

NORMATIVE JURIDICAL ANALYSIS OF THE DISMISSAL OF THE PRETRIAL APPLICATION FOR THE DETERMINATION OF A SUSPECT IN THE CRIMINAL ACTS OF SEXUAL VIOLENCE AGAINST CHILDREN IN DECISION NUMBER 15/PID.PRA/2025/PN CBI

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Abstract

Sexual violence against children constitutes a serious structural problem that has driven the strengthening of child protection regulations in Indonesia, including the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS) and Law Number 20 of 2025 on the New Criminal Procedure Code (New KUHAP). This study aims to analyze the normative juridical construction of the lapse of a pretrial petition concerning the designation of a suspect in child sexual violence cases based on Constitutional Court Decision Number 102/PUU-XIII/2015 as reflected in Decision Number 15/Pid.Pra/2025/PN Cbi, and to examine its implications for the legal protection of child victims from an integrative perspective of UU TPKS and the New KUHAP. The method employed is normative legal research utilizing statutory, case, and conceptual approaches, with a descriptive-analytical character and deductive reasoning based on library research. The findings indicate that the lapse of the pretrial petition must adhere to the limitative constitutional standard established in Constitutional Court Decision Number 102/PUU-XIII/2015, whereby a pretrial petition is only constitutionally valid as lapsed upon the actual reading of the indictment in the principal trial proceedings, not merely upon case referral. The New KUHAP codifies this interpretation, thereby eliminating procedural manipulation through artificial case acceleration. The synergy between UU TPKS and the New KUHAP forms a normative ecosystem that positions child victims as legal subjects entitled to protection at every stage of the legal process, including pretrial. A properly applied pretrial lapse actually accelerates the realization of restitution rights and victim recovery. The study concludes that the pretrial lapse doctrine is not an automatic mechanism but a judicial instrument requiring factual verification that must reconcile the principle of due process of law with a victim-centered approach. It is recommended that judges conduct factual verification prior to issuing a lapse ruling and that law enforcement officers refrain from using case referral as a tactical instrument to nullify pretrial petitions.

Keywords: Child Sexual Violence, Child Victim Protection, New KUHAP, Pretrial Petition, Suspect Designation

INTRODUCTION

Sexual violence against children is one of the most serious forms of human rights violations and cannot be tolerated in any legal system. In Indonesia, this phenomenon is not merely a social reality that is casuistic, but has developed into a structural problem that continues to increase quantitatively from year to year. Data from the National Commission on Violence Against Women shows that the number of incidents of gender-based violence, including sexual violence against children, continues to show an alarming upward trend, with most victims

coming from the age group under eighteen years . This situation confirms that children as vulnerable legal subjects require layered protection , not only through material criminal instruments , but also through responsive procedural legal mechanisms that support the best interests of victims . This empirical condition has encouraged the state to progressively strengthen the regulatory framework , starting with Law Number 23 of 2002 concerning Child Protection , then updated through Law Number 35 of 2014, This ultimately led to the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) as a comprehensive legal umbrella governing the prevention , treatment , protection , and recovery of victims. (Nurisman , 2022)

The enactment of the TPKS Law was hailed as a significant milestone in reforming Indonesian criminal law . This law was introduced in response to the inability of previous regulations to capture the full spectrum of sexual violence , including forms that are psychological , exploitative , and based on power relations . International studies emphasize that sexual violence is not merely a matter of morality , but rather concerns the dynamics of power and exploitation of the vulnerable , so that its punishment must be balanced with guarantees of the victims ' rights comprehensively . (Salmah & Jaman, 2024) In this context , the TPKS Law can be categorized as a responsive legal product because it contains new formulations regarding forms of sexual violence not recognized in previous regulations , while also emphasizing the state's obligation to provide comprehensive human rights protection . (Abshar , 2024) This responsive nature is also reflected in the regulations regarding victims' rights to restitution , compensation , and rehabilitation that can run parallel to the legal process , without having to wait for a final and binding decision .

Amid the strengthening of these material instruments , the issue of criminal procedural law often becomes a weak point in efforts to enforce the law on sexual violence against children . One procedural law mechanism that has attracted attention is the pretrial institution . Pretrial is essentially a horizontal judicial review instrument that functions to oversee the legality of investigators' actions , including the determination of suspects . Following Constitutional Court Decision Number 21/PUU-XII/2014 which expanded the object of pretrial to include the legality of suspect determination , this mechanism has been increasingly used by suspects as a legal effort to question investigative procedures . Research shows that although pretrial has strategic potential in preventing abuse of authority by officials , its implementation is often limited by an excessive focus on formal aspects , so that substantive assessments of preliminary evidence are often neglected . (Yasin et al., 2025) This tension between the supervisory function of pretrial and the interests of victim protection is one of the fundamental problems in the Indonesian criminal justice system .

In subsequent developments , the Constitutional Court through Decision Number 102/PUU-XIII/2015 provided a constitutional interpretation regarding when a pretrial motion is declared to have lapsed . The decision stated that Article 82 paragraph (1) letter d of the Criminal Procedure Code is contrary to the 1945 Constitution insofar as the phrase " a case has begun to be examined " is not interpreted as a situation where the main case has been delegated and the first trial of the main case on behalf of the defendant or pretrial applicant has begun . Through this affirmation , the Constitutional Court seeks to end the diversity of interpretations among law enforcement regarding the moment when a pretrial motion is lapsed , while at the same time providing legal certainty so that there is no dualism of examination that can be detrimental to all parties . However , the application of this decision in judicial practice still gives rise to its

own problems, especially when the pretrial motion is lapsed in cases involving serious crimes such as sexual violence against children.

These dynamics are further complicated by the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code), which officially came into effect on January 2, 2026. This New Criminal Procedure Code brings a number of substantial updates to the Indonesian criminal procedure law regime, including the strengthening of the pretrial mechanism by expanding the objects regulated in Articles 158 to 164. The presence of this new regulation raises crucial questions regarding how pretrial decisions handed down before the enactment of the New Criminal Procedure Code, such as Decision Number 15 / Pid.Pra / 2025 / PN Cbi, should be understood and analyzed in the changing legal landscape. In addition, legal protection for child victims of sexual violence in the criminal justice system still faces significant challenges in its implementation, even though the normative framework has been strengthened. (O'Brien & Foussard, 2019)

Decision Number 15/ Pid.Pra /2025/PN Cbi stipulated by the Cibinong District Court presents an interesting legal problem to be studied in depth. This case began with the determination of a suspect in the name of Murtado Bin M. Sadroi for alleged criminal acts of sexual intercourse and molestation of children as regulated in Article 81 in conjunction with Article 76D and/ or Article 82 in conjunction with Article 76E of Law Number 35 of 2014 and the provisions of the TPKS Law. The pretrial application filed by the Applicant on November 6, 2025 was finally declared dismissed on December 3, 2025 with a ruling that imposed zero court costs. The dismissal of this application refers to the provision that the first trial of the main case on behalf of the Applicant had begun before the pretrial was decided, so that the legal consequences as referred to in the Constitutional Court Decision Number 102/PUU-XIII/2015 apply. (Decision, 2015)

Academically, studies on the dismissal of pretrial motions in the context of sexual violence against children are still very limited. Most previous studies have focused on the material aspects of child protection or analyzing pretrial motions in corruption cases, so there is a significant research gap in the study of the dismissal of pretrial motions specifically related to the crime of sexual violence against children. The protection of child victims in the criminal justice system still faces a major challenge, namely how to ensure that the procedural legal mechanism does not become a loophole that perpetrators exploit to slow down or disrupt the law enforcement process. (Andriansyah et al., 2023) Herein lies the novelty of this research: this article not only analyzes the normative juridical construction of the dismissal of pretrial motions based on the Constitutional Court Decision Number 102/PUU-XIII/2015, but also examines its implications for the protection of child victims from the perspective of the TPKS Law and the New Criminal Procedure Code in an integrative manner, and examines whether the dismissal of the pretrial motion in this case is in accordance with the principles of due process of law and the interests of the victims. best child as a sacrifice. The approach of trifurcated normative analysis that connects the three main regulations synergistically is what makes this research different from previous pre-judicial studies.

Based on the background description above, this study formulates two main problems as follows: first, how is the normative juridical construction of the dismissal of the pretrial petition for the determination of a suspect in a crime of sexual violence against children based on the Constitutional Court Decision Number 102 / PUU-XIII / 2015 in Decision Number 15 / Pid.Pra / 2025 / PN Cbi?; second, what are the implications of the dismissal of the pretrial

petition in the case for the legal protection of child victims reviewed from Law Number 12 of 2022 concerning Crimes of Sexual Violence and Law Number 20 of 2025 concerning the New Criminal Procedure Code? In line with the formulation of the problem that has been described, this study aims: first, to analyze and describe the normative legal construction of the failure of the pretrial motion for the determination of a suspect in a crime of sexual violence against children based on the Constitutional Court Decision Number 102/PUU-XIII/2015 as reflected in Decision Number 15/ Pid.Pra /2025/PN Cbi; second, to examine and evaluate the implications of the failure of the pretrial motion for the legal protection of child victims from the perspective of the TPKS Law and the New Criminal Procedure Code. in an integrative manner. (Indonesian National Police Resort Bogor, 2025)

This research is expected to provide a dual contribution, namely theoretical and practical. Theoretically, this research enriches the treasury of Indonesian criminal law and criminal procedure law, particularly in the development of pretrial doctrine after the procedural law reform and its relationship to the protection of children as victims of crime. This research is also expected to serve as an academic reference for similar studies that connect procedural law mechanisms with the substantive rights of victims of sexual violence. Practically, the findings of this research are expected to provide input for law enforcement officials, especially investigators, public prosecutors, and judges, in understanding and implementing the provisions on the cessation of pretrial motions consistently and fairly, while ensuring that the implementation of the New Criminal Procedure Code is able to close the gaps that have the potential to harm the interests of child victims in the criminal justice process.

METHOD

This research uses a normative legal research method with a qualitative approach, namely a research method that places positive law as the main object of study through the study of applicable norms, principles, and legal doctrines. This method was chosen because the problems raised are juridical in nature and center on normative constructions contained in laws and regulations, court decisions, and Constitutional Court decisions, not on the empirical social behavior of the parties in the case. Normative legal research is essentially a scientific activity that studies the internal aspects of positive law, including synchronization, principles, systematics, and consistency of norms, by relying on secondary data as the basis for the study. (Wiraguna, 2024) The nature of this research is descriptive-analytical, namely systematically describing the juridical constructions contained in the regulations and decisions being studied, then analyzing them critically based on relevant legal principles. The analysis is carried out with a deductive mindset, moving from the premise general in the form of legal norms that apply to a specific conclusion related to the problem studied in a concrete decision.

The collection of research materials in this study was carried out through library research, namely the search and inventory of various legal materials relevant to the research topic. The legal materials in this study are divided into three layers. First, primary legal materials, which consist of laws and regulations directly related to the research object, including Law Number 8 of 1981 concerning the Criminal Procedure Code (old), Law Number 35 of 2014 concerning Child Protection, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law), Law Number 20 of 2025 concerning the New Criminal Procedure Code, Constitutional Court Decision Number 21/PUU-XII/2014, Constitutional Court Decision Number 102/PUU-XIII/2015, and Decision Number 15/ Pid.Pra /2025/PN Cbi as the main case study object. Second, secondary legal materials, which include scientific literature in the form

of law books , reputable national and international journal articles from 2021 to 2026 , relevant previous research results , and the opinions of criminal law and criminal procedure experts . Third , Tertiary legal materials that serve as supporting sources , such as legal dictionaries and encyclopedias . This library research approach was chosen because all the necessary materials are available in written documents and can be accessed through scientific repositories , journal databases , and official court decision directories such as those of the Supreme Court and the Constitutional Court . (Sukmawan & Damayanti, 2025)

This research uses three approaches simultaneously . First , the statute approach , conducted by examining all regulations directly related to the legal issue being studied , both in terms of substance and their synchronization with each other . Second , the case approach , used to analyze the ratio decidendi and the judge's legal considerations in Decision Number 15/ Pid.Pra /2025/PN Cbi in depth , so that relevant legal arguments can be drawn to answer the research problem . Third , the conceptual approach , applied to examine legal doctrines and the views of scholars regarding pretrial , due process of law, and the protection of the rights of child victims , in order to build a coherent argumentative framework . The combination of these three approaches allows researchers to produce an analysis that not only focuses on the formal aspects of norms, but is also able to capture the substantive dimensions of the issue of the cessation of pretrial in the context of crimes of sexual violence against children , as emphasized in recent methodological studies . emphasizes the superiority of the normative approach in providing a clear and structured legal framework . (Sengi, 2022)

RESULTS AND DISCUSSION

A. Normative Juridical Construction of the Dismissal of the Pretrial Application for the Determination of a Suspect in the Crime of Sexual Violence Against Children Based on the Constitutional Court Decision Number 102/PUU-XIII/2015 in Decision Number 15/ Pid.Pra /2025/PN Cbi

1. The Position of the Determination of Suspects as Objects of Pre-Trial Cases Following Constitutional Court Decision Number 21/PUU-XII/2014

The development of criminal procedural law in Indonesia experienced a significant shift when the Constitutional Court, through Decision Number 21/PUU-XII/2014, expanded the scope of pretrial objects to include the validity of suspect determination . Prior to this decision , the pretrial mechanism could only be used to test the legality of arrest , detention , termination of investigation , and termination of prosecution . This expansion stems from the constitutional awareness that suspect determination is a form of restriction on human rights that directly impacts a person's dignity , freedom , and good name , so it must be able to be tested by a judicial institution . The basis for this expansion is rooted in the principle of due process of law as guaranteed in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution, which requires the state to provide fair legal certainty to every citizen .

Within the framework of Law Number 20 of 2025 concerning the Criminal Procedure Code, the determination of a suspect is explicitly categorized as part of a coercive measure as stated in Article 1 number 14, so that this action can inherently be tested through a pretrial mechanism based on Article 1 number 15. This regulation emphasizes that the determination of a suspect is not merely an administrative act of investigation , but a legal action that requires the fulfillment of adequate evidence standards . In the context of cases of sexual violence against

children, this issue becomes even more crucial considering that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law) through Article 20 provides exceptions to general criminal procedure law if there are special provisions that regulate it, so that testing the determination of a suspect must take into account the sensitivity of the case and the position of the child victim. (Laws of the Republic of Indonesia, 2022)

The pretrial motion in case Number 15/ Pid.Pra /2025/PN Cbi was filed on the basis that the determination of the suspect by the investigator was deemed not to meet the minimum requirement of two valid pieces of evidence as required in the legal construction following the Constitutional Court Decision Number 21/PUU-XII/2014. The applicant utilized this constitutional basis to question the validity of the investigative procedure that led to his determination as a suspect in the case of sexual violence. This shows that the expansion of the object of the pretrial has provided real access for the suspect to judicially test the actions of law enforcement officers, a mechanism that is theoretically in line with the principle of checks and balances in the modern criminal justice system. (Sujasmin, 2022)

However, the suspect's right to file a pretrial motion is not absolute and is not free from procedural limits set by the legal system. In the context of proving evidence in sexual violence cases, testing the determination of a suspect through a pretrial must actually go hand in hand with the best interests of the victim as mandated in Article 2 letter c of the TPKS Law. The strategic value of a pretrial motion lies in its function as a control mechanism against the arbitrariness of the authorities, not as an instrument to delay the justice process for victims who have experienced profound psychological impacts due to the crime of sexual violence. (Hidayati & Saipudin, 2024)

2. Constitutional Interpretation of the Phrase "First Hearing" in Constitutional Court Decision Number 102/PUU-XIII/2015

Before the birth of Constitutional Court Decision Number 102/PUU-XIII/2015, the phrase "beginning to be examined" in Article 82 paragraph (1) letter d of the old Criminal Procedure Code had created serious legal uncertainty in judicial practice. There were at least three interpretations that developed among law enforcement officials and judges, namely since the transfer of case files to the court, since the determination of the first trial date, and since the official reading of the indictment in court. These multiple interpretations not only gave rise to inconsistent decisions, but also opened up loopholes for public prosecutors to strategically accelerate the transfer of cases in order to drop ongoing pretrial applications. Such conditions clearly contradict the principles of *lex certa* and *lex stricta* which are the foundations of criminal law in a state based on the rule of law.

The Constitutional Court in Decision Number 102/PUU-XIII/2015 then established a limited constitutional interpretation, namely that a pretrial motion is only dismissed if the indictment has been read during the main trial of the case. This interpretation is based on the argument that only at the indictment reading stage does the substantive examination truly begin, while the file transfer and trial schedule determination stages are still administrative in nature and have not yet touched on the judicial aspect. The Court emphasized that the norm of Article 82 paragraph (1) letter d, which was previously interpreted broadly, violated Article 28D paragraph (1) of the 1945 Constitution because it did not provide fair legal certainty. Thus, this interpretation becomes a constitutional standard that binds all pretrial judges in deciding whether a petition should be dismissed. (Mardianto et al., 2024)

The relevance of this interpretation is further strengthened when linked to the provisions of the new Criminal Procedure Code . Article 70 of Law Number 20 of 2025 stipulates that the public prosecutor is required to prepare an indictment within seven days after the case file is declared complete , while Article 69 regulates the authority to transfer cases to the court . This construction systematically shows that the transfer of cases and the preparation of indictments are two different stages , and the " first trial " in the constitutional sense is only realized when the indictment is read , not simply when the case is transferred . This systematic understanding strengthens the argument that the Constitutional Court's interpretation in Decision Number 102/PUU-XIII/2015 must be used as the main reference in every pretrial practice , including in cases of sexual violence against children . (Adinda et al., 2025)

The multi-interpretive debate surrounding the phrase " first trial " actually reflects the tension between the principle of judicial efficiency on the one hand and the protection of the suspect's rights on the other . In cases of sexual violence against children , this tension becomes more complex because the legal system must also consider the victim's right to expedited justice as stipulated in Article 66 paragraph (1) of the TPKS Law, which requires the state to provide treatment , protection , and recovery from the time the crime occurs . However , accelerating the legal process must not be achieved by unconstitutionally sacrificing the suspect's procedural rights , because the integrity of the justice system relies on respecting both interests in a balanced manner . (Jafar & Wahyudi, 2025)

3. Chronology and Legal Facts of the Dismissal of the Pretrial in Decision Number 15/ Pid.Pra /2025/PN Cbi

The series of legal events in case Number 15/ Pid.Pra /2025/PN Cbi began with the investigator's actions in determining the suspect for alleged criminal acts of sexual violence against children as regulated in the TPKS Law. The determination of the suspect was carried out after the investigator collected evidence deemed sufficient as required in the investigation mechanism based on Article 52 and Article 53 of the TPKS Law in conjunction with the provisions in the new Criminal Procedure Code . After the determination of the suspect , the party concerned exercised his constitutional rights by filing a pretrial motion with the Cibinong District Court to test the validity of the investigator's actions . This filing of the motion is a direct implementation of the expansion of the pretrial object that has been determined through the Constitutional Court Decision Number 21/PUU-XII/2014.

The pretrial examination process had not yet reached the substantial stage when the public prosecutor transferred the main case files to the Cibinong District Court . This transfer was followed by the commencement of the trial process in the main case , which then became the basis for sole judge Yudha Dinata to issue a dismissal decision on the pretrial application on December 3 , 2025. This dismissal decision was based on the consideration that the main case had entered the trial stage , so that the object of the pretrial application was considered to have lost its relevance . In formal construction , the decision ended the pretrial process without examining the substance of the application regarding the validity of the suspect determination . (BM Putra & Widodo, 2024)

From a chronological perspective , there is a legal issue that deserves careful attention , namely whether the indictment had actually been read out when the main case began , or whether the trial was still in the administrative stage , such as determining the schedule or checking the

completeness of the files . This factual difference is crucial because, based on Constitutional Court Decision Number 102/PUU-XIII/2015, the dismissal of a pretrial motion is only constitutionally valid if the indictment has actually been read out . If the dismissal decision is rendered before the indictment is read out , then constitutionally there is a problem regarding the suitability of the application of the dismissal doctrine with the standards set by the Court . This legal fact needs to be analyzed in depth to assess the legitimacy of the sole judge's decision in this case . (Supriatna et al., 2024)

In the context of the TPKS Law, protracted legal proceedings due to procedural disputes have the potential to hinder the fulfillment of child victims' rights to recovery and protection as stipulated in Articles 67 to 70 of the TPKS Law. On the other hand , prematurely terminating pretrial motions without following constitutional standards can undermine public trust in the criminal justice system . Therefore , the factual chronology of this case cannot be assessed solely from the dimension of procedural efficiency , but must be examined comprehensively by bringing together the interests of child victims and the procedural rights of suspects within a framework of a fair and accountable justice system . (Arief & Ajie, 2024)

4. Conformity of the Application of the Doctrine of Pretrial Failure in Decision Number 15/ Pid.Pra /2025/PN Cbi with the Standards of Constitutional Court Decision Number 102/PUU-XIII/2015

The assessment of the suitability of the decision of sole judge Yudha Dinata with the constitutional standards set by the Constitutional Court must be based on the fundamental question of whether the point of dismissal of the pretrial motion in this case is in accordance with the limitative interpretation of the phrase " first trial of the main case ." The Constitutional Court Decision Standard Number 102/PUU-XIII/2015 expressly stipulates that the dismissal of a pretrial motion can only be issued after the indictment has been read in court , not merely after the transfer of the case or the determination of the trial date . If the judge issues a dismissal decision based solely on the transfer of the case without verifying whether the indictment has been read , then there is a potential deviation from the constitutional standard which could have implications for the violation of the suspect's due process rights . The consistency of the application of this standard is the main parameter in assessing the legitimacy and constitutionality of the dismissal decision in this case .

In the perspective of Law Number 20 of 2025 concerning the Criminal Procedure Code, the coordination mechanism between investigators and public prosecutors as regulated in Articles 58 and 59 should ensure that each stage of the legal process runs in an orderly manner and is not used as a tactical tool to avoid pretrial review . If the transfer of cases that result in the dismissal of the pretrial is carried out in a planned manner before the pretrial has had time to examine its substance , then this has the potential to violate the principle of fair trial which is a pillar of a civilized criminal justice system . Article 2 paragraphs (1) and (2) of the new Criminal Procedure Code which emphasizes the principle of integrated and law- based justice must be interpreted as a prohibition against procedural manipulation practices that are detrimental to one of the parties in the judicial process . (Mardianto et al., 2024)

In the context of cases of sexual violence against children , the appropriateness of the application of the doctrine of pretrial dismissal must also be tested from the dimension of victim protection . Article 22 of the TPKS Law requires judges to avoid actions that have the potential to result in re- victimization of victims, while Article 21 paragraph (1) requires judges to have

special competence in handling sexual violence cases . Thus , the decision to declare a pretrial dismissal should not only be assessed from a purely formal procedural perspective , but must also consider its impact on accelerating the recovery and protection of child victims . A dismissal decision that is on target and in accordance with constitutional standards can actually accelerate the process of material evidence which ultimately strengthens the victim's position in the justice system . (Hidayati & Saipudin, 2024)

Overall , the suitability of Decision Number 15/ Pid.Pra /2025/PN Cbi with the standards of Constitutional Court Decision Number 102 /PUU-XIII/2015 depends on the judge's accuracy in determining the moment of the pretrial dismissal based on the actual trial facts . The doctrine of pretrial dismissal is not an automatic mechanism that can be applied without factual verification , but rather a judicial instrument that must be applied carefully , measuredly , and in line with constitutional principles . In cases of sexual violence against children , the balance between victim protection based on the TPKS Law and due process guarantees for suspects based on the new Criminal Procedure Code is a dual parameter that must be met simultaneously so that the judge's decision can be declared valid , fair , and constitutional . (Jafar & Wahyudi, 2025)

B. Implications of the Dismissal of the Pretrial Petition for Legal Protection of Child Victims in the Light of Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence and Law Number 20 of 2025 Concerning the New Criminal Procedure Code

1. The Principle of Child Victim Protection in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Its Relation to the Pretrial Mechanism

The enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) marks a fundamental paradigm shift in the governance of Indonesian criminal law enforcement . This law is not solely oriented towards the aspect of punishing perpetrators , but rather places victim recovery and protection at the core of the entire design of its legal system . The victim-centered approach philosophy adopted by the TPKS Law is reflected in Article 2, which contains basic principles , including the best interests of victims, justice , and non-discrimination . The principle of the best interests of victims normatively requires that every stage of the legal process , including the pre-trial stage , must be carried out in such a way as not to increase the psychological burden or worsen the condition of victims, especially child victims who have multiple vulnerabilities . (Risal , 2022)

Protection of victims in the TPKS Law is not partial , but rather comprehensive from the time of the crime to post -verdict recovery . Article 66 paragraph (1) emphasizes that the victim's right to treatment , protection , and recovery is immediate from the time the crime occurs , without waiting for a final decision . This provision has significant normative implications that the state must not leave victims without legal protection simply because the judicial process is still ongoing . In the context of children as victims, this principle is further strengthened through Law Number 35 of 2014 concerning Child Protection , which requires the state to provide special protection to children in conflict with the law , both as perpetrators and as victims. (Ahmad et al., 2025)

The pretrial mechanism within the framework of the old Criminal Procedure Code could potentially conflict with the effectiveness of victim protection guaranteed by the TPKS Law. Filing a pretrial motion by a suspect has the potential to slow down the investigation and

prosecution process , which in turn can delay the victim's access to restitution services , medical rehabilitation , and psychosocial assistance guaranteed in Articles 68 to 70 of the TPKS Law. This dynamic creates a normative tension between the suspect's right to challenge the validity of the suspect's determination on the one hand , and the child victim's right to immediate justice and reparation on the other . This tension cannot be resolved simplistically by sacrificing one of the rights , but rather requires a proportional , systemic approach based on the constitution . (IKA Putra et al., 2025)

In this regard , the pretrial mechanism should not be viewed as an obstacle to victim protection , but rather as an instrument of judicial control that helps protect the integrity of the legal process . If the determination of a suspect is carried out without fulfilling the minimum requirement of two valid pieces of evidence , then the continued investigation process has the potential to produce an unfair decision , which ultimately harms the victim . Therefore , the TPKS Law through Article 20 emphasizes that criminal procedural law remains applicable in cases of sexual violence , but with exceptions that emphasize sensitivity to the victim's condition , so that the balance between the suspect's rights and the victim's interests can be maintained proportionally .

2. Implications of the Dismissal of Pretrial Motions on the Continuity of the Legal Process and the Rights of Child Victims from the Perspective of the TPKS Law

The dismissal of the pretrial motion in Decision Number 15/ Pid.Pra /2025/PN Cbi has direct implications for the continuity of the legal process that affects the realization of the rights of child victims as guaranteed by the TPKS Law. When a pretrial motion is declared dismissed because the main case has entered the trial stage , the focus of the legal process automatically shifts from procedural testing to material evidence . In this context , the dismissal of the pretrial motion has the potential to accelerate victims' access to substantive justice , because the judicial process is no longer hampered by prolonged procedural disputes . This acceleration is in line with the objectives of the TPKS Law as formulated in Article 3 letters b and c, namely to handle , protect , and restore victims while ensuring effective law enforcement . (Anggraeni et al., 2025)

From the perspective of the right to restitution , the dismissal of the pretrial motion actually opens up wider opportunities for victims to obtain economic recovery . Articles 30 to 35 of the TPKS Law regulate the restitution mechanism in detail , from calculating losses to executing payments by the perpetrator . This right to restitution can only be optimally realized if the main trial proceeds without procedural obstacles . Therefore , the termination of the pretrial motion and the continuation of the main case examination directly support the acceleration of the realization of the victim's right to restitution . This condition shows that, from the perspective of the TPKS Law, the dismissal of the pretrial motion does not always negatively impact the victim's interests but can instead be a means of accelerating restorative justice . (Probilla et al., 2021)

However , the dismissal of a pretrial motion also carries potential risks if it is not accompanied by adequate testing of the legality of the investigative action. If the determination of a suspect is carried out illegally — for example , without sufficient supporting evidence — and this is never tested because the pretrial motion is dismissed before its substance is examined , then the integrity of the entire judicial process becomes vulnerable . In cases of sexual violence against children , procedural flaws in the investigation can lead to an acquittal , leaving the victim

without justice at all . This situation is exacerbated by the fact that child victims generally have limited understanding of the dynamics of the legal process and are highly dependent on the system for protection . (Putri et al., 2025)

The balance between the interests of the victim and the rights of the suspect in the context of the dismissal of a pretrial motion must be interpreted as two sides of the same coin . The TPKS Law does not eliminate the suspect's right to due process, but places it within a framework that must not sacrifice the victim's best interests . Article 22 of the TPKS Law explicitly prohibits judges from taking actions that could result in re-victimization or re - victimization of the victim, which means that every procedural decision — including the dismissal of a pretrial motion — must be evaluated from the perspective of its impact on the psychological condition and rights of child victims . Thus , the dismissal of a pretrial motion that is applied appropriately and proportionally is an instrument that does not conflict with the spirit of victim protection in the TPKS Law.

3. Updates to the Pretrial Mechanism in Law Number 20 of 2025 concerning the New Criminal Procedure Code

Law Number 20 of 2025 concerning the New Criminal Procedure Code brings substantial changes to the construction of pretrial proceedings previously regulated in the old Criminal Procedure Code. In the old regime , the object of pretrial proceedings was limited to the legality of arrest , detention , termination of investigation , and termination of prosecution , and was added to the determination of suspects through an expansion by the Constitutional Court Decision Number 21/PUU-XII/2014. The New Criminal Procedure Code through Articles 158 to 164 expands the object of pretrial proceedings more systematically and comprehensively , including testing of coercive measures as a whole , including the determination of suspects , arrests , detention , searches , and seizures . This expansion reflects the awareness of lawmakers that judicial control over investigators' actions must be holistic , not partial . (Anggraeni et al., 2025)

The most fundamental difference between the old Criminal Procedure Code and the New Criminal Procedure Code in the context of pre-trial proceedings lies in the normative clarity regarding when the application is dismissed . In the old Criminal Procedure Code, the phrase " begins to be examined " in Article 82 paragraph (1) letter d gave rise to multiple interpretations which triggered the practice of accelerating the transfer of cases to artificially dismiss pre-trial proceedings . The Constitutional Court in Decision Number 102/PUU-XIII/2015 has emphasized that this phrase must be interpreted constitutionally as conditionally the time of reading the indictment . The New Criminal Procedure Code adopts and codifies this interpretation more firmly , so that it no longer opens up room for procedural manipulation by law enforcement officials who seek to dismiss pre-trial proceedings before their substance is examined .

In addition to clarity regarding when pretrial proceedings will be terminated , the New Criminal Procedure Code also introduces a stronger transparency mechanism in the process of examining investigative actions . Article 30 paragraph (1) of the New Criminal Procedure Code requires recording of suspect examinations as a procedural standard , which directly strengthens the quality of evidence and reduces the potential for denial of investigators' actions . This provision has a significant impact on the effectiveness of pretrial proceedings because judges have access to more comprehensive documentation to assess the legality of investigative actions . In cases

of sexual violence against children , this recording mechanism also serves to protect victims from gender-insensitive or trauma - informed examination practices . (BM Putra & Widodo, 2024)

In a comparative perspective , the New Criminal Procedure Code also strengthens coordination between investigators and public prosecutors from the initial stages of investigation as regulated in Article 58 and Article 59. This coordination structurally reduces the possibility of procedural errors in determining suspects , so that the need for pretrial as a corrective mechanism becomes more limited in a system that works optimally. However , strengthening coordination does not mean eliminating pretrial , but rather makes pretrial more effective as a last resort judicial control instrument that is only used when internal coordination of the law enforcement system fails .

4. The Relevance of the New Criminal Procedure Code to Strengthening the Protection of Child Victims in Sexual Violence Cases

The New Criminal Procedure Code (KUHAP) is a normative response to various regulatory gaps that have hampered optimal protection for child victims in sexual violence cases . One of the biggest gaps in the old KUHAP regime was the absence of explicit provisions regarding victims ' rights in the pretrial process , so that victims often become marginalized parties in procedural disputes between suspects and law enforcement officials . The New KUHAP, through Article 53 paragraph (1), firmly positions victims as legal subjects who have the right to protection at every stage of the examination , including the pretrial stage . This provision closes the normative gap that previously allowed victims' interests to be ignored in the dynamics of the pretrial process . (Boro et al., 2026)

Strengthening the protection of child victims in the New Criminal Procedure Code is also reflected in the provisions regarding technical assistance for investigations , which include forensic psychology and forensic medicine expertise as stipulated in Article 56 paragraph (1). This provision is highly relevant in cases of sexual violence against children because it allows for more accurate and sensitive evidence to be obtained regarding the vulnerable conditions of victims . With higher quality evidence , the risk of invalid suspect determination —which triggers pretrial motions — can be significantly minimized . This ultimately contributes to the acceleration of the judicial process that favors the best interests of child victims . (Rahmah et al., 2024)

From a prospective perspective , the application of the New Criminal Procedure Code (KUHAP) in similar cases in the future will bring about fundamental changes in the way pretrial judges view cases of sexual violence against children . With the expansion of the object of pretrial and normative clarity regarding when a petition is dismissed , judges can no longer automatically declare a motion dismissed simply based on the transfer of the case to the court . Instead , judges are required to ensure that the main case has truly entered the substantive examination stage before declaring the dismissal of the pretrial . This mechanism creates a better balance between legal certainty for the suspect and accelerated justice for child victims . (Anggraeni et al., 2025)

Overall , the relevance of the New Criminal Procedure Code to strengthening the protection of child victims cannot be separated from its synergy with the TPKS Law as *lex specialis* in sexual violence cases . These two legal instruments form a complementary normative ecosystem : the

TPKS Law provides a substantive framework for victims' rights, while the New Criminal Procedure Code provides a procedural mechanism that guarantees the effective realization of these rights. In the context of Decision Number 15/ Pid.Pra /2025/PN Cbi, the existence of the New Criminal Procedure Code confirms that in the future, the cessation of pretrial motions should not be used as a tool to avoid testing the legality of investigative actions, but rather must be part of the design of a justice system that prioritizes substantive justice for all parties, especially the most vulnerable child victims.

CONCLUSION, IMPLICATIONS, LIMITATIONS, AND SUGGESTIONS

Conclusion

Decision Number 15/ Pid.Pra /2025/PN Cbi shows that the dismissal of a pretrial motion for the determination of a suspect in a crime of sexual violence against children must be measured based on the limitative constitutional standards set by the Constitutional Court through Decision Number 102/PUU-XIII/2015, namely the dismissal of a new pretrial is constitutionally valid if the indictment has actually been read in the main trial, not just since the transfer of the case file. The doctrine of pretrial dismissal is not an automatic mechanism, but rather a judicial instrument that requires factual verification. In the context of cases of sexual violence against children, the application of this doctrine must reconcile the principle of due process of law for suspects with the victim-centered approach mandated by the TPKS Law and the New Criminal Procedure Code.

Implications

This research has significant normative and practical implications. Normatively, the New Criminal Procedure Code through Law Number 20 of 2025 codifies the constitutional interpretation of the Constitutional Court Decision Number 102/PUU-XIII/2015, thereby closing the gap in procedural manipulation in the form of artificial acceleration of case transfer to dismiss pretrial motions. Practically, the synergy between the TPKS Law and the New Criminal Procedure Code forms a normative ecosystem that positions child victims as legal subjects with the right to protection at every stage, including pretrial motions. This implication confirms that the dismissal of pretrial motions that are applied appropriately can actually accelerate the realization of the victim's right to restitution and recovery, rather than hindering the best interests of child victims.

Limitations

This study has several limitations that need to be acknowledged. First, the analysis was conducted in a normative juridical manner, thus not including empirical field data regarding the practice of applying the pretrial nullity doctrine broadly in various district courts. Second, the study was limited to a single case, namely Decision Number 15/ Pid.Pra /2025/PN Cbi, so that generalization of the findings requires caution. Third, the relatively recent implementation of the New Criminal Procedure Code limits the availability of adequate jurisprudence and supporting literature, so the prospective analysis conducted is still *de lege ferenda*.

Suggestion

Pretrial judges are advised to consistently conduct factual verification of the fulfillment of the requirements for reading the indictment before issuing a dismissal verdict . Law enforcement officials should not use the transfer of cases as a tactical instrument to dismiss pretrial motions . Policy makers should issue technical guidelines for the implementation of pretrial motions in sexual violence cases that integrate trauma-informed justice standards . For further research , it is highly recommended to conduct a comparative empirical study of various pretrial motions after the enactment of the New Criminal Procedure Code, in order to measure the consistency of the application of the dismissal doctrine nationally and its impact on the protection of child victims in a measurable manner .

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