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Beyond Formality in Indonesian Pretrial Law: KUHAP Reform, Human Rights, and Islamic Law

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Abstract:

Indonesia's pretrial system has long faced challenges, including formalistic procedures, limited judicial oversight, and potential violations of suspects' rights. The Constitutional Court Decision No. 21/PUU-XII/2014 expanded pretrial review, especially regarding suspect designation. Yet, gaps remain in implementation, legal certainty, and due process. This study aims to critically evaluate the reconfiguration of Indonesia's pretrial mechanism by integrating human rights principles, Islamic criminal law, and KUHAP reform. Employing doctrinal analysis of legislation, case law, and jurisprudence, complemented with comparative insights from Malaysia, Egypt, and Türkiye, the research examines how procedural fairness and accountability can be strengthened. Findings reveal persistent weaknesses in judicial control, repeated suspect status, and post factum review. Integrating positive law, human rights, and Islamic law principles such as *ḥisba*, *qāḍī al-maẓālim*, *al-bayyina*, and *dar' al-ḥudūd bi al-shubuhāt* can enhance procedural justice. Recommendations include clearer pretrial codification, substantive judicial oversight, and adoption of Islamic law insights to build a more equitable, rights-oriented pretrial framework in Indonesia.

Keywords:

human rights; Islamic criminal law; KUHAP reform; pretrial review

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Introduction

The Constitutional Court Decision No. 21/PUU-XII/2014, issued on April 28, 2015, marked a pivotal turning point in Indonesian criminal procedure law. The ruling expanded the scope of pretrial review, which had previously been confined to assessing the legality of arrest, detention, termination of investigation, and prosecution. Following this decision, pretrial courts also became authorized to review the designation of suspect status, searches, and seizures. This development reaffirmed the role of pretrial review as an instrument for safeguarding due process of law and protecting human rights. However, its effectiveness remains a matter of debate. Situmeang (2021) notes that despite its expanded authority, pretrial review continues to be limited in supervising suspects' designation and guaranteeing the presumption of innocence.[1] Similarly, Moeliono and Wulandari (2015) warn that the Constitutional Court's ruling effectively positioned constitutional judges as "negative legislators."[2] Thus, from a normative perspective, revising the Criminal Procedure Code (KUHAP) remains necessary to establish a stronger legal foundation for pretrial review.

A growing body of scholarship has examined the shifting role of pretrial review after Constitutional Court Decision No. 21/PUU-XII/2014. Suarda et al. (2021) analyzed the legality parameters of suspect designation in pretrial courts. They reaffirmed the requirement of "at least two pieces of evidence" as an absolute condition, recommending that this standard be explicitly affirmed in the Draft Criminal Procedure Code (RUU KUHAP) to ensure alignment with human rights protection.[3] Kusumastuti (2018) emphasizes that the inclusion of suspect designation as an object of pretrial review—following the Constitutional Court's decision—has altered the original philosophy of pretrial from procedural oversight toward substantive adjudication. Landmark rulings, such as those involving Budi Gunawan and Suroso Atmomartoyo, have shown

[1] Sahat Maruli Tua Situmeang, "Presence of Pretrial in the Perspective of the Pancasila State of Law," *Law Reform* 17, no. 2 (September 30, 2021): 183–200, https://doi.org/10.14710/lr.v17i2.41746.

[2] Tristam P. Moeliono and Widati Wulandari, 'Asas Legalitas dalam Hukum Acara Pidana: Kritikan terhadap Putusan MK tentang Praperadilan', *Jurnal Hukum Ius Quia Iustum* 22, no. 4 (October 2015): 594–616, https://doi.org/10.20885/iustum.vol22.iss4.art4.

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

that pretrial proceedings extended beyond formal examinations into the case's merits, creating legal uncertainty and weakening human rights protections under KUHAP.[4] Furthermore, Susilo et al. (2024) critique the practice of "repeated suspect designation" after annulments by pretrial courts. They argue that the absence of adequate horizontal checks fosters legal uncertainty and risks violating the principle of *ne bis in idem*.[5]

National-level studies highlight the opportunities and challenges following Constitutional Court Decision No. 21/PUU-XII/2014, which expanded the scope of pretrial review to include suspect designation, seizure, and search.[6] While this marked a shift in strengthening due process, the absence of formal amendments to KUHAP has produced ambiguities and a surge in pretrial petitions, raising concerns over the Court's role as a "positive legislator",[7] Scholars further note the persistence of repeated suspect status, which undermines legal certainty, and the inconsistent judicial application of the Court's decision.[8] Comparative studies, such as Hellqvist's (2021) analysis of Sweden,[9] underscore the importance of effective remedies through compensation and rehabilitation for victims of judicial error, suggesting that reforming KUHAP requires expanding pretrial objects and institutionalizing human rights protection mechanisms.

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[4] Ely Kusumastuti, 'Penetapan Tersangka sebagai Obyek Praperadilan', *Yuridika* 33, no. 1 (February 8, 2018): 1–18, https://doi.org/10.20473/ydk.v33i1.7258.

[5] Erwin Susilo et al., 'Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia', *Hasanuddin Law Review* 10, no. 3 (2024): 342–57, https://doi.org/10.20956/halrev.v10i3.6088.

[6] Rahmad Riyan Choiruddin, Nyoman Serikat Putra Jaya, and Sukinta, 'Tinjauan Yuridis Penetapan Status Tersangka sebagai Perluasan Objek Praperadilan Pasca Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014', *Diponegoro Law Journal* 5, no. 2 (2016): 1–19, https://doi.org/10.14710/dlj.2016.10860.

[7] Fadjar Ramadhan, 'Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014 dalam Menguji Pasal 77 Huruf A Kitab Undang-Undang Hukum Acara Pidana terkait Fungsi Mahkamah Konstitusi sebagai Positive Legislator', *Novum: Jurnal Hukum* 3, no. 3 (2016): 1–13, https://doi.org/10.2674/novum.v3i3.17860; Labib Muttaqin et al., 'Examining the Constitutional Court's Positive Legislature Decisions in Indonesia's Hierarchy of Legal Norms', *Jurnal Jurisprudence* 14, no. 2 (December 30, 2024): 248–61, https://doi.org/10.23917/jurisprudence.v14i2.6410.

[8] Simon Butt, "Why Do Indonesian Judges Dissent?," *Australian Journal of Asian Law* 23, no. 1 (2022): 1–19, https://ssrn.com/abstract=4263219.

[9] Sara Hellqvist, 'Access to Justice for Wrongful Conviction Claimants in Sweden: The Final Legal Safeguard and Levels of (in)Accessibility', *Nordic Journal of Human Rights* 39, no. 3 (July 3, 2021): 320–38, https://doi.org/10.1080/18918131.2021.2010909.

Beyond these debates, integrating Islamic legal principles into the modern criminal justice system offers a promising framework for constructing a substantively just model of pretrial review. Fatoni et al. (2025) discuss the "principle of proportionality" in criminal justice from the perspective of both positive law and *maqāṣid al-sharīʿa*. They argue that proportionality should be a guiding standard in judicial decision-making to achieve substantive justice.[10] Similarly, Ibrahim et al. (2025) demonstrate that *maqāṣid al-sharīʿa* provides a humanistic philosophical framework for criminal law reform, enabling a transition from a repressive to a restorative paradigm.[11] This normative proposition may extend into the constitutional sphere, as Suparmin and Ramadani (2022) argue in their exploration of a *maqāṣid*-based approach to addressing crime through constitutional morality.[12]

Despite the extensive body of research on the expanded scope of pretrial review following Constitutional Court Decision No. 21/PUU-XII/2014—from both positive and Islamic law perspectives—significant conceptual gaps remain. Much of the scholarship has concentrated either on the procedural legality of suspect designation[13] or on technical issues such as repeated suspect designation.[14] Comprehensive analyses that integrate *maqāṣid al-sharīʿa* with the pressing need to reconstruct Indonesian criminal procedure law remain limited. While Islamic legal scholarship has advanced the principles of proportionality and caution,[15] it has not sufficiently addressed how these

[10] Syamsul Fatoni et al., 'Asas Proporsionalitas: Perspektif Hukum Positif dan Maqosid Syariah dalam Sistem Peradilan Pidana', *Jurnal Hukum Ius Quia Iustum* 32, no. 1 (January 31, 2025): 46–71, https://doi.org/10.20885/iustum.vol32.iss1.art3.

[11] Zumiyati Sanu Ibrahim et al., 'Integration of Maqaṣid al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity', *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, https://doi.org/10.28918/jhi.v23i1.04.

[12] Sudirman Suparmin and Ramadani Ramadani, 'Reconstruction of Maqâshid al-Syarî`ah as an Approach to Constitutional Law in Overcoming Crime in Indonesia', *Madania: Jurnal Kajian Keislaman* 26, no. 1 (July 6, 2022): 41–50, https://doi.org/10.29300/madania.v26i1.7033.

[13] Suarda, Taufiqurrohman, and Priambudi, 'Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System'; Kusumastuti, 'Penetapan Tersangka sebagai Obyek Praperadilan'.

[14] Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia."

[15] Fatoni et al., 'Asas Proporsionalitas: Perspektif Hukum Positif dan Maqosid Syariah dalam Sistem Peradilan Pidana'; M. Rosyid et al., 'Revitalization of Uṣūl al-Fiqh through Iḥtiyāṭī Principles', in *Religion, Education, Science and Technology towards a More Inclusive and Sustainable Future*, 2024, 44–49, https://doi.org/10.1201/9781003322054.

principles can be operationalized normatively within the formulation and practice of pretrial review.

This study thus offers novelty by synthesizing positive law and Islamic law to formulate a model of pretrial review that aligns not only with constitutional and human rights standards[16] but also with the values of substantive justice embodied in *maqāṣid al-sharīʿa*.[17] In doing so, the study contributes to enriching the discourse on reforming the Draft Criminal Procedure Code (RUU KUHAP), while also proposing a new conceptual framework that emphasizes human rights protection and bridges universal principles with religious values within Indonesia's criminal justice system.

Specifically, this article examines the reconstruction of pretrial authority in the aftermath of Constitutional Court Decision No. 21/PUU-XII/2014, focusing on the legality of suspect designation as the primary object of dispute. The analysis adopts an interdisciplinary approach, reviewing provisions of KUHAP, jurisprudential developments, criminological doctrines, and Islamic legal principles—particularly those of *maqāṣid al-sharīʿa*. The discussion thereby encompasses normative (positivist), philosophical (substantive justice), and comparative (synchronization with Islamic law) dimensions, aiming to provide a more comprehensive perspective in addressing the limitations of current pretrial regulations. This article argues that reforming Indonesia's pretrial mechanism must primarily focus on revising the Criminal Procedure Code (KUHAP) while ensuring compliance with international human rights norms and Islamic legal principles. These two normative frameworks are not secondary but complementary foundations to strengthen the reform agenda.

This research employs a normative juridical approach with qualitative methods. Primary legal materials analyzed include KUHAP, Constitutional Court Decision No. 21/PUU-XII/2014, and relevant pretrial rulings, while secondary sources comprise academic literature, prior research, and Scopus-indexed

[16] Yevhen Leheza et al., "The Human Right to an Environment Safe for Life and Health: Legal Regulation, Contemporary Challenges and Comparative Perspectives," *Syariah: Jurnal Hukum dan Pemikiran* 23, no. 2 (January 30, 2024): 138–50, https://doi.org/10.18592/sjhp.v23i2.12257.

[17] Krismiyarsi Krismiyarsi and Rayno Dwi Adityo, "The Urgency of Community Service Imposed as Punishment on Juvenile Delinquents: A Study of Al- Shatibi's Maqhasid Al-Syariah Concept," *De Jure: Jurnal Hukum dan Syar'iah* 17, no. 1 (April 12, 2025): 132–48, https://doi.org/10.18860/j-fsh.v17i1.31246; Edi Kurniawan et al., "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Sharia Review," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 20, no. 1 (May 28, 2020): 1–15, https://doi.org/10.30631/alrisalah.v20i1.565.

journal articles on both positive and Islamic law. The analytical method employed is comparative and conceptual, juxtaposing the framework of positive law with the principles of *maqāṣid al-sharīʿa* to generate a new synthesis. Through this approach, the study aims to establish a normative framework that strengthens the role of pretrial review in protecting suspect rights and contributes to advancing the reform agenda of criminal procedure law in Indonesia.

Reconfiguration of Pretrial Function after Constitutional Court Decision No. 21/PUU-XII/2014

The Constitutional Court Decision No. 21/PUU-XII/2014 represents a significant milestone in developing Indonesian criminal procedure law.[18] Before this decision, the scope of pretrial authority was limited to reviewing the legality of arrest, detention, termination of investigation, and termination of prosecution as regulated under Article 77 of the Criminal Procedure Code (KUHAP). With the Court's ruling, however, the scope of pretrial review was expanded to include the determination of suspect status, search, and seizure. This expansion is not merely a technical adjustment but rather a fundamental reorientation of the pretrial function as an instrument of control over the actions of law enforcement authorities.[19]

Among these expansions, suspect designation is the most critical aspect, as it concerns the starting point of an individual's criminalization process. Through the mechanism of pretrial review, a suspect may challenge the legality of their status based on the requirement of "at least two pieces of evidence" as stipulated in KUHAP. It means that pretrial judges are now compelled to assess procedural formalities and substantive sufficiency of evidence. Such a transformation indicates a paradigmatic shift: from pretrial review serving primarily as a procedural safeguard to functioning as a substantive forum for adjudicating the legality of investigative actions.

[18] Dewi Bella Juniarti, "Fulfillment of Defendant's Rights in PERMA Number 4 of 2020 reviewed from the Principle of Due Process of Law," *Lex Scientia Law Review* 5, no. 2 (November 29, 2021): 89–104, https://doi.org/10.15294/lesrev.v5i2.50385.

[19] Supriyono Supriyono, M. Arief Amrullah, and I Gede Widhiana Suarda, "Pretrial in Indonesian Criminal Law," *International Journal of Educational Research & Social Sciences* 4, no. 3 (June 29, 2023): 562–65, https://doi.org/10.51601/ijersc.v4i3.664; Situmeang, "Presence of Pretrial in the Perspective of the Pancasila State of Law."

The first implication of this expansion relates to the principle of legality.[20] A suspect designation made without sufficient evidence can now be annulled through pretrial review, reinforcing the maxim *nullum crimen sine lege, nulla poena sine lege* at the earliest stage of criminal proceedings. The second implication concerns the strengthening of the due process of law.[21] Pretrial review allows suspects to challenge state actions before the case proceeds to trial, thereby preventing potential abuse of authority. The third implication directly relates to protecting suspects' rights, particularly the right not to be arbitrarily designated as a suspect, violating the presumption of innocence.[22] From this perspective, the Constitutional Court's decision can be progressive in rebalancing the power relations between the state and its citizens.

Nevertheless, the expansion of pretrial authority raises conceptual challenges.[23] The original design of KUHAP deliberately distinguished between the role of pretrial review as a procedural control mechanism and the role of trial proceedings as the forum for substantive adjudication. By granting pretrial judges the authority to evaluate the sufficiency of evidence, the Court has blurred the line between pre-adjudication and adjudication.[24] It gives rise to a methodological problem: whether pretrial judges are legitimately empowered to assess the substantive validity of evidence, a domain traditionally reserved for trial judges.

From the perspective of Islamic law, analogous principles can be found in the concepts of *al-bayyina* (valid evidence) and *al-ʿadl* (justice). A *qāḍī* (judge) in Islamic jurisprudence may only determine an individual's legal status based on evidence that is clear, consistent, and convincing (*qaṭʿī*). The establishment of

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[20] Jason N.E. Varuhas, "The Principle of Legality," *The Cambridge Law Journal* 79, no. 3 (November 7, 2020): 578–614, https://doi.org/10.1017/S0008197320000598.

[21] Noer Yasin, 'The Authority Rationalization Philosophy of the Indonesia Competition Commission: The Due Process of Law and Maqashid Sharia Perspectives', *Jurisdictie* 13, no. 1 (July 27, 2022): 63–89, https://doi.org/10.18860/j.v13i1.15873.

[22] Oktavia Wulandari et al., "Presumption of Innocence Against Criminal Offenders in the Police: A Critical Study," *Walisongo Law Review (Walrev)* 2, no. 1 (April 30, 2020): 17–38, https://doi.org/10.21580/walrev.2020.2.1.5506; Iqbal Taufik and Muammar, "Examining the Presumption of Innocence Principle against Suspected/Alleged Perpetrators of Terrorism Crimes," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 2 (August 5, 2024): 143–60, https://doi.org/10.24246/jrh.2024.v8.i2.p143-160.

[23] Suarda, Taufiqurrohman, and Priambudi, "Limiting the Legality of Determining Suspects in Indonesia Pre-Trial System."

[24] Iskandar Muda, Bintan R. Saragih, and Ferry Edwar, "Constitutional Authority Based on the Constitutional Court Decision in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 3 (September 26, 2023): 221–42, https://doi.org/10.25041/fiatjustisia.v17no3.2636.

legal responsibility without sufficient proof is considered a violation of *sharʿī* principles, as affirmed in the maxim *al-yaqīn lā yuzāl bi al-shakk* (certainty is not removed by doubt). In this sense, the Constitutional Court's ruling reflects the spirit of Islamic law, which emphasizes caution in designating individuals as guilty or subject to legal proceedings.

In this context, the tension between judicial activism by the Constitutional Court and the original design of KUHAP becomes evident.[25] On the one hand, the Court's activism may be regarded as a progressive attempt to expand human rights protections, resonating with the Islamic legal maxim *darʾ al-ḥudūd bi al-shubuhāt* (criminal penalties must be avoided in the presence of doubt).[26] On the other hand, such activism risks creating judicial overreach in pretrial review, as judges may begin to rule on substantive issues beyond the mandate envisioned by the legislator. This debate raises a fundamental question regarding the limits of the Constitutional Court's authority: should it function solely as a negative legislator, striking down norms inconsistent with the Constitution, or as a positive legislator, actively shaping new norms within Indonesia's criminal procedure system?

Jurisprudential Dynamics and Challenges in Implementation

The development of pretrial proceedings following Constitutional Court Decision No. 21/PUU-XII/2014 was marked by the emergence of several landmark rulings, one of which was the pretrial motion of Commissioner General Budi Gunawan before the South Jakarta District Court in 2015. In that case, the pretrial judge declared the suspect designation unlawful because it did not satisfy the requirement of two sufficient pieces of evidence. This decision became a crucial turning point, affirming that pretrial proceedings could annul suspect status, even in high-profile corruption cases.[27] Since then, the trend of

[25] Riris Ardhanariswari et al., 'Upholding Judicial Independence through the Practice of Judicial Activism in Constitutional Review: A Study by Constitutional Judges', *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 2 (December 27, 2023): 183–207, https://doi.org/10.24090/volksgeist.v6i2.9565.

[26] Petter Gottschalk, "From Crime Convenience to Punishment Inconvenience: The Case of Detected White-Collar Offenders," *Deviant Behavior* 42, no. 8 (August 3, 2021): 1021–31, https://doi.org/10.1080/01639625.2020.1717840; Muhammad Tahmid Nur, "Justice in Islamic Criminal Law: Study of the Concept and Meaning of Justice in The Law of Qiṣāṣ," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 55, no. 2 (October 15, 2021): 335–65, https://doi.org/10.14421/ajish.v55i2.1011.

[27] Cokky Wijaya Saputra, 'The Pre-Trial Application Granted in the Case of Budi Gunawan', *Jurnal Hukum Volkgeist* 4, no. 1 (December 16, 2019): 63–69, https://doi.org/10.35326/volkgeist.v4i1.478.

filing pretrial motions has sharply increased, transforming the forum into a primary arena for contesting the legality of investigative actions.

Subsequently, other pretrial cases emerged to test the consistency of this mechanism, including the case of Setya Novanto (2017) in the electronic ID (e-KTP) corruption scandal.[28] The South Jakarta District Court rejected Novanto's pretrial motion, affirming that the Corruption Eradication Commission (KPK) had two legitimate pieces of evidence in designating him as a suspect. This decision reflected a different dynamic compared to the Budi Gunawan case. Pretrial proceedings did not automatically favor the applicant. However, they could also reinforce the legitimacy of law enforcement authorities if procedure and evidence were deemed valid. It illustrates the ambiguous function of pretrial review—sometimes serving as a safeguard for suspects' rights, while at other times strengthening the position of investigators.

This practice soon introduced a new phenomenon known as the "repeated suspect status." Law enforcement authorities frequently re-designated an individual as a suspect after the status had been annulled by a pretrial decision, often on the pretext of new evidence.[29] Sharp criticism emerged because this mechanism was perceived as undermining the effectiveness of pretrial rulings and opening the door to repeated criminalization. The blurred distinction between "new evidence" and "old evidence repackaged" generated serious confusion in practice and risked nullifying the legal protection that pretrial review was intended to provide.

A similar issue was evident in the case of Syafruddin Arsyad Temenggung (BLBI),[30] whose suspect status was also challenged through a pretrial motion. Although his petition was rejected, the case reinforced criticism that pretrial proceedings have opened the door to protracted and repetitive legal disputes, particularly when law enforcement authorities reissued suspect designations despite prior annulments. Such circumstances create serious problems for legal

[28] Oxford Analytica, "Golkar Move Will Aid Indonesia's Jokowi, But Not Graft," Emerald Expert Briefings, December 22, 2017, https://doi.org/10.1108/OXAN-DB227630.

[29] Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia"; Wenbo Lin, Michael J. Strube, and Henry L. Roediger, "The Effects of Repeated Lineups and Delay on Eyewitness Identification," *Cognitive Research: Principles and Implications* 4, no. 1 (December 13, 2019): 16, https://doi.org/10.1186/s41235-019-0168-1.

[30] Muliana, 'Judicial Corruption dan Analisis Tindak Pidana Korupsi Bantuan Dana Likuiditas Bank Indonesia Berdasarkan Teori Sebab-Sebab Tindak Pidana Korupsi: Studi Kasus Syafruddin Arsyad Temenggung', *Jurist-Diction* 7, no. 2 (April 1, 2024): 359–74, https://doi.org/10.20473/jd.v7i2.56407.

certainty, as an individual's status may shift repeatedly depending on the interplay between pretrial decisions and investigative actions.

From a legal principle perspective, this condition demonstrates disharmony between the objective of safeguarding suspects' rights and the necessity of effective law enforcement. If pretrial rulings lack binding authority, the check-and-balance function intended by the Constitutional Court loses its significance. Conversely, pretrial review is positioned too strongly to curtail investigators' ability to act. In that case, concerns arise that the investigative function could be ineffective. This debate reflects the enduring tension between the rule of law and law enforcement efficiency, which has yet to be resolved.[31]

Within academic discourse, a critical question arises as to whether pretrial proceedings have shifted from a mere procedural control mechanism into a form of substantive trial in advance. Pretrial judges no longer assess only the legality of procedures but also evaluate the sufficiency of evidence, which is inherently the domain of the main trial. Some scholars view this as a form of "overreach" that blurs the boundaries of pretrial review. In contrast, others argue that such a transformation is necessary to reinforce the protection of suspects' constitutional rights.[32]

Compared with Islamic law, a *qāḍī* is not permitted to repeatedly issue a legal designation against an individual without genuinely new and authentic evidence, as such a practice violates the principle of justice and risks perpetuating *ẓulm* (injustice). The maxim *lā yujzā al-marʾ marratayn* (a person shall not be punished twice for the same matter) aligns with the principle of *ne bis in idem* in modern law. Consequently, the practice of repeated suspect designations in the Indonesian system stands in contradiction not only to the principle of legal certainty in national law but also to the values of justice upheld in Islamic jurisprudence.

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[31] Suud Sarim Karimullah, "The Role of Law Enforcement Officials: The Dilemma Between Professionalism and Political Interests," *Jurnal Hukum dan Peradilan* 13, no. 2 (July 31, 2024): 365–92, https://doi.org/10.25216/jhp.13.2.2024.365-392; Burhanuddin Burhanuddin, Wahyuniar Wahyuniar, and Maskawati Maskawati, "Law Enforcement in the Perspective of Legal Sociology," *International Journal of Sociology and Law* 1, no. 3 (November 26, 2024): 243–52, https://doi.org/10.62951/ijsl.v1i3.286.

[32] Erwin Susilo, Dharma Setiawan Negara, and Joel Niyobuhungiro, "Legal Protection for Suspects through the Integration of Judicial Supervision in Pre-Trial Detention in Indonesia," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 179–216, https://doi.org/10.15294/ijcls.v10i1.20605.

Comparative and Theoretical Perspectives

In Malaysia, judicial control over investigative actions does not extend to the substantive evaluation of evidence in determining suspects. However, it remains confined to procedural aspects, thereby allowing the judiciary to preserve its formal framework without encroaching upon investigative authority. It is reflected in the amendment to Article 28A of the Criminal Procedure Code, which guarantees suspects' fundamental rights, such as being informed of the reasons for arrest and access to legal counsel. However, its implementation remains ambiguous due to the vague phrase "as soon as possible," creating opportunities for authoritarian practices by law enforcement.[33] A juridical review by Aziz et al. (2023) portrays judicial review as an essential mechanism for safeguarding the rule of law. However, in practice, it remains constrained mainly by structural limitations.[34] Furthermore, a report by Human Rights Watch (2005) notes that the amendment of the Internal Security Act effectively restricted judicial review to procedural aspects, indicating that courts refrained from probing the substantive fairness of investigations.[35]

In Egypt, a legal system deeply influenced by civil law traditions and Islamic law provides relatively broad authority to the investigating judge. This judicial officer has the power to assess the legality of suspect designation, detention, and even the direction of the investigation. Such a role offers significant protection of suspects' rights from the early stages of the process, but at the same time imposes an excessive burden on the judiciary, as judges become directly involved in case management. This comparison underscores the diverse approaches in defining the extent of judicial control over investigative measures.[36]

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[33] Bernard Noel Beneldus et al., "Upholding The Rights of Arrested Individuals: A Comparison Between Malaysia and the United Kingdom's Legal Framework," *Current Legal Issues (CLI)* 7, no. 1 (2025): 1–21, https://ejournal.ukm.my/cli/article/view/90552/0.

[34] Norazlina Abdul Aziz et al., "An Overview of Judicial Review in The Malaysian Court," *International Journal of Academic Research in Business and Social Sciences* 13, no. 1 (January 14, 2023): 336–52, https://doi.org/10.6007/IJARBSS/v13-i1/16182.

[35] Human Rights Watch, "Detained Without Trial: Abuse of Internal Security Act Detainees in Malaysia," 2005, https://www.hrw.org/report/2005/09/26/detained-without-trial/abuse-internal-security-act-detainees-malaysia.

[36] National Anti-Corruption Academy (NACA), "Judicial Regulatory Framework," aca.gov.eg, n.d., https://aca.gov.eg/News/1797.aspx?utm.

In Türkiye, the judiciary grants the criminal peace judge an essential role in reviewing the legality of arrests, detentions, and other investigative actions conducted by prosecutors or investigators. However, as in Malaysia, this judicial assessment predominantly focuses on procedural compliance rather than the substantive evaluation of evidence. Accordingly, Türkiye maintains a balance between protecting individual rights and ensuring the efficiency of investigations, while preventing pretrial hearings from becoming a forum for premature adjudication.[37]

In contrast, post-Decision No. 21/PUU-XII/2014 of the Indonesian Constitutional Court, the function of pretrial hearings has shifted from procedural control toward substantive review of the evidence underpinning suspect designation. From the perspective of the due process of law, this development may be viewed positively, as it strengthens constitutional safeguards against arbitrary criminalization.[38] Nevertheless, under the lens of the rule of law, it raises serious concerns: pretrial decisions often lack consistency and allow for the re-designation of suspects, thereby undermining legal certainty.[39]

The concept of judicial control in modern legal systems emphasizes that courts must counter executive power, but within proportional limits.[40] Comparisons with Malaysia and Türkiye demonstrate how confining judicial oversight to procedural aspects preserves a balance between protecting suspects' rights and maintaining effective law enforcement. Conversely, the Egyptian model, alongside Indonesia's post-Constitutional Court decision, reveals that expanding judicial authority to assess the substance of evidence risks overburdening the judiciary and generating functional overlaps with investigators.

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[37] Başak Çalı and Betül Durmuş, "Judicial Self-Government as Experimental Constitutional Politics: The Case of Turkey," *German Law Journal* 19, no. 7 (December 1, 2018): 1671–1706, https://doi.org/10.1017/S2071832200023208; Zafer Yılmaz, "Erdoğan's Presidential Regime and Strategic Legalism: Turkish Democracy in the Twilight Zone," *Southeast European and Black Sea Studies* 20, no. 2 (April 2, 2020): 265–87, https://doi.org/10.1080/14683857.2020.1745418.

[38] Sanford H. Kadish, "Methodology and Criteria in Due Process Adjudication. A Survey and Criticism," *The Yale Law Journal* 66, no. 3 (January 1957): 319, https://doi.org/10.2307/793970.

[39] Robert S. Summers, 'A Formal Theory of the Rule of Law', *Ratio Juris* 6, no. 2 (July 2, 1993): 127–42, https://doi.org/10.1111/j.1467-9337.1993.tb00142.x.

[40] Peter Lindseth, "Judicial Review in Administrative Governance: A Theoretical Framework for Comparative Analysis," in *Judicial Review of Administrative Discretion in the Administrative State* (The Hague: T.M.C. Asser Press, 2019), 175–94, https://doi.org/10.1007/978-94-6265-307-8_9.

The main lesson from this comparative analysis is the need to improve the Indonesian Criminal Procedure Code to explicitly delineate the scope of pretrial jurisdiction. Based on the analysis of the concepts of compensation and rehabilitation in Sweden, Indonesia can learn that pretrial reform should not end with judicial oversight. Rather, this reform must be accompanied by effective legal remedies for wrongful prosecution.[41] This comparative lesson highlights a practical policy direction that can be adapted within the Indonesian context. The law must clarify whether pretrial hearings are limited to procedural oversight or extend to the substantive review of evidence. Such clarity would eliminate functional dualism, prevent repeated suspect designation, and reinforce legal certainty. In this way, Indonesia can adopt best practices from other jurisdictions while aligning them with constitutional values and the principles of Islamic law, prioritizing the protection of fundamental rights while ensuring that the abuse of authority harms no party. This argument is further illustrated in Table 1, highlighting the comparative features of pretrial mechanisms in Indonesia, Malaysia, Türkiye, and Egypt.

Table 1.
Comparative Overview of Pretrial Mechanisms in Selected Jurisdictions

Country	Preemptive Control	Judicial Authority	Protection of Suspects' Rights
Indonesia	Limited, mainly post factum through pretrial review	District court judges in pretrial proceedings; Constitutional Court decisions expand the scope	Still weak; issues include repeated suspect designation and lack of effective remedies
Malaysia	Relatively stronger, through judicial oversight of police detention and remand procedures	Magistrates exercise significant authority in approving or rejecting remand requests.	Suspects' rights are better safeguarded through strict timelines and judicial checks.
Türkiye	Strong preemptive judicial control over arrests and detentions	Judges of peace courts play a decisive role in authorizing coercive measures	Clear procedural safeguards, though concerns remain about independence under emergency decrees
Egypt	Formal pretrial oversight exists, but it is often undermined by executive dominance.	Judges formally supervise investigations, but prosecutorial power remains dominant.	Protection of rights is uneven, with frequent criticisms of arbitrary detention and weak remedies.

[41] Hellqvist, 'Access to Justice for Wrongful Conviction Claimants in Sweden: The Final Legal Safeguard and Levels of (in)Accessibility'.

As shown in Table 1, Malaysia and Türkiye exemplify stronger models of judicial oversight and protection of suspects' rights. At the same time, Indonesia and Egypt display persistent structural weaknesses. These contrasts underscore the urgency for Indonesia to adopt a more robust framework of preemptive judicial control and effective remedies, drawing selectively from comparative practices while remaining faithful to constitutional principles and Islamic legal values.

Integration of Islamic Law Perspectives

Islamic criminal law emphasizes justice and the control of power through the concepts of *ḥisba*, *qaḍā'*, and *qāḍī al-maẓālim*. *Ḥisba* functions as a mechanism of public oversight to prevent practices harmful to society and to ensure compliance with the law. *Qaḍā'* underscores impartial adjudication through independent judges, while *qāḍī al-maẓālim* provides a legal avenue for society to seek redress when abuses of power or injustices occur in investigation and law enforcement processes. These principles align closely with the role of pretrial proceedings (*praperadilan*) in Indonesia as a supervisory mechanism over the actions of investigators, prosecutors, and other law enforcement authorities.[42]

In matters of evidence, Islamic law stresses the obligation to present valid proof (*al-bayyina*) to rebut the presumption of innocence. It means that only strong and credible evidence can establish truth and prevent miscarriages of justice.[43] Conversely, the principle of *dar' al-ḥudūd bi al-shubuhāt* places strict limits on the imposition of *ḥudūd* punishments, holding that no penalty may be imposed where substantial doubt exists. The law must prioritize justice and safeguard individuals from wrongful conviction.[44] This principle underscores

[42] Abdullateef Adekunle Owoade and Mohammed Bashir Badr, 'Hisbah: A Vibrant Islamic Legal Tool for Sociopolitical Orderliness', *Jamia Law Journal* 3 (2003): 29–48; Ssuna Salim, Syahrul Faizaz Binti Abdullah, and Kamarudin bin Ahmad, 'Wilayat Al-Hisba; A Means to Achieve Justice and Maintain High Ethical Standards in Societies', *Mediterranean Journal of Social Sciences* 6, no. 4 (July 1, 2015): 201–6, https://doi.org/10.5901/mjss.2015.v6n4s2p201.

[43] Seeni Mohamed Mohamed Nafees, *An Introduction to the Divine Criminal Justice System* (Gelioya: Minarah Publications, 2020), https://www.researchgate.net/publication/372852954_An_Intro Duction_To_The_Divine_Criminal_Justice_System.

[44] Hunud Abia Kadouf, Umar A. Oseni, and Magaji Chiroma, 'Revisiting the Role of a Muftī in the Criminal Justice System in Africa: A Critical Appraisal of the Apostasy Case of Mariam Yahia Ibrahim', *Pertanika Journal of Social Sciences and Humanities* 23, no. S (2015): 1–18, http://www.pertanika.upm.edu.my/resources/files/Pertanika PAPERS/JSSH Vol. 23 (S) Oct. 2015/01 JSSH Vol 23 (S) Oct 2015_pg1-18.pdf.

that law enforcement measures must be based on clear evidence and not arbitrarily harm individuals.[45] Such a concept resonates with pretrial proceedings in Indonesia, where judges assess the legality of suspect designation, detention, and other coercive measures, thereby protecting the rights of the accused.

The congruence between Islamic criminal law and modern human rights norms is also evident. The concepts of presumption of innocence, due process, and procedural fairness mirror the objectives of *qaḍā'* and *qāḍī al-maẓālim*, namely, to ensure that no individual is punished without a fair process and sufficient evidence.[46] The Indonesian pretrial, which grants suspects or their legal counsel the right to challenge the legality of investigative actions, essentially represents a modern implementation of these timeless principles of justice.[47]

From the perspective of Islamic law, pretrial reform gains an additional normative foundation through the institution of *ḥisba*, which serves as a procedural oversight mechanism preventing arbitrary acts of law enforcement without proper scrutiny (*pre-factum* control). The principles of proportionality and *maqāṣid al-sharīʿa* emphasize a balance between public security and individual protection, forming the basis for expanding the role of pretrial proceedings beyond mere formalities to substantive review.[48] The Islamic principles of harm prevention and protection of individuals provide a normative justification for extending the scope of pretrial authority to examine not only

[45] Salma Salma et al., "The Other Side of the History of the Formulation of Aceh Jinayat Qanun," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022): 83–110, https://doi.org/10.15408/ajis.v22i1.21000.

[46] Nasirullah Khalid, 'Presumption of Innocence in the Islamic Law', *Addaiyan Journal of Arts, Humanities and Social Sciences* 3, no. 1 (January 14, 2021): 11–16, https://doi.org/10.36099/ajahss.3.1.2.

[47] Khoirul Amin, "Perlindungan Hukum terhadap Penetapan Status Tersangka Ditinjau dari Perspektif Hak Asasi Manusia," *JOSH: Journal of Sharia* 3, no. 01 (January 28, 2024): 1–18, https://doi.org/10.55352/josh.v3i01.572.

[48] Fatoni et al., 'Asas Proporsionalitas: Perspektif Hukum Positif dan Maqosid Syariah dalam Sistem Peradilan Pidana'; Hammis Syafaq, Nur Lailatul Musyafaah, and Sri Warjiyati, 'Judicial Commission Role to Handle Contempt of Court in Indonesia from the Perspective of Islamic Legal Thought', *European Journal of Law and Political Science* 2, no. 3 (May 24, 2023): 7–13, https://doi.org/10.24018/ejpolitics.2023.2.3.90; Mohamad Ridhuan Mohd Zawawi et al., 'Rethinking Hisbah and Sharia Proceduralism: A Comparative Approach to Justice in Contemporary Islamic Law', *MILRev: Metro Islamic Law Review* 4, no. 1 (May 30, 2025): 234–68, https://doi.org/10.32332/milrev.v4i1.10391.

procedural aspects but also substantive grounds, without undermining the investigative mandate.

Accordingly, integrating Islamic criminal law principles into Indonesia's pretrial mechanism can strengthen the protection of suspects' rights, clarify evidentiary standards, and prevent arbitrary state actions. This approach enriches the national legal framework and reinforces the harmony between Islamic values and modern human rights principles, thereby positioning pretrial proceedings as not merely a procedural safeguard but also a substantive instrument for ensuring justice.

Draft of Criminal Procedure Code (RUU KUHAP) and Legislative Responses

The draft of the Criminal Procedure Code (RUU KUHAP) following the Constitutional Court Decision No. 21/PUU-XII/2014 seeks to recalibrate the mechanism of *praperadilan* (pretrial review) by providing a clearer legal basis for examining the legality of coercive measures, the termination of investigations, and requests for compensation and rehabilitation. Spanning Articles 149 to 155, the draft stipulates the authority of the pretrial judge, the time limits for review, and the procedures for filing applications by suspects, their families, or legal counsel. It reflects a legislative effort to accommodate the expanded scope of *pr*etrial articulated by the Constitutional Court, particularly concerning determining suspect status.

Nevertheless, the draft RUU KUHAP continues to exhibit fundamental shortcomings. Pretrial remains essentially *post factum*, meaning that judicial oversight can only occur after coercive measures have already been implemented.[49] It significantly limits the effectiveness of pretrial in preventing potential abuses of power by investigators or prosecutors. Furthermore, there is no explicit provision addressing repeated suspect determinations (*repeated*

[49] Dandy Alfayed Ginting et al., 'The Court's Ruling on the Determination of Suspect Status by a Pretrial Judge as a Development in Indonesian Criminal Procedure Law', *International Journal of Nusantara Law and Policy* 1, no. 2 (2023): 83–92, https://jurnal.locusmedia.id/index.php/ijnlp/article/view/394; Suharizal Suharizal and Firdaus Arifin, 'Due to the Verdict of the Constitutional Court of the Republic of Indonesia Number 21 / PUU-XII / 2014 on the Extension of Pretrial Institutional Authority in Indonesia', *International Journal of Multicultural and Multireligious Understanding* 6, no. 4 (August 22, 2019): 218–24, https://doi.org/10.18415/ijmmu.v6i4.986.

suspect status), which creates the risk of violating the principle of *ne bis in idem* and undermines legal certainty for the suspect.[50]

From a comparative international perspective, many jurisdictions have adopted stricter mechanisms of preemptive control. In Malaysia and Türkiye, for example, judicial oversight over suspect designation and detention can occur before such measures are executed (*pre-factum*), thereby granting judges the authority to reject investigative actions lacking sufficient evidentiary basis.[51] This practice contrasts with Indonesia, where pretrial judges may only intervene once a suspect has been subjected to coercive measures. The contrast reveals a significant legislative gap between Indonesia's model and several other jurisdictions.

Islamic criminal law offers equally essential insights. The principle of *qāḍī al-maẓālim* emphasizes the control of state officials to prevent the misuse of authority, while the principles of *al-bayyina* (valid evidence) and *dar'u al-ḥudūd bi al-shubuhāt* (suspension of penalties in cases of doubt) stress the necessity of evidentiary certainty before the imposition of punishment or the restriction of rights.[52] Normatively integrating these principles could strengthen mechanisms of *pre-factum* judicial review, thereby ensuring that pretrial functions not only as a formal instrument to examine actions already taken but also as a preventive safeguard against potential violations.

In addition, the draft RUU KUHAP limits the parties entitled to file a pretrial proceedings application to suspects, their families, or legal counsel, thereby excluding the legitimate interests of third parties—such as property owners whose premises are subject to search or seizure. This restriction risks weakening the horizontal control function and reducing the effectiveness of

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[50] Susilo et al., "Justice Delayed, Justice Denied: A Critical Examination of Repeated Suspect Status in Indonesia"; Kusumastuti, "Penetapan Tersangka Sebagai Obyek Praperadilan."

[51] International Commission of Jurists, "The Turkish Criminal Peace Judgeships and International Law" (Geneva, 2018), https://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf; Ifa Sirrhu Samsudin, Ramalinggam Rajamanickam, and Rohaida Nordin, "Reviewing the Chain Remand Practices and Freedom of Rights in Malaysia," *International Journal of Human Rights and Constitutional Studies* 9, no. 1 (2022): 51, https://doi.org/10.1504/IJHRCS.2022.119442; Ifa Sirrhu Samsudin, Ramalinggam Rajamanickam, and Rohaida Nordin, "Specific Legal Provision on Pre-Charge Detention for Further Offences: A Viewpoint of Police Enforcement in Malaysia," *Salus Journal* 10, no. 1 (2023): 20–44, https://salusjournal.com/wp-content/uploads/2022/05/Salus_2021_006_R1_Samsudin-numbered.pdf.

[52] Nafees, *An Introduction to the Divine Criminal Justice System*; Kadouf, Oseni, and Chiroma, "Revisiting the Role of a Muftī in the Criminal Justice System in Africa: A Critical Appraisal of the Apostasy Case of Mariam Yahia Ibrahim."

pretrial as a rights protection mechanism. By comparison, some jurisdictions grant broader standing to directly affected parties, ensuring more comprehensive oversight against abuses of power.

Accordingly, while the draft RUU KUHAP represents progress in accommodating the Constitutional Court's decision, it nonetheless leaves unresolved substantive gaps in regulating suspect designation and establishing preemptive judicial control mechanisms. Integrating Islamic criminal law principles and international practices could provide a normative framework to strengthen the RUU KUHAP, protecting suspects' rights, safeguarding legal certainty, and reducing the risk of abuse of authority by law enforcement officials. A more comprehensive legislative revision would enhance the credibility of pretrial not merely as an instrument of procedural review but as a substantive safeguard of human rights and a mechanism of accountability for law enforcement in Indonesia.

Critical Synthesis: Towards a More Human Rights-Oriented Pretrial Mechanism

The analysis of the foregoing discussion demonstrates that Constitutional Court Decision No. 21/PUU-XII/2014 has significantly recalibrated the role of pretrial proceedings by broadening the ambit of judicial oversight, particularly concerning the designation of suspects. Nevertheless, the practical implementation of pretrial review continues to encounter substantive impediments. Mechanisms of horizontal accountability over investigators and prosecutors remain fragile, the procedure is still predominantly post factum, and the interpretive latitude afforded to law enforcement agencies remains extensive, thereby perpetuating the risk of arbitrariness and abuse of authority.

Landmark cases, most notably the Budi Gunawan pretrial, illustrate the recurrent phenomenon of re-issuance of suspect status and the predominance of administrative formalism, wherein pretrial judges are largely constrained from substantively interrogating the evidentiary sufficiency.[53] It generates legal indeterminacy and exposes the system to violations of the *ne bis in idem* principle, which should serve as a bedrock for protecting suspects' rights. Scholarly debates suggest an ongoing transition of pretrial mechanisms from mere procedural supervision to a quasi-substantive judicial forum. Yet, such

[53] Kusumastuti, "Penetapan Tersangka sebagai Obyek Praperadilan"; Saputra, "The Pre-Trial Application Granted in the Case of Budi Gunawan."

evolution has not been coherently embedded within Indonesia's criminal justice praxis.

Comparative jurisprudence further reveals that jurisdictions such as Malaysia, Egypt, and Türkiye employ more stringent preemptive judicial scrutiny, giving judges the authority to nullify investigative actions before executing coercive measures.[54] This perspective underscores the necessity of consolidating judicial oversight in Indonesia to guarantee legal certainty and forestall rights violations. At the same time, it demonstrates that reform of the Criminal Procedure Code (KUHAP) must entail a hybridization of international best practices with Indonesia's socio-legal specificities.

In addition, Islamic criminal law principles such as *ḥisba*, *qāḍī al-maẓālim*, *al-bayyina*, and *dar' al-ḥudūd bi al-shubuhāt* furnish a normative framework for a more humane and ethically grounded conception of power control. These principles emphasize that law enforcement interventions must be predicated on authentic evidence and designed to prevent injustice. Integrating such perspectives may serve as a corrective to the lacunae within KUHAP's pretrial regime, particularly concerning protecting suspects' rights and facilitating substantive oversight over prosecutorial and investigative discretion.

From an Islamic legal perspective, the principle of *al-bayyina* requires that any designation of suspect status be substantiated by clear and credible evidence, thereby preventing arbitrary accusations. Likewise, the doctrine of *ḥisba* underscores the accountability of state authorities in safeguarding public rights and preventing injustice. These doctrines provide normative correctives that can guide KUHAP reform, ensuring that the pretrial mechanism aligns with *maqāṣid al-sharī'ah* in protecting justice and avoiding abuse of power.

Based on this synthesis, the novelty of this article resides in its proposition that pretrial reform in Indonesia ought to integrate three mutually reinforcing dimensions: due process (anchored in positive law and international human rights standards), judicial control (informed by comparative and transnational practice), and Islamic legal principles (*ḥisba* and *al-bayyina*) as normative correctives. Adopting such a multidimensional paradigm is anticipated to strengthen the safeguarding of suspects' rights, elevate the accountability of law

[54] International Commission of Jurists, "The Turkish Criminal Peace Judgeships and International Law"; Samsudin, Rajamanickam, and Nordin, "Reviewing the Chain Remand Practices and Freedom of Rights in Malaysia"; Samsudin, Rajamanickam, and Nordin, "Specific Legal Provision on Pre-Charge Detention for Further Offences: A Viewpoint of Police Enforcement in Malaysia"; National Anti-Corruption Academy (NACA), "Judicial Regulatory Framework."

enforcement institutions, and fortify legal certainty for all stakeholders within the criminal justice system. Furthermore, to prevent repeated suspect designation, the law should stipulate that once a pretrial court has declared a suspect status unlawful, the investigator may not reissue the same designation unless new substantial evidence (*novum*) is presented. It would harmonize Indonesian practice with international due process standards.

Conclusion

The reconfiguration of the pretrial mechanism following Constitutional Court Decision No. 21/PUU-XII/2014 has expanded the scope of judicial oversight, particularly regarding the designation of suspects. However, its implementation continues to face substantive challenges, including the weakness of horizontal control, the *post factum* nature of review, and the insufficient protection of suspects' rights. Comparative international analysis and perspectives from Islamic criminal law suggest that integrating due process principles, judicial control, and the doctrines of *al-bayyina* and *ḥisba* could reinforce Indonesia's pretrial system, rendering it more just, comprehensive, and aligned with modern human rights standards. This study recommends that the upcoming KUHAP reform explicitly prohibit repeated suspect designation without new substantial evidence (*novum*), strengthen judicial authority to impose remedies through compensation and rehabilitation, and institutionalize independent oversight mechanisms. These steps would enhance the protection of suspects' rights, increase accountability within law enforcement agencies, and ensure greater legal certainty.

To refine the function of pretrial proceedings, it is recommended that legislators broaden the scope of pretrial review to encompass all forms of coercive measures, institutionalize mechanisms of preemptive judicial control before the execution of such measures, and incorporate Islamic criminal law principles into evidentiary procedures and the designation of suspects. Such reforms must simultaneously promote legal certainty, safeguard the rights of suspects, and enhance the accountability of law enforcement officials, thereby enabling the pretrial system to serve as an effective and humanistic mechanism of substantive judicial control.[a]

Author Contribution Statement

Arista Candra Irawati: Conceptualization; Data Curation; Formal Analysis; Methodology; Validation; Writing Original Draft.

Eugenia Brandao da Silva: Validation; Review & Editing.

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