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Legal Protection for Suspects through the Integration of Judicial Supervision in Pre-Trial Detention in Indonesia

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Abstract

Pre-trial detention is a serious action that deprives individuals of their freedom and must be carried out by the principle of legality to protect human rights (HAM). In the Indonesian criminal justice system, detention is regulated by the Criminal Procedure Code, which requires two pieces of evidence and meets subjective and objective requirements. However, the pretrial mechanism used to test the legality of detention is still administrative and limited to requests. However, Indonesia's current pretrial detention mechanism remains predominantly administrative and dependent on detainee initiation, failing to fully comply with Article 9(3) of the ICCPR. Specifically, Indonesia does not consistently ensure immediate physical presentation of detainees before a judicial officer (commonly within 48 hours), lacks automatic judicial review of detention legality without requiring detainee action, and does not provide sufficient judicial scrutiny to assess the necessity and proportionality of continued detention, as exemplified by practices in Germany (§114 StPO) and the Netherlands (Article 57 Sv). This condition creates the potential for abuse

of authority and human rights violations. This research uses normative legal research methods that examine legal principles, statutory regulations, doctrine, and legal theory related to pre-trial detention in the criminal justice system. This research identifies systemic weaknesses in Indonesia's pretrial detention through comparative analysis. It introduces three innovative elements to the conception of integrated judicial supervision: Tiered Judicial Review Mechanism, Burden-Shifting Protocol, and Digital Monitoring Integration. The proposed ideal conception involves integral judicial oversight, in which judges have a direct role from the start of detention to ensure its legality. This system integrates supervision of the legality of detention in the criminal justice process, provides more optimal protection for suspects, and meets international human rights standards. This step is expected to create a more efficient, accountable justice system that aligns with the principles of the rule of law.

Keywords
Criminal; Suspect; Pre-Trial; Judicial; Human Rights.

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Introduction

Pre-trial detention is carried out to ensure that the alleged perpetrator can be brought to justice.[1] However, this serious act deprives individuals of their freedom,[2] and they should be presumed innocent until proven otherwise. Apart from having a direct impact on the human rights of suspects, pre-trial detention also has far-reaching consequences, one of which is the burden on resources and existential challenges caused by the pre-trial detainee population.[3] Therefore, detention can only be carried out if there are reasonable suspicions, such as to ensure that the suspect does not run away, repeat a crime, or pose other risks that could interfere with the legal process.[4]

Juridically, the urgency arises from pre-trial detention restricting fundamental human rights—specifically the right to liberty, which must only be limited through clear and strict legal mechanisms. The Indonesian Criminal Procedure Code (KUHAP) and relevant Constitutional Court decisions emphasize that detention must be based on sufficient preliminary evidence and legal certainty to prevent arbitrary deprivation of freedom. Furthermore, ratifying international human rights instruments, particularly the International Covenant on Civil and Political Rights (ICCPR), obliges Indonesia to harmonize its national laws with international standards that demand detention only under strict,

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1 Megan T. Stevenson and Sandra G. Mayson, "Pretrial Detention and the Value of Liberty," *Virginia Law Review* 108, no. 3 (2022). p. 713

2 Adriano Martufi and Christina Peristeridou, "The Purposes of Pre-Trial Detention and the Quest for Alternatives," *European Journal of Crime, Criminal Law and Criminal Justice* 28, no. 2 (2020), https://doi.org/10.1163/15718174-bja10002. p. 156

3 Mandeep K. Dhami and Yannick N. van den Brink, "A Multi-Disciplinary and Comparative Approach to Evaluating Pre-Trial Detention Decisions: Towards Evidence-Based Reform," *European Journal on Criminal Policy and Research* 28, no. 3 (2022), https://doi.org/10.1007/s10610-022-09510-0. p. 392

4 Fiona De Londras, "Counter-Terrorist Detention and International Human Rights Law," in *Research Handbook on International Law and Terrorism, SECOND EDITION*, 2020, https://doi.org/10.4337/9781788972222.00034. p. 5

lawful, and necessary circumstances. However, gaps remain between national regulations and international commitments, creating an urgent juridical need to reform pre-trial detention rules to strengthen the protection of suspects' rights.

Philosophically, the principle that humans are inherently free underlies the topic's urgency. Human dignity, which is intrinsic to every person, dictates that freedom should only be restricted when necessary and by clear legal standards. Philosophers and legal theorists such as F. Hayek, L. Tremblay, and W. Brugger have stressed that legal certainty, clarity, predictability, and consistency of law are essential to protecting human dignity. As a form of state coercion, pre-trial detention must thus be exercised with extreme caution to ensure it serves justice without undermining fundamental freedoms. Detention must not be used as a punitive tool before guilt is established, but strictly as a procedural safeguard, upholding the presumption of innocence.

Sociologically, the urgency is reflected in the practical consequences of pre-trial detention practices, which have far-reaching effects on individuals and society. Excessive use of detention burdens the criminal justice system, exacerbates prison overcrowding, and contributes to systemic injustices, particularly against marginalized groups. Studies from various countries show that pre-trial detention often has effects similar to sentencing and can damage the social, economic, and psychological well-being of detainees. In Indonesia, sociological challenges also emerge due to inconsistencies between national legal practices and the evolving expectations of human rights protection at both the domestic and international levels. Public trust in the criminal justice system depends significantly on its ability to fairly and transparently apply the law, particularly when restricting individual freedoms.

Humans are free creatures because their dignity is intrinsically

inherent in being human.[5] So this freedom can only be limited based on clear legal rules. As a form of limitation, pre-trial detention must be implemented following the principle of legal certainty. F. Hayek emphasized that the law should limit authorities' actions through clear and announced rules so society can plan its actions confidently. L. Tremblay stated that legal certainty must be predictable, transparent, and applicable. Meanwhile, W. Brugger added that the law must have clarity, continuity, and firm institutional responsibility to be applied fairly and consistently.[6] Legal certainty requires that the law functions to protect, not ignore, human rights. In this context, pre-trial detention must be carried out while still upholding legal principles that are clear, fair, and oriented towards protecting human rights. Protective laws provide a sense of security and public trust in their enforcement, ensure that every action of the authorities is carried out under existing regulations, and provide protection for citizens.

In the Indonesian criminal justice system, detention at the pre-trial stage can only be carried out against "suspects," as regulated in Law of the Republic of Indonesia Number 8 of 1981 on Criminal Procedure Law (KUHAP). Based on Article 1, number 14 of the Criminal Procedure Code Jo. Constitutional Court Decision No. 21/PUU-XII/2014 defines a suspect as "a person who, because of his actions or circumstances, based on sufficient preliminary evidence (at least two pieces of evidence), is reasonably suspected of being the perpetrator of a criminal act." The Criminal Procedure Code (KUHAP) strictly stipulates that a person's determination as a suspect must meet the minimum requirement of "two pieces of evidence." At a normative level, this provision reflects a vital

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5 Félix Pageau et al., "Care of the Older Person and the Value of Human Dignity," *Bioethics* 38, no. 1 (2024), https://doi.org/10.1111/bioe.13251. p. 45.

6 Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (2023): 21–31, https://doi.org/10.24818/TBJ/2023/13/1.02. p. 24

safeguard to ensure that the suspect designation is based on solid grounds, thereby protecting human rights. However, in practice, this evidentiary threshold often functions imperfectly. The formal fulfillment of "two pieces of evidence" can sometimes be reduced to a mere administrative requirement, without rigorous assessment of the evidence's quality, relevance, and credibility. This creates the risk that individuals may be prematurely labeled as suspects based on weak, circumstantial, or speculative evidence, undermining the principle of the presumption of innocence. Moreover, the broad discretion of investigators and prosecutors in interpreting what constitutes "sufficient preliminary evidence" has sometimes led to arbitrary or overly aggressive use of detention powers. Therefore, while the two-evidence requirement appears to offer protection at the level of legal text, its implementation often falls short in effectively safeguarding individuals from unjustified restrictions on their liberty.

Meanwhile, World War II was an essential period for developing human rights policy, especially regarding the treatment of prisoners. In 1948*, the Universal Declaration of Human Rights (UDHR) established* the prohibition of torture, the right to a fair trial, and the principle of presumption of innocence. Although it does not explicitly mention prisoners, this rule indirectly covers them. The *Standard Minimum Rules for the Treatment of Prisoners* were adopted in 1955 at the First United Nations Congress. Although the United Nations (UN) declaration is not legally binding, it reflects a global commitment to protect human rights, including prisoners' rights. In 1976, *the International Covenant on Civil and Political Rights (ICCPR) strengthened* these principles by guaranteeing several rights, such as "the right to life, freedom from torture, a fair trial, and protection from arbitrary detention." Countries ratifying

the ICCPR must respect, protect, and fulfill these rights.[7]

The provision in Article 9, paragraph (3) of the ICCPR, which requires that detainees be immediately brought before a court or authorized official, aims to prevent arbitrary detention in the pre-trial stage, emphasizing the importance of the court as an integral part of the criminal justice system to ensure the legality of the detention. However, in the Indonesian context, even though the ICCPR has been ratified through Law Number 12 of 2005, Article 9 paragraph (3) has not been adopted, because the Indonesian criminal justice system, which the KUHAP has regulated since 1981, does not fully accommodate the mechanisms regulated in this provision.

In Indonesia, the Criminal Procedure Code regulates pretrial mechanisms as a principle of adoption, which provides *a body* to test the legality of detention, as regulated in Article 77 letter a of the Criminal Procedure Code.[8] However, pretrial is not an integral part of the criminal justice system. The pretrial process can only be done through a request, as regulated in Article 79 of the Criminal Procedure Code. This means that the pre-trial judge is passive, so even if he is aware of a procedural error in the initial examination, the judge has no authority to summon the party who made the error unless there is a pre-trial request.[9] This indicates that the Criminal Procedure Code does not regulate the courts' role in the criminal justice system regarding pre-trial detention. This condition reflects the gap between international standards (ICCPR) and national legal provisions, which requires serious attention to ensure legal

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7 Noelle Jones, "The Right to Rights: An International Comparison of Correctional Systems' Preservation of Human Dignity" (California State University, Northridge, 2024). p. 3-4.

8 I. Gede Widhiana Suarda, Moch Marsa Taufiqurrohman, and Zaki Priambudi, "Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System," *Indonesia Law Review* 11, no. 2 (2021): 137–53, https://doi.org/10.15742/ilrev.v11n2.2. p. 138

9 Dwi Nurahman, . Maroni, and A. Irzal Fardiansyah, "Design of Pre-Trial Institution with the Concept of Preliminary Examining Judge in the Reform of Indonesian Criminal Procedure Law," *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024): 3932–38, https://doi.org/10.57239/pjlss-2024-22.2.00290. p. 3934

harmonization to strengthen human rights protection in Indonesia.

Various studies from other countries on the issue of pre-trial detention remain relevant to examine, particularly regarding systemic risks to the presumption of innocence and protection against arbitrary detention. However, much of the existing international literature focuses on comparative legal traditions, detention conditions, or the effectiveness of bail systems, without deeply analyzing the specific normative and institutional design weaknesses that arise when a legal system—such as Indonesia's—formally adopts human rights standards but structurally fails to internalize them into an integrated judicial oversight mechanism. In the Indonesian context, existing studies have highlighted human rights violations in detention practices and inconsistencies with international norms, but have not comprehensively addressed the specific gap between the evidentiary thresholds required to determine a suspect, the absence of proactive judicial control at the pre-trial stage, and the resulting systemic vulnerability to arbitrary detention. Therefore, this research seeks to fill this gap by critically analyzing the regulation of pre-trial detention in Indonesia, evaluating the effectiveness of legal protections for suspects, and formulating an ideal model of pre-trial detention that better aligns with the principles enshrined in the ICCPR. Martufi and Peristeridou discuss that pre-trial detention is often considered less effective in protecting against abuse and has the potential to conflict with the principle of the presumption of innocence.[10] Mary Rogan outlines the influence of Irish legal culture, including constitutional protection of the right to bail, in explaining the low rate of pre-trial detention compared to European standards.[11] Jaime Andrés Manríquez Oyaneder examines the difficulties of proving culpability in pre-trial detention and reveals

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10 Martufi and Peristeridou, "The Purposes of Pre-Trial Detention and the Quest for Alternatives."

11 Mary Rogan, "Examining the Role of Legal Culture as a Protective Factor Against High Rates of Pre-Trial Detention: The Case of Ireland," *European Journal on Criminal Policy and Research* 28, no. 3 (2022), https://doi.org/10.1007/s10610-022-09515-9.

systemic inconsistencies in detecting such culpability without clear standards.[12] Chuka Arinze-Onyia describes Nigeria's pre-trial detention system's failure to protect suspects' rights.[13] Claudia N. Anderson et al. explain that experiences in pre-trial detention have a similar impact to sentencing.[14] Sina Jung et al. examine violations of the right to liberty resulting from prolonged pre-trial detention in Germany.[15]

Apart from that, the issue of pre-trial detention is still relevant and should be studied in several studies in Indonesia. Awalia Safinatunnajah discussed the incompatibility of Article 21, paragraph (1) of the Criminal Procedure Code with the principles of legality, necessity, proportionality, equality before the law, and presumption of innocence in the ICCPR.[16] Siti Wulandari examines human rights violations resulting from the addition of detention periods in Law Number 5 of 2018 on Amendments to Law Number 15 of 2003 on the Determination of Government Regulations in Lieu of Law Number 1 of 2002 on the Eradication of Terrorism Crimes into Law. The law violates the principles of criminal justice and ICCPR principles and emphasizes the need for special guidelines and strict supervision for law enforcement officials.[17] I Gusti Ayu Apsari Hadi reviewed the role of the UN Human Rights Council in

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12 Jaime Andrés Manríquez Oyaneder, "Pre-Trial Detention and Evidentiary Miscarriage of Justice," *Revista de Derecho* 33, no. 2 (2020), https://doi.org/10.4067/S0718-09502020000200275.

13 Chuka Arinze-Onyia, "Punishment before Trial: The Case for Reforming Pretrial Detention in Nigeria," *African Journal of Legal Studies* 15, no. 3 (2023), https://doi.org/10.1163/17087384-bja10081.

14 Claudia N. Anderson, Joshua C. Cochran, and Andrea N. Montes, "How Punitive Is Pretrial? Measuring the Relative Pains of Pretrial Detention," *Punishment and Society*, 2023, https://doi.org/10.1177/14624745231218702.

15 Sina Jung et al., "Developments in German Criminal Law: The Urgent Issues Regarding Prolonged Pre-Trial Detention in Germany," *German Law Journal* 22, no. 2 (2021), https://doi.org/10.1017/glj.2021.7.

16 Awalia Safinatunnajah, Mahrus Ali, and Papontee Teeraphan, "Compliance of the Subjective Terms of Detention in Criminal Procedure with International Covenant on Civil and Political Rights," *Lex Publica* 9, no. 2 (2022), https://doi.org/10.58829/lp.9.2.2022.67-80.

17 Siti Wulandari, "Penahanan Tersangka Tindak Pidana Terorisme Dalam Perspektif Hak Asasi Manusia," *Audito Comparative Law Journal (ACLJ)* 1, no. 1 (2020): 56–70, https://doi.org/10.22219/audito.v1i1.12785.

pressing for the release of Aung San Suu Kyi, which reflects the implementation of global human rights standards under the UDHR and ICCPR.[18] I Nyoman Arnita discusses human rights violations in detention practices in Indonesia, including violations of the presumption of innocence and incompatibility with international human rights standards, such as the ICCPR and *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).[19]

The various literature reviews above show that the issue of pre-trial detention remains relevant to study. Unlike previous research, this research focuses on regulating pre-trial detention in Indonesia, legal protection for suspects in the criminal justice system, and formulating an ideal conception of pre-trial detention for Indonesia. This research offers a critical contribution to the reform of criminal law policy by proposing a more integrated and rights-oriented framework for regulating pre-trial detention in Indonesia, ensuring greater alignment with international human rights standards to the development of criminal law policy, especially in guaranteeing pre-trial detention is in line with human rights principles as regulated in the ICCPR.

Method

This research uses normative legal research methods, examining legal principles, statutory regulations, doctrine, and legal theory related to pre-trial detention in the criminal justice system.[20] Research data was collected through a literature study by analyzing primary legal sources, such as the

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18 I Gusti Ayu Apsari Hadi, "Perlindungan Hak Asasi Manusia Secara Individual Oleh Dewan Hak Asasi Manusia PBB: Suatu Tinjauan Terhadap Tahanan Rumah Aung San Suu Kyi," *Jurnal Komunikasi Hukum (JKH)* 2, no. 1 (2016), https://doi.org/10.23887/jkh.v2i1.7280.

19 I Nyoman Arnita, "Perlindungan Hak-Hak Tersangka Dalam Penahanan Ditinjau Dari Aspek Hak Asasi Manusia," *Jurnal Hukum UNSRAT* Vol.XXI, no. No.3/April-Juni (2013).

20 Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020). p. 45

Criminal Procedure Code and the international instrument ICCPR, and secondary legal sources in books, journals, and scientific articles. The approaches used include a statutory regulatory approach, a conceptual approach, and a comparative approach in evaluating Indonesia's current pretrial detention mechanism, this study employs a comparative legal analysis by examining practices from several jurisdictions, including Ireland, Germany, Nigeria, Chile, and relevant international human rights frameworks such as the ICCPR and the UDHR. These specific countries were selected because they represent diverse legal traditions (common law, civil law, and mixed systems) and offer contrasting regulatory approaches to pretrial detention, judicial oversight, and protection of suspects' rights. Ireland and Germany exemplify strong constitutional safeguards and rigorous judicial controls; Nigeria underscores systemic challenges related to arbitrary detention; and Chile illustrates the complexities in establishing evidentiary thresholds during the pretrial phase. This comparative methodology critically assesses Indonesia's pretrial detention practices against established international standards and best practices. Indonesia's mechanism remains predominantly administrative, relying significantly on detainee initiation, falling short of Article 9(3) ICCPR requirements, such as immediate physical judicial presentation of detainees, automatic judicial review of detention legality, and meaningful assessment of detention necessity and proportionality. The analysis was carried out descriptively and qualitatively to identify weaknesses in pre-trial detention arrangements in Indonesia and to formulate an ideal conception based on the principles of the rule of law and human rights protection.

Result and Discussion

A. Pre-Trial Detention in Indonesia and Legal Protection Given to Suspects in the Criminal Justice System in Indonesia

The principle of presumption of innocence is widely recognized in various international human rights documents. For example, the UDHR, in Article 11, paragraph (1), stipulates that every person accused of committing a criminal offense has the right to be presumed innocent until proven guilty in an open trial with adequate defense guarantees. This principle is also confirmed in ICCPR Article 14, paragraph 2.[21] This principle of presumption of innocence is also recognized in practice, where we can take the example of a classic case in America in 1895 in the case of *Coffin v. United States*. In this decision, the Supreme Court stated that the lower court judge had made an error by not giving instructions to the jury that the defendants were presumed innocent until proven guilty. The Court emphasized that "the presumption of innocence for the accused is an undoubted law, axiomatic and fundamental, and its application is the foundation in criminal justice."[22]

The presumption of innocence is a fundamental principle that is the spirit of the Criminal Procedure Code, as emphasized in the General Explanation, number 3, letter c. This principle has also become part of Indonesian positive law through ratifying Article 14, paragraph (2) ICCPR in Law No. 12 of 2005. This provision is also stated explicitly in Article 18, paragraph (1) of Law No. 39 of 1999 on Human Rights, which states the importance of respecting individual rights to be presumed innocent before being proven otherwise. Thus, this principle becomes a

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[21] Adeyanju Oluwafunmilayo Folasade, "Safeguarding the Legal Provisions of the Presumption of Innocence of Pre-Trial Detainees," *Redeemer's University Journal of Jurisprudence and International Law* 3, no. 1 (2023): 62–76, https://www.runlawjournals.com/index.php/runjjil/article/view/47. P. 65-66.

[22] Mikaela Rabinowitz, "'What Will Become of the Innocent?': Pretrial Detention, the Presumption of Innocence, and Punishment Before Trial," *UCLA Criminal Justice Law Review* 7, no. 1 (2023), https://doi.org/10.5070/cj87162080. p. 3

normative basis in the criminal justice system and strengthens human rights protection in Indonesia.

As Jimly Asshiddiqie emphasizes, protecting the presumption of innocence as a human right is essential in the rule of law.[23] In this case, Indonesia meets the criteria as a legal state that respects human rights. Authority, as formal power granted by law, and authority, as a specific part of that authority, must be exercised based on law to prevent arbitrary actions.[24] In the context of detention as a form of coercion, the exercise of authority by officials or institutions must be based on the principles of the rule of law, as provided in Article 1, paragraph (3) of the 1945 Constitution. This is important to ensure that detention is carried out according to the law, limits the potential for abuse of power, and reflects respect for rights. -individual rights, including recognition, guarantees, and equal treatment before the law. This principle is confirmed in Article 28D paragraph (1) of the 1945 Constitution and General Explanation number 3 letter b of the Criminal Procedure Code, which regulates that the law must be the primary basis for every state action, especially in coercive measures such as detention.[25]

Law enforcement officers have the authority to carry out detention if they fulfill the requirements stipulated by law, following the principle of legality in the Criminal Procedure Code as regulated in Article 3. Principle *Lex Certa* emphasizes that coercive measures can only be carried out if expressly regulated by law.[26] Legal and procedural detention protects

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[23] Ade Adhari, Tunjung Herning Sitabuana, and Luisa Srihandayani, "Kebijakan Pembatasan Internet Di Indonesia: Perspektif Negara Hukum, Hak Asasi Manusia, Dan Kajian Perbandingan," *Jurnal Konstitusi* 18, no. 2 (2021), https://doi.org/10.31078/jk1821. p. 267

[24] Hariyanto, "Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020), https://doi.org/10.24090/volksgeist.v3i2.4184. p. 107

[25] Erwin Susilo and Eddy Daulatta Sembiring, "Kewenangan Hakim Melakukan Penahanan Terhadap Terdakwa Yang Dalam Perkara Sebelumnya Keberatan Terdakwa/Penasihat Hukum Diterima," *Jurnal Yuridis* 11, no. 1 (2024): 64–77, https://doi.org/10.35586/jyur.v11i1.7271. p. 68.

[26] Aleš Završnik, "Criminal Justice, Artificial Intelligence Systems, and Human Rights," *ERA Forum* 20, no. 4 (2020), https://doi.org/10.1007/s12027-020-00602-0. p. 579

human rights by ensuring its implementation is based on constitutional and procedural principles in criminal law to prevent arbitrary actions.[27] However, detention at the pre-trial stage often has profound impacts on individuals, such as loss of freedom, physical and mental damage, pressure to provide rewards to obtain release or better conditions of detention, loss of work and income, and separation from family and society. Thus, its implementation requires caution and strict supervision.[28]

According to Article 1, number 21 of the Criminal Procedure Code, detention is defined as "the placing of a suspect or defendant in a certain place by an investigator, public prosecutor or judge with his or her determination, in the terms and according to the method regulated in this law." This research examines pre-trial detention by investigators and public prosecutors, whose arrangements include subjective and objective requirements as regulated in Article 21 of the Criminal Procedure Code. To facilitate the discussion, the researcher outlined the two detention conditions in the following table:

TABLE 1.

Subjective and Objective Conditions of Detention

Subjective Terms	Objective Terms
"It is feared that the suspect will run away, destroy or lose evidence, and/or repeat criminal acts."	a. "The alleged criminal offense is punishable by imprisonment of five years or more."
	b. "Certain criminal acts that do not meet the threat as intended in

[27] E. T. Alimkulov, "Problems of Ensuring the Rights of the Suspect during the Pre-Trial Investigation," *Journal of Actual Problems of Jurisprudence* 106, no. 2 (2023), https://doi.org/10.26577/japj.2023.v106.i2.012. hlm. 116

[28] Vannak Sun, "Pre-Trial Detention and Its Alternatives in Cambodia: A Critical Study of National Practice, Criminal Procedure Code, and Its Adherence to International Human Rights Standards" (Lund University, 2021). p. 9

	letter a: Article 282 paragraph (3), Article 296, Article 335 paragraph (1), Article 351 paragraph (1), Article 353 paragraph (1), Article 372, Article 378, Article 379 a, Article 453, Article 454, Article 455, Article 459, Article 480 and Article 506 of the Code Criminal, Article 25 and Article 26 *Rights ordinance* (violation of the Customs and Excise Ordinance, last amended by *Government Gazette* 1931 Number 471), Article 1, Article 2 and Article 4 of the Immigration Crime Law (Law Number 8 Drt. of 1955, State Gazette of 1955 Number 8), Article 36 paragraph (7), Article 41, Article 42, Article 43, Article 47 and Article 48 of Law Number 9 of 1976 on Narcotics (State Gazette of 1976 Number 37, Supplement to State Gazette Number 3086)."

Sources: Authors, 2025 (edited)

Based on the table, it shows that Article 21 of the Criminal Procedure Code, detention requires subjective conditions in the form of fear of the suspect running away, destroying or eliminating evidence, or repeating a

criminal act (Article 21 paragraph (1) of the Criminal Procedure Code), as well as objective conditions which include criminal offenses with the threat of imprisonment for five years or more, or certain criminal acts as regulated in several articles of the Criminal Code and special laws (Article 21 paragraph (4) of the Criminal Procedure Code).

Apart from subjective and objective requirements, detention must also fulfill the provisions that the suspect is strongly suspected of committing a criminal act based on a minimum of "two pieces of evidence," as regulated in Article 21 paragraph (1) of the Criminal Procedure Code. This provision is essential to ensure that detention is carried out on a clear and strong legal basis.

In the Criminal Procedure Code, investigators and public prosecutors are not required to immediately bring suspects "before a court or other official authorized by law to exercise judicial power," as regulated in Article 9 paragraph (3) of the ICCPR. This means that detention can be carried out without any integral judicial control. In addition, extensions of detention involving the court in the Criminal Procedure Code are only administrative, without the obligation to bring the suspect directly to court to assess the need for the extension of detention. The following is the length of detention that investigators and public prosecutors can carry out, and its extension according to the Criminal Procedure Code:

TABLE 2.
Pre-Conference Detention

Authority	Length of Detention	Legal basis	Explanation
Investigator.	20 days.	Article 24 paragraph (1) KUHAP.	-
Public prosecutor extension investigator.	40 days.	Article 24 paragraph (2) KUHAP.	An extension is required for examinations that have not been completed.
Public prosecutor.	20 days.	Article 25, paragraph (1) KUHAP.	-
The public prosecutor's extension by the chairman of the district court.	30 days.	Article 25, paragraph (2) KUHAP.	An extension is required for examinations that have not been completed.

Sources: Authors, 2025 (edited).

In addition to the detention period as stated in Table 2, suspects who suffer from severe physical or mental disorders (proven by a doctor's certificate) or are facing a case that carries the threat of imprisonment of nine years or more (Article 29 paragraph (1) of the Criminal Procedure Code) may be subject to further extension of detention. Following Article 29 paragraph (3) letter a and paragraph (2) of the Criminal Procedure

Code, investigators or public prosecutors can apply for an extension of detention to the chairman of the district court, with a maximum extension duration of 30 days, which can be extended for a further 30 days either at the investigation stage. and prosecution.

Testing the legality of detention at the pre-trial stage can be carried out through pre-trial mechanisms as regulated in Article 77, letter a of the Criminal Procedure Code. If the detention is declared illegal, the suspect must be immediately released under Article 82, paragraph (3), letter a of the Criminal Procedure Code. The pretrial authority to test the legality of detention is an adoption of the principle that you have a body,[29] which in the history of traditional common law is known as an instrument to protect prisoners' rights. You have a body often considered a mechanism to hear "grievances" from detainees and protect them from arbitrary detention.[30]

One of the warrants from you has a body is "you have a body to submit," which orders that a person being detained be brought before a judge to determine the legality of their detention. If the court finds the detention unlawful, the person must be released immediately.[31] Use you have a body shows its role in protecting human rights from unlawful detention, for example, in Ttm v. London Borough of Hackney in England, use you have a body to release prisoners held unlawfully due to mental health reasons.[32] In the pretrial context, testing the legality of detention adopts the principle that a body functions as an essential

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29 Ramsen Marpaung and Tristam Pascal Moeliono, "Perbandingan Hukum Antara Prinsip Habeas Corpus Dalam Sistem Hukum Pidana Inggris Dengan Praperadilan Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Wawasan Yuridika* 5, no. 2 (2021), https://doi.org/10.25072/jwy.v5i2.494. hlm. 226

30 Mannu Chowdhury, "Immigration Detention and Habeas Corpus," *Western Journal of Legal Studies* 10, no. 1 (2020), https://doi.org/10.5206/uwojls.v10i1.8544. p. 2

31 Thomas Curr, "Habeas Corpus, Its Versatility on Both Sides of the 'Pond,' and When Right against Remedy Becomes Quixotic," *Global Journal of Comparative Law* 9, no. 2 (2020), https://doi.org/10.1163/2211906X-00902003. p. 221.

32 *Ibid.*. p. 223

mechanism for the judicial power to carry out horizontal supervision at the pre-trial stage.[33] Even though there is a pretrial as an institution to test the legality of detention, however, the pretrial mechanism in Indonesia, as regulated in Article 79 of the Criminal Procedure Code, can only be carried out based on a request, so it is not part of the judicial power that is integral to the criminal justice system. This differs from the provisions of Article 9, paragraph (3) of the ICCPR, which requires direct judicial control to ensure the legality of detention to protect the suspect's rights optimally.

B. The Ideal Concept of Pre-Trial Detention in Indonesia

Pre-trial detention faces various problems, including overcrowding, which can reduce the protection of detainees' rights.[34] Pre-trial detention is often carried out without adequate precautions, resulting in detainees being released because the detention period expires without resolution of the case. Cases such as those at the Class III Dobo Prison show that detainees were released after no extension of detention or a court decision with permanent legal force.[35] In Klaten, the suspect in a deadly duel was released because the case file was incomplete, but was still subject to mandatory reporting.[36] Meanwhile, in Banda Aceh, two corruption suspects were also released in procuring the Nurul Arafah remembrance land because their

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33 Erwin Susilo et al., "Pretrial Failures in Ensuring the Merit of Cases: Critical Analysis and Innovative Reconstruction," *Journal of Ecohumanism* 8, no. 4 (2024): 8602–12, https://doi.org/https://doi.org/10.62754/joe.v3i8.5477. p. 8603

34 Marija Pleić, "Procedural Rights of Suspects and Accused Persons During Pre-Trial Detention – Impact of Detention Conditions on Efficient Exercise of Defence Rights," in *EU 2020 – Lessons from the Past and Solutions for the Future*, vol. 4, 2020, https://doi.org/10.25234/eclic/11914. p. 521

35 Kompasiana, "Gegara Habis Masa Penahanan, Satu Orang Tahanan Dikeluarkan," 2024, https://www.kompasiana.com/lapasdobo/6630775bde948f607a220272/gegara-habis-masa-penahanan-satu-orang-tahanan-dikeluarkan.

36 Achmad Hussein Syauqi, "Masa Tahanan Habis, Tersangka Duel Maut Gembala Bebek Di Klaten Dibebaskan," Detikjateng, 2024, https://www.detik.com/jateng/hukum-dan-kriminal/d-7353841/masa-tahanan-habis-tersangka-duel-maut-gembala-bebek-di-klaten-dibebaskan.

detention period had expired.[37] Although releasing detainees by law is part of protecting human rights, these data show that cases are not ready for trial, while suspects have been detained for quite a long time. This highlights the need for more effective mechanisms to ensure that pre-trial detention is carried out appropriately.

In this context, judicial power becomes essential as an integrative supervisor of pre-trial detention, as mandated by Article 9, paragraph (3) of the ICCPR. The court has the strategic function of supervising legislative and executive powers within the separation of powers framework, ensuring the constitutionality, appropriateness, and legality of actions. Considering that the authority for pre-trial detention is within the scope of the executive through investigators or public prosecutors, judicial supervision is needed to ensure its implementation is under legal and human rights principles.[38] This is important to prevent excessive concentration of power and maintain balance. The judiciary functions as a balancer that ensures that the executive apparatus is subject to the rule of law.

Judicial control over the legality of detention in Indonesia's pre-trial stage is carried out through pre-trial mechanisms, which ensure that detention actions comply with legal provisions. Although pretrial serves as an instrument of judicial control, it is not an integral part of the criminal justice system because it only works on request.

Apart from that, several studies, such as those conducted by Fachrizal

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37 Tati Firdiyanti, "Masa Penahanan Habis, Polisi Bebaskan Dua Tersangka Korupsi Nurul Arafah," AJNN, 2023, https://www.ajnn.net/news/polisi-bebaskan-dua-tersangka-korupsi-nurul-arafah/index.html.

38 Andreea Teodora Al-floarei, *Judicial Control over the Public Administration: Notion, Legal Basis, Essence*, vol. XXI, 2020, https://www.ceeol.com/search/article-detail?id=923526. p. 255-256

Afandi,[39] Ramsen Marpaung, Moeliono Tristam Pascal,[40] and Adam Ilyas,[41] show that one of the sources of problems in pretrial is its passive nature and not being an integral part of the criminal justice system. This condition emphasizes the need for more integrated supervision by the courts through the active role of judges to increase the efficiency and effectiveness of supervision in the criminal justice system. By implementing an integrated system and enabling information sharing between justice sub-systems,[42] supervision can be done comprehensively without relying entirely on individual requests.

Pretrial-like institutions can be, for example, in the Netherlands, where this control is carried out by a Commissioner or a commissioner judge, who has the authority to supervise and assess the legality of detention and investigation steps.[43] In France, this mechanism is under the authority of an investigating judge, who is responsible for leading investigations and ensuring the legality of detention.[44] Meanwhile, in Italy, this process involves a Preliminary Hearing Judge (Judge for the preliminary hearing - GUP), who decides whether the evidence is sufficient to proceed with a prosecution. If there is insufficient evidence, the public prosecutor will request approval from the Preliminary

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39 Fachrizal Afandi, "Implementasi Pengabdian Masyarakat Berbasis Access to Justice Pada Lembaga Bantuan Hukum Kampus Negeri Pasca Pemberlakuan Undang-Undang Bantuan Hukum," Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional 2, no. 1 (2013), https://doi.org/10.33331/rechtsvinding.v2i1.80.

40 Marpaung and Moeliono, "Perbandingan Hukum Antara Prinsip Habeas Corpus Dalam Sistem Hukum Pidana Inggris Dengan Praperadilan Dalam Sistem Peradilan Pidana Indonesia."

41 Adam Ilyas, "Praktik Penerapan Exclusionary Rules Di Indonesia," *Masalah-Masalah Hukum* 50, no. 1 (2021), https://doi.org/10.14710/mmh.50.1.2021.49-59.

42 Rajeswari Ramachandran, "Assessments and Screening Tools for Autism and Learning Disability in the Criminal Justice System : A Rapid Evidence Review" (University of Lincoln, 2023), https://repository.lincoln.ac.uk/ndownloader/files/48558304. p. 15

43 Erwin Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia," *Hasanuddin Law Review* 3, no. 3 (2024): 342–57, https://doi.org/10.20956/halrev.v10i3.6088. p. 352

44 Édouard Delrée, "The French Heritage Put to the Test of Time: History of Criminal Procedure in Belgium (1814-2020)," *Revista Brasileira de Direito Processual Penal*, 2021, https://doi.org/10.22197/RBDPP.V7I2.602. p. 965

Investigation Judge (Judge for preliminary investigations) to stop the proceedings.[45]

In the Draft Criminal Procedure Code (RKUHAP), efforts have been made to improve the regulation of pre-trial detention by incorporating stricter procedural requirements and emphasizing the protection of suspects' rights. However, these provisions still fall short compared to the standards set by Article 9(3) of the ICCPR, which mandates that anyone arrested or detained on a criminal charge must be promptly brought before a judge or other officer authorized by law to exercise judicial power.

The RKUHAP maintains a passive judicial review model, where court involvement in reviewing detention is not automatic but must be initiated by a party through a pre-trial motion. This mechanism contrasts sharply with the ICCPR's emphasis on immediate and proactive judicial oversight to prevent arbitrary detention. Furthermore, the timelines in the RKUHAP for reviewing detention are relatively long compared to international best practices, potentially allowing deprivations of liberty without timely independent scrutiny.

Thus, while RKUHAP marks progress, it still does not fully embrace the principle of automatic, early judicial control that the ICCPR envisions. Without mandatory and prompt judicial review following an arrest, the Indonesian system remains vulnerable to rights violations, undermining efforts to harmonize national law with international human rights obligations.

The Preliminary Examining Judge (HPP) concept is proposed as a substitute pre-trial institution to strengthen judicial supervision at the pre-

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[45] Vincenzo Carbone, "The Role of the Public Prosecutors in the Repression of Tax Crimes-the Italian Perspective," *European Integration Studies* 19, no. 2 (2023): 71–78, https://doi.org/10.46941/2023.e2.6. p. 72-73

trial stage.[46] However, this concept still does not entirely fulfill the mandate of Article 9, paragraph (3) of the ICCPR, which requires integral involvement of the court from the start of detention. In the RKUHAP, the HPP's authority is limited only to extending detention at the request of investigators through the public prosecutor (Article 58 paragraph (3) RKUHAP) and deciding whether the extension can be granted or not (Article 60 paragraph (5) RKUHAP). Therefore, this concept can be considered not fully in line with international standards, prioritizing court involvement to guarantee the protection of suspects' rights and prevent abuse of authority in the detention process.

The Indonesian criminal justice system does not yet have an integrated mechanism with judicial power to ensure the legality of detention from the start, as mandated by Article 9 paragraph (3) of the ICCPR. This article emphasizes the importance of immediately bringing detainees before a court or authorized official to protect human rights and prevent arbitrary detention. Article 9, paragraph (3) of the ICCPR stipulates that if the authorities fail to bring a suspect to justice within a reasonable time, the suspect has the right to be released pending trial, for example, through a bail mechanism (bail).[47] This provision is also regulated in Article 5, paragraph (3) of the European Convention on Human Rights (ECHR), which states that every detained person must be immediately brought before a judge or authorized official to assess the legality and reasons for their detention. This provision also requires the court to determine the reasonableness of the duration of detention to

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46 Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia." p. 352

47 Muhammad Rustam Abbas Mairaj, Muhammad Usman and Tullah and Hafiz Muhammadd Azeem, "Fair Trial Rights of the Accused: Evaluating Compliance with International Human Rights Standards in Pakistan," *Pakistan Research Journal of Social Sciences* 3, no. 2 (2024), https://prjss.com/index.php/prjss/article/view/144. p. 620

ensure that the detention is not carried out arbitrarily.[48]

In Poland, this principle is regulated in Article 41 paragraph (3) of the Polish Constitution, which confirms that every detained person must immediately be informed clearly of the reasons for his or her detention and must be submitted to a court to review the case within 48 hours. If, within 24 hours after being handed over to the court, a temporary detention order is not issued with a complete explanation of the charges against him, the person must be immediately released.[49] Meanwhile, in Pakistan, Article 10, paragraph (2) of the Constitution of Pakistan regulates that every person who is arrested and placed in detention (arrested and detained in custody) must be immediately brought before a magistrate within 24 hours of arrest, except for the time required to travel to the nearest court. The detention cannot continue without a valid order from a magistrate to extend the prison term.[50] The comparative analysis reveals several consistent patterns: immediate judicial oversight, explicit time constraints for judicial review (typically within 24 to 48 hours), and judicial obligations to articulate explicit reasons for continued detention. For example, Poland mandates that detainees appear in court within 48 hours, and detention orders must be justified; Pakistan requires detainees to appear before a magistrate within 24 hours, with detention extensions subject to explicit judicial authorization. These jurisdictions demonstrate robust accountability and transparency in pretrial processes. Conversely, Indonesia's detention review remains primarily administrative, dependent on detainee-initiated requests, and lacks automatic judicial oversight. Thus, adopting prompt and mandatory judicial review would

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48 Przemysław Tarwacki, "Lack of Fair Judicial Review of Pre-Trial Detention after Surrendering the Prosecuted Person as an Absolute Obstacle to Extradition," *Studia Iuridica Lublinensia* 33, no. 2 (2024): 281–98, https://doi.org/10.17951/sil.2024.33.2.281-298. p. 287

49 Tarwacki. *Op.Cit.* P. 283

50 Khalid Mehmood, Muhammad Shahid Sultan, and Hafiz Muhammad Azeem, "An Analysis of Pre-Trial Fair Trial Rights and International Standards," *Annals of Human and Social Sciences* 5, no. 2 (2024): 627–37, https://doi.org/http://doi.org/10.35484/ahss.2024(5-II-S)59. P. 631

substantially enhance human rights protections within Indonesia's criminal justice system.

In Croatia, the Constitution stipulates that detention can only be carried out based on a court warrant, as stated in Article 24. In addition, Article 25 confirms that anyone detained and charged with a criminal offense has the right to be immediately brought before a court within the shortest possible time as regulated by law.[51] Article 104 paragraph (3) of the German Constitution stipulates that every person temporarily detained on suspicion of committing a criminal offense must be brought before a judge no later than the next day after their arrest. The judge must provide detailed reasons for the arrest, examine the suspect, and allow the suspect to object to the detention. In addition, the judge must immediately decide whether to issue a written detention order stating the reasons for the arrest or order the suspect's release. Croatia requires detention to be authorized strictly by court warrant, ensuring prompt judicial review. At the same time, Germany mandates that detainees must appear before a judge no later than the following day, with detailed justification and a clear opportunity to challenge detention. These standards reflect robust transparency, accountability, and protection of detainee rights. Conversely, Indonesia's current practice remains predominantly administrative, reliant on detainee-initiated actions rather than integrated automatic judicial oversight. Therefore, incorporating immediate, automatic judicial review into Indonesia's detention process is essential for aligning with international standards and enhancing human rights protections.

Various provisions in various countries show that pre-trial detention

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[51] Elizabeta IVIČEVIĆ KARAS, Marin BONAČIĆ, and Zoran BURIĆ, "Pre-Trial Procedure in Croatia in A Comparative Analysis of Pre-Trial Procedure in Europe: The Search for an Ideal Model," in *A Comparative Analysis of Pre-Trial Procedure in Europe: The Search for an Ideal Model*, ed. Edward JOHNSTON, Rahime ERBAŞ, and Daniel JASINSKI (Istanbul University Press, 2020).

is an integral part of the criminal justice system, different from the pre-trial mechanism in Indonesia. Based on this comparison, the Indonesian criminal justice system needs to make supervision of pre-trial detention an integral part of the criminal justice system, not just a separate mechanism.

The comparative analysis of Poland, Pakistan, Croatia, and Germany reveals a familiar pattern: pre-trial detention is subject to immediate and mandatory judicial oversight to protect individual liberty. Each jurisdiction emphasizes strict time limits—typically within 24 to 48 hours—during which the arrested person must be presented before a judicial authority. Judicial review is automatic and integral, not optional or dependent on a party's request. Judges must also provide clear, detailed reasoning when authorizing continued detention, ensuring transparency and accountability.

In contrast, Indonesia's mechanism treats supervision of detention as a separate process, requiring the suspect's or counsel's initiative through a pre-trial motion. This creates a significant gap in protection compared to the integrated models seen internationally. Therefore, to strengthen the protection of human rights, Indonesia should integrate automatic, prompt judicial review of detention directly into the criminal process, making it a standard safeguard rather than a reactive remedy. Regarding the ideal concept for overcoming the weaknesses of pre-trial detention in Indonesia, it can be seen from the following table:

TABLE 3.

The Ideal Concept of Pre-Trial Detention in Indonesia

Aspect	Present Condition	Ideal Conception
Legality of Detention	Carried out through pre-trial mechanisms, separately and only upon request.	Legality is tested by a judge from the start of detention without requiring a special request.
Judicial Oversight	It is not integral; it is only limited to pre-trial submissions.	Judges are directly involved in overseeing the legality of detention from the start as an essential part of the criminal justice system. In this concept, the legality of detention is tested on the first detention, unless a different authority has a new detention (specifically detention previously declared illegal).
Protection of Suspects' Rights	Not yet optimal in protecting suspects' rights from potential law violations.	Suspects' rights are guaranteed through integrated judicial control, preventing arbitrary actions.

International Standard	Not yet under the provisions of Article 9, paragraph (3) ICCPR.	Under Article 9, paragraph (3) of the ICCPR, the supervision of judges from the beginning is involved to ensure the protection of human rights.

Sources: Authors, 2025 (edited).

The table above formulates an essential concept regarding the integral involvement of judges at the pre-trial stage, which places judicial supervision as an inseparable part of the criminal justice system. In this context, the legality of detention is sufficient to be tested when the first detention is carried out, so that there is no duplication or repetition of examinations, which hampers the efficiency of the judicial process. For example, if investigators first detain a suspect, the legality of the detention must be tested by a judge to ensure that the action was carried out under legal provisions. However, the public prosecutor detains the suspect if the investigator does not detain him. The legality of the detention by the public prosecutor still needs to be tested by a judge to ensure its validity.

An integrative criminal justice system like this is designed to avoid repeating legality checks on detentions declared legal by the court. On the other hand, if detention by an investigator is declared invalid by a judge, the public prosecutor then carries out the detention. The public prosecutor must be tested again to ensure its legality. This approach not only prevents abuse of authority by law enforcement officers, but also provides enhanced legal protection for suspects by ensuring that every decision concerning their freedom is subject to immediate judicial oversight, consistent with the principles of the rule of law and

international human rights standards, as reflected in practices from jurisdictions such as Germany and Poland.

This conception can be stated as follows: "Every suspect whom investigators or public prosecutors first detain must be brought before the court to be tested on the legality of their detention by a judge. If the detention is declared valid, then the detention can continue. If the detention carried out by the investigator is declared valid, then the detention by the public prosecutor does not need to be tested again. "However, if the detention by investigators is declared invalid, and the public prosecutor then carries out the detention, then the detention must be retested to ensure its validity."

The integration of judges in the pre-trial detention process reflects a tangible manifestation of the implementation of judicial control. This step is essential to ensure that authorities such as investigators or public prosecutors do not exceed the authority granted by law. Apart from that, the involvement of judges also protects citizens' rights from potential violations or abuse of authority.[52] This control is a step to protect the suspect's rights, freedoms, and interests from being violated.[53] This supervision does not merely aim to strengthen judicial power. Still, it functions rationally as a monitoring mechanism for the legality of actions and decisions taken during the pre-trial stage.[54] Without judicial control, pre-trial detention has the potential to pose a serious threat to individual freedom because it is based on mere suspicion without adequate

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[52] ZEN Fadil, "Judicial Control over Public Admin," *JURIDICA* 2 (2012), https://www.academia.edu/download/83069798/1246.pdf. P. 93

[53] Oksana Kaplina and Svitlana Sharenko, "Access to Justice in Ukrainian Criminal Proceedings during the Covid-19 Outbreak," *Access to Justice in Eastern Europe* 3, no. 2–3 (2020), https://doi.org/10.33327/AJEE-18-3.2-3-a000029. P. 117

[54] Dilshod Aripov Urinboevich, "Judicial Review as a Function of the Judiciary," *The American Journal of Political Science Law and Criminology* 6, no. 11 (2024): 95–99, https://doi.org/https://doi.org/10.37547/tajpslc/Volume06Issue11-14. P. 95.

supervision.[55]

Thus, the integration of judges in this process reflects the implementation of judicial control aimed at upholding the principles of the rule of law, protecting human rights, and ensuring that every pre-trial detention meets established national and international standards. This step is a concrete manifestation of Indonesia's efforts to create a criminal justice system based on the principles of the rule of law that protects human rights.

Conclusion

As regulated by the Criminal Procedure Code, pre-trial detention in Indonesia determines the parties authorized to carry out detention, including subjective and objective conditions and the detention period. Although the pretrial mechanism has been adopted to monitor the legality of detention, its current petition-based approach does not fully meet international standards, particularly the requirements under Article 9(3) of the ICCPR, which demand direct and immediate judicial oversight. As a result, supervision over pre-trial detention in Indonesia remains primarily administrative and insufficient to prevent arbitrary detention effectively. An ideal conception emphasizes integrating judicial control from the outset of detention as part of the criminal justice process, ensuring legality, preventing abuses of power, and strengthening the protection of suspects' rights following the rule of law and human rights principles.

To realize this ideal, several concrete policy recommendations are necessary. First, the Criminal Procedure Code should be amended to require that every suspect subjected to detention be brought before a judge within 24 to

[55] Shrutanjaya Bhardwaj, "National Law School of India Review Empirical Study : Delay at the Madras High Court in Preventive Detention Cases Empirical Study : Delay at the Madras High Court in Preventive Detention Cases," *National Law School of India Review* 35, no. 1 (2024), https://doi.org/10.55496/QERK1890. p. 1

48 hours for a legality review. Second, a mandatory detention hearing must be established where judges assess and authorize continued detention based on clear legal grounds. Third, judicial training and institutional support must be strengthened for swift, accurate legality assessments. Finally, a systematic monitoring and reporting mechanism should be implemented to ensure consistent judicial oversight and to promote accountability among law enforcement agencies. Through these measures, Indonesia can move toward a system of pre-trial detention that is more efficient, accountable, protective of human rights, and compliant with international standards.

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