


## Criticism of the Effectiveness of Pretrial in Protecting Human Rights Under the Criminal Code

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Article Info	ABSTRACT
<b>Keywords:</b> Effectiveness, Pretrial, Human rights.	Pretrial is a crucial mechanism in Indonesia's judicial system to protect human rights from potential abuses of authority and procedural errors during legal proceedings. However, its implementation in the Criminal Procedure Code (KUHP) still raises criticism regarding its effectiveness in ensuring optimal human rights protection. This study aims to analyze the effectiveness of pretrial as an instrument for human rights protection based on the Criminal Code, as well as identify structural and practical weaknesses in its implementation. Using normative legal research methods with a descriptive-analytical approach. Data were obtained through a literature study of primary legal sources (KUHP) and secondary (journals, pretrial rulings), as well as a critical analysis of relevant law enforcement practices. Pretrial plays a significant role in overseeing the legality of detention, search, and confiscation, as well as providing room for correction of procedural violations. However, there are fundamental weaknesses, such as the limited authority of pretrial judges to assess the legality of searches/seizures, reliance on the independence of judicial institutions, and low public legal awareness in accessing this mechanism
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### INTRODUCTION

Human Rights (HAM) are basic rights that must be guaranteed and protected by the state in every aspect of life, including in the law enforcement process. Fair and civilized law enforcement is one of the important pillars in ensuring the protection of human rights (Rifka Sondakh, 2013). In Indonesia, the criminal justice system is designed to provide legal protection for every individual, especially for suspects and defendants facing legal proceedings. One of the mechanisms regulated in the Criminal Procedure Code (KUHP) to protect these rights is pretrial (Fabian Christian Loa, 2024).

Human rights protection is made by the State in the form of a law to protect its citizens from any human rights violation. With the issuance of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, it is hoped that the state will carry out the function of fulfilling and enforcing human rights for citizens. Especially related to the protection of the human rights of suspects or defendants, namely in order to limit the abuse of power and arbitrariness of government officials and officials. Human rights in criminal justice are commonly referred to as suspect rights. Human rights are in accordance with

Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, namely: "A set of rights inherent in the nature and existence of human beings as creatures of Allah Almighty and are His grace that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity."

With the principle of presumption of innocence as embraced by the Criminal Procedure Code (KUHP), it provides guidelines for law enforcement officials to use the principle of innocence at every level of examination. Law enforcement officials distance themselves from the "Inquisition" system or inquisition, which places suspects/defendants under interrogation as objects that can be treated arbitrarily (Ismail & Tamu, 2012).

The existence of pre-judicial institutions is indeed an extraordinary breakthrough born from the Criminal Code. The existence of a pretrial system shows that the Criminal Code is indeed serious about protecting the rights of suspects/defendants who actually always have an unbalanced position with law enforcement officials (Firmansyah & Farid, 2022). Suspects/defendants are often considered as perpetrators who must be punished immediately without waiting for the trial process. In fact, the suspect/defendant is protected by the principle of presumption of innocence which requires everyone not to blame the suspect/defendant before the official court decision.

Pretrial is a legal institution regulated in the Criminal Procedure Code (KUHP) as a mechanism for monitoring the actions of law enforcement officials, especially in terms of arrest, detention, termination of investigation, and prosecution (Mohamad Hidayat Muhtar et al., 2023). This institution aims to provide protection for the human rights of suspects or defendants by ensuring that the actions of the authorities do not violate the provisions of the law and the principles of justice (Glendy J. Kaurow, 2015). Pretrial is expected to be an important instrument in preventing abuse of authority and human rights violations in the criminal justice process.

Pretrial has a function as a control over the actions of investigators and public prosecutors, to ensure that the legal process runs in accordance with the provisions of the law and does not violate human rights (Ali, 2009). Through pretrial, suspects or related parties can apply to test the legality of arrest, detention, termination of investigation, and other investigative actions. Thus, pretrial is expected to be an effective instrument in maintaining justice and protecting individual rights during the law enforcement process.

One of the main objectives of pretrial is to provide legal protection to the suspect or defendant so that his or her basic rights are not violated during the investigation and prosecution process. With the existence of a pretrial, the suspect has the opportunity to raise an objection to the actions of the authorities that are considered illegal, so that the right to freedom and justice can be preserved. The Criminal Code regulates in detail the procedures and scope of pretrial, ranging from Article 77 to Article 82. These articles explain who has the right to file a pretrial, the object that can be pretrial, and the authority of the pretrial judge in deciding the case.

Pretrial judges have an important role as supervisors of the actions of law enforcement officials. This judge is in charge of assessing whether the act of arrest, detention, or investigation is in accordance with the provisions of the law. However, in practice, pretrial

judges often face challenges related to independence and limited authority.

One of the main criticisms of pretrial is the limited authority of judges in implementing pretrial decisions. Although judges can overturn the actions of unauthorized authorities, the implementation of the ruling is often ineffective because law enforcement officials still have room to ignore or delay its implementation.

Nevertheless, in practice, the effectiveness of pretrial in protecting human rights is still a matter of debate. Various criticisms have arisen regarding the limitations and obstacles faced by the pretrial, ranging from procedural to substantial aspects. For example, pretrial is often considered incapable of providing optimal protection due to its reactive nature and limited to the formalities of testing, rather than the substance of the case. In addition, there are still problems in the implementation of pretrial that affect the protection of the rights of suspects and defendants. In practice, the effectiveness of pretrial in protecting human rights still draws criticism. Several studies show that there are limitations in the implementation of pretrial, such as the lack of independence of pretrial courts, limited authority of pretrial judges, and obstacles in the implementation of pretrial decisions that have an impact on the protection of human rights that are not optimal. In addition, the pretrial process is often just a formality without providing substantive protection to the suspect, so potential human rights violations still occur (Septian Joddie Dwianur Sukono & Bambang Santoso, 2024).

Pretrial verdicts in favor of suspects are not always followed by concrete actions by law enforcement officials. This causes the expected human rights protection to not be fully realized, so that suspects continue to experience violations of their rights, such as unlawful detention or non-transparent investigations.

Criticism of the effectiveness of pretrial is important to be studied in depth in order to provide recommendations for improving the criminal justice system in Indonesia. Thus, this study aims to criticize and analyze the effectiveness of pretrial in protecting human rights based on the provisions of the Criminal Code, as well as identifying factors that hinder the optimal implementation of pretrial.

## METHOD

The type of research used in this study is normative (doctrinal) legal research. Normative law research is research that examines positive law from its internal aspects (Deassy J.A. Hehanussa et al., 2023). This research will analyze legal norms, applicable rules, and principles contained in laws and regulations. The main focus is on relevant laws and regulations, especially the Criminal Procedure Code (KUHAP) and other laws and regulations related to pretrial and human rights. This research uses several approaches, namely, the Legislative Approach This approach is carried out by examining and analyzing laws and regulations related to pretrial, such as the Criminal Procedure Code (KUHAP), HUMAN RIGHTS LAW, and other implementing regulations. The aim is to comprehensively understand the legal norms governing pretrial and human rights protection. Conceptual Approach This approach is carried out by examining legal concepts relevant to pretrial and human rights, such as the concept of justice, legal certainty, human rights protection, and other related concepts. This conceptual analysis will be helpful in understanding the

philosophical and theoretical foundations of pretrial as a mechanism for the protection of human rights.

## RESULTS AND DISCUSSION

Indonesia is committed to providing and guaranteeing the human rights of every citizen because Indonesia relies on the concept of the rule of law, and one of the characteristics of the rule of law is the protection of human rights in the country's jurisdiction. The protection of these rights must be applied to everyone, including suspected criminals or suspects. No matter how serious the crime allegedly committed by the suspect, based on this theory, it should not be considered as someone who must be the perpetrator because he is protected by the principle of presumption of innocence, although then there are various further debates about the application of this principle in the process of resolving criminal cases.

The Indonesian state that prioritizes positive law as the rule of the main in the life of the nation and state and makes the law the commander-in-chief in this country, then this has wide consequences in the midst of society, namely everything related to the behavior and needs of people's lives must be regulated by law. In the criminal justice system in Indonesia, which is codified in the Criminal Procedure Code (KUHAP), in practice there are many injuries to the rights of suspects, especially at the investigation level. If examined more deeply, it turns out that there are no provisions that strictly regulate the threat of sanctions for those who violate the content of the Criminal Code. Even if there is, as mentioned in Law Number 48 of 2009 concerning Judicial Power, Article 9 paragraph (1) and paragraph (2):

1. Any person who is arrested, detained, prosecuted, or prosecuted for no reason under the law or because of a misrepresentation of his or her personality or the laws he or she is enacting, has the right to seek compensation and rehabilitation.
2. Officials who deliberately commit acts as intended in paragraph (1) shall be punished in accordance with the provisions of laws and regulations.

Pretrial is an institution born from the idea of carrying out surveillance actions against law enforcement officials (Police, Prosecutor's Office and Judges) so that in exercising their authority they do not abuse their authority, because it is not enough to have internal supervision in the law enforcement agencies themselves, but also cross-supervision between fellow law enforcement officers (Muhammad Rifqi Hidayat et al., 2022).

Pretrial is an important mechanism in the Criminal Procedure Code (KUHAP) to protect the human rights of suspects or defendants in criminal proceedings. This institution functions as a supervisor of the actions of law enforcement officials such as police, prosecutors, and judges, to prevent abuse of authority (Fence M. Whul, 2015).

The Criminal Code explicitly regulates provisions regarding pretrial as an effort for suspects or aggrieved parties to file objections to the actions of law enforcement officials that are considered illegal. This shows that Indonesian legislators are aware of the importance of mechanisms to control the power of law enforcement officials so that there is no abuse of authority that can harm individual rights.

Pretrial is regulated in Articles 77 to 82 of the Criminal Code as a legal mechanism that provides an opportunity for suspects or related parties to test the validity or not of the actions

of investigators and public prosecutors, such as arrest, detention, termination of investigations, and other actions that are considered unlawful (Sutomo, 2023). Normatively, pretrial plays a role as an instrument to control the abuse of authority by law enforcement officials and as a means of protecting human rights, especially the right to freedom and fair treatment during the legal process.

Pretrial as a mechanism for the protection of human rights (HAM) in the Criminal Procedure Code (KUHAP) still reaps a lot of criticism regarding its effectiveness. Data shows that the number of pretrial cases has increased rapidly in the past decade, but this raises concerns because pretrial is often used by suspects, especially in corruption cases, to cancel suspect status or stop investigations quickly. In addition, access to pretrial is more accessible to those who have the resources, while underprivileged communities are often not facilitated their rights. Pretrial is also considered to be more focused on protecting the rights of suspects or defendants, so that the protection of victims, complainants, and witnesses is still less than optimal. Another criticism is the expansion of the pretrial object after the Constitutional Court's ruling, which, while strengthening supervision, also opens up opportunities for abuse to evade legal process. Examples of cases such as the pretrial victory by Hadi Poernomo in a corruption case show that pretrial has not been fully effective in supporting law enforcement and the protection of human rights in a fair and balanced manner. Therefore, comprehensive reform is needed so that pretrial is truly an effective instrument for human rights protection and is not abused by certain parties.

#### Functions and Objectives of Pretrial

1. Pretrial aims to uphold and protect the human rights of the suspect or defendant during the investigation, investigation, and prosecution.
2. Pretrial seeks to reduce the abuse of power by investigators in making arrests, detentions, termination of investigations, and prosecutions.
3. Pretrial is a form of control over the actions of investigators and public prosecutors in carrying out their duties and authorities in the criminal justice process.

Pretrial, as stipulated in the Criminal Code, has an important role as a mechanism for the protection of human rights in the criminal justice process (Pakpahan, 2024). Normatively, pretrial provides an opportunity for suspects or related parties to test the legitimacy of the actions of investigators and public prosecutors that have the potential to violate their rights, such as arrest and detention. However, in-depth research shows that the effectiveness of pretrial protection of human rights is still very limited.

First, the Criminal Procedure Code (KUHAP) regulates pretrial in a limited manner and focuses more on formalities than substance. For example, a pretrial can only be filed if there is a party who feels aggrieved by the investigator's actions, so it is reactive and not preventive. The pretrial judge does not have the authority to examine the main case, but only tests the validity of the investigator's actions based on formal evidence. This causes human rights protection to be less optimal because not all human rights violations can be detected and corrected through pretrial.

Second, the provisions regarding detention in the Criminal Code still provide a wide enough space for law enforcement officials to carry out detentions that have the potential to

violate human rights, such as detention for too long or without a clear reason. The existing pretrial system has not been able to effectively control this practice.

#### Scope of pretrial

The Pretrial has the authority to examine and decide the following:

1. Whether the arrest and/or detention is legal or not.
2. Whether the termination of the investigation or the termination of prosecution is legal or not.
3. A request for compensation or rehabilitation by the suspect or his family, or another party on his behalf whose case was not submitted to the court.

According to the Guidelines for the Implementation of the Criminal Procedure Code (KUHAP), the establishment of pretrial is for the sake of protecting the human rights of suspects and defendants in criminal proceedings. The pretrial process should receive special attention because without strict supervision, human rights can be suppressed by power.

Pretrial has the same important position as other judicial processes in providing guarantees of human rights protection. Pretrial is a form of protection of the dignity and dignity of suspects in the criminal justice process. With a pretrial, the suspect is protected in a preliminary examination against the actions of the police and/or prosecutor's office that violate the law and harm the suspect.

One of the main causes of these limitations is the regulation of the Criminal Code which focuses more on the formality aspect than substance. Pretrial judges are only given the authority to assess the validity of the investigator's actions from a procedural point of view, without being able to examine in depth the substance of the case or the broader judicial aspects. As a result, pre-trial is not always able to uncover human rights violations that occur behind the formalities of legal procedures.

In addition to the weaknesses of the legal arrangement, the implementation of pretrial in the court also faces obstacles. One of them is the lack of understanding and awareness from law enforcement officials and the public about the functions and mechanisms of pretrial. As a result, pretrial proceedings are rarely filed, so the protection of human rights through this mechanism is limited. In addition, the relatively complicated and time-consuming pretrial process is also an obstacle for suspects or related parties to submit a pretrial application. This causes the right to justice and legal protection to be less fulfilled.

In addition, pretrial is reactive, meaning that it can only be filed by parties who feel aggrieved. This causes pretrial to not function as a proactive monitoring mechanism against abuse of authority by law enforcement officials. In addition, the low understanding of the public and law enforcement officials regarding the rights and mechanisms of pretrial also limits its use as a tool of legal protection (Mellanie R. Y. Parengkuan, 2022).

One of the important aspects of pretrial is the legality of arrest and detention. Arrest and detention are actions that severely restrict a person's freedom, so they must be carried out based on clear legal reasons and procedures. If the act is carried out illegally, then through pretrial, the suspect can get the justice and freedom he deserves.

In addition, pretrial also plays a role in supervising the termination of investigations and prosecutions. In some cases, investigations or prosecutions can be stopped by law

enforcement officials for no apparent reason or without following proper procedures. Through pretrial, the decision to dismiss can be re-examined to ensure that no human rights violations occur.

The protection of human rights through pretrial also includes the right of suspects to a fair and transparent legal process. The Criminal Code gives suspects the right to file a pretrial application if they feel aggrieved by the actions of law enforcement officials (Aprilia et al., 2023). This provides space for the suspect to fight for his rights before the case enters the main court stage. In addition, pretrial also serves as a means to uphold the rule of law. With this mechanism, law enforcement officials are expected to act in accordance with the provisions of the applicable law and not exceed their authority. This indirectly strengthens the protection of human rights in the criminal law enforcement process.

In practice, pretrial can be an effective tool for the public to monitor and criticize the actions of law enforcement officials. Thus, pretrial not only protects the rights of individuals but also strengthens the criminal justice system as a whole to be more accountable and transparent. However, in its implementation, pretrial also faces various challenges. One is the public's lack of understanding of their rights and the pretrial mechanism itself. Therefore, intensive legal education is needed so that people can make optimal use of pretrial in protecting their human rights.

In addition, law enforcement officials must also be given strict guidance and supervision so as not to abuse their authority. Pretrial is a form of supervision, but it must be supported by a commitment from all elements of law enforcement to respect and protect human rights. Juridically, the Criminal Code provides a strong legal basis for the implementation of pretrial. The articles in the Criminal Code regulate in detail the procedures and pretrial procedures that must be complied with by all parties. This shows that pretrial is not only a formal procedure, but an integral part of the protection of human rights in the criminal justice process (Rusman Sumadi, 2021).

Philosophically, pretrial reflects the principle of restorative justice that puts human rights and dignity at the center of attention in the legal process. Thus, pretrial not only enforces the law mechanically, but also maintains human values that must be respected in every law enforcement action.

Effective pretrial implementation can increase public trust in the criminal justice system. When people feel that their rights are protected and there is a mechanism to correct the mistakes of law enforcement officials, the legitimacy and credibility of the judiciary will be stronger.

Complicated and time-consuming pretrial procedures are also significant barriers. Many suspects or related parties are reluctant to submit pretrial applications because the process is long and complicated, so their rights to legal protection are not optimally fulfilled. Prolonged detention practices and lack of oversight of investigators' actions further increase the risk of human rights violations during the investigation process.

The limited regulation and implementation of pretrial has a direct impact on the protection of human rights in the criminal justice process. Without effective monitoring mechanisms for the actions of investigators and public prosecutors, the risk of human rights

violations such as arbitrary detention, torture, and other violations of legal procedures becomes greater. This is contrary to the principles of the rule of law and the protection of human rights that must be upheld.

From the results of this study, it is clear that pretrial has not been able to function optimally as an instrument for human rights protection in the criminal justice system in Indonesia. Therefore, it is necessary to improve the regulations of the Criminal Code so that pretrial judges can assess not only the formality aspect, but also the substance of the investigator's actions. In addition, more intensive education and socialization to law enforcement officials and the community is very important to increase awareness and utilization of pretrials. The simplification of pre-trial procedures is also a strategic step to make access to this mechanism easier and faster, so that human rights protection can be more optimal.

## CONCLUSION

Pretrial in the Criminal Procedure Code is recognized as an important instrument to protect the human rights of suspects or defendants, especially from arbitrary actions by law enforcement officials, but its effectiveness still draws criticism because the scope of its authority is limited only to administrative and formal aspects, and tends to be post factum so that it is less able to prevent human rights violations from the beginning of the legal process. In addition, pretrial mechanisms often do not provide a guarantee of justice and legal certainty as a whole, especially for victims, complainants, and witnesses, because protection is more focused on suspects or defendants. Therefore, reform and expansion of pretrial authority are needed to be able to assess the substance of human rights violations and strengthen supervision from the early stages of the legal process, so that fair, balanced, and effective human rights protection can truly be realized according to the mandate of the Criminal Code.

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