International Journal of Educational Review, Law & Social Sciences (IJERLAS)

International Journal of Educational Review, Law And Social Sciences (IJERLAS Journal) | ISSN (e): 2808-487X
Volumes 5 No. 6 (2025)

LEGAL IMPLICATIONS OF PRETRIAL DECISIONS OUTSIDE THE OBJECT OF PRETRIAL CONSIDERED IN THE LIGHT OF SUPREME COURT REGULATION NUMBER 4 OF 2016 CONCERNING THE PROHIBITION OF REVIEW OF PRETRIAL DECISIONS

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Received	: 01 September 2025	Published	: 17 November 2025
Revised	: 15 September 2025	DOI	: https://doi.org/10.54443/ijerlas.v5i6.4346
Accepted	: 10 October 2025	Link Publish	: https://radjapublika.com/index.php/IJERLAS

Abstract

Pretrial decisions have an important role in ensuring the protection of human rights and controlling coercive actions by law enforcement officers in the Indonesian criminal justice system. However, in judicial practice, dynamics have developed where pretrial judges decide cases outside the object of pretrial as limited by Article 77 of the Criminal Procedure Code, such as examining the validity of the determination of suspects, preliminary evidence, and even the main points of the case. This development has given rise to legal issues, especially after the issuance of Supreme Court Regulation (Perma) Number 4 of 2016 which expressly prohibits the legal remedy of Judicial Review (PK) against pretrial decisions. This study aims to analyze: (1) the legal basis for the birth of pretrial decisions that exceed the limits of the object of authority; (2) the legal implications of these decisions on the principles of legal certainty, justice, and due process of law; and (3) the relevance of Perma No. 4 of 2016 in providing solutions to the lack of legal remedies for controversial pretrial decisions. This study uses a normative legal method with a statutory, case, and conceptual approach. The data were analyzed qualitatively through systematic and comparative legal interpretation of pretrial practices following Constitutional Court Decision No. 21/PUU-XII/2014 and other progressive pretrial decisions. The research results show that the expansion of pretrial objects is a consequence of the constitutional interpretation of the protection of the suspect's rights, but at the same time creates legal uncertainty and disharmony between the norms of the Criminal Procedure Code and judicial practice. The prohibition of judicial review in Supreme Court Regulation No. 4 of 2016 limits access to justice by closing the room for correction of ultra vires pretrial decisions. Therefore, it is necessary to reconstruct the pretrial regulations in the future Criminal Procedure Code and open up space for limited legal remedies to prevent abuse of pretrial judges' authority.

Keywords: ***Pretrial, Perma 4/2016, Judicial Review, Judicial Implication, Ultra Vires.***

INTRODUCTION

Pretrial is an important part of the criminal justice system in Indonesia. Pretrial in the Criminal Procedure Code has a different meaning, "pre" means to precede, so pretrial can be interpreted as a preliminary before the trial in court (Andi Hamzah 2008: 187). Pretrial functions as a means of monitoring the actions of law enforcement officers, particularly those related to arrest, detention, and the termination of investigation and prosecution. Provisions regarding this issue can be seen in Articles 77 to 83 of the Criminal Procedure Code (Wulandari 2015: 2), where pretrial has the main objective of ensuring that the law enforcement process is carried out in accordance with applicable legal principles, while always respecting and protecting human rights. In practice, problems often arise related to the implementation of pretrial decisions due to deviations in the application of authority. One quite crucial issue is the existence of pretrial decisions that are considered contrary to the law because the judge exceeds his authority in deciding the pretrial case. This condition not only creates legal uncertainty, but also has the potential to harm the parties involved, be it the suspect, the victim, or the law enforcement officers themselves (Salman Luthan 2014: 3). Cases like this raise fundamental questions about how pretrial decisions, which should be a means of legal protection, can actually become a source of new legal problems because fundamentally, a state's power has limits determined by law and the state is obliged to provide guarantees of law enforcement so that justice can be achieved

(Nordin & Abdullah 2017: 2). As an example of this problem, there are several pretrial decisions such as Pretrial Case Number 8/Pid.Pra/2024/PN Bgl, Number 15/Pid.Pra/2017/PN.Jkt.Sel and Number 36/Pid.Pra/2015/PN.Jkt.Sel, where the pretrial judge ordered the termination of the investigation. This is a problem considering that the authority to terminate the investigation is the authority of the investigator and is not an object of the pretrial based on the provisions of Article 7 paragraph (1) letter i jo. Article 109 paragraph (2) of the Criminal Procedure Code. If it is connected with the principle of Res Judicata Pro Veritate Habetur then of course the judge's decision must be considered correct because there is no legal remedy for a pretrial decision. This is based on Article 83 paragraph (1) of the Criminal Procedure Code in conjunction with Constitutional Court Decision Number 65/PUU-IX/2011 which states that a pretrial decision cannot be appealed. Then, Article 45 A paragraph (2) letter a of Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court in conjunction with Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court. Law Number 5 of 2004 regulates exceptions, stating that a pretrial decision cannot be appealed. Finally, the Supreme Court, based on Article 3 paragraph (1) of Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions (hereinafter referred to as Perma 4/2016), emphasized that pretrial decisions cannot be subject to a legal review. The Supreme Court Regulation has positioned the object of pretrial proceedings in accordance with the context of procedural law (Muntaha 2017: 469).

LITERATURE REVIEW

Various previous studies have discussed matters related to the implementation of pretrial motions from various perspectives. The study on the Analysis of Pretrial Judge Decisions at the Medan District Court (Study on Pretrial Decisions of the Medan District Court No. 07/Pra-Pid/2016/PN.Mdn) highlights the legal developments regarding the reasons for filing pretrial motions and the formulation of criminal law policies in Indonesian positive law in terms of human rights protection (Jekson Sipayung 2016). Other studies also examine pretrial motions that cannot be implemented by the public prosecutor. Specifically, this study examines the ratio decidendi of Case Decision Number 38/Pra.Per/2025/PN.Sby and the prosecutor's legal actions regarding pretrial motions that cannot be implemented by the public prosecutor. In addition, there is also research on the Analysis of Pretrial Decisions on the Validity of Suspect Determination Letters and Investigation Termination Letters (Case Study of Decision Number 06/Pid.PRA/2020/PN-MKS, and Decision Number 8/PID.PRA/2020/PN.MKS) (Reski Ospiah 2022). This research discusses the judge's considerations in deciding the validity of Suspect Determination Letters and Investigation Termination Letters based on the criminal justice system in Indonesia and their conflict with human rights. Unlike previous research, this study focuses on the legal consequences of pretrial rulings that potentially exceed their authority on the principles of legal certainty, human rights protection, and the criminal justice system. Furthermore, this study examines the legal basis and considerations of judges examining matters not subject to pretrial (e.g., suspect determination, validity of evidence, legality of investigation) and provides a reconstruction of normative solutions for criminal procedural law reform.

METHOD

This research uses a normative legal method with a focus on the analysis of secondary legal materials in the form of laws and regulations, official documents, and relevant literature (Sunggono, 2015). The approaches used include a statute approach to examine related legal provisions, an analytical approach to understand the meaning and application of legal terms, and a conceptual approach to examine the legal theories and principles underlying the research issues. The sources of legal materials consist of primary materials such as Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions, secondary materials in the form of scientific publications and legal literature, and tertiary materials such as legal dictionaries and encyclopedias. The collection technique is carried out through a literature study by identifying and classifying relevant legal documents (Marzuki, 2013), while the analysis of legal materials is carried out systematically and teleologically to interpret and construct legal norms according to the context and purpose of their formation.

RESULTS AND DISCUSSION

Legal Implications of Pretrial Decisions Issued Outside the Object of the Pretrial Based on Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Review of Pretrial Decisions

Legal Status of Pretrial Decision Number 8/Pid.Pra/2024/PN Bgl

In principle, Article 3 paragraph (1) of Perma 4/2016 emphasizes that pretrial decisions issued by judges cannot be reviewed. Furthermore, Article 3 paragraph (3) of Perma 4/2016 states that the determination of the Head

of the District Court regarding pretrial cannot be subject to legal action. This provision is the embodiment of MK Decision Number 65/PUU-IX/2011 which removes the granting of the right of appeal to investigators and public prosecutors as referred to in Article 83 paragraph (2) of the Criminal Procedure Code. These provisions can be interpreted to mean that pretrial decisions are final and binding (Atang Hidayat 2023: 12). However, this does not necessarily mean that all rulings can be implemented. In the doctrine of criminal procedural law, it is known that the principle that ultra petita decisions or decisions outside the provisions of the law do not have binding force because they conflict with the principle of legality. In the realm of Criminal Law, ultra petita decisions are often associated with the provisions of Article 182 paragraph (4) of the Criminal Procedure Code, which stipulates that the judge's deliberations in issuing a verdict must be based on the indictment and everything proven during the trial. This regulation emphasizes that the public prosecutor's indictment is the primary basis for the judge in deciding a case. In line with this provision, Yahya Harahap argues that criminal punishment means the defendant is sentenced to a criminal penalty in accordance with the criminal offense charged (M. Yahya Harahap 2009: 354).

In Indonesian criminal procedure law, there is a fundamental difference between the decision in the main trial of the case based on Article 193 paragraph (1) of the Criminal Procedure Code, and the pretrial decision based on Article 77 of the Criminal Procedure Code. In the main trial of the case, the judge is tasked with assessing the material substance (Lilik Mulyadi 2010: 194): whether the defendant's actions have been legally and convincingly proven, whether they fulfill the elements of a criminal offense, and determining the severity of the sentence. As explained by M. Yahya Harahap, judges are not even completely bound by the prosecutor's demands, but rather refer to the indictment and the results of the evidence presented in court. Judges are free to determine the sentence as long as it remains within the minimum and maximum limits stipulated by law (M. Yahya Harahap 2009: 354). Here, judges do have the authority to enter the realm of substance and impose a sentence based on their judgment.

However, unlike that, pretrial proceedings are limited to the formalities of coercive measures: the legality of an arrest, detention, termination of an investigation, or termination of a prosecution (Article 77 of the Criminal Procedure Code, expanded by Constitutional Court Decision No. 21/PUU-XII/2014 to include suspect determination, searches, and seizures). This means that pretrial proceedings may not address the underlying substance of the case, let alone assess the defendant's guilt or determine the validity of the investigation. When a pretrial judge rules beyond these boundaries, such as declaring an investigation invalid due to a lack of evidence, or even ordering the investigator to issue a written order (SP3), the ruling falls into the ultra petita category. Ultra petita here means the judge issues a ruling that exceeds the normative provisions stipulated by law. In Pretrial Case Number 8/Pid.Pra/2024/PN Bgl, the judge ruled outside the scope of pretrial proceedings as stipulated in Supreme Court Regulation 4/2016, the Criminal Procedure Code, and the relevant Constitutional Court Decision, namely:

1. Declares that the investigation conducted by the Respondent in relation to the alleged criminal act of trademark infringement... is INVALID AND NOT BASED ON LAW;
2. Order the Respondent to stop the investigation ...

In the context of a pretrial motion, if the judge rules on matters not covered by Article 77 of the Criminal Procedure Code, the ruling is essentially unenforceable. In the first ruling, the judge declared the Petitioner's suspect status invalid. This ruling complies with Article 77(a) of the Criminal Procedure Code.

The Constitutional Court, in its ruling, also emphasized that, based on Article 1, paragraph (3) of the 1945 Constitution, Indonesia is a state governed by the rule of law, and therefore the principle of due process of law must be consistently upheld by all law enforcement officials to protect human rights. According to the Court, the Criminal Procedure Code does not provide a checks and balances mechanism for investigators' actions in determining a suspect. The absence of a mechanism for testing the validity of the evidence underlying the determination of a suspect indicates that Indonesian criminal procedure law has not fully implemented the principle of due process of law. However, the legality of law enforcement officials' actions in seeking and finding evidence should be subject to legal review to ensure the protection of individual rights.

Within the framework of legal certainty, the object that then becomes the focus is the determination of the suspect itself. The question that arises is regarding the legal and temporal limits of suspect status: to what extent a person can be designated as a suspect, and how long this status can be attached without causing a violation of human rights. The Criminal Procedure Code, through Article 1 number 14, defines a suspect as a person who, due to his actions or circumstances, is reasonably suspected of being the perpetrator of a crime. This provision is reinforced by Article 50 paragraphs (1) to (3) of the Criminal Procedure Code, which emphasizes that suspects have certain legal rights, including being immediately examined, brought to court, and the right to defend themselves. Thus, protection for suspects is not merely a formality, but also includes certainty regarding investigative procedures.

However, the ruling in the Pretrial Decision Number 8/Pid.Pra/2024/PN Bgl stated that the investigation was invalid and not based on law, even though the object of the pretrial was only limited to testing procedural validity, not assessing the material aspects of the ongoing investigation. Normatively, Article 77 of the Criminal Procedure Code in conjunction with Article 2 paragraph (1) of Perma 4/2016 stipulates that the pretrial is only authorized to test the legality of arrests, detention, termination of investigations or prosecutions, as well as compensation and rehabilitation. In addition, the Constitutional Court Decision No. 21/PUU-XII/2014, the object of the pretrial was expanded to include the determination of suspects, searches, and confiscations. This means that the object of the pretrial remains limited to certain legal actions of a formal nature, not the entire investigation process.

Legal Implications of Pretrial Decision Number 8/Pid.Pra/2024/PN Bgl

The legal implications of a court decision are binding, meaning it has permanent legal force (inkracht van gewijsde), making it mandatory for the parties, in this case the applicant and respondent in a pretrial motion, to comply. Failure to comply voluntarily can result in enforceable enforcement by the state through the judiciary. Furthermore, a court decision, as a legal certainty, provides confirmation of the legal status of a case and serves as a legal reference. Court decisions also create new rights for one party and obligations for the other. Although the Criminal Procedure Code (KUHAP) does not explicitly regulate the format of a pretrial decision, Yahya Harahap provides guidelines on how to formulate such a decision. Based on the principle of expedited examination, a pretrial decision should adapt to the nature of the expedited procedure. Therefore, the format of a pretrial decision should be kept simple while still containing clear considerations based on law and statute. Simplicity in the decision format should not diminish the clarity and adequacy of the considerations used.

Furthermore, two sources explain that the pretrial decision is combined with the minutes of the trial. If the decision is based on Article 82 paragraph (1) letter c, this provision confirms that the pretrial hearing is conducted through expedited procedures. This provision must be applied consistently with the format and manner of decision-making in expedited procedures, so that the appropriate form of decision is a decision combined with the minutes. Meanwhile, if based on Article 83 paragraph (3) letter a of the Criminal Procedure Code and Article 96 paragraph (1) of the Criminal Procedure Code, the pretrial decision takes the form of a ruling. Generally, this ruling forms a link between the minutes and the content of the decision itself. A similar situation is also found in civil cases, where voluntary ex parte decisions take the form of a link between the minutes and the content of the decision, without being made separately.

Perma 4/2016 has summarized the provisions governing the pretrial institution as stated in the Criminal Procedure Code and Constitutional Court Decision Number 21/PUU-XII/2014. In Article 2 paragraph (2) of Perma 4/2016 it is emphasized that: “The pretrial examination of the application regarding the invalidity of the determination of a suspect only assesses the formal aspect, namely whether there are at least 2 (two) valid pieces of evidence and does not enter into the material of the case.” Furthermore, Article 2 paragraph (4) of Perma 4/2016 also emphasizes that: “The pretrial hearing regarding the validity or invalidity of the determination of a suspect, confiscation, and search is led by a single judge because the nature of the examination is relatively short and the evidence is limited to the formal aspect.” Based on these provisions, the pretrial with the object of “the validity or invalidity of the determination of a suspect” can only assess the formal aspect, namely whether there are at least 2 (two) valid pieces of evidence without touching on the substance of the material of the case.

In practice, a number of pretrial rulings in Indonesia frequently rule on matters not explicitly regulated in the Criminal Procedure Code (KUHAP). For example, prior to Constitutional Court Decision No. 21/PUU-XII/2014, several pretrial judges had ruled on the validity of suspect determinations even though they were not listed in Article 77 of the Criminal Procedure Code. This sparked debate as to whether pretrial judges were conducting legal discovery to address a normative gap, or whether they were going beyond the scope of the law. The Constitutional Court's ruling subsequently affirmed some of this practice by expanding the scope of pretrial proceedings to include suspect determination, searches, and seizures. However, this expansion remains subject to normative limitations. This is where Supreme Court Regulation (PERMA) 4/2016 plays a crucial role: it emphasizes that pretrial rulings are final and cannot be subject to judicial review (PK). In this way, the Supreme Court seeks to prevent the escalation of interpretations by pretrial judges, who could add other matters outside the Criminal Procedure Code or beyond those already defined by the Constitutional Court. Regarding pretrial decisions that rule on matters outside the provisions, Supreme Court Regulation 4/2016 can be understood as a remedial regulation that limits judges' creativity to prevent them from producing jurisprudence that is counterproductive to legal certainty. If judges continue to expand the scope of the case without a basis in the Criminal Procedure Code (KUHAP) and the Constitutional Court Decision, their decisions have the potential to violate the principles of legal certainty and due process, as well as

potentially lead to human rights violations, for example by creating uncertainty regarding the status of suspects or disproportionately prolonging the legal process. In other words, the combination of the Criminal Procedure Code (KUHAP), the Constitutional Court Decision, and Supreme Court Regulation 4/2016 creates a "closed framework" regarding the scope of pretrial restrictions. The KUHAP provides the initial foundation, the Constitutional Court Decision expands within certain limits as needed to protect rights, while Supreme Court Regulation 4/2016 closes the gap to prevent further unfounded expansion by pretrial judges. The synergy of these three ultimately maintains a balance between human rights protection and legal certainty in the criminal justice process. According to Komariah Emong Sapardjaja, a judge's considerations that exceed the legality principle should remain based on the rule of law. This means that every action by law enforcement officers must be based on legal regulations and statutes, and the implementation of criminal procedural law can only be carried out in accordance with procedures established by law. Criminal procedural law serves to provide legal certainty for every individual in society because through this mechanism, the enforcement of criminal law is carried out in an orderly manner based on statutory regulations (Komariah Emong 2015: 16).

Furthermore, a single judge who acts in this manner is considered to have violated the principles of criminal law and criminal procedural law, which is inherently unacceptable for a judge. Extensive interpretation or analogy is considered a prohibited method of interpretation in criminal law because it contradicts the principle of legality. Therefore, the principle of legality must be the primary guideline for judges. The principle of legality in turn can be interpreted as containing a number of important conditions, namely the prohibition on the retroactive application of law, criminal provisions must be formulated in the form of written regulations (lex scripta), the formulation must be carried out clearly and not give rise to multiple interpretations (lex certa), and the interpretation must be carried out strictly by emphasizing the prohibition on the use of analogy (lex stricta) (Jan Remmelink 2003: 355). Based on Komariah Emong Sapardjaja's thinking, this does not mean that law enforcement efforts through pretrial to achieve justice for suspects are carried out by interpreting the law or making legal breakthroughs that contradict the principle of legality. This study instead emphasizes the importance of updating or revising the Criminal Procedure Code (KUHAP), particularly regarding expanding the scope of pretrial objects. These changes are expected to include new things, such as determining suspect status, searches, seizures, the existence of commissioner judge institutions, and mechanisms for obtaining evidence by investigators, all of which need to be included in the RKUHAP as part of the objects of pretrial.

Proposed Editorial Improvements to the Ideal Pretrial Decision

In Pretrial Decision Number 8/Pid.Pra/2024/PN Bgl, the issue that arose was that the pretrial judge ruled outside the established pretrial object by declaring, "the investigation is invalid," while simultaneously ordering the investigator to stop the investigation. In fact, normatively, Article 77 of the Criminal Procedure Code has limited the pretrial object only to testing the validity of the actions of law enforcement officers, not replacing the investigator's authority in the investigation process. Constitutional Court Decision Number 21/PUU-XII/2014 did expand the pretrial object, including the validity of the determination of suspects, searches, and seizures, but the Constitutional Court still emphasized that the pretrial function as a control mechanism (checks and balances), not as an usurper of the investigator's function. The same thing is also reinforced through PERMA Number 4 of 2016 which outlines that pretrial decisions should not expand beyond the determined object. From the perspective of Gustav Radbruch's theory of legal certainty, the wording of the ruling, which limits itself to "the legality or illegality of an act," constitutes a form of upholding legal certainty. Radbruch emphasized that the law must not lose its predictability, as legal certainty is a fundamental requirement for law to function as an instrument of protection. Ultra vires pretrial rulings not only upset the balance between certainty and justice but also erode judicial legitimacy by creating decisions that are difficult to enforce.

In line with this, Peter Mahmud Marzuki emphasized that a judge's interpretation in upholding the law should not be solely textual, but rather must understand the intent of the lawmakers (historical interpretation). In the context of pretrial proceedings, the drafters of the Criminal Procedure Code (KUHAP) intended to limit the scope of pretrial proceedings to prevent overlap with the investigator's function. Therefore, wording the decision to only assess the legality of the investigator's actions is a form of interpretation that adheres to the intent of the drafters of the law while ensuring consistency in the criminal justice system. Therefore, an appropriate pretrial ruling not only maintains consistency with the Criminal Procedure Code, the Constitutional Court Decision, and PERMA 4/2016, but also reflects the balance between substantive justice, legal certainty, and expediency as emphasized in Radbruch's theory.

Therefore, the correct wording of the decision to avoid creating new legal issues is as follows:

1. Declare that the investigator's actions in determining the applicant as a suspect are invalid and have no legal basis.
2. Declare that the investigator's actions in carrying out the arrest/detention/search/confiscation of the Applicant are illegal and have no legal basis.
3. "Reject the Petitioner's application in its entirety." or "Declare that the Applicant's application is unacceptable." if that is the result of the examination.

With this wording, the judge remains within the corridor of positive law, because he only states whether or not the actions of law enforcement officers are legal.

CONCLUSION

Based on the discussion above, it can be concluded that pretrial decisions that exceed the object of the case as stipulated in the Criminal Procedure Code, Supreme Court Regulation Number 4 of 2016, and the Constitutional Court Decision have serious implications both theoretically and practically in the Indonesian criminal justice system. Normatively, pretrial decisions remain final and binding (res judicata pro veritate habetur), so they must be implemented by law enforcement officials. This condition has several consequences: first, it undermines legal certainty because the judge acts ultra vires by deciding beyond the limits of his authority; second, it creates disharmony between law enforcement agencies because the judge takes over the function of investigators; third, it presents executorial difficulties because such decisions are difficult to implement without violating positive law; and fourth, it creates ambiguity in law enforcement, on the one hand there is an obligation to comply with court decisions, but on the other hand there is an obligation to maintain consistency in procedural law. From the perspective of Gustav Radbruch's theory, this situation shows an imbalance between justice, legal certainty, and expediency, so that instead of strengthening the principle of the rule of law, pretrial decisions that exceed the object have the potential to weaken the criminal justice system and reduce public trust in judicial institutions.

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