

Human Rights Protection Related to Arrest, Detention, and Judicial Remedies: A Comparative Legal Study of Indonesia, Saudi Arabia, and Egypt

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Abstract

Arrest, detention, and pretrial legal remedies constitute crucial stages in criminal procedure because they determine the extent to which state coercive power is constrained by due process and human rights guarantees. This study aims to examine and compare the legal regulation and practical implementation of arrest, detention, and pretrial review mechanisms in Indonesia, Saudi Arabia, and Egypt, with particular attention to their compliance with human rights standards. Methodologically, this research employs normative legal research using a doctrinal and institutional comparative approach, analyzing statutory provisions, procedural regulations, constitutional safeguards, and relevant reports and legal materials. The findings show that Indonesia provides relatively stronger procedural safeguards through the Criminal Procedure Code (KUHAP) and the *praperadilan* mechanism, which functions as judicial control

over unlawful arrest and detention. Egypt formally recognizes legal oversight through the public prosecution and judicial review, yet persistent implementation gaps raise concerns regarding prolonged pretrial detention and limited procedural transparency. In contrast, Saudi Arabia demonstrates weaker independent judicial supervision at the pretrial stage, increasing the risk of arbitrary detention and executive overreach. This comparative analysis concludes that strengthening effective judicial review, access to legal counsel, and procedural accountability is essential to prevent abuses of power. The study recommends reinforcing institutional checks on detention practices to ensure greater alignment with international human rights principles and due process requirements.

KEYWORDS *Human Rights, Criminal Procedure Law, Comparative Law*

Introduction

Criminal procedure law is a set of rules and procedures that govern the enforcement of laws related to criminal offenses. This law regulates how the state, through its law enforcement officers, carries out the process from investigation, arrest, investigation, prosecution, trial, to the execution of the verdict against a person suspected of committing a criminal offense.¹ Generally, criminal procedure law is often referred to as formal criminal law, in contrast to substantive criminal law which regulates what acts are prohibited and punishable. Criminal procedure law regulates the mechanism and procedure for the implementation of substantive criminal law, including the protection of the rights of suspects, defendants, and other parties involved in the criminal justice process.²

Van Bemmelen states that criminal procedure law is a collection of legal provisions that govern the state's response to alleged criminal offenses, aiming to ascertain the truth through its instruments, examined in court, and decided

¹ M Zen Abdullah, "Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional Di Indonesia Yang Lebih Responsif," *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 1 (2020): 281.

² Kei Hannah Brodersen, Nadja Capus, and Damian Rosset, "The Politics of Informality in Criminal Procedures," *International Journal of Law, Crime and Justice* 74, no. 1 (September 2023): 100612, <https://doi.org/10.1016/j.ijlcj.2023.100612>.

by a judge.³ The main functions of criminal procedure law include: ensuring fairness in the criminal justice process, guaranteeing the protection of human rights, regulating the procedures for enforcing criminal law, and achieving legal certainty in handling criminal cases.⁴ Therefore, criminal procedure law is a crucial instrument in the criminal justice system, ensuring that legal processes are fair, transparent, and in accordance with principles of justice and human rights protection.

Recent scholarship demonstrates that the study of criminal procedure, particularly in the pretrial stage, must be grounded in empirical and comparative analyses of how legal safeguards operate in practice. Sadia Shultana and Tanvir Mahtab in *Journal of Asian and African Social Science and Humanities*, show that pretrial mechanisms intended to protect public order often risk undermining due process when not accompanied by effective judicial control and clear legal safeguards, leading to arbitrary detention and potential human rights violations. This finding underscores the central role of pretrial review in maintaining the balance between state security and individual liberty. Similarly, Majed Falah and Nader Qasim in *Al-Biruni Journal of Humanities and Social Sciences* highlights how differences in legal frameworks and procedural regulation significantly affect the effectiveness of law enforcement and the protection of rights, particularly in addressing complex crimes such as electronic fraud. Their study demonstrates that comparative legal analysis is essential to identify gaps, inconsistencies, and best practices across jurisdictions.⁵ Taken together, these studies emphasize that robust procedural safeguards, especially at the pretrial stage are critical not only for ensuring due process but also for aligning national criminal justice systems with broader human rights standards.

The relationship between criminal procedure law and human rights is very close, as criminal procedure law serves as an instrument to guarantee the

³ Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, "Criminal Sanctions' Reformulation in the Reclamation of the Mining Community," *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 1 (2022): 11–30, <https://doi.org/10.25041/fiatjustisia.v16no1.2222>.

⁴ Moh Al-vian Zul Khaizar, "Analisis Pembaharuan Hukum Pidana Dan Hukum Acara Pidana Dalam Undang- Undang Tindak Pidana Kekerasan Seksual," *Diktum* 10, no. 1 (2022): 103–17, <https://doi.org/10.24905/diktum.v10i1.204>.

⁵ majed Falah Alsarhan and Nader Qasim Mohammad Alsarhan, "The Scene of Electronic Fraud Crimes: A Comparative Study of Jordanian and Spanish Legislation," *Al-Biruni Journal of Humanities and Social Sciences* 3, no. 12 (2025): 1–13, <https://doi.org/https://doi.org/10.64440/BIRUNI/BIR0010>.

protection of human rights in the process of enforcing criminal law.⁶ The relevance of criminal procedure law to human rights lies in its regulation of law enforcement procedures, ensuring the protection of the rights of suspects, defendants, and related parties throughout the criminal justice process.⁷ The core of human rights protection in criminal procedure law generally covers the rights to recognition, humane treatment, the presumption of innocence, the right to a fair trial, and the prohibition of cruel or inhuman treatment.⁸

At the international level, these protections are firmly embedded in human rights instruments, particularly the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR guarantees the right to liberty and security of person, prohibiting arbitrary arrest and detention and requiring prompt judicial control, while Article 14 ICCPR establishes minimum guarantees for a fair trial, including equality before courts and tribunals, the presumption of innocence, and the right to legal assistance. These provisions form the normative foundation for evaluating national criminal procedure systems and their compliance with international human rights standards.

In criminal proceedings, suspects and defendants must be treated in accordance with humanitarian values and human dignity.⁹ Criminal procedure law provides safeguards against torture, coercion of confessions, unlawful detention, and other arbitrary actions by law enforcement officials.¹⁰ Criminal law not only protects human rights by regulating fair and humane procedures, but also serves as a tool to prosecute human rights violations.¹¹ Therefore,

⁶ Steven Malby, "Beyond Sword and Shield: The UN Human Rights System and Criminal Law," *The International Journal of Human Rights* 1, no. 1 (November 2024): 1–24, <https://doi.org/10.1080/13642987.2024.2432953>.

⁷ Sidra Kanwel, Muhammad Imran Khan, and Usman Asghar, "In the Shadow of Justice: Human Rights Implications of Criminal Acts," *Journal of Asian Development Studies* 13, no. 1 (February 2024): 578–85, <https://doi.org/10.62345/jads.2024.13.1.48>.

⁸ Corsei Andreea Catan Anastasia, Antoci Albert, Lișii Cătălin, Popescu Petru, "The Role of the European Court of Human Rights in the Formation of the Procedures of Criminal Prosecution in Moldova," *Pakistan Journal of Criminology* 16, no. 3 (May 2024): 805–20, <https://doi.org/10.62271/pjc.16.3.805.820>.

⁹ Robyn L. Holder and Albin Dearing, "Human Dignity, Rights and Victim Participation in Criminal Justice," *International Criminology* 4, no. 1 (March 2024): 108–19, <https://doi.org/10.1007/s43576-024-00119-3>.

¹⁰ Jacinto Nelson de Miranda Coutinho and Bruno Cunha Souza, "Judicial Independence and Impartiality in Contemporary Brazilian Criminal Procedure," *Beijing Law Review* 16, no. 01 (2025): 468–500, <https://doi.org/10.4236/blr.2025.161024>.

¹¹ Silvana Tapia Tapia, "Human Rights Penalty and Violence Against Women: The Coloniality of Disembodied Justice," *Law and Critique* 36, no. 1 (April 2024): 41–65,

formal criminal law (criminal procedure) and substantive criminal law complement each other in protecting and upholding human rights.

From a theoretical perspective, the relationship between criminal procedure and human rights can be understood through the framework of the rule of law and procedural justice theory. The rule of law requires that all exercises of public power be subject to clear, predictable, and fair procedures.¹² While procedural justice emphasizes fairness, transparency, and impartiality in decision-making processes as key determinants of legitimacy.¹³ In addition, the concept of legal pluralism understanding how multiple legal traditions such as civil law, Islamic law (*Sharia*), and customary norms interact within hybrid legal systems,¹⁴ shaping the design and implementation of criminal procedures.

Principles such as the presumption of innocence, the right to legal counsel, the right to know the accusations, and the right to an open and fair trial are integral parts of criminal procedure.¹⁵ This ensures that the power of law enforcement officers is not abused and individual rights are respected throughout the judicial process. Criminal procedure is a legal framework that regulates the process of enforcing criminal law fairly and humanely, while guaranteeing the protection of human rights for suspects, defendants, and all parties involved in the criminal justice system. Thus, criminal procedure and human rights are interconnected and mutually supportive in realizing justice and the protection of human rights in the Indonesian legal approach.

This research focuses on analyzing the regulations and practices regarding arrest, detention, and pretrial legal remedies through a comparative legal study

<https://doi.org/10.1007/s10978-023-09355-4>. See also Indah Sri Utari, Ridwan Arifin, and Sergi Fernandez Alejandro. "Gender-Based Violence and the Implementation of the Sexual Violence Crime Law in Indonesia". *The Indonesian Journal of Feminist Legal Studies* 1, no. 1 (2026): 1-30. <https://inleads.id/publications/index.php/IJFLS/article/view/1>.

¹² Sarah Song and Irene Bloemraad, "Immigrant Legalization: A Dilemma between Justice and the Rule of Law," *Migration Studies* 10, no. 3 (2022): 484–509, <https://doi.org/https://doi.org/10.1093/migration/mnac014>.

¹³ Marie Christin Decker, Laila Wegner, and Carmen Leicht-Scholten, "Procedural Fairness in Algorithmic Decision-Making: The Role of Public Engagement," *Ethics and Information Technology* 27, no. 1 (November 2024): 1-, <https://doi.org/10.1007/S10676-024-09811-4>.

¹⁴ I Gede Agus Kurniawan et al., "Legal Reform in Business Dispute Resolution: A Study of Legal Pluralism in Indonesia, Vietnam, and Thailand," *Journal of Law and Legal Reform* 6, no. 2 (April 30, 2025): 69–116, <https://doi.org/10.15294/jllr.v6i2.21128>.

¹⁵ Andrew Cornford, "The Aims and Functions of Criminal Law," *The Modern Law Review* 87, no. 2 (October 3, 2023): 398–429, <https://doi.org/10.1111/1468-2230.12846>.

in Indonesia, Saudi Arabia, and Egypt, and their relation to human rights. These three countries were selected because they represent different models of criminal justice systems within Muslim-majority states and reflect significant legal diversity: Indonesia represents a pluralistic system influenced by civil law and constitutional democracy; Saudi Arabia represents a criminal justice framework strongly rooted in Islamic law (*Sharia*) with distinctive procedural mechanisms; while Egypt represents a hybrid legal system combining civil law traditions with Islamic legal influence and a long-established judicial structure. This comparative selection allows the study to examine how different legal foundations and institutional settings shape procedural safeguards and state authority in criminal proceedings. By situating this comparison within the broader discourse on legal pluralism and human rights compliance, this study seeks to assess not only formal legal provisions but also the effectiveness of procedural safeguards in practice, particularly in the pretrial stage where risks of rights violations are most acute.

This study contributes to the existing body of legal and human rights literature by providing a structured comparison of procedural protections against arbitrary arrest and detention, and by evaluating the effectiveness of pretrial remedies as human rights safeguards in each jurisdiction. Rather than merely highlighting legal differences, the research aims to identify key similarities and divergences in judicial control, legal certainty, and the protection of suspects' rights, offering analytical findings that can support legal reform discourse and strengthen procedural safeguards, particularly in Indonesia and other comparable jurisdictions. The legal issues addressed are: (i) the relevance of criminal procedure regulations to human rights principles in Indonesia, Saudi Arabia, and Egypt, and (ii) the comparative regulation and implementation of arrest, detention, and pretrial legal remedies in these three legal systems.

This study constitutes normative legal research focusing on the regulation and implementation of arrest, detention, and pretrial legal remedies in Indonesia, Saudi Arabia, and Egypt in relation to human rights protection. The research employs a comparative legal approach, using a doctrinal and contextual comparative method, which compares legal norms in criminal procedure while also examining their institutional application and practical functioning within each legal system. The assessment of human rights protection is based on international standards, particularly the International Covenant on Civil and Political Rights (ICCPR), especially Article 9 concerning protection against arbitrary arrest and detention and Article 14 concerning fair trial guarantees, as

well as relevant constitutional safeguards in each jurisdiction. The legal materials used consist of primary sources such as statutory provisions, criminal procedure regulations, constitutional provisions, judicial decisions where available, and relevant official reports, supported by secondary sources including academic journal articles, books, and prior comparative studies. The data processing and analysis technique involves systematic legal material collection, classification, and interpretation through qualitative juridical analysis, followed by comparative evaluation to identify similarities, divergences, and the degree of compliance of each system with due process principles and human rights standards.

The Relevance of Criminal Procedure Regulations and Their Relationship to Human Rights in Indonesia, Saudi Arabia, and Egypt

Criminal law is generally divided into two main parts: substantive criminal law and procedural criminal law (or formal criminal law).¹⁶ That's a good summary. Substantive criminal law (*hukum pidana materiil*) defines what constitutes a crime, who can be prosecuted for it, and the types and conditions of punishment.¹⁷ In other words, substantive criminal law contains rules about offenses (*delik*) and the penalties that can be imposed.

Procedural criminal law (or formal criminal law) is the set of rules that govern how substantive criminal law is implemented.¹⁸ This includes the procedures by which the state, through law enforcement agencies, conducts investigations, inquiries, prosecutions, trials, and the execution of criminal judgments. The goal is to ensure that the criminal justice process is fair, guarantees the protection of human rights, and provides legal certainty in handling criminal cases.

¹⁶ Abdul Malik Mufty and Nurul Chaerani Nur, "Discourse On The Discovery And Renewal Of The Principle Of Legality In Criminal Law," *Jurnal Meta-Yuridis* 7, no. 2 (September 2024): 12–24, <https://doi.org/10.26877/m-y.v7i2.19873>.

¹⁷ Yogi Yasa Wedha and Edy Nurcahyo, "Criminal Law Reform Toward Deprivation of Property Resulting from Corruption Criminal Acts," *Prizren Social Science Journal* 5, no. 1 (2021): 97–103, <https://doi.org/10.32936/pssj.v5i1.207>.

¹⁸ Zulkifly Muda, Nizaita Omar, and Nehaluddin Ahmed, "Comparison Between Islamic Criminal Law and Man-Made Law," *International Journal of Academic Research in Business and Social Sciences* 14, no. 2 (February 2024): 972–80, <https://doi.org/10.6007/IJARBS/v14-i2/20718>.

Simply put, substantive criminal law defines the crimes and their punishments, while procedural criminal law dictates how those laws are enforced. This fundamental division ensures an effective and just criminal justice system, with procedural law upholding and implementing substantive law.¹⁹ Substantive criminal law outlines the conditions for an act to be punishable, specifies who can be punished, and details the punishments themselves. Procedural criminal law, on the other hand, dictates how the state, through its agencies, prosecutes and sentences offenders. Therefore, procedural law acts as both the framework and the mechanism for implementing substantive criminal law.²⁰

Key functions of procedural criminal law include ensuring a fair criminal justice process that adheres to principles of justice and protects the rights of suspects, defendants, and all involved parties.²¹ Procedural criminal law also serves to uphold human rights within the judicial process, including the rights to a fair trial, legal representation, the presumption of innocence, and humane treatment. It establishes the procedures and mechanisms for law enforcement, encompassing investigation, arrest, detention, inquiry, trial, and sentencing. Generally, the process involves investigation, arrest, inquiry, trial, and execution of the sentence.

Globally, the relationship between procedural criminal law and human rights has evolved alongside increased international awareness of fundamental human rights, particularly after World War II.²² The concept of human rights protection within procedural criminal law gained serious attention after the atrocities of World War II, particularly the Holocaust and other war crimes. These crimes highlighted the need for international legal mechanisms to prosecute perpetrators of serious human rights violations and international

¹⁹ Eddy O. S. Hiariej, *Hukum Acara Pidana* (Tangerang Selatan: Universitas Terbuka, 2015).

²⁰ I Gede Agus Kurniawan et al., “Reconstructing Criminal Liability in Trademark Law: Lessons from Indonesia and Spain,” *Indonesian Journal of Criminal Law Studies* 11, no. 1 (2026): 213–42, <https://doi.org/https://doi.org/10.15294/ijcls.v11i1.36962>.

²¹ Nabilla Callosa Husin and Naylla Shabilla Callistha Husin, “Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code,” *Ius Poenale* 5, no. 1 (September 2024): 31–42, <https://doi.org/10.25041/ip.v5i1.3486>.

²² Terence Etherton, “Religion, the Rule of Law and Discrimination,” *Ecclesiastical Law Journal* 16, no. 3 (September 13, 2014): 265–82, <https://doi.org/10.1017/S0956618X14000490>.

crimes such as genocide and crimes against humanity.²³ The history of international criminal law began with the establishment of the first two ad hoc international criminal tribunals: the Nuremberg Trials and the Tokyo Trials, which prosecuted perpetrators of war crimes and crimes against humanity following World War II.²⁴ These tribunals were the precursors to the integration of human rights principles into international criminal procedure.

Following the establishment of the United Nations in 1945, various international legal instruments governing human rights began to be formulated, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights (both 1966).²⁵ These instruments established human rights protection standards that must be respected in criminal proceedings, including the right to a fair trial, protection from torture, and the right to legal counsel. In 1998, the Rome Diplomatic Conference produced the Rome Statute, establishing the International Criminal Court (ICC), a permanent institution with jurisdiction to prosecute genocide, war crimes, and crimes against humanity internationally.²⁶ The ICC represents a breakthrough in integrating human rights protection into international criminal procedure by providing an independent and permanent enforcement mechanism. Despite the existence of international instruments and institutions, the implementation of human rights-respecting criminal procedure still faces challenges, such as international politics and national sovereignty, which sometimes hinder the enforcement of international law. However, this development marks significant progress in ensuring that criminal justice

²³ Dhana Laxmi Hamal, "Formal Inclusion, Informal Exclusion: Implementation of Women's Quota System and Political Participation in Post-Civil War Nepal," *Journal of Genocide Research*, May 18, 2023, 1–11, <https://doi.org/10.1080/14623528.2023.2212516>.

²⁴ Stephan Sonnenberg and Patricia Goedde, "Accountability for Human Rights Crimes in North Korea: Jurisdictional Dilemmas in South Korea," ed. Michael Lysander Fremuth, Andreas Sauermoser, and Konstantina Stavrou, *Asian Perspective* 47, no. 3 (June 2023): 513–41, <https://doi.org/10.1353/apr.2023.a905236>.

²⁵ I Gede Agus Kurniawan et al., "Utilitarianism Versus Communalism: A Legal Theory Analysis of Intellectual Property Rights Ethics in Global North and South," *Jambe Law Journal* 8, no. 1 (2025): 229–54, <https://doi.org/https://doi.org/10.22437/home.v8i1.450>.

²⁶ Yordan Gunawan and Vensky Ghaniyyu Putri Permana, "Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction," *Jurnal Suara Hukum* 6, no. 1 (June 2024): 31–47, <https://doi.org/10.26740/jsh.v6n1.p31-47>.

processes not only uphold substantive criminal law but also respect and protect the human rights of suspects, defendants, and victims.

Further developing this, the international human rights document that most explicitly prohibits arbitrary arrest, detention, or exile is the Universal Declaration of Human Rights (1948). This is clearly stated in Article 9 of the UDHR, which asserts that "No one shall be subjected to arbitrary arrest, detention or exile."²⁷ Another crucial instrument addressing this is the International Covenant on Civil and Political Rights (ICCPR), which also affirms the right to liberty and security of person and prohibits arbitrary detention. This prohibition stipulates that detention must be based on clear legal provisions, with legitimate grounds, and must not be arbitrary, unfair, or disproportionate. Detention failing to meet these criteria constitutes a human rights violation. Therefore, the Universal Declaration of Human Rights and related international instruments serve as the foundation of international law protecting individuals from arbitrary arrest and detention.²⁸

The evolution of international human rights instruments highlights the crucial link between criminal procedure and human rights protection. In Indonesia, the primary legal framework for criminal procedure is Law Number 8 of 1981, the Criminal Procedure Code (KUHAP). The KUHAP governs the entire process of criminal law enforcement, from initial investigation and inquiry through prosecution, trial, and the execution of judgments.²⁹ In addition to the KUHAP, specific regulations for serious human rights violations are provided in Law Number 26 of 2000 concerning the Human Rights Court, which establishes special procedures for handling such violations while still referencing the general principles of the KUHAP.

Reform of the criminal procedure system is also underway through the draft Criminal Procedure Code (RKUHAP), aiming to adapt to societal and technological advancements, and to strengthen human rights protection in line with international standards and the Indonesian Constitution.

²⁷ Aliyih Prakarsa and Rena Yulia, "Examining Victim Precipitation in Determining a Suspect (A Case Study of Marital Rape That Ended in Death)," *Lambung Mangkurat Law Journal* 7, no. 1 (2022): 59–73, <https://doi.org/10.32801/lamlaj.v7i1.307>.

²⁸ Matthew Marcellinno Gunawan, Pujiyono Suwadi, and Muhammad Rustamaji, "Comparison of Restorative Justice Implementation in Indonesia, Usa, Germany, Poland and Switzerland," *Revista de Gestao Social e Ambiental* 18, no. 1 (2024): 1–15, <https://doi.org/10.24857/rgsa.v18n1-055>.

²⁹ Muhammad Arif Agus and Ari Susanto, "The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 369, <https://doi.org/10.30641/dejure.2021.v21.369-384>.

Some key principles in Indonesian criminal procedure law directly related to human rights protection include:³⁰

- a. Presumption of Innocence
Every person suspected, arrested, detained, prosecuted, or tried is presumed innocent until a court judgment declares their guilt legally and convincingly.
- b. Right to Legal Counsel
Suspects or defendants have the right to legal assistance from a lawyer at every stage of the proceedings.
- c. Right to a Fair and Speedy Trial
Suspects have the right to prompt examination by investigators and to be brought before a court without unnecessary delay.
- d. Right to Notification of Charges
Suspects or defendants have the right to be clearly informed, in a language they understand, of the charges against them.
- e. Right to Free Testimony
Suspects or defendants have the right to give testimony freely, without pressure or coercion.
- f. Right to an Interpreter
If a suspect or defendant does not understand Indonesian, they have the right to an interpreter.
- g. Right to Protection from Violence and Intimidation
Suspects or defendants must be protected from violence, threats, or intimidation throughout the legal process.

Indonesian criminal procedure law is intrinsically linked to human rights protection. The KUHAP and related regulations are designed to ensure that law enforcement processes do not violate fundamental individual rights, such as the rights to liberty, equality before the law, and fair treatment. Human rights protection in criminal procedure includes the guarantee of equality before the law, where every citizen is entitled to equal treatment without discrimination, in accordance with the principle of equality before the law.³¹ Further guarantees include fair legal certainty, where legal processes must be just, transparent, and non-discriminatory. Oversight systems and complaint mechanisms are necessary to prevent abuse of power by law enforcement officials.

³⁰ Suyanto, *Hukum Acara Pidana* (Sidoarjo: Zifatama Jawara, 2018).

³¹ Yusrianto Kadir, Leni Dwi Nurmala, and Nurwita Ismail, "The Relevance of Legal Protection to Human Rights Related to Euthanasia Law in Indonesia," *Jambura Law Review* 3, no. 2 (2021): 319–35, <https://doi.org/10.33756/jlr.v3i2.7111>.

Regulations concerning arrest, detention, and pre-trial legal remedies in Indonesia are clearly outlined in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). Arrest is the initial action taken by law enforcement to detain someone strongly suspected of committing a crime. Arrest must be based on sufficient initial evidence and conducted with strict procedures, including notification of the arrest warrant to the suspect, except in cases of apprehension in the act (*flagrante delicto*), where arrest can be made without a warrant. The arrest period is limited to a maximum of one day; if longer, that time is counted as detention.

Detention is the act of holding a suspect or defendant in a designated location during the legal process. Detention can only be carried out if there are strong reasons, such as concerns that the suspect may flee, destroy evidence, or repeat the offense. Furthermore, detention only applies to crimes with specific criminal threats, primarily those with a sentence of five years or more. Detention can be ordered by investigators, prosecutors, or judges based on applicable law.

As a form of legal protection for suspects or defendants, the Indonesian legal system also provides a pre-trial mechanism. Pre-trial proceedings are legal actions filed with the district court to test the legality of actions such as arrest, detention, termination of investigation, or termination of prosecution carried out by law enforcement. Through pre-trial proceedings, the suspect, family, or legal counsel can petition the court to examine and decide whether these actions comply with applicable procedure and law.³² The pre-trial ruling is binding and can order the release of a suspect if the arrest or detention is deemed unlawful, or order the resumption of legal proceedings if the termination of the investigation or prosecution is deemed unlawful.³³ Therefore, the regulations concerning arrest, detention, and pre-trial proceedings in Indonesia are designed to guarantee a fair legal process and protect human rights, while ensuring that law enforcement is effective and in accordance with the principles of justice.

The effectiveness of *praperadilan* as a mechanism for protecting human rights remains a subject of ongoing debate in Indonesian legal scholarship. A significant development occurred through Constitutional Court Decision No.

³² Galuh Praharafti Rizqia dan Dimas Sutawijaya, "Penyelesaian Perkara Pidana Persetubuhan Dengan Pelaku Anak Pada Masyarakat Hukum Adat Dayak Lundayeh Di Kabupaten Malinau," *Jurnal de Jure* 13, no. 1 (2021): 114–29.

³³ Anang Shophan Tornado, *Reformasi Praperadilan Di Indonesia (Tinjauan Teori, Praktek, Dan Perkembangan Pemikiran)*, 1st ed. (Bandung: Nusamedia, 2019).

21/PUU-XII/2014, which expanded its scope to include the determination of suspect status, thereby strengthening judicial oversight over investigative actions.³⁴ This decision marked an important shift toward greater control of law enforcement discretion, particularly in high-profile cases such as corruption investigations. Empirical studies show an increase in *praperadilan* applications following this ruling, especially in corruption and narcotics cases.³⁵ However, concerns persist regarding unequal access and procedural limitations, including restricted scope of review and limited examination time, which may reduce its effectiveness as a comprehensive safeguard.

Structural limitations in the KUHAP remain significant, particularly in rural and under-resourced regions. Although Article 54 guarantees the right to legal counsel, access to legal assistance is uneven across Indonesia. As a result, suspects especially those from lower socioeconomic backgrounds often undergo examination without adequate legal representation,³⁶ leading to procedural inequality. In addition, limited judicial infrastructure in remote areas constrains the timely filing of *praperadilan* petitions. Unlawful or prolonged detention still occurs without judicial review, indicating that the effectiveness of human rights protection under the KUHAP depends heavily on institutional capacity and equitable resource distribution.

Similar to Indonesia, Saudi Arabia, with its Islamic legal system, also has provisions governing arrest and detention within its criminal procedure law, granting security forces the authority to detain individuals suspected of criminal activity. However, the practice of arrest and detention in Saudi Arabia often comes under scrutiny due to numerous instances of arbitrary detention without clear due process.³⁷ According to the law, an individual can be detained without charge for up to five days, and this detention can be extended for up to six months by order of the Bureau of Investigation and Prosecution. After six

³⁴ Daswanto Daswanto, "Legal Policy of Pretrial Arrangements in Criminal Procedure Law in Indonesia by the Constitutional Court," *Interdisciplinary Journal and Hummanity (INJURITY)* 3, no. 11 (November 2024): 755–67, <https://doi.org/10.58631/injury.v3i11.1309>.

³⁵ Supriyadi W. Eddyono et al., *Pretrial Hearing In Indonesia: Theory, History, and Practice in Indonesia*, ed. Anggara (Jakarta: Institute for Criminal Justice Reform, 2014).

³⁶ David Hughes and Angela King, "Vulnerability Through a Legal Lens: A Comparative Jurisdictional Analysis of the Law of Confessions and Vulnerable Suspects," *The Journal of Criminal Law* 88, no. 3 (June 2024): 182–210, <https://doi.org/10.1177/00220183241256739>.

³⁷ Risky Fany Ardiansyah Tedy Nopriandi, "Paradigm Of Death Penalty (Comparative Study In Indonesia, Saudi Arabia And China)," *Lajil* 2, no. 1 (2020): 62.

months, the law requires that the detainee be brought before a competent court or released. However, data indicates that thousands of individuals are held in pre-trial detention for months or even years without being brought before a court, raising serious concerns about human rights violations.

A pre-trial mechanism, as known in several other countries, does not appear to be effective in Saudi Arabia, as detainees are often not promptly brought before a judge to review the legality of their detention. This contradicts international standards that require anyone arrested or detained to be promptly given the opportunity to be tried within a reasonable time or released. Prolonged detention without trial is considered arbitrary and violates the principle of the right to a fair trial. Furthermore, cases of arrest involving foreign nationals, including Indonesian citizens, are frequent, particularly concerning immigration violations and illegal activities such as Hajj fraud. Suspects are usually detained and their cases transferred to the prosecution for further legal proceedings; however, consular access and legal protection for them are often limited.

An important issue in Saudi Arabia's criminal procedure system lies in the tension between Sharia-based principles and international human rights standards.³⁸ While Islamic jurisprudence provides procedural safeguards, such as the prohibition of coerced confessions (*iqrār*) and evidentiary requirements,³⁹ it does not recognize independent pretrial judicial review in the same way as other legal systems. Saudi Arabia has also entered reservations to international human rights treaties, citing consistency with Sharia, which has been criticized by international monitoring bodies.⁴⁰ This tension is evident in practices related to confessions, detention standards, and the dual role of judges in the judicial process. Although Islamic law contains protective principles, their implementation in Saudi Arabia is often influenced by executive authority, limiting effective judicial oversight.

³⁸ Ahmad Muhammad Mustain Nasoha et al., "Criminal Law in Muslim-Majority Countries: Balancing Sharia, Human Rights, and Global Standards," *SHAHIH: Journal of Islamicate Multidisciplinary* 10, no. 1 (June 2025): 1–18, <https://doi.org/10.22515/shahih.v10i1.10038>.

³⁹ Nurul Hidayah Ritonga and Zulkarnain, "The Position of The Defendant's Statement as Evidence in The Perspective of Islamic Criminal Justice," *Justitia Jurnal Hukum* 9, no. 2 (July 2025): 193–204, <https://doi.org/10.30651/justitia.v9i2.27417>.

⁴⁰ Maja Janmyr and Charlotte Lysa, "Saudi Arabia and the International Refugee Regime," *International Journal of Refugee Law* 35, no. 3 (November 2023): 251–71, <https://doi.org/10.1093/ijrl/cead027>.

Recent reforms under Saudi Arabia's Vision 2030 have introduced changes to the criminal justice system, including the establishment of an independent Public Prosecution in 2017 and amendments to the Law of Criminal Procedure. These reforms aim to strengthen prosecutorial independence, regulate detention periods, and improve access to legal counsel during the investigation stage.⁴¹ However, reports from Amnesty International and Human Rights Watch indicate that their practical impact remains limited, particularly in cases involving political detainees and foreign nationals.⁴² Moreover, the Anti-Terrorism Law allowing extended detention without charge have been particularly criticized as incompatible with ICCPR Article 9 standards. Thus, while Vision 2030 signals an intent toward procedural modernization, its impact on pretrial human rights protections remains constrained by the absence of independent judicial review mechanisms.

Overall, while the formal regulations on arrest and detention in Saudi Arabia provide a certain legal framework, their implementation faces sharp criticism due to the practice of arbitrary detention and the lack of adequate legal protection for suspects and detainees.⁴³ This highlights the need for legal reform and stronger enforcement of human rights principles within the Saudi Arabian criminal justice system.

In Egypt, regulations concerning arrest, detention, and pre-trial legal remedies are governed by the criminal justice system, based on the Egyptian Criminal Code and Code of Criminal Procedure.⁴⁴ Arrest in Egypt can only be carried out by police officers or authorized authorities based on strong suspicion that a person has committed a crime. The arrest procedure must comply with

⁴¹ Omar D. Alatawi, "Combating Corruption and Promoting Economic Resilience: Legal and Institutional Reform in Saudi Arabia," *Humanities and Social Sciences Communications* 12, no. 1 (October 2025): 1597, <https://doi.org/10.1057/s41599-025-05873-x>.

⁴² Rachel Myrick and Jeremy M. Weinstein, "Making Sense of Human Rights Diplomacy: Evidence from a US Campaign to Free Political Prisoners," *International Organization* 76, no. 2 (November 2022): 379–413, <https://doi.org/10.1017/S0020818321000424>.

⁴³ Mona Omran, "Constitutional Underpinnings of Substantive Criminal Law: A Comparative Analysis of Egypt and Saudi Arabia," *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024): 8543–46, <https://doi.org/10.57239/PJLSS-2024-22.2.00644>.

⁴⁴ Ibrahim Munib, Muhammad Hasyied Abdurrasyied, and Isniyatin Faizah, "The Urgency of Expert Witnesses in Settlement of Cases in The Egyptian Judicial Legal System," *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 1 (April 2024): 1–20, <https://doi.org/10.51675/jaksya.v5i1.749>.

legal provisions requiring notification of the reasons for the arrest to the suspect and official recording of the action. Detention in Egypt is implemented to ensure that the suspect does not flee, destroy evidence, or interfere with the investigation and judicial process.⁴⁵ While the initial period of temporary detention is usually limited to 15 days and can be extended by a court if necessary, the practice of detention in Egypt often receives criticism due to prolonged pre-trial detention and a lack of transparency in the legal process, potentially violating the human rights of the accused.⁴⁶

Regarding pre-trial legal remedies, Egypt has a judicial review mechanism allowing suspects or their lawyers to petition a court to examine the legality of their arrest and detention.⁴⁷ While Egyptian courts have the authority to review the legality of arrests and detentions, ordering release if violations are found, access to this mechanism remains limited and often ineffective in preventing arbitrary detention. In short, despite Egypt's legal framework for arrest, detention, and pre-trial remedies, serious challenges remain regarding human rights protection. Prolonged detention without a fair and transparent judicial process is a major concern highlighted by various international human rights organizations. Legal reform and enhanced legal protections for suspects are therefore crucial to ensuring justice and legal certainty in Egypt.

Numerous reports highlight a persistent gap between Egypt's formal criminal procedure framework and its implementation in practice. The UN Human Rights Committee has raised concerns over the extensive use of pretrial detention, particularly under anti-terrorism laws and emergency regulations.⁴⁸ Detainees are often held beyond legal limits and face restricted access to legal counsel and family members. Human Rights Watch and Amnesty International also report that Emergency State Security Courts operate with limited

⁴⁵ Kazuaki Takemura, "Squandering Marital Movables: On Family and Criminal Law in Egypt," *Islamic Law and Society* 31, no. 4 (May 2024): 431–63, <https://doi.org/10.1163/15685195-bja10055>.

⁴⁶ Takemura.

⁴⁷ MennattAllah Hassan Attia and Nancy M Zaghloul, "Selfie Accidents and Crimes in Egypt: A Comprehensive Discussion of the Medico-Legal Implications," *Medicine, Science and the Law* 65, no. 2 (April 2025): 113–19, <https://doi.org/10.1177/00258024241257100>.

⁴⁸ Asif Mohiuddin, "Human Rights in the Crossfire," in *Securitisation and Islamism in Egypt and Saudi Arabia* (Cham: Springer Nature Switzerland, 2025), 151–93, https://doi.org/10.1007/978-3-031-96459-6_5.

procedural safeguards, including the absence of effective appeal mechanisms.⁴⁹ The Egyptian Commission for Rights and Freedoms (ECRF) documented over 4,000 cases of enforced disappearance between 2015 and 2020.⁵⁰ These findings collectively indicate a systemic implementation deficit that renders formal pretrial remedies largely.

A key structural issue in Egypt's criminal justice system concerns the dual role of the Public Prosecution as both investigator and authority for pretrial detention.⁵¹ This arrangement raises concerns about impartiality, as the same institution conducts investigations while also approving and extending detention. International standards recommend separating these functions to prevent conflicts of interest and ensure due process. In practice, prosecutors may renew detention for successive periods up to two years under Article 143 of the Code of Criminal Procedure, without effective independent judicial review.⁵² This concentration of power weakens oversight mechanisms and contributes to patterns of prolonged detention.

The regulations concerning arrest, detention, and pre-trial legal remedies in Indonesia, Saudi Arabia, and Egypt nominally reflect recognition of human rights principles such as protection of individual liberty, the right to a fair trial, and oversight of law enforcement actions. While differences exist in legal approaches and implementation challenges, particularly regarding arbitrary detention and limited access to pre-trial mechanisms in Saudi Arabia and Egypt, the three legal systems substantially provide the legal basis for accommodating human rights protection within the criminal justice process.

⁴⁹ Sylvia Agu, "Assessment of Current Procedural Protections in International Human Rights Instruments," in *The International Legal Protection of Children in Street Situations* (Cham: Springer, 2025), 307–71, https://doi.org/10.1007/978-3-031-78086-8_7.

⁵⁰ International Commission of Jurists, "Egypt and Libya: Stop Enforced Disappearances and Ensure Accountability | ICJ," 2025.

⁵¹ Ahmad Fekry Moussa, Ibrahim Suleiman Al Qatawneh, and Moustafa Elmetwaly Kandeel, "RETRACTED ARTICLE: Procedural Necessity in Primary Investigation Work," *Humanities and Social Sciences Communications* 9, no. 1 (March 2022): 73, <https://doi.org/10.1057/s41599-022-01084-w>.

⁵² Heba M Khalil, "Lawyers Without an Association: The Legal Professionals Challenging Autocratic Legalism in Egypt," *Indiana Journal of Global Legal Studies* 32, no. 2 (2025): 136–54, <https://doi.org/10.2979/gls.00012>.

Comparative Law: Arrest, Detention, and Pre-Trial Legal Remedies in Indonesia, Saudi Arabia, and Egypt

The history of regulations governing arrest, detention, and pre-trial legal remedies in Indonesia has a long trajectory, beginning during the Dutch colonial era. At that time, criminal procedure law was based on the colonial legal system, such as the Dutch East Indies Code of Criminal Procedure (HIR) and the Reglement op de Strafvordering (Rv). These regulations technically addressed arrest, detention, and search, but offered limited protection for suspects' rights.⁵³ During that period, temporary detention could be ordered by an assistant resident or the chairman of the Landraad (a colonial court). Detention periods were relatively long, and judicial oversight was minimal, leading to frequent instances of arbitrary detention without effective mechanisms for suspects to challenge such actions.⁵⁴

Following Indonesian independence in 1945, the prevailing criminal procedure law largely adopted the old regulations based on the principle of *konkordansi*, which stipulated that existing laws remained in force until replaced by new legislation.⁵⁵ Efforts to modernize criminal procedure law began in 1974 with the introduction of a draft Criminal Procedure Code (RKUHAP). This draft introduced the concept of stricter oversight of arrests and detentions through the role of an examining judge (*hakim komisaris*), aiming to better protect the human rights of suspects and defendants.

This modernization culminated in the enactment of Law Number 8 of 1981 on Criminal Procedure (KUHAP), which came into effect in 1983. This law explicitly regulates the rights of suspects and defendants in the criminal justice process, including provisions on arrest and detention. These provisions require sufficient initial evidence and clear, time-limited procedures. The KUHAP also introduced a pre-trial mechanism allowing suspects or their legal counsel to challenge the legality of arrests, detentions, the termination of investigations, or

⁵³ Ishaq, *Pengantar Hukum Indonesia*, 5th ed. (Jakarta: Raja Grafindo Persada, 2018).

⁵⁴ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2013).

⁵⁵ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

the termination of prosecutions, thus providing legal protection and oversight of law enforcement actions.⁵⁶

However, in practice, judicial oversight of detention and the implementation of pre-trial proceedings still face various challenges. These include a lack of transparency and limited access for suspects to file pre-trial motions, resulting in prolonged detention without legal certainty. Therefore, the history of these regulations demonstrates the dynamic tension between the need for effective law enforcement and the protection of human rights, a continuous focus of criminal procedure reform in Indonesia.

The principles underlying the regulations governing arrest, detention, and pre-trial legal remedies in Indonesia are rooted in the rule of law, upholding human rights and justice. Some of the main principles include⁵⁷:

- a. **Presumption of Innocence:** Anyone suspected, arrested, detained, prosecuted, or brought before a court is presumed innocent until a final and binding court judgment proves otherwise. This principle is reflected in every stage of the criminal process, including arrest and detention procedures, where the burden of proof rests entirely on the prosecution.
- b. **Legality Principle (Nullum delictum nulla poena sine praevia lege poenali):** No act can be criminalized unless it is explicitly defined as such in a pre-existing law. This ensures legal certainty and prevents arbitrary actions in criminal law enforcement.
- c. **Equality Before the Law:** Everyone is equal before the law and entitled to equal treatment without discrimination, including in arrest and detention procedures.
- d. **Due Process of Law:** All law enforcement actions must adhere to legally mandated procedures, ensuring the protection of suspects' or defendants' rights. In the context of arrest and detention, this requires a valid warrant, notification of the reason for arrest, and time limits on detention.
- e. **Accusatorial Principle:** This principle positions the suspect/defendant as a subject, not an object, in all investigative actions.
- f. **Principle of Speedy, Simple, and Low-Cost Justice:** Criminal proceedings must be efficient, effective, and affordable, including pre-trial remedies.

⁵⁶ Desi Ratnasari, Sahuri Lasmadi, and Elly Sudarti, "Kedudukan Hukum Deponeering Dalam Sistem Peradilan Pidana," *Pampas: Journal of Criminal Law: Journal of Criminal Law* 2, no. 1 (2021): 17–29, <https://doi.org/10.22437/pampas.v2i1.12053>.

⁵⁷ Suyanto, *Hukum Acara Pidana*.

- g. Right to Legal Counsel: Every suspect or defendant has the right to legal counsel from the initial investigation to court proceedings, ensuring effective defense and protection of their rights.
- h. These principles underpin the KUHAP's norms governing arrest, detention, and pre-trial proceedings. They guide law enforcement in upholding the law and justice while respecting human rights.

The KUHAP (Law Number 8 of 1981) comprehensively regulates arrest, detention, and pre-trial remedies in Indonesia, forming the basis for criminal proceedings in general courts. Arrest is the initial act by investigators or authorized officials to detain someone strongly suspected of a crime based on sufficient initial evidence. Arrests must be lawful and accompanied by a warrant, except in cases of *tangkap tangan* (caught in the act), where a warrant is not required. Arrests must respect suspects' rights, including notification of the reason for arrest and the right to contact legal counsel. The arrest period is limited to a maximum of one day; any longer period is considered detention.

Detention involves holding a suspect or defendant in a designated location during the investigation, prosecution, or court proceedings. Detention is only permitted with strong reasons, such as preventing escape, destruction of evidence, or repetition of the crime. It applies only to crimes with specific penalties, typically those with sentences of five years or more.⁵⁸ Detention may be ordered by investigators, prosecutors, or judges based on applicable law, always respecting the suspect's rights, including humane treatment and the right to legal counsel.

To protect suspects and defendants, Indonesian law also provides a pre-trial legal remedy mechanism. Suspects, their families, or legal counsel can petition a district court to review the legality of arrests, detentions, or the termination of investigations or prosecutions by law enforcement. The pre-trial court can determine whether these actions complied with legal procedure and can order the release of a suspect if the arrest or detention is deemed unlawful, or order the continuation of legal proceedings if the termination of an investigation or prosecution is deemed unlawful. This pre-trial mechanism is crucial for protecting human rights in criminal proceedings, ensuring that law enforcement is fair, transparent, and consistent with the rule of law, upholding human dignity. Therefore, the KUHAP's regulations on arrest, detention, and pre-trial remedies balance effective law enforcement with the protection of

⁵⁸ Andiani Oktavia Safitri, "Pertanggung Jawaban Penyidik Kepolisian Terhadap Kasus Salah Tangkap," *Dewantara: Jurnal Pendidikan Sosial Humaniora* 3, no. 1 (2024): 246–55, <https://doi.org/10.30640/dewantara.v3i1.2232>.

suspects' and defendants' rights, ensuring fair, speedy criminal proceedings and legal certainty in accordance with Pancasila and the 1945 Constitution.

In Saudi Arabia, the history of arrest, detention, and pre-trial legal remedies is intertwined with the kingdom's legal and governmental development, which is based on Islamic Sharia as the primary source of law. Officially established in 1932 after King Abdul Aziz Ibn Saud unified Najd and Hijaz, Saudi Arabia adopted Islamic law based on the Quran and Sunnah as the foundation for governance, including criminal law and its enforcement procedures.⁵⁹ Saudi Arabia's legal system adheres to the Hanbali school of Islamic jurisprudence as its official madhhab (school of thought). All judicial processes and law enforcement are conducted by judges applying only Islamic Sharia law. There is no separation of powers (legislative, executive, and judicial) as seen in many other countries.⁶⁰

Regarding arrest and detention, Saudi Arabian law grants broad authority to security forces to apprehend individuals suspected of legal violations. Procedures are heavily influenced by Islamic Sharia principles and royal decrees. However, detention in Saudi Arabia often occurs without the effective pre-trial mechanisms found in other legal systems. This can result in prolonged detention without transparent judicial processes or adequate access to legal representation. This is linked to the absolute monarchy's structure, where the King's power is dominant, and legal policy depends heavily on royal decisions and consensus, with the principle that no law or regulation can contradict Islamic Sharia.

Over time, particularly since the establishment of the Ministry of Justice in 1962 and the appointment of a Minister of Justice in 1970, Saudi Arabia has developed a more structured judicial system, including general courts, criminal courts, and family courts, all operating under Islamic law.⁶¹ However, legal reforms have maintained Sharia as the primary foundation and have not adopted formal pre-trial mechanisms to protect suspects' rights regarding the

⁵⁹ Relli Shechter, "Abd Al-'Aziz Āl Sa'ūd's Other Campaign: Propaganda in the Making of the Modern Saudi State, 1918–1932," *Journal of Arabian Studies* 12, no. 1 (January 2022): 45–63, <https://doi.org/10.1080/21534764.2022.2207711>.

⁶⁰ Dian Yudhantara Syahputra and Syaifuddin Zuhdi, "Comparison of the Legal Construction of Hadhanah Rights in Saudi Arabia, Turkey and Indonesia," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 9, no. 1 (June 2024): 131–48, <https://doi.org/10.25217/jm.v9i1.4753>.

⁶¹ Nadia Nadir, "Sistem Pemerintahan Dan Kebijakan Luar Negeri Arab Saudi," *Qaumiyyah: Jurnal Hukum Tata Negara* 1, no. 2 (August 17, 2021): 161–75, <https://doi.org/10.24239/qaumiyyah.v1i2.11>.

legality of arrest and detention. Therefore, the history of arrest, detention, and pre-trial remedies in Saudi Arabia reflects a blend of strong Islamic legal tradition and an absolute monarchy where the King holds ultimate power in legal decision-making. This results in a unique legal system distinct from modern systems in other countries.

Regulations governing arrest, detention, and pre-trial remedies in Saudi Arabia are based on a unique legal system: Sharia law, the primary source of all legal rules, interpreted according to the Hanbali school of thought. Unlike many other countries, Saudi Arabia does not have a clear separation of powers, so legal decisions are heavily influenced by royal authority and the interpretations of religious scholars. Security forces have broad authority to detain individuals suspected of legal violations. Criminal procedure allows detention without charges for up to five days, extendable to six months by order of the Bureau of Investigation and Prosecution. After this period, detainees must be brought before a competent court or released. However, arbitrary and prolonged detention without transparent judicial processes remains a problem.

The underlying principles are heavily influenced by Islamic Sharia, such as justice based on the Quran and Sunnah, and the absolute authority of the King and religious institutions in determining and implementing the law. Although the Arab Charter on Human Rights, ratified by Saudi Arabia in 2009, guarantees the right of anyone arrested or detained to be promptly brought before a judge and tried within a reasonable time, formal pre-trial mechanisms protecting the legality of arrest and detention remain limited and ineffective.⁶² This has drawn criticism from various international human rights organizations, which view the practice of detention without clear judicial process as a violation of human rights standards.

The history of Saudi Arabia's legal system began with the establishment of the kingdom in 1932, adopting Islamic law as the sole source of law without developing a separate secular legal system or codified criminal procedure.⁶³ Over time, the establishment of judicial institutions and the Ministry of Justice in the 1960s and 1970s led to a more organized judicial structure, but it remained firmly rooted in Sharia principles and absolute monarchical authority.⁶⁴ The

⁶² Ahmed Almutawa, "The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights," *Human Rights Law Review* 21, no. 3 (July 2021): 506–32, <https://doi.org/10.1093/hrlr/ngab008>.

⁶³ Shechter, "Abd Al-'Aziz Āl Sa'ūd's Other Campaign: Propaganda in the Making of the Modern Saudi State, 1918–1932."

⁶⁴ Nadir, "Sistem Pemerintahan Dan Kebijakan Luar Negeri Arab Saudi."

principles governing arrest, detention, and pre-trial procedures in Saudi Arabia differ significantly from those in other legal systems. Law enforcement emphasizes religious interpretation and royal authority, leading to significant limitations and challenges in protecting suspects and defendants' rights during criminal proceedings.

Saudi Arabia's regulations on arrest, detention, and pre-trial remedies stem from a legal system rooted in Islamic Sharia as the primary source of law, formally implemented since the kingdom's 1932 founding. There's no clear separation of powers; judges apply Sharia principles based on the Hanbali school of thought, with royal authority central to legal decision-making. In practice, Saudi security forces have broad powers to detain individuals suspected of legal violations. Criminal procedure allows detention without charges for up to five days, extendable to six months by order of the Bureau of Investigation and Prosecution. After this, detainees must be brought before a court or released.

However, Human Rights Watch reports indicate widespread arbitrary and prolonged detention without transparent judicial processes. Thousands remain detained for months or years without trial, raising serious human rights concerns.⁶⁵ Formal pre-trial mechanisms to challenge the legality of arrests and detentions are virtually nonexistent or severely limited in Saudi Arabia, leaving suspects and detainees with inadequate legal protection during criminal proceedings. While the Arab Charter on Human Rights, ratified by Saudi Arabia in 2009, guarantees the right of anyone arrested or detained to be promptly brought before a judge and tried within a reasonable time, implementation remains suboptimal.

Despite the country's development, the establishment of the Ministry of Justice in 1962 and a more structured judicial system still operate under Islamic law and absolute monarchical authority. Saudi Arabia also imposes strict rules regarding deportation and blacklisting of foreigners, including Indonesian citizens, who violate residency permits or commit certain crimes. These procedures are often opaque and lack official notification. Therefore, Saudi Arabia's regulations on arrest, detention, and pre-trial remedies reflect a legal system heavily influenced by Sharia principles and monarchical power, facing significant challenges in ensuring human rights protection and procedural justice.

⁶⁵ Joseph A. Kéchichian, "Challenges to Legal Reforms in Saudi Arabia," *Contemporary Review of the Middle East* 12, no. 2 (June 2025): 123–40, <https://doi.org/10.1177/23477989251326312>.

In Egypt, the history of arrest, detention, and pre-trial remedies is inseparable from the long evolution of the Egyptian legal system, rooted in Islamic legal tradition and undergoing significant reforms since the 19th century.⁶⁶ Initially, Egyptian law was heavily influenced by traditionally applied Islamic law. Judicial and legal matters were handled by scholars and jurists who administered law based on the Maliki school of thought, later replaced by the Hanafi school under the Tulunid dynasty.⁶⁷ However, the 19th century, particularly during the Tanzimat era in the Ottoman Empire (which significantly influenced Egypt), saw major reforms incorporating secular Western legal elements. This included codifying criminal and commercial law based on French and other Western legal systems, without completely eliminating Sharia provisions such as qisas and diyat.

These reforms also established specialized courts, such as the Nizamiyah courts, handling non-Muslim cases using secular law, while Sharia courts continued to handle Islamic legal matters. This created a dual legal system, partially unified under the Divan-i Ahkam-i Adliye in 1868 as the highest court.⁶⁸ Furthermore, the establishment of the public prosecutor's office significantly altered the judicial system by introducing state-sponsored prosecution, unlike the previous private prosecution system in Sharia courts.

Regarding arrest and detention, Egypt adopted rules combining Islamic and Western legal principles. Provisions mandate lawful grounds and time limits for detention, along with judicial oversight to prevent arbitrary detention. Pre-trial legal remedies exist through judicial review, allowing suspects or their lawyers to challenge the legality of arrests and detentions. However, challenges remain in optimally protecting human rights in practice.

Following Egypt's independence and the establishment of the republic in the early 20th century, legal reforms continued, codifying family, criminal, and civil law. These increasingly integrated modern values and legal nationalism while retaining Sharia elements as a primary foundation.⁶⁹ Therefore, the history of arrest, detention, and pre-trial legal remedies in Egypt reflects a blend

⁶⁶ Takemura, "Squandering Marital Movables: On Family and Criminal Law in Egypt."

⁶⁷ Takemura.

⁶⁸ Abdul Holel Rea Rufaidah Al Anshariyah, Lailatul Mubarakah, "Social Changes Towards Women's Progress In Egypt," *Mozaic: Islamic Studies Jurnal* 2, no. 2 (2023): 22–28.

⁶⁹ Lev Weitz, "Islamic Law on the Provincial Margins: Christian Patrons and Muslim Notaries in Upper Egypt, 2nd-5th/8th-11th Centuries," *Islamic Law and Society* 27, no. 1–2 (2020): 5–52, <https://doi.org/10.1163/15685195-00260A07>.

of Islamic legal tradition and evolving Western legal influences, aiming to create a more structured, just, and modern legal system.

The principles underpinning the regulation of arrest, detention, and pre-trial remedies in Egypt are a combination of Islamic law and secular law adopted from Western legal systems. Some important relevant principles include⁷⁰:

- a. Principle of Legality: No act can be criminalized unless it is based on pre-existing legal provisions. This principle guarantees legal certainty and prevents arbitrary actions.
- b. Presumption of Innocence: A person is presumed innocent until proven guilty by a final and binding court judgment.
- c. Equality Before the Law: Everyone is equal before the law and has the right to be treated equally without discrimination.
- d. Due Process of Law: Every law enforcement action must be carried out according to legally established procedures and guarantee the protection of the rights of suspects or defendants.
- e. Right to Legal Counsel: Suspects or defendants have the right to legal assistance from a legal advisor.
- f. Prompt Examination: An arrested suspect must be promptly examined. Judicial Police officers must hand over the suspect to the Prosecution within 24 hours of arrest. The Prosecution then interrogates to determine if the arrest was lawful.
- g. Prosecution Oversight: The Prosecution has the authority to oversee the arrest and detention process, including visiting prisons to ensure no illegal detentions occur. The public can also report unlawful arrests to the Prosecution.
- h. Pre-Trial Legal Remedies: The party entitled to file a pre-trial motion regarding seizure is the Prosecution, not the Judicial Police officers; this is then passed on to the court.

These principles form the basis for the legal norms governing arrest, detention, and pre-trial procedures.

In Egypt, the regulation of arrest, detention, and pre-trial legal remedies is based on the Egyptian Criminal Code No. 150 of 1950 and its amendment No. 189 of 2020.⁷¹ The law enforcement process begins with the reporting of a

⁷⁰ Omran, "Constitutional Underpinnings of Substantive Criminal Law: A Comparative Analysis of Egypt and Saudi Arabia."

⁷¹ Amy Shlosberg et al., "Death Row Exonerations: A Scoping Review," in *The Elgar Companion to Capital Punishment and Society* (Edward Elgar Publishing, 2024), 200–216, <https://doi.org/10.4337/9781803929156.00022>. See also Muhtar Agung Kusuma, and

criminal event, followed by the process of proving guilt and other legal steps. Investigators, known as Judicial Police Officers, are responsible for searching for crimes and perpetrators, and collecting evidence for investigation and prosecution. The investigation of criminal cases is the full authority of the Public Prosecutor's Office. Judicial Police Officers are required to visit the crime scene, examine physical signs of the crime, secure the location and individuals, and hear witness statements.

Judicial Police Officers can make arrests if the crime is punishable by imprisonment of more than three months and there is sufficient evidence. Arrests can also be made if the suspect fails to appear for questioning. For cases of theft, fraud, serious assault, and violent resistance against public officials, Judicial Police Officers can make arrests by requesting an arrest warrant from the prosecutor's office. Arrests must be accompanied by questioning by the Judicial Police Officer, and within 24 hours must be handed over to the Public Prosecutor's Office. The Public Prosecutor's Office conducts interrogations to determine whether the arrest was properly conducted and to determine whether the suspect remains arrested or is released within 24 hours. Anyone aware of an unlawful arrest is obligated to notify the prosecutor's office.

The Public Prosecutor's Office, together with a deputy head of court, is authorized to visit prisons to ensure there are no illegal detainees. Inmates can report to the prison head if there is any indication of illegal detention, which must be investigated by the Public Prosecutor. In the case of pretrial litigation regarding seizures, the party entitled to file is the Public Prosecutor's Office, not the Judicial Police Officer, and the case is then forwarded to the court. However, it should be noted that there are reports of arrests or detentions of individuals without a clear legal basis, as well as cases of enforced disappearance. In addition, violations of local laws and regulations can result in deportation, arrest, or detention by local authorities.

TABLE 1. Comparative Arrest, Detention, and Pretrial Remedies in Indonesia, Saudi Arabia and Egypt

Component	Indonesia	Saudi Arabia	Egypt
Legal Basis	Law No. 8/1981 (KUHP); Law No. 26/2000	Islamic Sharia (Hanbali); Royal	Criminal Code No. 150/1950 (amended 2020);

Ahmad Zikri. "The 2022 Criminal Code Revision: A Step Forward or a Backslide for Civil Liberties in Indonesia?". *Indonesian Court and Justice Review* 2, no. 3 (2025). <https://doi.org/10.65815/xphrxf91>.

Component	Indonesia	Saudi Arabia	Egypt
		Decrees; Law of Criminal Procedure	Code of Criminal Procedure
Authority for Arrest	Police investigators with warrant; warrantless only in flagrante delicto	Security forces with broad discretionary authority	Judicial Police Officers; prosecutorial warrant for certain offenses
Maximum Detention Without Charge	1 day arrest; stage-specific detention orders required	Up to 5 days; extendable to 6 months by Bureau of Investigation	Up to 24 hours before transfer to Public Prosecution
Judicial Oversight of Detention	Independent judicial review at each stage	Minimal; no independent pretrial judicial review	Public Prosecution oversight; court review available but structurally limited
Access to Legal Counsel	Guaranteed at all stages (KUHAP Art. 54); uneven in rural areas	Formally recognized; severely restricted in practice	Formally guaranteed; restricted in politically sensitive cases
Pretrial Remedy Mechanism	<i>Praperadilan</i> independent, binding, accessible to suspect/family/counsel	Virtually nonexistent	Prosecutorial review within 24 hours; judicial review structurally constrained
ICCPR Ratification	Ratified 2005	Not ratified	Ratified 1982
Regional Human Rights Instrument	ASEAN Human Rights Declaration (non-binding)	Arab Charter on Human Rights (ratified 2009)	Arab Charter on Human Rights (ratified 2009)
Primary Compliance Gaps	Access inequality; limited <i>praperadilan</i> scope	No independent judicial review; prolonged arbitrary detention	Prosecution dual role; emergency detention; restricted judicial review

Source: Various sources, edited by Authors

The regulations regarding arrest, detention, and pretrial legal efforts in Indonesia, Saudi Arabia, and Egypt reflect the diversity of legal approaches influenced by history, the legal system adopted, and the social and religious values prevalent in each society. Despite their different backgrounds, these three

countries basically demonstrate a commitment to the protection of human rights, although to varying degrees and forms.

Indonesia, as a legal state with a civil law tradition mixed with customary law and the influence of Dutch colonialism, has undergone a long journey in building a modern and more humane criminal procedure system. From the colonial era to the post-independence period, Indonesia has continuously reformed the rules regarding arrest and detention to strengthen the protection of suspects' rights. The culmination was the birth of the Criminal Procedure Code (Law Number 8 of 1981), which not only regulates the procedures for arrest and detention in detail, but also introduces the pretrial institution as a legal effort to test the legality of law enforcement officers' actions. This mechanism is a concrete manifestation of the principles of the rule of law, such as the presumption of innocence, due process of law, legality, and equality before the law.

On the other hand, Saudi Arabia applies a legal system based on Islamic law with the Hanbali school of thought as the main reference, and does not recognize the codification of secular criminal procedure law. In this context, arrests and detentions are carried out based on interpretations of sharia and royal policy, where security forces have broad authority, but with limited judicial oversight. The pretrial mechanism as known in the Indonesian legal system is not found in the Saudi Arabian legal structure. Although there are normative provisions requiring legal settlement within a certain time limit, in practice it is often not transparent and raises concerns about the potential for arbitrary detention. This shows a major challenge in ensuring accountability and the protection of human rights, especially in the context of criminal justice.

Meanwhile, Egypt displays a unique legal character, namely a combination of Islamic law and Western legal systems (especially the French legal tradition). This influence is evident from the codification of criminal law and formal justice regulated in the Egyptian Penal Code, but still maintains elements of sharia in its legal system. Arrests and detentions in Egypt must be carried out based on legitimate legal grounds and within a limited time frame, and are under the supervision of the Public Prosecutor's Office. Suspects must be brought before the prosecutor's office within 24 hours to test the legality of their arrest. Egypt also recognizes a form of judicial review similar to the pretrial mechanism, although its implementation faces various obstacles, especially regarding procedural violations and reports of detention without a clear legal basis.

A comparative analysis of Indonesia, Egypt, and Saudi Arabia reveals clear differences in pretrial safeguards and judicial oversight. Indonesia provides relatively stronger protection through *praperadilan*, which enables independent judicial review of arrest and detention. In contrast, Egypt formally requires prosecutorial review, but the dual role of the Public Prosecution weakens its impartiality and falls short of international standards. Saudi Arabia shows the most significant limitation, as it lacks an independent mechanism to review the legality of detention. Differences are also evident in detention practices, where Indonesia applies structured limits, while Egypt and Saudi Arabia continue to face challenges related to prolonged detention and limited judicial control.

Assessed against binding international and regional human rights instruments, Indonesia, Egypt, and Saudi Arabia show different levels of compliance. Indonesia, as a party to the ICCPR, has a procedural framework that largely aligns with Articles 9 and 14, although challenges remain in equal access to legal remedies and counsel. Egypt also formally adheres to the ICCPR, but significant gaps persist in practice, particularly in prolonged detention and the use of emergency and anti-terrorism laws. These practices have been criticized as inconsistent with fundamental protections under Article 9. Saudi Arabia, while not a party to the ICCPR, is bound by the Arab Charter on Human Rights, yet limitations in judicial oversight and continued reliance on executive-controlled detention raise concerns regarding compliance with its human rights obligations.

A comparative reading of these findings suggests several practical reform directions. Indonesia could strengthen its system by introducing an early-stage legality review, similar to Egypt's 24 hour prosecutorial check, to improve protection for suspects in remote areas. Saudi Arabia could enhance safeguards by establishing an independent pretrial review mechanism within its court system, which can be aligned with Sharia principles such as accountability and protection of human dignity. Egypt, on the other hand, could reduce institutional bias by separating investigative, prosecutorial, and oversight functions, as seen in Indonesia. Overall, effective protection of pretrial rights depends not only on legal provisions but also on institutional design that ensures independent and impartial oversight.

Thus, the regulations regarding arrest, detention, and pretrial legal efforts in the three countries reflect different paradigms and legal systems, but also show efforts—albeit to varying degrees—to integrate human rights principles into the criminal justice process. This comparison shows the importance of

ongoing legal reform to ensure that the legal system is not only formally valid, but also fair and effective in practice.

Conclusion

The regulation of arrest, detention, and pretrial legal remedies in Indonesia, Saudi Arabia, and Egypt reflects a shared normative commitment to fundamental human rights principles, despite differences in legal systems and institutional structures. Indonesia, through the KUHAP and *praperadilan* mechanism, demonstrates a relatively stronger alignment with due process and rule of law principles by enabling judicial review of law enforcement actions. Egypt provides a formal legal framework for oversight, yet its effectiveness is limited by the dual role of the Public Prosecution and persistent gaps between law and practice. Saudi Arabia, while recognizing certain procedural safeguards within its Sharia-based system, lacks an independent pretrial review mechanism, which weakens protection against arbitrary detention. Overall, the level of human rights protection in pretrial processes is shaped not only by legal norms but also by judicial independence, institutional design, and enforcement practices. These differences highlight the importance of ensuring that procedural safeguards operate effectively in practice, not merely in formal regulation.

Based on these findings, each country requires targeted legal and institutional reforms to strengthen pretrial safeguards. Indonesia should expand access to *praperadilan* and legal aid, particularly in remote areas, to ensure equal protection before the law. Egypt needs to address structural bias by separating investigative and detention oversight functions and strengthening independent judicial control. Saudi Arabia should establish a clear and independent pretrial review mechanism consistent with regional human rights obligations. At the regional level, institutions such as ASEAN and the Arab human rights system can play a greater role in monitoring and promoting best practices through cooperation and peer learning. This study is limited by its reliance on normative analysis and secondary data, and does not fully capture empirical realities or specific vulnerabilities, including gender-based issues. Future research should incorporate empirical methods and focus on specific areas such as legal aid access, political detention, and the use of security laws to provide a more comprehensive assessment of pretrial justice.

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