian criminal justice system arises from legal gaps (legal gaps) that allow for repeated suspect designations. This is facilitated by the judicial review mechanism in pretrial hearings. As per Article 2(3) of PERMA 4/2016, "a pretrial decision that grants a motion to invalidate a suspect's designation does not void the Investigator's authority to designate the individual as a suspect again, provided at least two new, valid pieces of evidence are obtained, distinct from the previous evidence related to the case's merits." This provision opens the door for a person whose suspect status has been invalidated in a pretrial hearing to be re-designated as a suspect if new evidence emerges. This mechanism undermines the principle of legal certainty, as it allows the same individual to be repeatedly designated as a suspect (Table 1).

Table 1. The Empirical Landscape of Repeat Suspect Determinations

No	The Involved Parties	Details
1.	Marthen Dira Tome v Corruption Eradication Commission (KPK)	Marthen, the Regent of Sabu Raijua, had his suspect status annulled by Decision No. 65/Pid.Pra/2016/PN Jkt.Sel on May 18, 2016. Subsequently, he was re-designated as a suspect by the KPK based on Investigation Order No. Sprint.Dik-81/01/10/2016 dated October 31, 2016.
2.	Sukri v Prosecutor's Office	Sukri, a member of the DPRD West Sulawesi, had his suspect status annulled by Decision No. 3/Pid.Pra/2022/PN Mam on November 21, 2022. However, according to the Head of Mamuju District Attorney's Office on November 21, 2022, Sukri was re-designated as a suspect based on evidence.
3.	Siman Bahar v Corruption Eradication Commission (KPK)	Siman Bahar, the CEO of PT Loco Montrado (LM), had his suspect status annulled by Decision No. 90/Pid.Pra/2021/PN Jkt.Sel on October 27, 2021. Later, as per the official statement by the KPK, Siman Bahar was re-designated as a suspect.
4.	Anwar Mooduto v Prosecutor's Office	Anwar Mooduto, the owner of UD Wendyarsa Pratama, had his suspect status annulled by Decision No. 7/Pid.Pra/2019/PN Ktg on December 9, 2019. He was later re-designated as a suspect.
5.	Halim Susanto v Police	Halim, the Chairman of Koperasi Simpan Pinjam (KSP) Jateng Mandiri, had his suspect status annulled by Decision No. 14/Pid.Pra/2017/PN Sng on December 21, 2017. Halim was re-designated as a suspect.
6.	Indra Agus Lukman v Prosecutor's Office	Indra, the Head of the Department of Energy and Mineral Resources in Kuantan Singingi Regency, had his suspect status annulled twice: Decision No. 2/Pid.Pra/2021 on October 28, 2021, and Decision No. 1/Pid.Pra/2022/PN Tlk on June 6, 2022.

Source: Author's Compilation from Various Sources, (2024).

This data illustrates the phenomenon of multiple suspect designations, with a notable case, Indra Agus Lukman, whose suspect status was revoked twice, highlighting a problem in Indonesia's legal system. Another ironic example is seen in the case of Halim Susanto, where the Semarang District Court's Decision No. 14/Pid.Pra/2017/PN Smg on December 21, 2017, ruled that his suspect designation was invalid because he was not informed of the Initiation of Investigation Notice (SPDP), violating his right to defend himself before coercive measures were taken. However, in Decision 06/Pra.Pid/2018/PN Smg on May 25, 2018, the court rejected Halim's pretrial motion, declaring that the delay in the SPDP was merely an administrative issue and did not invalidate the investigation process. Once the suspect designation was deemed valid, Halim's case proceeded to trial at the Semarang District Court. According to Decision No. 627/Pid.Sus/2018/PN Smg on February 6, 2019, Halim was acquitted of all charges, as his actions were considered administrative violations, not criminal offenses. This decision was upheld by the Supreme Court in Decision No. 1890 K/Pid.Sus/2019 on September 5, 2019.

Although pretrial motions do not determine a person's guilt or innocence and their decisions are not subject to the principle of *ne bis in idem*, there is no preventive mechanism to avoid re-designating someone as a suspect. While multiple suspect designations may be legally valid, this practice undermines the pretrial process, failing to protect human rights and deliver legal certainty.²⁴ The current norms and practices within Indonesia's criminal justice system are incapable of preventing repeated suspect designations, which could affect any citizen due to the flawed system. This highlights a weakness in the criminal justice system, necessitating efforts to prevent violations of citizens' constitutional rights to legal certainty.²⁵

As comparison, in the Dutch criminal justice system, *the Rechter-Commissaris* (RC) plays a vital role in supervising and controlling the quality of investigations through its authority outlined in Articles 170 to 241 of the Dutch Criminal Procedure Code (SV). Additionally, Article 36 SV empowers the RC to set time limits for investigations and prosecutions. To address the shortcomings of Indonesia's pretrial mechanism, the adoption of provisions from Article 44 of the Draft Criminal Procedure Code is proposed. This ideal arrangement integrates pretrial mechanisms as an essential part of the criminal justice system. This integration requires pretrial involvement before a person can be redesignated as a suspect. Investigators must present their new evidence before a pretrial judge prior to making any new suspect designation. If the pretrial judge deems the evidence credible, the investigation will be considered legitimate by the pretrial court.

²⁴ Eddyono, Supriyadi Widodo, Wahyudi Djafar, Sufriyadi, Erasmus AT Napitupulu, and Sriyana. *Praperadilan di Indonesia: Teori, Sejarah dan Praktiknya*. Institute for Criminal Justice Reform, 2014, p. 27.

²⁵ Ariyanny, Renny, Sung-jun Bae, and Mohammad Kemal Dermawan. "Disgorgement of Profits: An Alternative Solution to Stolen State Assets' Recovery from Corporate Financial Crimes." *Hasanuddin Law Review* 9, no. 2 (2023): 139-154. Doi: <http://dx.doi.org/10.20956/halrev.v9i2.4622>

The previously discussed phenomenon underscores the critical need for reform within Indonesia's criminal justice system. To address the recurring issue of suspect designation and to establish legal certainty regarding its interpretation, pretrial mechanisms must become an integral part of the justice system. In the Netherlands, a pretrial institution known as the *Rechter-Commissaris* (RC) serves as a vital component of their criminal justice framework. This system provides judicial oversight (*justitie*) over prosecutors (*openbaar ministerie*), while prosecutors, in turn, oversee the police. Although these three entities operate with distinct authorities, their interconnected oversight ensures a complementary and balanced approach to fulfilling their roles.

According to Kripsiaji and Minarno,²⁶ the RC's scope of authority encompasses three key aspects:

1. Oversight of Investigations

The RC is tasked with controlling and monitoring the quality of criminal investigations. This authority includes: Monitoring and reviewing the actions of prosecutors and investigators, determining necessary investigative measures, and assessing the legality of detentions; and exercising independent powers, such as conducting home searches and issuing detention orders.

2. Monitoring Progress

Under Article 180 of the Dutch Criminal Procedure Code (SV), the RC supervises the progress of investigations, either *ex officio* or upon a suspect's request. Article 36 SV also grants the RC authority to set deadlines for prosecutors to conclude investigations or proceed to trial.

3. Reviewing Investigation Processes

The RC examines the investigation process to maintain balance among involved parties, verify the completeness of case files, and provide feedback to prosecutors in case of errors. Articles 180-184 SV empower the RC to oversee investigative completeness, while Article 150b(2) SV allows suspects to request expert examinations. If denied by the court, the RC may appoint an expert or revisit the request.

The Dutch criminal justice system offers a comprehensive framework to ensure transparency and high-quality legal processes. The RC's authority under Article 36 SV not only enables progress monitoring but also allows the RC to impose deadlines for investigations and prosecutions. This proactive role ensures investigations are conducted effectively and in accordance with the law. Such reforms ensure that pretrial mechanisms serve as a robust safeguard against arbitrary or repeated suspect designations. They

²⁶ Dinar Kripsiaji dan Nur Basuki Minarno, "Perluasan Kewenangan dan Penegakan Hukum Praperadilan di Indonesia dan Belanda," *Al-Mazaahib: Jurnal Perbandingan Hukum* 10, no. 1 (2022), <https://doi.org/10.14421/al-mazaahib.v10i1.2573>.

establish a system where legal certainty and fairness are prioritized, aligning the investigation process with higher standards of accountability and transparency.

Adopting these principles in Indonesia could significantly enhance the country's criminal justice system. By implementing such mechanisms, Indonesia could ensure that legal procedures meet high standards, constitutional rights are effectively safeguarded, and the quality and accountability of investigations and prosecutions are improved. Ultimately, these reforms would contribute to a more equitable and legally certain justice system.²⁷

Preventing repeated suspect designations requires careful consideration of the criminal procedure's characteristics, emphasizing legal certainty and human rights protection.²⁸ Comparatively, the Netherlands offers a legal framework that ensures certainty in investigations. This study proposes an innovation by adopting provisions from the Draft Criminal Procedure Code (RKUHAP), particularly concerning the authority of the Preliminary Examination Judge. Article 1 point 7 of the RKUHAP defines the Preliminary Examination Judge as an official authorized to assess the course of investigations and prosecutions, along with other powers stipulated in this law. One of the judge's key powers is to determine whether a case is "fit for prosecution in the court."

Implementing this principle within the criminal justice system could prevent the misuse of authority in repeated suspect designations. Future criminal law policy reforms through amendments to the Criminal Procedure Code (KUHP) should include provisions such as:

"In cases where investigators reinvestigate a suspect whose status has been annulled by a pretrial decision, the suspect cannot be redesignated as a suspect unless the investigator discovers new evidence related to the case, and a pretrial court declares the reinvestigation valid."

This proposed reform integrates pretrial mechanisms as an essential component of the criminal justice system, positioning them as the primary legal safeguard before a person can be redesignated as a suspect. The reform aims to ensure that any new suspect designation occurs only after a rigorous examination process by the pretrial court. Under this framework, investigators are required to present comprehensive new evidence before the pretrial judge prior to any suspect designation. If the pretrial judge deems the new evidence sufficient and valid, the reinvestigation will be considered legitimate and can proceed.

²⁷ Muchtar, Syamsuddin, Irwansyah, Ahsan Yunus, Arnita Pratiwi Arifin, and Markham Faried. "Juvenile Criminal Responsibility in Justice Systems: A Comparative Study of Judicial Interpretations in Indonesia and Australia." *Jambe Law Journal* 7, no. 2 (2024): 371-394, DOI: 10.22437/jlj.7.2.371-394

²⁸ Siagian, Fahrizal S. "Juridical Analysis for the Rights of Interested Third Parties in Filing Pretrial Applications in the Indonesian Criminal Justice System." *Legal Brief* 12, no. 2 (2023): 231-240.

As it turns out into practice, this system offers stronger legal certainty for individuals involved in legal proceedings, protecting them from unjust or repetitive suspect designations without clear grounds. Furthermore, the reform reinforces constitutional rights for citizens. It also provides legal certainty for investigators in pursuing cases, reducing the risk of baseless suspect designations and ensuring that every legal action is based on sufficient and relevant evidence. In essence, this reform guarantees that every individual receives legal protection and that their constitutional rights are upheld. It strengthens the integrity of the legal system by embedding pretrial mechanisms as a critical check on investigative and prosecutorial actions, promoting justice and fairness in criminal procedures.

5. Conclusion

In Indonesia's criminal justice system, pretrial judges assess the validity of suspect designations based on procedural and formal principles. Their authority is confined to reviewing formal aspects, such as: Whether the suspect designation is supported by at least two pieces of evidence; and whether it was issued by an authorized official, namely the investigator. These limitations underscore that pretrial proceedings focus solely on administrative and procedural compliance rather than the substantive merits of the case. This formalist approach aligns with the civil procedural principles that prioritize formal truth over material truth. Although pretrial judges have the authority to annul a suspect designation, investigators can re-designate the individual as a suspect if new evidence emerges. Such a reform would ensure a balanced interplay between the investigative authority and judicial oversight, reducing the risks of arbitrary practices and promoting procedural fairness. However, the recurring practice of re-designating suspects raises a significant flaw in the system, undermining legal certainty and eroding public trust.

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