

Preliminary Examining Judges in Indonesian Criminal Procedure Reform: Lessons from Australia's Committal Hearings

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Abstract

This study examines Indonesia's Preliminary Examining Judges (PEJ) and compares them with Australia's committal hearings. We ask whether the PEJ can better protect human rights and prevent abuses of authority in Indonesia's criminal justice system. Using a qualitative comparative approach, we analyze the PEJ in the 2012 Draft Criminal Procedure Code and Australia's committal hearings, drawing on statutes, scholarly articles, and related regulations. We find that although the 2025 draft Code did not adopt the PEJ, the concept remains relevant and worth implementing. The Preliminary Examining Judge can improve the efficiency of the legal system by supervising investigations and ensuring only well-founded cases proceed to court. Operating at the pre-investigation stage with broad powers to direct inquiries and name suspects, the PEJ reflects the



inquisitorial civil law tradition. By contrast, Australia's committal hearings occur post-investigation and assess the evidentiary sufficiency for higher courts, consistent with the common-law adversarial model.

Keywords

Preliminary Examining Judge, Criminal Procedure Law, Committal Hearing, Draft Criminal Procedure Code, Protection of Human Rights.

Introduction

The idea of pretrial was initially implemented when the Criminal Procedure Code (KUHAP) was enacted in 1981.¹ Pretrial proceedings under Articles 77 to 83 of KUHAP are a procedural tool for determining the legal validity of law enforcement actions, such as arrest, detention, and termination of an investigation or prosecution.² The pre-trial capacity at this time was intended to safeguard the suspects' human rights against abuse of power by law enforcement agencies. Over the next decades, pre-trial was widely regarded as less efficient owing to its narrow focus and to cases in which suspects could not beat the law enforcement system.³ Few pre-trial cases were won, and the whole process was seen as a foregone conclusion rather than a proper supervisory check. One of the big developments is Constitutional Court Decision No. 21/PUU-XII/2014.⁴ This decision also expanded the scope of the pretrial proceedings by treating a seizure as another action that may exceed the constitutional warrant. By this decision, police confiscation powers cannot operate since the suspect or related party can challenge the

¹ Baren Sipayung and Andi Wahyudi, "Pretrial Determination of Suspects in Corruption Cases: A Critical Analysis of Judge Sarpin Rizaldi's Decision and Its Implications for Combating Corruption in Indonesia," *Journal of Progressive Law and Legal Studies* 2, no. 03 (2024): 225–36, <https://doi.org/10.59653/jplls.v2i03.1084>.

² Fernando Tumbur Josua Napitupulu and Hery Firmansyah, "The Implementation of Article 77 KUHAP Regarding Status of Suspects in Pre-Trial Criminal Justice System in Indonesia," April 21, 2022, 857–61, <https://doi.org/10.2991/assehr.k.220404.136>.

³ Arista Candra Irawati, "Pre-Trial: A Study and Analysis of the Protection of the Rights of Suspects in Creating Legal Certainty," *The Virtual International Conference on Economics, Law and Humanities* 1, no. 1 (2022): 1.

⁴ Dina Liliyana and Yusuf Setyadi, "Legal Interpretation of the Constitutional Court on the Deadline Provisions for Imposing Pretrial Decisions Based on Decision Number 66/PUU-XVI/2018," *International Journal of Social Health* 2, no. 1 (2023): 1, <https://doi.org/10.58860/ijsh.v2i1.18>.

confiscation through a pre-trial. Thus, post-decision, pre-trial has emerged as a more efficient tool in securing the constitutional rights of suspects.⁵

Pre-trial is a legal procedure in Indonesia in which one can go to court to challenge law enforcement actions such as arrest, detention, or the identification of suspect status.⁶ The purpose of this mechanism remains to safeguard human rights and to guarantee the proper functioning of a legal procedure.⁷ Pretrial has offered people a chance to seek a fresh angle regarding their case pending before the court, especially if there are signs of some irregularities or authoritarianism in the judicial system.⁸ Nonetheless, the efficiency of pretrial review has been generally an up-and-down affair. The barriers include, for instance, the principle that pre-trial proceedings need to be finalized within a short period, which often means that not all necessary investigations can be conducted. Secondly, while the Constitutional Court has expanded pre-trial powers to challenge the legitimacy of suspect decisions, this aspect remains problematic in practice.⁹ Unfortunately, there is no extensive data on pretrial motions, their numbers, or their outcomes, which makes evaluating the phenomenon challenging. In response to the lack of perfection in the pre-trial process, there has been an idea of a new procedure, the preliminary examination judge, since 2012.

The Preliminary Examining Judge (PEJ) helps filter weak cases from going to trial by disposing of cases involving undeserving or unnecessary

⁵ Rusman Sumadi, "Praperadilan Sebagai Sarana Kontrol Dalam Melindungi Hak Asasi Manusia (HAM) Tersangka," *Jurnal Hukum Sasana* 7, no. 1 (2021): 149–62.

⁶ Stacie St. Louis, "The Pretrial Detention Penalty: A Systematic Review and Meta-Analysis of Pretrial Detention and Case Outcomes," *Justice Quarterly* 41, no. 3 (2024): 347–70, <https://doi.org/10.1080/07418825.2023.2193624>.

⁷ Septian Joddie Dwianur Sukono and Bambang Santoso, "Analisis Efektivitas Praperadilan Dalam Melindungi Hak Asasi Manusia Di Sistem Peradilan Indonesia," *Verstek* 12, no. 1 (2024): 1, <https://doi.org/10.20961/jv.v12i1.78978>.

⁸ Fitriah Faisal, "Pre-Trial in Indonesia: Why It Should Be Reformed," *Jurisprudencie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 10, no. 2 (2023): 2, <https://doi.org/10.24252/jurisprudencie.v10i2.43678>.

⁹ Siska Trisia, "Problematika Praperadilan di Indonesia," *hukumonline.com*, accessed November 25, 2024, <https://www.hukumonline.com/berita/a/problematika-praperadilan-di-indonesia-lt5b064a4bfc39/>.

imprisonment, while warranting that strong cases proceed to trial.¹⁰ PEJ has the power to scrutinize the lawfulness of detention, review the materials, and decide whether the case should proceed.¹¹ The examination is conducted publicly. It is important to make some decisions that should be legally inexplicable.¹²

Preliminary examinations are also conducted in a very formal standard of procedure and within time limits set by the 2012 Draft Criminal Procedure Code (KUHAP-Draft).¹³ Also, during the preliminary examination, the suspect is given the right to seek legal redress if they feel their rights have been trampled. By this design, KUHAP-Draft would like to reinforce human rights and eradicate abuse of power in Indonesia, and, in addition, improve public confidence in the criminal justice system.¹⁴

The PEJ in the proposed KUHAP-Draft has broader powers than the pretrial institution in the present KUHAP.¹⁵ Unlike the preliminary examination judge, who has broader and more complex functions and duties. However, their aim is the same: to protect suspects' rights. When the legal system is independent, the people accused as suspects or defendants should be protected at the initial stages of the judicial process.¹⁶

¹⁰ Hamalatul Qurani, "Praperadilan vs Hakim Pemeriksa Pendahuluan, Mana yang Lebih Baik?," *hukumonline.com*, accessed November 23, 2024, <https://hukumonline.com/stories/article/lt66aee90b380ce/praperadilan-vs-hakim-pemeriksa-pendahuluan--mana-yang-lebih-baik/>.

¹¹ Johannes Blasius Vernando, "Kedudukan Hakim Pemeriksa Pendahuluan Dikaitkan Dengan Kewenangan KPK Dalam Pembaharuan Hukum Acara Pidana Indonesia = The Position of the Hakim Pemeriksa Pendahuluan Associated with the KPK in the Indonesian Criminal Procedure Law Reform," Universitas Indonesia Library, Fakultas Hukum Universitas Indonesia, 2014, <https://lib.ui.ac.id>.

¹² Kartika Aji, "Urgensi Pengaturan Hakim Pemeriksa Pendahuluan Sebagai Upaya Penjaminan Terpenuhi Hak-Hak Tersangka Dalam Proses Perkara Pidana" (PhD Thesis, Universitas Brawijaya, 2021), <http://repository.ub.ac.id/186700/>.

¹³ Ridwan Ridwan et al., "Speeding Up Justice: A Critical Analysis Of The Principle Of Speedy, Simple, And Low-Cost Trials In Indonesian Corruption Cases," *Kanun Jurnal Ilmu Hukum* 26, no. 2 (2024): 2, <https://doi.org/10.24815/kanun.v26i2.33385>.

¹⁴ Tim Mann, "Pretrial Hearings: Safeguarding Human Rights or a Gift to Corruptors?," in *Crime and Punishment in Indonesia* (Routledge, 2020).

¹⁵ Ditjen PP Kemenkumham, *Rancangan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)* (2012), http://ditjenpp.kemenkumham.go.id/files/doc/1008_RUU_KUHAP.doc.

¹⁶ Devi Kartika Sari, "Analisis Yuridis Kedudukan Hakim Pemeriksa Pendahuluan Sebagai Upaya Pembaharuan Lembaga Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia," *Brawijaya Law*

It allows the PEJ to make a neutral determination about whether the case has a proper legal ground or whether the insufficient amount of proved facts may result in unjust persecution. Lack of proper and comprehensive initial assessments, resulting from consultation and investigations, is a threat to imprisoning or prosecuting individuals with no legal grounds, which would lead to human rights abuses and would discredit the criminal justice system.¹⁷

The PEJ also plays a role in the proper use of judicial resources, to some extent.¹⁸ A justice system with many cases that are not suitable for trial clogs it, thereby preventing it from handling more serious and urgent cases. Thus, the role and importance of the PEJ become clear, as it can prevent inefficiencies in the criminal justice system and direct attention to cases that meet legal standards and are of significant relevance.¹⁹

In normative terms, the origin of the PEJ is to be found in the very principle of prudence in the practice of law, particularly the criminal one, that invades individual freedom to a great extent.²⁰ Hence, its application needs to be done carefully. The PEJ ensures that proceedings against a person are instituted when there are good grounds and sufficient material.

Indonesian law has been based on KUHAP for the past twenty-seven years, which replaced a colonial product known as the *Herziene Inlandsch Reglement*.²¹ Nevertheless, such technological advancements, especially in communication and transport systems, accompanied by

Student Journal, April 7, 2015, <https://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1005>.

¹⁷ Supriyadi Widodo Eddyono and Erasmus Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP," *Jakarta: Institute for Criminal Justice Reform*, 2014, <http://icjr.or.id/wp-content/uploads/2014/03/HPP-dan-Penahanan-dalam-R-KUHAP.pdf>.

¹⁸ Eddyono and Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP."

¹⁹ Fachrizal Afandi, "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia," *JURNAL MIMBAR HUKUM* 28, no. 1 (2016): 1, <https://doi.org/10.22146/jmh.15868>.

²⁰ Sari, "Analisis Yuridis Kedudukan Hakim Pemeriksa Pendahuluan Sebagai Upaya Pembaharuan Lembaga Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia."

²¹ Muhd Khumaidi El Anshari et al., "Implementation Of Default Judgment In Article 19 Letter C Of Government Regulation Number 9 Of 1975 At The Religious Court Of Lubuk Pakam," *JHSS (JOURNAL OF HUMANITIES AND SOCIAL STUDIES)* 7, no. 2 (2023): 2, <https://doi.org/10.33751/jhss.v7i2.8820>.

political, social, economic, and legal reforms, have posed new problems that the existing KUHAP does not adequately address. In many areas of the law, including criminal law, globalization in economics, finance, and trade has brought about dramatic changes that, in turn, demand changes in the law. In addition, Indonesia has signed many international instruments, including the United Nations Convention against Corruption, the International Convention against Torture, and the International Covenant on Civil and Political Rights.²² They are all inextricably linked to the criminal procedure law and require a more developed, effective, and legally responsible system.

The concept of the Preliminary Examining Judge in the KUHAP-Draft reflects a fundamental shift in Indonesia's approach to criminal justice. This mechanism is inspired, in part, by the committal hearings in Australia, a procedural safeguard implemented in Australian criminal law to prevent wrongful trials and protect human rights. The committal hearings serve as a pretrial mechanism to filter out weak cases, ensuring that only those with sufficient evidence proceed to trial in higher courts.²³ The rationale for adopting a similar model in Indonesia is to prevent law enforcement from abusing its power, much as Australia has done to prevent frivolous trials and ensure justice is upheld.²⁴

Australia's Committal Hearings (ACH) occur after the investigation is completed and involve a magistrate reviewing the evidence to decide whether the case should proceed to a higher court.²⁵ This process is part of the adversarial legal system in Australia, which ensures judicial independence and neutrality, thereby allowing an impartial review of the evidence before a case goes to trial.²⁶ The Australian system also provides an opportunity for the defense to challenge the sufficiency of evidence, offering a balance between prosecutorial authority and the rights of the

²² Hailey Ferguson, "Indonesian Government Proposes Legislation Attacking Anti-Corruption Agency, Brutally Cracks down on Student Protesters," *Human Rights Brief* 23 (2020): 6.

²³ Gao Yong, "Hearings of Procedural Adjudication," in *Criminal Procedural Trial in China*, by Gao Yong (Springer Nature Singapore, 2024), https://doi.org/10.1007/978-981-97-4935-5_5.

²⁴ Seokwoo Lee et al., "Asian State Practice in the Domestic Implementation of International Law," *The Korean Journal of International and Comparative Law* 10, no. 1 (2022): 1–65.

²⁵ Felicity Bell et al., "The Use of Technology (and Other Measures) to Increase Court Capacity: A View from Australia," *Revista Forumul Judecatorilor*, 2021, 18.

²⁶ Sarah C. Derrington, "Without Fear or Favour," *Monash University Law Review* 48, no. 3 (2022): 1–18.

accused.²⁷

In contrast, Indonesia's PEJ, as proposed in the KUHAP-Draft, seeks to embed judicial oversight much earlier in the process, beginning before formal investigations and arrests. The introduction of this concept was driven by the need to protect suspects' rights against potential abuse by law enforcement. Similar to ACH, the PEJ aims to sift out baseless cases and ensure that only those with strong legal grounds proceed. However, the PEJ's broader scope and earlier intervention in the investigative process have raised concerns about potential overreach, with critics warning of the concentration of too much power in the hands of judges, thereby undermining the separation of powers among the judiciary, the police, and prosecutors.

In both systems, the idea is to prevent wrongful trials and ensure fairness in the criminal process. However, the Australian model has been proven effective, as it aligns with their adversarial system and provides clear procedural guidelines. Based on official Australian data and reports, the committal hearing system has been shown to filter weak cases efficiently, encourage early case resolution, and protect defendants' rights. Its success is demonstrated by high rates of early guilty pleas and a low percentage of cases being discharged after a full hearing.²⁸ Indonesia, on the other hand, faces unique challenges, including geographical constraints, infrastructural limitations, and resistance from law enforcement, which have led to skepticism about the feasibility of fully implementing the PEJ. Despite these concerns, the PEJ concept, influenced by the ACH, remains a potential reform to address inefficiencies and safeguard human rights in Indonesia's evolving criminal justice system.

Although the PEJ has been removed from the 2025 KUHAP-Draft, this study remains urgently needed to enrich legal scholarship on the PEJ's importance. Considering the effectiveness of law enforcement in Australia,

²⁷ Natalie Hodgson et al., "The Decision to Prosecute: A Comparative Analysis of Australian Prosecutorial Guidelines," *Criminal Law Journal*, 2020, <https://research-repository.griffith.edu.au/items/32e96448-0091-4db4-a771-dcd4394bd4d5>.

²⁸ Victorian Law Reform Commission, "Committal System and Indictable Case Data," *Victorian Law Reform Commission*, n.d., accessed October 9, 2025, <https://www.lawreform.vic.gov.au/publication/committals/3-committal-system-and-indictable-case-data/>.

the concept of a PEJ, which monitors the performance of law enforcement officers and screens cases with insufficient evidence before they are brought to trial, is highly relevant. Implementing this concept in the revised KUHAP is expected to improve the Indonesian legal system while meeting the challenges posed by globalization and international standards for the protection of human rights in criminal justice procedures.

This study highlights significant shortcomings in the existing KUHAP, which have not fully protected justice and human rights in the Indonesian criminal justice system. By introducing a PEJ into the KUHAP, it is hoped that this mechanism will reduce arbitrary detention, abuse of power, and ineffective legal proceedings. This study also discusses key obstacles to implementing this mechanism, including resistance from law enforcement officers, bureaucratic barriers, and threats to judicial independence. Furthermore, this study aims to identify strategies and institutional reforms to ensure the successful implementation of the PEJ within the Indonesian legal framework, thereby improving the provision of justice, the efficiency of resource allocation, and public trust in this legal system.

Therefore, this study explores how the concept of a PEJ ensures the protection of human rights and prevents abuse of authority in the Indonesian criminal justice system, and to what extent can this concept, inspired by the ACH, be implemented to improve the efficiency of the legal system by strengthening the supervision of the investigation process and ensuring that only cases with strong evidence are brought to court, given that this concept has been removed from the 2025 KUHAP-Draft?

Method

This study employs a qualitative and comparative approach to examine the concept of the Preliminary Examining Judge (PEJ) within Indonesia's criminal justice system, using Australia's Committal Hearings (ACH) as a reference point. The analysis deliberately centers on the 2012 Draft Criminal Procedure Code (KUHAP-Draft), as it contains the most comprehensive formulation of the proposed judge mechanism, whereas the 2025 Draft omits it entirely. To ensure a representative comparison, the study utilizes a purposive selection of Australian jurisdictions,

including Victoria and New South Wales for their traditional models, Queensland for its innovative "registry committals," and Western Australia and Tasmania as examples of jurisdictions that have moved to abolish such hearings.

Data for this research were gathered through an extensive literature review of primary and secondary legal sources. The primary data encompasses the Indonesian KUHAP, the 2012 KUHAP-Draft, and relevant Australian state legislation. Secondary data includes scholarly articles, books, court decisions, and official reports. The comparative framework analyzes the primary objectives, legal authorities, procedures, and underlying legal philosophies, contrasting Indonesia's civil law tradition with Australia's common law system.

The data processing technique is descriptive-analytical, aiming to interpret regulations and procedures to elucidate the challenges and opportunities in implementing a PEJ system in Indonesia. Furthermore, this study acknowledges its reliance on secondary data and documents as a limitation, recognizing that the findings are interpretive and do not incorporate direct empirical perspectives from practitioners. This research aims to provide actionable recommendations to strengthen judicial oversight and human rights protection within the Indonesian legal context, informed by a comparative analysis.

Results and Discussion

A. Regulating Preliminary Examining Judges in the 2012 Draft Criminal Procedure Code (KUHP-Draft)

In Indonesian criminal procedure law, there is a process known as a pretrial hearing, and, under reform, the concept of a Preliminary Examining Judge (PEJ) has been introduced. Fundamentally, the preliminary examining judge and the pretrial hearing are two different institutions, both philosophically, legally, and functionally, in the Indonesian criminal justice system. The preliminary examining judge, proposed in the 2012 Draft Criminal Procedure Code (KUHP-Draft), is a proactive and preventive mechanism that operates at the pre-investigation stage, before coercive measures such as arrest and detention are carried out. This concept adheres to the *inquisitorial* paradigm, in which judges actively lead

and direct investigations, have broad authority to assess the admissibility of preliminary evidence, determine suspects, and approve or cancel coercive measures proposed by investigators. Its purpose is to serve as the main “filter” to ensure that only cases with strong legal grounds and evidence proceed to trial, thus making it an ex-ante (pre-action) oversight mechanism.

In contrast, the Pre-trial Hearing regulated in the Criminal Procedure Code (KUHAP) (Articles 77-83) is a reactive and corrective mechanism that operates at the post-factum stage, i.e., after a coercive measure (such as arrest, detention, or designation of a suspect) has been carried out by the investigator. The adopted paradigm is adversarial, in which the judge acts as a referee who assesses the legality of an action upon request by the suspect or their representative. The judge's authority is limited to examining the formal legality of actions that have already occurred and deciding whether they are valid or should be revoked. Thus, the main function is as a remedy or restoration of rights (remedial) after an alleged violation, so it is ex-post (supervision after the action).

Another fundamental difference lies in the process's initiative. The Preliminary Examination Judge process is initiated by investigators who require the judge's approval before acting, reflecting a tiered system of oversight. Meanwhile, the pre-trial is initiated entirely by the affected party (the suspect or their lawyer), who believes their rights have been violated and submits a petition to the court to obtain a correction. In terms of scope, the PEJ is designed to oversee the entire investigation process from the outset, while the pre-trial focuses on testing specific actions limited by law. However, the Constitutional Court's decision has expanded its scope to include seizure actions. The PEJ functions as a “gatekeeper” that prevents weak cases from entering the court system, while the Pre-trial Judge acts as a “judge” who decides on the legality of an action after the case has been filed.

The appointment of a PEJ in Indonesia's criminal procedure is the basis for a proper legal process, for the rights of suspects and witnesses, and for proper judicial management.²⁹ The incorporation of this practice in

²⁹ Fitriah Faisal, “Due Process of Law: Pre-Trial and Preliminary Examination Judge on Indonesian Criminal Procedure Law,” *Scholars International Journal of Law, Crime and Justice* 6, no. 03 (2023): 154–58, <https://doi.org/10.36348/sijlcj.2023.v06i03.003>.

the Indonesian legal system will help take the fight for the rule of law and protection of persons in criminal cases to another level.

The position of the PEJ is very important in Indonesian criminal procedure because it protects the rights of suspects and witnesses and ensures justice throughout the process. A preliminary hearing by a judge is crucial to guaranteeing a fair legal process and the operational standards of the stipulated legal procedure in justice.

The PEJ protects the legal pre-trial stage of the criminal process in Indonesia and the rights of the participants. This process involves ensuring that the kinds of evidence produced in court are admissible in a court of law and that the legal concerns of persons of interest and other witnesses are respected from the time of arrest through trial.³⁰ When adopting the legal foundation of the PEJ into the Criminal Process Code, there is an opportunity to enhance the legal system and to teach fair justice for individuals engaged in criminal justice cases.³¹

Besides, to get the judge to accept that a particular criminal act is true and that the accused ought to be punished, there is a need for two elements of a piece of evidence in the criminal procedure before them.³² This goes to show the necessity of enshrining the law so that, even before an officer's investigation, the judge intervenes to ensure that only legally collected and admissible evidence is presented.³³

Regarding the presumption of innocence, the Indonesian legal system under the Criminal Code of Indonesia and or other relevant laws attaches great importance to the rule of innocent until proven guilty.³⁴ Pursuing this principle requires recognizing the innocent until proven guilty; the presentation of an essential and detailed preliminary examination by a judge to protect this right is essential.

³⁰ Afandi, "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia."

³¹ Dwi Nurahman et al., "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), <https://doi.org/10.57239/PJLSS-2024-22.2.00290>.

³² Adrianus Herman Henok, "Konstruksi Motif Dalam Pembuktian Perkara Pidana," *Honeste Vivere* 33, no. 2 (2023): 2, <https://doi.org/10.55809/hv.v33i2.242>.

³³ Vivin Nurviana, "The Principle of Presumption of Innocence in Criminal Law Policy in Indonesia," *Proceedings of the International Seminar on Shariah and Law* 1 (December 2023): 115–22.

³⁴ Indra Miza et al., *Optimizing The Application Of The Presumption Of Innocence In Indonesia's Law Enforcement Against Terrorists*, 1, no. 3 (2021).

Additionally, the Preliminary Examining Judge's field of activity reflects discussions on criminal justice and concerns about the development of legal procedures to improve the protection of persons' rights within the justice system. There is an opportunity to enhance the effectiveness and fairness of the Indonesian criminal justice system by implementing mechanisms that have not yet been adopted or implemented effectively, such as the preliminary examination.³⁵

Although KUHAP is more commonly associated with the pre-trial process, the PEJ in KUHAP has much broader powers. Pre-trial and the PEJ are units in the criminal justice system that perform separate duties. Pretrial can be defined as a legal procedure through which the suspect or his/her counsel can object to the unlawful conduct of the police before the arrest, detention, or seizure has occurred.³⁶ Its role is to assess the legal effects that have already been done, to prevent abuses of power against suspects. On the other hand, the PEJ is an avoidance mechanism as it performs its activity from the time criminal proceedings commence, before acts such as detention or prosecution are carried out. The PEJ tests its jurisdiction by determining whether there is sufficient evidence and whether the police officers' actions comply with the law, so that only the strongest cases reach the court. Therefore, unlike pre-trial, the PEJ's role will seek to avoid frivolous cases and safeguard suspects from unfair treatment at the preliminary stage.³⁷

In the 2012 KUHAP-Draft, the PEJ is conceived as one of the stages in implementing the criminal justice process, which should prevent all unsound cases from ever reaching court. Some of the duties of the PEJ include determining or considering the legality and propriety of the arrest,

³⁵ Ichsan Anwary, "Exploring the Interconnectedness Between Public Administration, Legislative Systems, and Criminal Justice: A Comparative Analysis of Malaysia and Indonesia," *International Journal of Criminal Justice Sciences* 18, no. 1 (2023): 172–82.

³⁶ Joko Sriwidodo, "Construction of Pre Judges Through Judicial Reconstruction Commissioners and Representatives of Protected Rights," paper presented at Proceedings of the 1st International Conference on Science and Technology in Administration and Management Information, ICSTIAMI 2019, 17-18 July 2019, Jakarta, Indonesia, January 27, 2021, <https://eudl.eu/doi/10.4108/eai.17-7-2019.2303463>.

³⁷ Afandi, "Perbandingan Praktik Praperadilan Dan Pembentukan Hakim Pemeriksa Pendahuluan Dalam Peradilan Pidana Indonesia."

detention, or seizure of items or property, as well as other lawful conduct by any police officer.³⁸

The power of law enforcement authorities is limited in the procedure, where they are required to file a request with the PEJ, who, in turn, must determine, based on the information at their disposal, whether the proposed action is lawful and should go ahead.³⁹ PEJ retains the power to quash any accused unlawful acts committed by a police force while at the same time granting the police force permission to proceed with the case if the evidence is sufficient. Also, for any examination made, the PEJ affirms the suspect's rights, including the right to an attorney during the process. In transparency and accountability in the Preliminary Examining Judge, the decision-making process is supported by documentation and, sometimes, the publication of the decisions, as well as an oversight mechanism to check on the PEJ's performance and abuse of power, thereby preserving the judicial system.⁴⁰

TABLE 1. Preliminary Examining Judge's Authority and Procedure
According to Draft Criminal Procedure Code 2012

Aspect	Authority	Procedure
Initial Examination	Reviewing the appropriateness and legality of detention, seizure, and other legal actions.	Law enforcement must submit a request to the Preliminary Examining Judge (PEJ) before legal actions are taken.
Evidence Evaluation	Assessing whether there is sufficient evidence to proceed to an inquiry or prosecution.	The PEJ reviews the evidence submitted by law enforcement before

³⁸ Eddyono and Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP."

³⁹ Johannes Blasius Vernando, "Kedudukan Hakim Pemeriksa Pendahuluan Dikaitkan Dengan Kewenangan KPK Dalam Pembaharuan Hukum Acara Pidana Indonesia = The Position of the Hakim Pemeriksa Pendahuluan Associated with the KPK in the Indonesian Criminal Procedure Law Reform."

⁴⁰ Eddyono and Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP."

		approving the case proceeding.
Cancellation of Legal Actions	Canceling detention or legal actions if there is insufficient evidence or the action is deemed unlawful.	If the PEJ finds insufficient evidence or determines the action is unlawful, the judge can cancel the action.
Proceeding with the Case	Approving to proceed with the case if the evidence is strong enough.	If the evidence is sufficient, the PEJ approves proceeding to the next stage (inquiry/prosecution).
Preliminary Examination Hearing	Holding hearings to hear arguments from both sides in certain cases.	The PEJ may decide to hold hearings to ensure transparency and accountability in decision-making.
Suspect's Rights Protection	Ensuring the suspect has the right to be accompanied by legal counsel.	During the preliminary examination, the suspect has the right to be accompanied by legal counsel and to be informed of the results of the examination.
Transparency and Accountability	Documenting and publishing the PEJ's decisions and overseeing the judge's performance.	The PEJ's decisions must be documented and, in some cases, published to ensure transparency. An oversight mechanism is also in place.

Source: Draft Criminal Procedure Code 2012 Processed data.

Table 1 describes the authority and procedures of the 2012 KUHAP-Draft for the PEJ, the official who oversees that the criminal justice process complies with the legal and justice systems. Compared with the existing

KUHAP pre-trial mechanism, the authority of the PEJ under the 2012 KUHAP-Draft is broader and includes more active actions. The power of the PEJ's main authority involves examining the legal basis for the suspect's identification, arrest, search, and other coercive measures, and determining the sufficiency of the evidence to continue a criminal prosecution. The procedure by the PEJ occurs on the same note as the case inquiry is made, and as the case is to be forwarded to the court for trial without waiting for the suspect or defendant to demand the examination. One core task area of this authority is to guarantee the objectively correct continuation of legal proceedings and trials, and only significant cases supported by evidence can go to trial. Thus, the PEJ is meant to demand greater control over law enforcement activities and to stop violations of human rights in the criminal justice system.

B. Comparison between Australia's Committal Hearings and Preliminary Examining Judge

Australia's Committal Hearings (ACH) are preliminary proceedings in the Magistrates' Court that aim to determine whether there is sufficient evidence to commit a defendant to a higher court, such as the District, Supreme, or County Court, for indictable offenses or serious crimes.⁴¹ This process serves primarily as the "gatekeeper" of the criminal justice system, assessing whether the prosecution's evidence is strong enough to support a possible guilty verdict.⁴² If the evidence is insufficient, the defendant will be acquitted; if there is sufficient, the case will proceed to trial. In addition, this process guarantees the principle of a fair trial, allowing the defendant to understand the charges and test the evidence at the beginning. However, the mechanism varies between jurisdictions. For example, in Victoria, this process is set out in the Criminal Procedure Act 2009 which was updated in 2025 to limit committal hearings in certain cases in the Supreme Court; Queensland allows "registry committals", i.e. administrative transfers to higher courts without a hearing if both parties

⁴¹ Natalia Antolak-Saper et al., "Unrepresented Accused in the Magistrates' Court of Victoria," *Australian Institute of Judicial Administration*, 2021.

⁴² Gabrielle Appleby and Heather Roberts, "Studying Judges: The Role of the Chief Justice, and Other Institutional Actors," *Oñati Socio-Legal Series* 13, no. S1 (2023): S80–101.

agree; while Western Australia and Tasmania have effectively abolished committal hearings, replacing them with administrative procedures.⁴³

The committal procedure consists of several main stages. The first is the filing hearing or first mention, which is held immediately after the indictment is filed, at which a schedule for the exchange of evidence is set, and a committal mention is scheduled. In the committal mention stage, the prosecutor submits written evidence documents, such as witness statements and evidence (called hand-up briefs), to the defense. Judges can directly send cases to the high court, allow cross-examination of witnesses in committal hearings, or resolve evidence-related disputes. If the committal hearing continues, the prosecutor may call witnesses for cross-examination (if permitted) while other evidence is presented in writing. The defense can cross-examine witnesses, present its own witnesses, and argue that the evidence is insufficient. Finally, the judge will decide whether the defendant will be committed to court or released.

Special protections are applied to vulnerable witnesses, especially in cases of sexual crimes. In most states, such as NSW and Victoria, children and people with cognitive disabilities cannot be compelled to testify at committal hearings.⁴⁴ For adult victims, cross-examination can only be conducted with the judge's permission and for special reasons. This step aims to prevent re-trauma and double testimony (both at the committal and in trial).

There are also alternatives to traditional trials, such as hand-up committals, which decide cases based on written evidence in the absence of witnesses, and registry committals in Queensland, which is an administrative process in which both parties agree to go through a committal hearing.⁴⁵ In this process, the condition is that the defendant

⁴³ Ilya Klauzner and Steve Yeong, "The Impact of the Early Appropriate Guilty Plea Reforms on Guilty Pleas, Time to Justice, and District Court Finalisations," *Crime and Justice Bulletin*, no. 240 (2021), <https://bocsar.nsw.gov.au/content/dam/dcj/bocsar/documents/publications/cjb/cjb201-250/cjb240-report-impact-of-eagp-reforms-2021.pdf>.

⁴⁴ Anita Mackay and Jacqueline Giuffrida, "Ensuring the Right to a Fair Criminal Trial Using Communication Assistance," *Griffith Journal of Law & Human Dignity* 10, no. 1 (2022), <https://griffithlawjournal.org/index.php/gjlhd/article/view/1237>.

⁴⁵ Serah Kang, "Hearing Friendly Voices: A Case for Increased Indigenous Constitutional Intervention before the High Court of Australia," *Adel. L. Rev.* 44 (2023): 532.

must have legal counsel and that all evidence must be submitted within 14 days.

However, the committal hearings are not free from controversy. Some see it as slowing down the legal process, while others emphasize its function in filtering out weak cases. The latest reforms include the expansion of administrative commitments, such as an online registration system in Queensland, as well as tightening cross-examination rules to protect witnesses, as in Victoria, through the Justice Legislation Amendment Act 2025.⁴⁶

Comparisons between jurisdictions show differences in approach. Victoria still maintains a three-stage process with the judge's permission for cross-examination; Queensland allows registry committals and committal hearings for serious cases; NSW requires certification from ODPP and limits the testimony of the victim's child; while WA and Tasmania have shifted the entire process to an administrative one.⁴⁷

Committal Hearings play an important role in maintaining a balance between the efficiency of the legal process and the defendant's right to a fair trial. Although reform trends lead to the use of written evidence and administrative procedures, committal hearings remain relevant, especially in complex cases. The protection of vulnerable witnesses reflects an increasingly biased approach to the legal process. For specific procedures, the best reference remains in the regulations in each state and the guidance of prosecution agencies such as the ODPP.

If a comparison is made between ACH and the concept of PEJ in the 2012 KUHAP-Draft, it can be seen from the following perspectives: the main objective, the position of the legal process, the crucial authority, witness/suspect protection, and legal philosophy.

Committal Hearings in Australia serve as an evidence-screening process to ensure sufficient evidence for the High Courts in *indictable-offense* cases.⁴⁸ This is not a substance check but rather a due diligence test

⁴⁶ Orin Gusta Andini and Muhammad Riyan Kachfi Boer, "Indonesia's Safeguarding of Human Rights to Achieve Sustainable Development Goals: Insights from Australia's Experience," *Journal of Sustainable Development and Regulatory Issues (JSDERI)* 3, no. 1 (2025): 1–28.

⁴⁷ Martine Powell et al., *An Evaluation of How Evidence Is Elicited from Complainants of Child Sexual Abuse* (Royal Commission into Institutional Responses into Child Sexual Abuse, 2016).

⁴⁸ Alanna Van Der Veen, "Killing Time: The Challenges of Reforming Unreasonable Trial Delay" (PhD Thesis, UNSW Sydney, 2025).

to determine whether the case can proceed to a higher court. On the other hand, the PEJ in the 2012 KUHAP-Draft in Indonesia aims to replace investigators by leading investigations from an early age. The PEJ has the authority to determine suspects, gather evidence, and direct investigations, with more substantial examinations to form legal convictions.⁴⁹

ACHs are conducted after the investigation is completed, i.e., at the post-investigation stage, and take place in the Magistrates' Court.⁵⁰ In Indonesia, the PEJ is planned as a special phase in the pre-investigation stage, allowing judges to be involved before the formal investigation begins, with the aim of directing the investigation process in the district court.⁵¹

In the Australian system, the powers of an ACH include dismissing a case if the evidence is insufficient (*discharge*) and allowing or prohibiting the examination of witnesses, especially vulnerable victim witnesses.⁵² However, this process is not involved in the investigation. Meanwhile, the PEJ in Indonesia has broader authority, such as ordering investigators to collect certain evidence, determining the status of suspects, stopping cases if there is insufficient evidence (*pre-trial*), and declaring files ready for prosecution.⁵³

In Australia, there are strict restrictions on the re-examination of victim witnesses, particularly in cases of sexual violence.⁵⁴ In contrast, the draft PEJ in Indonesia includes no special clause to protect witnesses, with a focus on the efficiency of the legal process.

⁴⁹ Tongat Tongat, "The Ambiguous Authority of Living Law Application in New Indonesian Penal Code: Between Justice and the Rule of Law," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 188–209.

⁵⁰ Jenifer Varzaly, "The Effectiveness of Disclosure Law Enforcement in Australia," *Journal of Corporate Law Studies* 21, no. 1 (2021): 135–77, <https://doi.org/10.1080/14735970.2020.1791534>.

⁵¹ Sidik Sunaryo, "The Philosophy of Social Injustice for All Indonesian Laborers Set Forth in Job Creation Law," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 112–23.

⁵² Jacqueline Giuffrida and Anita Mackay, "Extending Witness Intermediary Schemes to Vulnerable Adult Defendants," *Current Issues in Criminal Justice* 33, no. 4 (2021): 498–516, <https://doi.org/10.1080/10345329.2021.1955459>.

⁵³ Yaris Adhial Fajrin et al., *Pandemic As a Crime Factor: Reason Mitigating or Aggravating Penal?* (The Reflection Post Covid-19 in Indonesia), 2022, <https://eprints.umm.ac.id/id/eprint/15969/>.

⁵⁴ Sarah L. Deck et al., "Are All Complainants of Sexual Assault Vulnerable? Views of Australian Criminal Justice Professionals on the Evidence-Sharing Process," *The International Journal of Evidence & Proof* 26, no. 1 (2022): 20–33, <https://doi.org/10.1177/13657127211060556>.

ACH adopts a *common-law* legal system with an adversarial approach, in which the judge acts as an arbitrator in the trial process.⁵⁵ In Indonesia, the PEJ operates within the *civil law* legal system, with an *inquisitorial approach* in which the judge plays an active role in directing and leading the investigation.⁵⁶ Criticism of ACH in Australia has focused on the potential to lengthen legal proceedings, while PEJ in Indonesia could undermine the principle of checks and balances, as judges have significant control over the investigation and trial process.⁵⁷

ACH has been implemented across all Australian jurisdictions, albeit with variations. In Indonesia, the concept of PEJ in the 2012 KUHAP-Draft was not adopted in the revision of the Criminal Code. The rejection was due to concerns about excessive concentration of authority in the hands of judges, which could eliminate the strategic role of investigators and the JPU, contrary to Indonesia's tradition of criminal procedure law.⁵⁸

Behind the clear structural and philosophical comparisons between ACH and the concept of a PEJ lies a need for deeper critical analysis to understand why transplanting such a model is fraught with difficulties. The crux of this challenge lies not in the theoretical merits of the concept, but in its profound clash with Indonesia's existing legal architecture and practical realities.

The most significant criticism of the PEJ model is that it risks creating a fundamental imbalance in the Indonesian state's structure. Granting a judge the authority to “lead investigations,” “determine suspects,” and “direct the investigation process” as envisaged in the 2012 KUHAP-Draft represents a dramatic concentration of power in the judiciary. This directly violates the core functions of the police (as

⁵⁵ Julian V. Roberts and Anneke Petzsche, “Sentencing Procedures under the Adversarial and Inquisitorial Models of Justice: A Comparative Analysis,” *Criminal Law Forum* 36, no. 2 (2025): 329–49, <https://doi.org/10.1007/s10609-025-09506-5>.

⁵⁶ Imam Hidayat et al., “Preparatory Examination in Civil Procedure Law: Strategies for Swift and Efficient Justice,” *Indonesia Law Reform Journal* 4, no. 2 (2024): 171–98.

⁵⁷ Sidik Sunaryo and Sholahuddin Al-Fatih, “How Corruptor Should Be Punished? A Comparative Study Between Criminal Law, Islamic Law, and Customary Law,” *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 91–100.

⁵⁸ Ady Thea DA, “Begini Alasan Pemerintah Dihapusnya Hakim Pemeriksa Pendahuluan Dari Draf RUU KUHAP,” accessed August 9, 2025, <https://www.hukumonline.com/berita/a/begini-alasan-pemerintah-dihapusnya-hakim-pemeriksa-pendahuluan-dari-draf-ruu-kuhap-lt6863391b6ad6b/>.

investigators) and the public prosecutor's office (as prosecutors), institutions that operate under the executive branch.

Contrary to the Australian adversarial system, where magistrates in ACH act as neutral referees who assess cases built entirely by the executive, PEJ in the Indonesian civil law tradition would instead become active inquisitorial supervisors at the investigation stage. This obscures the crucial separation of powers and has the potential to undermine the principle of checks and balances, raising the critical question: Will such powers turn the Preliminary Examination Judge into a super-investigator, thereby demotivating and weakening the roles of the police and the public prosecutor's office? This institutional conflict could lead to resistance and ultimately hinder law enforcement.

Beyond theoretical conflicts, the feasibility of implementing a strong PEJ system throughout Indonesia is also highly questionable. The Australian system, even with its reforms, operates within advanced infrastructure and concentrated urban centers. In contrast, Indonesia, as a vast archipelagic country, faces serious practical obstacles, such as the already high caseload in judicial institutions, which could be exacerbated by Preliminary Examination Judge procedures, as well as the digital divide between large cities and remote areas, which makes uniform implementation impractical.⁵⁹

The PEJ in the 2012 KUHAP-Draft was rejected in the latest draft (2025), even though it was considered important to prevent misapprehension and weak evidence. This rejection is caused by several main factors including the Indonesian archipelago and the limitations of digital infrastructure, such as electricity and internet in remote areas, making it difficult to implement technology-based PEJ, the fear that the PEJ will prolong the bureaucracy, especially in cases of emergency arrest, and increase the burden on the judge's case which is already high, the PEJ will reduce investigators' discretion in the investigative process, leading to resistance from law enforcement officials, as well as being considered contrary to Indonesia's tradition of criminal procedure law, Some

⁵⁹ MariNews, "Penguatan Kewenangan Hakim Dalam Pelaksanaan Pengawasan," Penguatan Kewenangan Hakim Dalam Pelaksanaan Pengawasan, accessed August 9, 2025, <https://marinews.mahkamahagung.go.id/artikel/penguatan-kewenangan-hakim-dalam-pelaksanaan-pengawasan-0hy>.

academics are concerned that the PEJ will trigger excessive prosecution of the investigators' actions, which could hinder the handling of cases. Alternatively, the government chose to strengthen pretrial procedures, which would include more coercive measures and help prevent unconstitutional abuse of evidence.⁶⁰

Furthermore, comparative analysis reveals another critical shortcoming in the 2012 Draft: the absence of specific provisions to protect vulnerable witnesses. The ACH procedure has evolved with strict rules to protect victims of sexual violence from re-traumatization, an aspect of human rights protection that the PEJ concept, which is more focused on procedural efficiency, fails to incorporate.

The rejection of the PEJ in the 2025 KUHAP-Draft can be understood as an acknowledgment of its deep systemic and practical incompatibility. The future of Indonesian criminal procedure reform may not lie in implementing the PEJ as proposed in 2012, but in finding a middle ground by strengthening existing pretrial mechanisms with expanded supervisory powers, while also addressing the practical and institutional obstacles that hinder ambitious judicial reform.

C. Sufficient Preliminary Evidence Scrutiny

The preliminary examining judge plays a significant role in the Indonesian Criminal Justice System because this step allows the admissibility of evidence sufficient to convict a person in court to be checked.⁶¹ The basic notion of the Preliminary Examining Judge (PEJ) is most appropriately associated with practices in the pre-trial stage and the implementation of police power within the criminal justice system. This examination is crucial to ensure that all cases are properly examined before they are taken to court, thereby upholding the legal procedures set out in the country's constitution.

Taking a cue from the Australian system, which has set down rules that govern the PEJ, also referred to as the preliminary hearing, this is the

⁶⁰ "Begini Alasan Pemerintah Dihapusnya Hakim Pemeriksa Pendahuluan Dari Draf RUU KUHAP," accessed October 9, 2025, <https://www.hukumonline.com/berita/a/begini-alasan-pemerintah-dihapusnya-hakim-pemeriksa-pendahuluan-dari-draf-ruu-kuhap-lt6863391b6ad6b/?page=all>.

⁶¹ Eddyono and Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP."

first stage in the criminal processing system where the judge determines that there are sufficient grounds to warrant a trial.⁶² At this stage, the prosecutor presents the primary evidence for the charges against the accused, and witnesses may testify. The defendant can also question these witnesses with their legal representative and dispute some of the evidence submitted in court. If the judge believes that pre-skeletal evidence points to a possible criminal offense and that the defendant may be involved, the case will go to trial. If not, then the case may be discharged. It sought to reduce the number of dubious cases to avoid congesting the courts. However, the defendants are also allowed to answer the cases outright.⁶³ Preliminary hearings are less rigorous than the full trials and may not have a jury; the judge decides based on the preliminary evidence before him.

The standard of proof in preliminary hearings in Australia is known as "probable cause," a lower standard than the standard used in full trials, namely "beyond a reasonable doubt."⁶⁴ Reasonable belief is the amount of probable cause that makes a judge feel that he or she thinks that a crime has been committed and that the accused person is involved. At this point in the trial, the prosecutor does not need to rest his/her case but must produce evidence that warrants the continuation of the trial. This standard was designed to avoid frivolous and substandard cases going to trial while at the same time enabling cases with some but not Miller proof. Continue Reading This standard is meant to ensure that bad and feeble cases should not proceed to trial, while those cases that may at least have a chance of some proof at trial may proceed.⁶⁵ While this standard could be advantageous to prosecutors, it has been considered disadvantageous because it allows cases with the least evidence to go to court; this leads to prolonged proceedings and increased costs; these defenses could pull their

⁶² Walter P. Signorelli, *Criminal Law, Procedure, and Evidence* (Taylor & Francis, 2023).

⁶³ Michael Cicchini, "Preliminary-Hearing Waivers and the Contract to Negotiate," *Pepperdine Law Review* 2023, no. 1 (2023): 35–57.

⁶⁴ R. G. Bloembergen, "The Development of the 'Modern' Criminal Law of Evidence in English Law and in France, Germany and the Netherlands: 1750–1900," *American Journal of Legal History* 59, no. 3 (2019): 358–401, <https://doi.org/10.1093/ajlh/njz014>.

⁶⁵ Philippa M. Collins, "Finding Fault in the Law of Unfair Dismissal: The Insubstantiality of Reasons for Dismissal," *Industrial Law Journal* 51, no. 3 (2022): 598–625, <https://doi.org/10.1093/indlaw/dwab018>.

subjects through, irrespective of the diluted evidence against the defendants.⁶⁶

In Indonesia's criminal procedure law, a concept similar to "probable cause" in the Australian legal system is known as "sufficient preliminary evidence" or "sufficient evidence." This principle relates to the rule that before police can move to further investigation or apprehend a suspect in connection with a crime, there must be sufficient probable cause to believe that a crime was committed and that the suspect is involved.⁶⁷

"Sufficient evidence" serves as the basis for law enforcement officials, such as enquirers and prosecutors, to take further action, such as detention, search, or seizure.⁶⁸ These actions cannot be taken arbitrarily; they must be based on initial evidence providing reasonable grounds to suspect a crime. For example, before enquirers arrest a suspect, they must have sufficient evidence, such as eyewitness testimony, documents, or other physical evidence, that strongly suggests the suspect's involvement in the crime. This evidence need not definitively prove the suspect's guilt, but must be sufficient to justify the continuation of the inquiry and other legal actions.

The concept of "sufficient preliminary evidence" aims to strike a balance between law enforcement needs and the protection of individual rights.⁶⁹ With this requirement, the legal system seeks to prevent baseless or arbitrary legal actions against individuals, ensuring that only cases with sufficient evidence proceed to further inquiry and prosecution.⁷⁰

⁶⁶ Eddyono and Napitupulu, "Prospek Hakim Pemeriksa Pendahuluan Dalam Pengawasan Penahanan Dalam Rancangan KUHAP."

⁶⁷ Nano Tresna Arfana, "Penetapan Tersangka, Penangkapan, Dan Penahanan Harus Berdasar Minimum Dua Alat Bukti | Mahkamah Konstitusi Republik Indonesia," accessed January 8, 2025, <https://www.mkri.id/index.php?page=web.Berita&id=9729>.

⁶⁸ Chandra Muhammad Hamzah, *Penjelasan hukum (restatement) bukti permulaan yang cukup*, with Pusat Studi Hukum dan Kebijakan Indonesia and Australia-Indonesia Partnership for Justice (Pusat Studi Hukum & Kebijakan Indonesia, 2014).

⁶⁹ Zul Khaidir Kadir and Adi Suriadi, "Dimensi Probable Cause Sebagai Standar Pembuktian Dalam Melakukan Upaya Paksa Penyidikan: Analisis Komparatif Pada KuhaP Dan Yurisprudensi Amerika Serikat," *KEMILAW: Kajian Eksekusi Madani Indonesia Journal* 1, no. 2 (2024): 2.

⁷⁰ Reza Syawawi, "Diskresi Dan Potensi Korupsi Dalam Penyelesaian Masalah Hukum Terkait Percepatan Pelaksanaan Proyek Strategis Nasional (Analisis Terhadap Peraturan Presiden Nomor 3 Tahun 2016 Dan Instruksi Presiden Nomor 1 Tahun 2016)," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 419–35.

Additionally, "sufficient preliminary evidence" plays a crucial role in maintaining the integrity of the criminal justice system in Indonesia. By establishing this standard of proof, the legal system ensures that inquiries and prosecutions are conducted carefully and not recklessly, aiming to safeguard justice for all parties involved. If there is no "sufficient preliminary evidence," suspects should not be detained or subjected to other legal actions, emphasizing the importance of this principle in protecting human rights within the criminal justice process.⁷¹

Although the two concepts of "sufficient preliminary evidence" in Indonesia and "probable cause" in the Australia differ in the way they are used in practice, they both serve as vital tools that allow only cases with a sufficient degree of evidence to proceed with the legal process, ensuring justice is served while protecting the rights of the individual in our criminal justice systems.⁷² The concept of 'sufficient preliminary evidence' is one of the key elements in regulating the pre-trial stages of the criminal justice process in Indonesia's 2012 KUHAP Draft.⁷³ Evidence that is sufficient preliminary evidence means that there is strong preliminary evidence to believe that a crime has been committed and that the alleged person played a sufficient part in the crime. It is the lowest standard of law enforcement before they may proceed further with detention, searches, or seizures.

In criminal proceedings that restrict individual freedom, including detention, human rights are protected within the criminal justice process, as set out in the 2012 KUHAP-Draft; "sufficient preliminary evidence" is a prerequisite. In other words, a person cannot be held without probable cause sufficient to support the suspicion that they pose a threat to public safety. Before legal proceedings progress to their full inquiry phase and even during the stage where it is being prosecuted, this preliminary step, as it were, must be fulfilled.

⁷¹ Nurbaiti Syarif et al., "Perlindungan Hak-Hak Tersangka Melalui Asas Praduga Tidak Bersalah (Presumption Of Innocent) Dalam Sistem Peradilan Pidana," *Audi Et AP: Jurnal Penelitian Hukum* 3, no. 02 (2024): 112–20.

⁷² Kadir and Suriadi, "Dimensi Probable Cause Sebagai Standar Pembuktian Dalam Melakukan Upaya Paksa Penyidikan: Analisis Komparatif Pada Kuhap Dan Yurisprudensi Amerika Serikat."

⁷³ Yogi Muhammad Rahman and Redo Noviansyah, "Pentingnya Mengadopsi Ketentuan Lembaga Pre-Trial Chamber Pada International Criminal Court Dalam Sistem Peradilan Pidana Indonesia," *Tirtayasa Journal of International Law* 1, no. 1 (2022): 19–36.

The 2012 KUHAP-Draft addresses the fairness of the legal process when legal action against a suspect will not be carried out freely.⁷⁴ Through the introduction of the "sufficient preliminary evidence standard," the 2012 KUHAP-Draft seeks to prevent human rights abuses, inter alia, from occurring, such as the arbitrary or groundless detention of a person or the bringing of any other legal action against him. Besides, this standard prevents only cases with clear evidence from being pursued, keeping the criminal justice system efficient and effective.⁷⁵

"Sufficient preliminary evidence" in the 2012 KUHAP-Draft is a concept to strike the correct balance between law enforcement and individual rights.⁷⁶ This way ensures that only if there is sufficient evidence can the police take legal steps to ban people's rights from baseless actions by law enforcement officials, and allow a fair and transparent legal process.

In the 2012 KUHAP-Draft, the testing of "sufficient preliminary evidence" had to be preceded by a series of procedures aimed to guarantee that legal actions against the suspect are undertaken on the basis of sufficient evidence. This stage is a very important preliminary phase of the criminal justice system. Law enforcement, enquirers, and prosecutors must decide whether the available evidence is sufficient to sustain the assumption that the suspect committed the crime as alleged.⁷⁷

This assessment typically includes several key elements. First, the collected evidence should be relevant to the alleged crime, implying a direct relationship between the evidence and the alleged unlawful act. Second, the evidence must be sufficient; it means there must be enough evidence and good enough evidence of a very strong likelihood that the same suspect committed the crime. Such evidence may be in the form of witness testimony, documents, or other physical evidence that logically corroborates the suspicion of the crime.

⁷⁴ Novriansyah Novriansyah and Conie Pania Putri, "Keberadaan Sistem Hakim Komisaris Sebagai Alternatif Pengganti Sistem Praperadilan Untuk Memberikan Keadilan Dan Kepastian Hukum Bagi Masyarakat," *Sol Justicia* 5, no. 1 (2022): 113–22.

⁷⁵ Clayton Littlejohn, "Truth, Knowledge, and the Standard of Proof in Criminal Law," *Synthese* 197, no. 12 (2020): 5253–86, <https://doi.org/10.1007/s11229-017-1608-4>.

⁷⁶ Kadir and Suriadi, "Dimensi Probable Cause Sebagai Standar Pembuktian Dalam Melakukan Upaya Paksa Penyidikan: Analisis Komparatif Pada Kuhap Dan Yurisprudensi Amerika Serikat."

⁷⁷ Oleh Tarasenko et al., "Investigative Judge as a Subject to Criminal Procedure," *Journal of Legal, Ethical and Regulatory Issues* 23 (2020): 1.

Under the 2012 KUHAP-Draft, law enforcement authorities must present this preliminary evidence to the appropriate authorities (an investigator or a judge, depending on the stage of the legal process) after it has been collected. This authority will then assess the evidence to hear whether the standard of 'sufficient preliminary evidence' has been met. If sufficient, the legal process would continue, for example, by indictment, designation of the suspect, or arrest. If the evidence is not considered significant, the inquiry may have to stop or continue until more evidence can be obtained.

This stage is also a control mechanism, so there would be no use of law enforcement or state power to bring legal actions without a strong basis in evidence. In this sense, it protects the suspect's human rights from unlawful or arbitrary detention or any other unlawful or arbitrary measure by testing 'sufficient preliminary evidence.' Because of this, the role of the procedure in the realization of justice and in the integrity of Indonesia's criminal justice system, as regulated in the 2012 KUHAP-Draft, is prominent.⁷⁸

Conclusion

Our study concludes that the Preliminary Examining Judge (PEJ) remains relevant to Indonesia's criminal procedure reform, despite its exclusion from the 2025 Draft Criminal Procedure Code. Comparison with Australia's committal hearings demonstrates the value of a robust, judge-led filter to protect human rights, prevent abuse of power, and improve efficiency of the criminal justice system. The PEJ was rejected due to concerns over concentrated judicial power, limited infrastructure, and institutional resistance. Even so, the reform debate should pivot to viable, context-sensitive designs rather than end.

Future revisions of the Criminal Procedure Code should reintroduce the PEJ with a narrowly defined mandate. Instead of granting sweeping powers to lead investigations, the PEJ should provide *post-investigation, pre-prosecution oversight*. Closer to Australia's committal-hearing model, the judge would review the investigators' dossier and rule on the

⁷⁸ Ahmad Jamaludin and Dandi Ditia Saputra, "Unifikasi Regulasi Keadilan Restoratif Melalui Sistem Peradilan Pidana Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 417–35.

sufficiency of the evidence *before* any indictment. This would block weak cases from reaching trial while respecting police investigative authority and the Attorney General's prosecutorial discretion.

As an immediate and pragmatic alternative, the existing pretrial institution should be significantly strengthened. Its jurisdiction should be expanded beyond its current narrow scope (arrest, detention, seizure) to include the authority to examine the legality and adequacy of "*sufficient preliminary evidence*" for naming a suspect and the decision to commence a prosecution. This would effectively incorporate the core evidence-screening function of the PEJ into a familiar legal mechanism, enhancing judicial oversight without the systemic upheaval of a completely new institution.

Prior to adopting any new judicial oversight mechanism, a comprehensive plan for infrastructural readiness must be developed. This includes investing in digital connectivity for remote courts, providing specialized training for judges on evidence assessment and human rights standards, and developing clear procedural guidelines. A phased implementation, perhaps beginning in major urban centers as a pilot project, would allow evaluation and refinement of the model before a nationwide rollout, thereby mitigating geographic and resource-based challenges.

While the comprehensive PEJ model of the 2012 KUHAP-Draft may have been politically and practically premature, its underlying principles remain vital. The path forward lies in adaptive innovation, whether through a refined PEJ or a supercharged pretrial mechanism coupled with a steadfast commitment to building the necessary institutional capacity. These targeted reforms would fortify judicial oversight, safeguard fundamental rights, and make Indonesia's criminal justice system more transparent, efficient, and legitimate.

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