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## Article Title

### Judicial Review of Pretrial Rulings: A Critical Analysis of Their Authority and Influence

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## ABSTRACT

*This study aims to analyze the legal authority related to filing for Judicial Review against Pretrial Rulings and its implications for the enforcement of justice in Indonesia. The study employs a normative legal research method with a statute approach. The collected legal materials are then analyzed qualitatively to describe the issues and address the research objectives. The research findings indicate that the authority to file for Judicial Review against Pretrial Rulings is a complex legal issue. Although Law Number 8 of 1981 does not explicitly provide for it, there are legal grounds that allow for such Judicial Review to be pursued. Suspects, Legal Advisor, and Prosecutors are the legal subjects authorized to file for Judicial Review. However, implementing Judicial Review against Pretrial Rulings still faces several challenges, particularly concerning public understanding and accessibility to the justice system. The Decision of Judicial Review on Pretrial Rulings has broad implications, not only affecting the fate of the individuals involved in the case but also contributing significantly to the protection of human rights, legal certainty, and improving the quality of law enforcement in Indonesia. The Supreme Court has a crucial role in providing clear and comprehensive guidelines regarding the technical implementation of Judicial Review against Pretrial Rulings, whether through the issuance of jurisprudence, a Circular of the Supreme Court, or reform of criminal procedural law. Reforming the procedure for filing for Judicial Review, which includes simplifying the procedure, intensifying public awareness campaigns, and optimizing the role of legal aid institutions, becomes crucial in enhancing access to justice and the protection of human rights.*

*Keywords:* Criminal Procedure Law; Human Rights; Judicial Review; Pretrial.

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## INTRODUCTION

The Pretrial Institute, as one of the pillars of the criminal justice system in Indonesia, holds a crucial function in maintaining the balance between firm law enforcement and the protection of fundamental individual rights (Putri, 2023). Its existence, mandated by Law Number 8 of 1981, provides an avenue for suspects or related parties to object to and challenge the legality of legal actions taken by law enforcement officials. The scope of legal actions that can be challenged include arrest, detention, search, and seizure. Thus, Pretrial not only serves as a shield for individuals against potential abuse of authority in criminal justice processes but also manifests the state's commitment to upholding human dignity through the protection of human rights (Yunara & Kemas, 2024).

More than just a control mechanism against the actions of investigators and public Prosecutors, a pretrial is essential in ensuring fair and dignified treatment for every individual facing the law, which aligns with prevailing legal principles. From a human rights perspective, Pretrial serves a vital preventive function, namely preventing arbitrary detention, torture, degrading treatment, and various other forms of human rights violations (Arifin, 2023). Therefore, Pretrial is not merely an integral part of the criminal justice system; it is also a solid foundation for realizing a justice system that upholds the values of justice, legal certainty, and respect for human rights.

Despite its noble role, the implementation of Pretrial is not without challenges. The complexity of legal procedures, the low level of legal literacy among the public regarding their rights in Pretrial, and legal ambiguity in several aspects often hinder individuals from accessing justice through this mechanism. The lack of public knowledge is reflected in their lack of understanding regarding the time limit for submitting a Pretrial petition (Situmeang, 2021), or the types of legal actions that can be challenged through Pretrial (Muryawan et al., 2023). On the other hand, final and binding Pretrial Rulings often raise debates and questions about the possibility of other legal remedies outside the Pretrial corridor (Pavone & Stiansen, 2022).

Concerning final and binding Pretrial Rulings, Judicial Review becomes a relevant legal remedy to examine. Judicial Review, as an extraordinary legal remedy, allows for re-examining court decisions that have obtained permanent legal force (Hellqvist, 2021). Although Law Number 8 of 1981 does not explicitly regulate Judicial Review against Pretrial Rulings, this issue demands in-depth study, especially ensuring justice and protecting human rights that may be overlooked in final and binding Pretrial Rulings. Therefore, a comprehensive understanding of the authority to file for Judicial Review against Pretrial Rulings is crucial to reaffirming the principles of justice and human rights protection within the Indonesian justice system.

Based on the description above, this study aims to comprehensively analyze the legal authority related to filing for Judicial Review against Pretrial Rulings and its implications for the enforcement of justice in Indonesia. This research will carefully examine relevant legislation, analyze developing jurisprudence, and review legal doctrines related to the issue of Judicial Review in Pretrial. The results of this study are expected to contribute significantly to the development of criminal procedural law in Indonesia, especially in ensuring access to justice and the protection of human rights for every citizen.

## **METHOD**

This study employs a normative legal research method with a statute approach (Qamar & Rezah, 2020). This methodological choice is predicated on the research's focus on examining legal norms, specifically those enshrined in legislation. The statute approach is implemented through a comprehensive search and analysis of legislation relevant to the issue of authority and the impact of Judicial Review on Pretrial Rulings. Furthermore, this research utilizes other secondary data sources, such as legal doctrines, academic journals, and relevant literature gathered through library research techniques. Data analysis is conducted qualitatively with a descriptive-analytical approach to describe and analyze the normative framework, identify challenges, and formulate solutions to enhance the quality of law enforcement in Indonesia (Sampara & Husen, 2016).

## RESULTS AND DISCUSSION

### A. Application for Judicial Review of Pretrial Rulings: A Study of Justice and Legal Certainty

The authority to file for Judicial Review of Pretrial Rulings is a legal issue that warrants further examination, mainly because [Law Number 8 of 1981](#) does not explicitly regulate it. Nonetheless, Articles 263 to 268 of [Law Number 8 of 1981](#), which generally governs Judicial Review, can be interpreted as an avenue for aggrieved parties to seek Judicial Review of Pretrial Rulings. It aligns with the theory of legal discovery (*rechtsvinding*) proposed by [Rahardjo \(2009\)](#), where the law is not only found in the text of legislation but also through the interpretation and development of law by law enforcement officials to address legal issues arising in society. In this context, the right to file for Judicial Review of Pretrial Rulings represents a form of development in criminal procedural law undertaken by law enforcement officials to accommodate the need for seeking justice and protecting human rights, as mandated by progressive legal theory.

Regarding the parties entitled to file for Judicial Review of Pretrial Rulings, three legal subjects have legal standing. *First*, the suspect or the reported party, essentially the most aggrieved by the Pretrial Ruling, has the constitutional right to file for Judicial Review to rectify potential errors or injustices. It aligns with the principle of equality before the law, which guarantees equal rights for everyone before the law ([Karindra, 2024](#)). *Second*, Legal Advisor acting for and on behalf of their client based on a valid power of attorney is also authorized to file for Judicial Review. It is consistent with the theory of representation (*vertegenwoordiging*), where Legal Advisor represents their client in carrying out legal actions ([Asnatuti & Ibrahim, 2019](#)). *Third*, the Prosecutor, as a representation of the state in law enforcement, is also granted the right to file for Judicial Review of Pretrial Rulings for the sake of public interest. This authority of the Prosecutor embodies the principle of *opportuneitsbeginsel*, where the Prosecutor has the discretion to determine the most appropriate legal action in the interest of law enforcement and justice ([Oktana et al., 2023](#)).

[Law Number 8 of 1981](#), in regulating the timeframe for filing for Judicial Review of Pretrial Rulings, imposes a relatively short time limit of 14 days after the ruling is pronounced. It aims to maintain effectiveness and legal certainty in criminal justice processes ([Rivanie et al., 2022](#)). The time limit aligns with *rechtsverwerking* (lapse of time), where a right is forfeited if not exercised within the stipulated timeframe ([Alamsyah et al., 2023](#)). Therefore, interested parties must diligently and proactively utilize their right to file for Judicial Review.

Not all applications for Judicial Review are admissible and examined by the court. [Law Number 8 of 1981](#) stipulates conditions that must be met for an application for Judicial Review to be deemed admissible and processed further. These conditions include formal requirements, such as the completeness of documents and proper filing procedures, as well as material requirements, namely the existence of strong and valid legal grounds. These grounds include errors in the application of law (*error in iudicando*), the existence of *novum* (new evidence) not previously known, or a conflict between the court's decision and another court's decision that has obtained permanent legal force. These requirements are consistent with the formal and material law theory, which emphasizes the importance of formality and substance in every legal action ([Fitrah et al., 2021](#)).

Although the normative framework concerning the Judicial Review of Pretrial Rulings is in place, its implementation still faces various obstacles. The public's lack of understanding regarding the procedures and requirements for filing for judicial review, coupled with limited access to the justice system, has become a hindrance that can lead to injustice for those seeking judicial review. This demonstrates a gap between *das sollen* (the law as it should be) and *das sein* (the law as it is). Therefore, concrete efforts from the government and other stakeholders are needed to improve legal literacy and access for the public, simplify the procedures for filing for Judicial Review, and strengthen the justice system to be more accessible to all levels of society.

## **B. Procedure for Filing for Judicial Review**

Filing for a Judicial Review of a Pretrial Ruling is not simple. It is an extraordinary legal remedy that requires the applicant to be meticulous in navigating each procedural stage stipulated by [Law Number 8 of 1981](#) and other relevant legislation. Precision and accuracy in executing this procedure are crucial, as negligence at any stage can have severe consequences, namely the rejection of the application for Judicial Review. It aligns with the principle of *pacta sunt servanda*, which emphasizes the importance of parties fulfilling the agreements or provisions that have been established ([Njoo et al., 2020](#)). In the context of filing for Judicial Review, such contracts are reflected in the binding procedural rules.

The initial step that must be taken by the applicant, whether the suspect or their Legal Advisor, is to prepare all the required documents ([Prasetya et al., 2023](#)). These documents include a written application for Judicial Review formulated with solid legal arguments outlining the reasons for the application, a copy of the Pretrial Ruling being challenged as the object of the application, and other relevant supporting documents such as written statements, new evidence, or other court decisions with permanent legal force. The completeness and validity of these

documents are absolute requirements for the application for Judicial Review to be accepted and processed further. It aligns with the theory of the hierarchy of laws (*stufenbau der rechtsordnung*) proposed by [Kelsen \(1960\)](#), where lower-level legislation must conform to higher-level legislation. In this case, the document requirements for filing for Judicial Review are an elaboration of the provisions of [Law Number 8 of 1981](#).

Once the documents are correctly prepared, the applicant must submit a written application for Judicial Review to the Supreme Court with jurisdiction over the case. The determination of the competent judicial institution must be made carefully by the applicable legislation. Additionally, the applicant must pay attention to the stipulated deadline for filing for Judicial Review 14 days after the Pretrial Ruling is pronounced. Failure to meet this deadline can result in the application for Judicial Review being declared expired and void. It is consistent with the principle of *tempus regit actum*, which states that time limits regulate and restrict legal actions ([Peirone, 2024](#)).

The next stage is registering the application for Judicial Review at the designated court. At this stage, the applicant must fulfill all the court's administrative requirements, such as paying court fees and completing registration forms. Court officials will examine the completeness and validity of the documents submitted by the applicant. If all requirements are met, the application for Judicial Review will be accepted and officially registered. It aligns with the principle of due process of law, which guarantees the applicant's rights in the judicial process, including the right to a fair and transparent examination ([Stoykova, 2023](#)).

After the application for Judicial Review is accepted and registered, the court will appoint a panel of judges to examine and adjudicate the application. The panel of judges will then schedule a hearing for the Judicial Review, where the applicant and the opposing party, if any, can present arguments and submit evidence before the court. This examination process is a crucial stage, where the judges will test the grounds for the application for Judicial Review and form their conviction to reach a decision. It aligns with the principle of *audi et alteram partem*, which grants both parties the right to be heard and present their defense ([Irmawaty & Burhany, 2022](#)).

The culmination of the procedure for filing for Judicial Review is the decision made by the panel of judges. The Decision of Judicial Review can reject the application if the court deems it unfounded or does not meet the requirements or grant the application if it finds sufficient grounds to annul or amend the challenged Pretrial Ruling. The pronounced Decision of Judicial Review is final and binding; therefore, no further ordinary legal remedies can be pursued. It aligns

with the court's function as the spearhead of law enforcement and justice (*iustitia est constans et perpetua voluntas ius suum cuique tribuendi*) (Kokoszkiwicz & Tokarski, 2024).

As a final step, the court will notify the parties of the decision and provide an official copy of the Decision of Judicial Review. A Decision of Judicial Review granting the application can have implications for further legal proceedings, such as the possible release of the suspect from detention or other changes in legal status favorable to the applicant. This stage manifests the principles of legal certainty and transparency in the judicial process (Musyarri & Sabrina, 2023).

### **C. Impact of the Decision of Judicial Review on Pretrial Rulings**

The Decision of Judicial Review and Pretrial Rulings, although differing in position and function, are two legal instruments that complement each other in upholding justice and protecting human rights within the Indonesian criminal justice system (Basri, 2021). Pretrial, as regulated in Law Number 8 of 1981, serves as a screening mechanism that examines the legality of an investigator's actions before entering further stages of investigation. It allows suspects or reported parties to defend their rights and prevent abuse of authority by law enforcement officials. On the other hand, Judicial Review emerges as an extraordinary legal remedy that provides a final opportunity to pursue substantive justice when a court decision, including a Pretrial Ruling, has acquired permanent legal force. Judicial Review of Pretrial Rulings offers a recourse for aggrieved parties to obtain justice that may have been overlooked in the Pretrial process.

One of the crucial implications of the Decision of Judicial Review on Pretrial Rulings lies in protecting human rights. A Decision of Judicial Review that grants an application can overturn a Pretrial Ruling that previously rejected the suspect's application, thereby restoring the suspect's rights that were previously violated. As an illustration, if a Pretrial rejects the suspect's application regarding the legality of their arrest, but a subsequent Judicial Review grants the application, then the suspect's detention can be declared unlawful, and the suspect is entitled to be released. It aligns with the theory of *due process of law*, which guarantees individual rights in legal proceedings, including the right to a fair and impartial examination (Stoykova, 2023).

Furthermore, the Decision of Judicial Review on Pretrial Rulings also contributes to realizing legal certainty. A Decision of Judicial Review that amends or overturns a Pretrial Ruling provides legal clarity for the parties involved. Legal certainty is essential in the rule of law, emphasizing the supremacy of law and the limitations of state power (Pech, 2022). With legal certainty, predictability and

stability are created within society, allowing individuals to act by applicable legal rules without fear and uncertainty.

Another equally important impact is the influence of the Decision of Judicial Review on subsequent legal proceedings. A Decision of Judicial Review granting an application can alter the direction and course of subsequent criminal proceedings. For instance, if a Judicial Review overturns a Pretrial Ruling that declared the seizure of evidence unlawful, that evidence can be used again in the investigation and prosecution process. It demonstrates that the Decision of Judicial Review has strong executorial power and can influence the course of legal proceedings. In this regard, the Decision of Judicial Review acts as a corrective instrument that rectifies errors or mistakes in previous Pretrial Rulings.

The Decision of Judicial Review on Pretrial Rulings can also affect law enforcement policies. A Decision of Judicial Review granting an application due to procedural errors or human rights violations by law enforcement officials can become jurisprudence that influences future law enforcement actions and policies. It is in line with the theory of responsive law, which emphasizes the importance of law adapting to societal developments and needs (Laia, 2024). The Decision of Judicial Review can stimulate legal reform and better law enforcement.

Moreover, the Decision of Judicial Review on Pretrial Rulings can also set a precedent for other cases. The decision made in a Judicial Review case can become a reference for handling similar cases in the future, thereby creating consistency and predictability in law enforcement. It aligns with the principle of equality before the law, which guarantees that everyone is treated equally before the law, without exception (Martono, 2020).

In conclusion, the Decision of Judicial Review on Pretrial Rulings has a multidimensional impact on the Indonesian criminal justice system. It not only affects the fate of the individuals involved in the case but also contributes to the protection of human rights, legal certainty, and improving the quality of law enforcement in Indonesia.

## **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion, it can be concluded that the authority to file for Judicial Review of Pretrial Rulings is a complex legal issue. Although [Law Number 8 of 1981](#) does not explicitly provide for it, legal loopholes allow for such Judicial Review to be pursued. Suspects, Legal Advisor, and Prosecutors are legal subjects granted the right to file for Judicial Review. However, implementing Judicial Review against Pretrial Rulings still faces several challenges, particularly concerning public



understanding and accessibility to the justice system. The Decision of Judicial Review on Pretrial Rulings has broad implications, not only affecting the fate of the individuals involved in the case but also contributing significantly to the protection of human rights, legal certainty, and improving the quality of law enforcement in Indonesia. Reforming the procedure for filing for Judicial Review, which includes simplifying the procedure, intensifying public awareness campaigns, and optimizing the role of legal aid institutions, becomes crucial in enhancing access to justice and the protection of human rights.

Based on the above conclusions, it is recommended that suspects consistently understand their legal rights, including the right to file for Judicial Review against Pretrial Rulings deemed unjust. It is essential for suspects to proactively seek information and consult with Legal Advisor to obtain adequate legal assistance. Legal Advisor, as assistants and legal advisors to suspects, should possess comprehensive knowledge regarding the procedures and requirements for filing for Judicial Review. Legal Advisor is expected to provide clear and accurate information to suspects and assist them in filing for Judicial Review. Prosecutors, as law enforcement officials representing the state, should exercise their authority to file for Judicial Review wisely and objectively, prioritizing the interests of justice and truth. The Supreme Court must provide clear and comprehensive guidelines regarding the technical implementation of Judicial Review against Pretrial Rulings. It can be achieved by issuing jurisprudence or a Circular of the Supreme Court that thoroughly regulates the procedures, requirements, and procedures for filing for Judicial Review against Pretrial Rulings. Additionally, the Supreme Court can also consider reforming criminal procedural law by establishing or amending legislation that explicitly regulates Judicial Review against Pretrial Rulings. The public, in general, needs to improve their understanding of legal rights and criminal justice mechanisms, including the mechanism for filing for Judicial Review against Pretrial Rulings. Public legal awareness can be enhanced through various legal education and awareness programs organized by the government, non-governmental organizations, and educational institutions.

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