Criminal Procedure Reform for Strengthening Human Rights Protection in Indonesian Pretrial Proceedings

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ABSTRACT

Pretrial review is an essential mechanism for judicial oversight and human rights protection in criminal proceedings. However, its limited scope and the unclear distinction between procedural and substantive issues create uncertainty regarding whether the expiry of prosecution limitation periods can be challenged through pretrial review. This issue remains insufficiently explored, particularly concerning the relationship between prosecutorial authority, judicial review, and human rights protection. This study aims to examine the limitations of pretrial review in Indonesia, identify relevant lessons from the United States, and propose a rights-based reconstruction of pretrial review concerning time-barred prosecutions. It employs normative legal research using statutory, conceptual, and comparative approaches, with qualitative analysis of relevant legal materials. The findings reveal three key points. First, Indonesian law does not explicitly establish expired prosecution limitation periods as a separate object of pretrial review, creating uncertainty regarding the legal basis and procedures for challenging prosecutorial authority. Second, the United States demonstrates how mechanisms such as preliminary hearings, pretrial motions, and *habeas corpus* provide avenues for judicial scrutiny, although their functions and limitations differ from Indonesian pretrial review. Third, Indonesia requires a clearer framework for reviewing limitation-related objections based on legality, effective human rights protection, and judicial restraint. Such reform should clarify jurisdiction, examination standards, and legal consequences without extending pretrial review into the determination of criminal liability.

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Introduction

The pretrial mechanism, an entity capable of continuous evolution and development, leads us to evaluate the scope and subject matter of the discourse surrounding the ideal implementation of judicial institutions. As outlined in Law Number 20 of 2025 concerning Criminal Procedure Law (the New Criminal Procedure Code), Indonesia's pretrial system serves as an indirect oversight mechanism for law enforcement officials. A formal request for review must be submitted by a party who feels aggrieved to the pretrial institution for it to exercise such oversight. The pretrial institution is authorize to supervise law enforcement operations only under these circumstances. In contrast, the pretrial institution cannot supervise all cases handled by law enforcement without a

request, as outlined in the Elucidation of Article 10 of the Criminal Procedure Code, which defines the roles of the respective parties within the pretrial system.[1]

The pretrial institution was established as an oversight instrument to guarantee the correct administration of law, justice, and truth. The pretrial process is designed to balance the duties of law enforcement officials and the suspect during the investigative phase. This reflects the accusatory principle, which ensures the suspect is treated as an equal party throughout the criminal case resolution process. According to Article 8 of Law Number 39 of 1999 concerning Human Rights, the government is accountable for protecting, promoting, enforcing, and fulfilling human rights, which is its primary responsibility to safeguard its citizens.[2]

At its inception, the pretrial mechanism was considered a "masterpiece" of the Criminal Procedure Code. It provides substantive protection for human rights within the Criminal Procedure Code framework. The classic legal postulate that the law will inevitably lag behind the evolution of society is implied by the fact that the law looks toward the facts. Protection is not afforded by the pretrial mechanism during the pre-adjudication phase in practice. In other words, the oversight function of the pretrial institution is exclusively *post-facto*, meaning that it does not encompass the investigative process itself. In addition, pretrial evaluations are entirely formal, focusing on objective elements, while subjective elements are not subject to judicial oversight. Therefore, from a theoretical perspective, the pretrial institution is merely formal rather than substantive.[3]

The significant bias that often shapes how courts interpret what constitutes a "formal" versus a "material" issue stems from the restricted scope of pretrial proceedings, which are strictly limited to formal matters. The primary reason for this ambiguity is the lack of a clear definition or boundary in current legislation for the scope of the "formal" concept. This lack of clarity is the primary source of pretrial complexity. In theory, the law should balance the objectives of justice and utility; however, as social life becomes more intricate, the law must be articulated with greater scientific precision, using more refined language.
In the context of the statute of limitations, a particular dilemma arises regarding the distinction between formal and material categories. Article 78 of the Indonesian Criminal Code (KUHP) governs the statute of limitations and specifies the time frame within which a public prosecutor may exercise prosecutorial

[1] Kacper Oleksy, 'The Statute of Limitations in 21st Century: Between Public and Individual Interests in the Criminal Justice System', *Revista Brasileira de Direito Processual Penal*, 11.3 (2025) https://doi.org/10.22197/rbdpp.v11i3.1199

[2] Mandeep K. Dhami and Yannick N. van den Brink, 'A Multi-Disciplinary and Comparative Approach to Evaluating Pre-Trial Detention Decisions: Towards Evidence-Based Reform', *European Journal on Criminal Policy and Research*, 28.3 (2022), 381–95 https://doi.org/10.1007/s10610-022-09510-0

[3] Adriano Martufi and Christina Peristeridou, 'Towards an Evidence-Based Approach to Pre-Trial Detention in Europe', *European Journal on Criminal Policy and Research*, 28.3 (2022), 357–65 https://doi.org/10.1007/s10610-022-09526-6

authority. The dilemma of whether the statute of limitations for naming a suspect-falls within the scope of pretrial remains unresolved, even though the scope of pretrial is defined in Article 1, point 10, in conjunction with Article 77 of the Criminal Procedure Code (KUHAP). The two provisions differ solely in their normative formulation. As a result, whether the expiration of the statute of limitations for a criminal offence is a "formal" aspect and can serve as a valid basis for a pretrial petition remains a matter of debate.[4]

The validity of an arrest, detention, investigation, or prosecution, as well as claims for compensation and/or rehabilitation in cases that have been terminated, are the only permissible objects of a pretrial petition, as outlined in Article 77 of the KUHAP. It does not extend any further. The subject matter of any pretrial proceeding must strictly adhere to Article 77 of the KUHAP, in accordance with the principle of legality. The pretrial process is fundamentally a mechanism that ensures justice for a suspect during both the investigation and prosecution stages, thereby striking a balance between the public interest and the protection of the suspect's fundamental rights.[5]

The statute of limitations is a provision in the Indonesian criminal justice system that ends the right to prosecute a putative offender after a set period has passed. This provision aims to ensure legal certainty and prevent prosecutions that are no longer relevant or difficult to substantiate because of the passage of time. The statute of limitations is based on the premise that the necessity of pursuing a suspect-decreases as the public memory of an event fades and evidence becomes more difficult to locate. By the time the suspect resurfaces after an extended absence, the public may have forgotten the incident, evading investigators and prosecutors. Conversely, a substantial disparity exists between statute-of-limitations regulations and their actual implementation in pretrial proceedings.[6]

The inconsistent application of the statute of limitations clearly indicates this gap. Although the regulations are designed to eliminate the right to prosecute after a specified period, rendering any additional legal action against a suspect irrelevant or invalid, the statute is often not enforced consistently. Even after the statutory time limit expires, prosecutions and arrests may still occur, which can lead to injustice for suspects who should be exempt from legal action. The statute of limitations and pretrial proceedings regulations are intended to protect the

[4] Tom Smith, 'The Practice of Pre-Trial Detention in England & Wales - Changing Law and Changing Culture', *European Journal on Criminal Policy and Research*, 28.3 (2022), 435–49 https://doi.org/10.1007/s10610-022-09504-y
[5] Adriano Martufi and Christina Peristeridou, 'The Purposes of Pre-Trial Detention and the Quest for Alternatives', *European Journal of Crime, Criminal Law and Criminal Justice*, 28.2 (2020), 153–74 https://doi.org/10.1163/15718174-bja10002
[6] Amy E. Lerman, Ariel Lewis Green, and Patricio Dominguez, 'Pleading for Justice: Bullpen Therapy, Pre-Trial Detention, and Plea Bargains in American Courts', *Crime & Delinquency*, 68.2 (2022), 159–82 https://doi.org/10.1177/0011128721999339

rights of suspects, assure legal certainty, and ensure that law enforcement actions are conducted fairly and legally. Discrepancies between these regulations and pretrial practice can violate a suspect's rights. Individuals who should be safeguarded by the statute of limitations may instead be subjected to unlawful prosecution or detention, which undermines both legal certainty and the perception of justice.[7]

Although some petitions have been granted by the courts, efforts to pursue justice in cases involving the alleged abuse of authority by investigators are not always successful. In 2016, four victims of unlawful arrest were subsequently declared innocent pursuant to Supreme Court Decision Number 131 PK/Pid.Sus/2016, as per the author's review of various national media reports. Two of the four victims were able to secure compensation through the pretrial hearing mechanism. Meanwhile, the presiding judge denied the other two victims' compensation applications during pretrial hearings in 2019. The judge found the applications time-barred.[8]

In addition to these instances, the pretrial application filed by Pegi Setiawan to contest the validity of his designation as a suspect, as detailed in Ruling Number 10/Pid.Pra/2024/PN Bdg, garnered substantial public attention in 2024. Delpedro Marhaen Rismansyah, a demonstrator and activist, was the subject of a case that emerged in late 2025. Delpedro's legal advocacy team claimed that investigators violated numerous procedural regulations, including designating him as a suspect without first questioning him, a requirement established by Constitutional Court Ruling Number 21/PUU-XII/2014, and seizing his property without obtaining authorisation from the Chief Judge of the South Jakarta District Court. Ruling Number 132/Pid.Pra/2025/PN JKT.SEL was used to examine and decide this case.[9]

A comparison of these two pretrial rulings reveals a disparity in how the law was applied to essentially identical arguments. Both rulings addressed the contention that investigators failed to examine a potential suspect before formally designating them as a suspect.Pra/2024/PN Bdg and Ruling Number 132/Pid.Pra/2025/PN JKT.SEL. Nevertheless, the two instances yielded distinct verdicts after the evidentiary process. The petitioner's request was granted in Ruling Number 10/Pid.Pra/2024/PN Bdg, while the petition was rejected in its entirety in Ruling Number 132/Pid.Pra/2025/PN JKT.SEL. This discrepancy suggests that the exercise of pretrial authority in evaluating the legality of

[7] Dhami and van den Brink.
[8] Yannick van den Brink, 'Different but Equal? Exploring Potential Catalysts of Disparity in Remand Decision-Making in the Youth Court', *Social & Legal Studies*, 31.3 (2022), 477–500 https://doi.org/10.1177/09646639211033709
[9] Yannick van den Brink, 'Remand Decision-Making in the Youth Court. A Comparative Analysis of Youth Remand and Bail in England & Wales and the Netherlands', *International Journal of Law, Crime and Justice*, 66 (2021), 100487 https://doi.org/10.1016/j.ijlcj.2021.100487

investigative actions is still inconsistent, particularly in terms of the preservation of the human rights of individuals who are subjected to coercive measures.

The Indonesian national media frequently highlights the abuse of authority during the execution of coercive measures, particularly in cases involving alleged wrongful arrests. This situation emphasises the imperative necessity of fortifying the pretrial institution, both as a safeguard for the rights of those who have been wrongfully apprehended and as a means of guaranteeing a law enforcement process that is equitable, proportionate, and respectful of human rights.[10] One of the concepts that established the pretrial mechanism can be traced back to the Habeas Corpus Act of 1679. This act requires law enforcement officials, specifically investigators, to have a legal basis and valid preliminary evidence before arresting or detaining an individual. Additionally, the Habeas Corpus Act underscores the urgency of establishing the legality of detention through formal orders or authorisation from a competent authority.[11] A judicial mechanism comparable to the "pretrial review" in the United States legal system can be used to investigate allegations that an arrest or subsequent detention is invalid. Beyond evaluating the legitimacy of an arrest or detention, this mechanism also provides a framework for assessing the legality of other coercive measures, including searches, seizures, and the methods used to obtain evidence.[12] Judges' consistency in applying legal provisions to comparable cases, the availability of legal remedies for aggrieved parties, and the clearly defined scope of judicial authority all contribute to the efficacy of this mechanism. As a result, any assessment of the pretrial review system must consider not only the existence of a formal legal basis, but also the system's ability to offer effective protection to individuals allegedly harmed by unlawful law enforcement actions.[13]

Developing a pretrial review system requires striking a balance among law enforcement effectiveness, the preservation of human rights, and legal certainty, as these issues show. Law enforcement officials must exercise their powers in accordance with applicable regulations, including those governing time limits for prosecution, to ensure legal certainty.[14] A judicial review mechanism is required to safeguard human rights when an individual claims that state action taken against

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[10] Marisa Omori and Nick Petersen, 'Institutionalizing Inequality in the Courts: Decomposing Racial and Ethnic Disparities in Detention, Conviction, and Sentencing*', *Criminology*, 58.4 (2020), 678–713 https://doi.org/10.1111/1745-9125.12257

[11] TOM SMITH, '"Rushing Remand"? Pretrial Detention and Bail Decision Making in England and Wales', *The Howard Journal of Crime and Justice*, 60.1 (2021), 46–74 https://doi.org/10.1111/hojo.12392

[12] Michael T Light and Hilde Wermink, 'The Criminal Case Processing of Foreign Nationals in the Netherlands', *European Sociological Review*, 37.1 (2021), 104–20 https://doi.org/10.1093/esr/jcaa039

[13] Adriano Martufi, 'Pre-Trial Detention and EU Law: Constitutional Constraints, Legislative Reluctance and Non-Binding Norms', *New Journal of European Criminal Law*, 17.1 (2026), 78–100 https://doi.org/10.1177/20322844251410848

[14] Ojmarrh Mitchell and others, 'Are Progressive Chief Prosecutors Effective in Reducing Prison Use and Cumulative Racial/Ethnic Disadvantage? Evidence from Florida', *Criminology & Public Policy*, 21.3 (2022), 535–65 https://doi.org/10.1111/1745-9133.12598

them lacks an adequate legal basis. In the interim, effective law enforcement requires that these supervision mechanisms do not impede legitimate criminal proceedings or extend judicial authority beyond legal boundaries. For the pretrial review system to effectively fulfill its function as an oversight instrument while remaining a preliminary judicial examination, these three interests must be maintained in harmony.[15]

This study employs a comparative legal approach to obtain a more comprehensive understanding of this issue, with a particular emphasis on the principles for protecting individual liberty that have developed within the Habeas Corpus tradition. The relevance of this approach is due to the historical emphasis placed on the necessity of judicial review in determining the legality of an individual's detention by the state by *Habeas Corpus. Nevertheless, this principle cannot be directly equated with the full scope of pretrial review authority in Indonesia, particularly in terms of the review of whether the statute of limitations for prosecution has expired. As a result, the comparison is made at the level of principles and the function of judicial oversight, while taking into account the differences in institutional structures, legal foundations, and the scope of review within each respective system. This method is used to identify principles that could strengthen judicial oversight within the Indonesian criminal justice system while respecting the unique attributes of its national legal framework.[16]

Previous research by Dhami and van den Brink examines pre-trial detention decisions using a multidisciplinary and comparative approach. The study frames pre-trial detention as a critical decision, as it restricts the liberty of individuals who are still entitled to the presumption of innocence. The authors emphasize the need for an evidence-based approach to evaluate detention decisions and formulate policy reforms, with a focus on the criminal justice systems of England and Wales, as well as the Netherlands.[17] Furthermore, research conducted by Smith highlights the importance of examining the implementation of the law in practice, rather than merely reading its normative provisions. Consequently, any evaluation of the protection of individual rights must take into account how law enforcement officials and judicial institutions apply the rules that govern the restriction of a person's freedom. That research suggests a gap between law and practice, which needs to be addressed going forward. Current evidence on pre-trial detention (PTD) in England and Wales (E&W) indicates that the number of defendants held in custody before trial is approaching record highs, and that defendants are being detained for longer periods potentially unlawfully.[18] Furthermore, research conducted by Adam Iltas et al. addresses the issue of the absence of pretrial review authority to examine decisions to terminate

[15] Lerman, Green, and Dominguez.
[16] Lerman, Green, and Dominguez.
[17] Dhami and van den Brink.
[18] Smith.

investigations within the Indonesian criminal justice system. The primary focus lies on the constitutional and procedural consequences of this limitation regarding legal protection for victims. This research is significant as it highlights how the restricted scope of pretrial can diminish access to justice. The authors explore the possibility of reconstructing the pretrial mechanism so that it may serve as an effective remedy for parties aggrieved by decisions to terminate investigations.[19]

The study's novelty lies in its examination of the correlation between the scope of pretrial judicial review in Indonesia and prosecution limitation periods. Although previous research has investigated pretrial detention, the disparity between legal regulations and their execution, and the constraints of pretrial remedies in terms of the termination of preliminary enquiries, this study concentrates on a unique legal issue: whether the expiration of a prosecution limitation period can be assessed as a factor in the legality of prosecutorial authority. This study aims to establish a conceptual framework that distinguishes the assessment of prosecutorial authority from the determination of criminal liability, rather than merely advocating an expansion of the subjects of pretrial review. It proposes a rights-based pretrial judicial review approach grounded in legality, effective human rights protection, and judicial restraint. The study will contribute to the reconstruction of Indonesian criminal procedure by identifying the legal conditions, judicial standards, and institutional boundaries required to evaluate claims that the authority to prosecute has expired. This will be achieved without transforming pretrial proceedings into a forum for determining the merits of a criminal case.[20]

Research Method

The relationship between prosecution limitation periods, pretrial judicial review, and human rights protection in Indonesia is investigated in this study through the use of normative legal research, which employs statutory, conceptual, and comparative legal approaches. The primary legal materials include Law No. 20 of 2025 on Criminal Procedure, the relevant provisions of Indonesia's Criminal Code regarding prosecution limitation periods, Law No. 39 of 1999 on Human Rights, relevant Constitutional Court decisions, and judicial rulings concerning pretrial proceedings. The Dutch legal framework that governs prosecution limitation periods and judicial supervision in criminal proceedings is the subject of the comparative approach. Scholarly commentaries, academic books, and peer-reviewed journal articles are all examples of secondary materials that pertain to human rights, statutes of limitations, pretrial review, and prosecutorial powers.

[19] Adam Ilyas, Fachrizal Afandi, and Indah Dwi Qurbani, 'Closing the Injustice Gap: Reconstructing Pre-Trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries', *Jurnal Konstitusi*, 22.4 (2025), 736–76 https://doi.org/10.31078/jk2247

[20] Bagus Hendradi Kusuma and others, 'Reforming the Statute of Limitations under Indonesia's New Criminal Code: Toward a Modern Criminal Justice System', *Journal of Law and Legal Reform*, 7.2 (2026), 951–86 https://doi.org/10.15294/jllr.v7i2.42768

The Netherlands is chosen as a comparator due to its civil-law tradition and its legal framework that governs prosecution limitation periods. However, its judicial institutions are not presumed to be of the same quality as Indonesia's pretrial system.[21]

The legal materials are qualitatively analysed through functional comparison, systematic legal analysis, and doctrinal interpretation. First, the analysis determines the scope of pretrial review and the relevant regulations that regulate the expiration of prosecutorial authority. It then evaluates whether it is possible to distinguish between objections based on limitations and those that address the merits of a criminal case. The comparative findings are used to assess potential legal safeguards and their applicability to Indonesia's criminal procedure framework.[22] The research establishes a normative reconstruction model that is based on three fundamental principles: legality, effective human rights protection, and judicial restraint. The proposed model aims to determine the conditions under which pretrial judicial review may be used to examine claims regarding expired prosecution limitation periods, without converting preliminary proceedings into a forum for determining criminal liability. The study does not attempt to experimentally determine the frequency of illegal prosecutions or the degree of inconsistent judicial practice; instead, it is restricted to normative and comparative legal analysis.[23]

Results and Discussion

Limitations of Pretrial Judicial Review and Human Rights Protection in Indonesia

The constitution and a range of legislative instruments, such as Law Number 20 of 2025 on Criminal Procedure (the Criminal Procedure Code), enshrine guarantees that protect human rights. These instruments essentially incorporate human rights by establishing justice and humanity as the highest values, in line with the dignity of an independent nation. Consequently, their implementation must be monitored. Law enforcement effectiveness is a critical factor in the success of any legislation; even the most meticulously crafted legislation will not fulfill its intended purpose if law enforcement is ineffective. Legislation is driven by the dynamic force of law enforcement.[24]

Although the Criminal Procedure Code provides a sufficient framework for protecting human rights, particularly those of suspects and defendants, practice

[21] Made Sinthia Sukmayanti and AAA. Ngurah Tini Rusmini Gorda, 'Implementation of Substantive Justice in Juvenile Serious Crime Cases in Indonesia', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 4.2 (2026), 715–44 https://doi.org/10.53955/jsderi.v4i2.372

[22] Christopher M. Campbell and others, 'Gauging Detention Dosage: Assessing the Impact of Pretrial Detention on Sentencing Outcomes Using Propensity Score Modeling', *Journal of Criminal Justice*, 70 (2020), 101719 https://doi.org/10.1016/j.jcrimjus.2020.101719

[23] Smith.

[24] SMITH.

often falls short. The Code's implementation has not always effectively promoted respect for human dignity, despite the well-crafted language in its articles. This is primarily due to the irresponsible and inadequately controlled exercise of authority by law enforcement officials. The use of coercive measures by law enforcement presents a substantial obstacle to safeguarding human rights within the criminal justice system. The law authorises public prosecutors and investigators to use coercive measures, including arrests, detentions, and seizures, to expedite the investigation of criminal offences. In essence, any such measure implemented against a suspect is a legal form of coercion that is intended to investigate an alleged offence. However, these actions inherently restrict human rights and deprive individuals of liberty and freedom, even though they are legally sanctioned. Because coercive measures restrict a suspect's liberty and fundamental human rights, they must be implemented responsibly and in compliance with relevant laws and regulations (due process of law).[25]

In essence, the pretrial review mechanism functions as a form of judicial oversight that is intended to evaluate the legality of specific actions taken by law enforcement officials during the criminal justice process, while preserving the authority of investigators and public prosecutors in the execution of their respective responsibilities. The scope of matters subject to review has expanded through pretrial regulation under Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP), including the validity of coercive measures, as outlined in Article 158. This expansion has occurred over time. This development emphasises the importance of judicial oversight of law enforcement actions in protecting human rights, particularly when such actions could curtail individual freedom, violate privacy, or deprive an individual of property. However, current procedural law limits pretrial authority; it is not intended to evaluate the case's merits or determine a suspect's innocence or culpability.[26] As a result, the primary concern is not only the legitimacy of the procedural actions law enforcement takes, but also the extent to which the pretrial mechanism can provide effective legal protection when the legitimacy of the state's exercise of authority in the criminal justice process is called into question.[27]

The pretrial proceeding is not an autonomous judicial institution in terms of its structure and judicial organization. Nor does it serve as a judicial tier with the power to render final decisions in criminal cases. Rather, it is a mechanism that is inextricably connected to the District Court; it functions exclusively within the District Court as an inseparable component of that institution. Its characteristics and existence are synonymous with the District Court. As a result, the pretrial

[25] Dhami and van den Brink.
[26] Becca Cadoff, Kevin T. Wolff, and Preeti Chauhan, 'Exploring Variation in Factors Associated with Increased Likelihood of Pretrial Detention', *Journal of Criminal Justice*, 74 (2021), 101799 https://doi.org/10.1016/j.jcrimjus.2021.101799
[27] Dhami and van den Brink.

does not exist as a separate entity, parallel to, or in addition to the District Court; rather, it functions as a division within it. The Chief Judge of the District Court leads, supervises, and guides it. It is integrated with the District Court in terms of its administrative, judicial, personnel, apparatus, and financial aspects. Its judicial functions extend the District Court's judicial mandate. Therefore, the pretrial is not a distinct entity; rather, the Criminal Procedure Code (KUHAP) has delegated a new set of powers and functions to each District Court. This adds to the District Court's existing framework.[28]

The pretrial's purpose and objectives align with the rationale behind the Criminal Procedure Code (KUHAP), implemented in response to the outdated and inadequate procedural code (HIR) that did not serve the needs of a contemporary, evolving society. Additionally, it is designed to safeguard suspects' fundamental human rights, guarantee legal certainty, and uphold the rule of law, as any coercive action authorities take must rigorously comply with KUHAP's provisions. An infringement of human rights is any coercive action, including arrest, search, seizure, detention, or prosecution, that is conducted in violation of the law and current legislation. The District Court faces no issues or obstacles in including pretrial proceedings in the Criminal Procedure Code (KUHAP), even though the *Herziene Inlandsch Reglement* (HIR) did not provide for pretrial proceedings. This is because the KUHAP was intended to foster harmonious relationships and coordination, recognising the resolution of criminal cases as a unified process within an integrated criminal justice system.[29]

As a result, pretrial is not intended to enable the District Court to re-adjudicate cases or serve as an appellate court. This mechanism is not acknowledged by the KUHAP. Additionally, it does not suggest a vertical or subordinate supervisory relationship between law enforcement agencies. Instead, it is intended to facilitate mutual complementarity, coordination, synchronisation, and integration in managing and resolving cases, in accordance with each entity's specific functions, authorities, and responsibilities in investigation, prosecution, and adjudication. The Criminal Procedure Code, also known as the KUHAP, clearly delineates the functions, duties, and powers of each law enforcement agency, thereby mandating a complete enhancement in the coordination and harmony of their working relationships. This requirement is fundamental to the concept of an integrated criminal justice system, which views the entire correctional process as a single,

[28] Martufi and Peristeridou, 'Towards an Evidence-Based Approach to Pre-Trial Detention in Europe'.
[29] Hilde Wermink, Michael T. Light, and Alicja P. Krubnik, 'Pretrial Detention and Incarceration Decisions for Foreign Nationals: A Mixed-Methods Approach', *European Journal on Criminal Policy and Research*, 28.3 (2022), 367–80 https://doi.org/10.1007/s10610-022-09519-5

continuous sequence, from investigation and prosecution to adjudication and final resolution.[30]

The substantive aspects that serve as the basis for designating an individual as a suspect are not adequately examined during pretrial proceedings, which still tend to concentrate on the fulfilment of formal or administrative requirements. For instance, the pretrial case registered under Number 132/Pid.Pra/2025/PN Jkt. Sel, which involved activist Delpedro Marhaen Rismansyah, illustrates this. The petitioner contended that the evidence did not adequately support the suspect's designation; however, the pretrial petition was ultimately denied. According to the author, this suggests that pretrial proceedings continue to prioritise formal aspects, such as the completeness of administrative procedures and investigator-issued documents, over assessing the legality and sufficiency of the evidence used to establish suspect status.[31]

However, designating an individual as a suspect is a legal action contingent on an evaluation of whether adequate preliminary evidence exists. As a result, the function of safeguarding a suspect's rights may not be fully realised if pretrial proceedings are not authorised to evaluate the legality and sufficiency of the preliminary evidence that investigators rely on. To ensure that any coercive legal measure is implemented in accordance with the principles of due process of law, it is essential to conduct a substantive examination of it from a human rights perspective. The regulations governing pretrial proceedings have been updated, superseding the previous Criminal Procedure Code, following the enactment of Law Number 20 of 2025, which took effect in 2026. The following compares the substantive content of pretrial proceedings under the previous Criminal Procedure Code and the 2025 Criminal Procedure Code to provide an overview of these developments.[32]

Table 1. Comparison of Pretrial Provisions between Law No. 8 of 1981 and Law No. 20 of 2025

Law No. 8 of 1981	Law No. 20 of 2025
a) Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code; **b) Constitutional Court Decision No. 21/PUU-XII/2014;** **c) Constitutional Court Decision No. 109/PUU-XIII/2015;** **d) Constitutional Court Decision No. 102/PUU-XIII/2015;** **e) Decision No. 130/PUU-XIII/2015**	Article 158 of Law Number 20 of 2025 concerning the Criminal Procedure Code

[30] Mary Rogan, 'Examining the Role of Legal Culture as a Protective Factor Against High Rates of Pre-Trial Detention: The Case of Ireland', *European Journal on Criminal Policy and Research*, 28.3 (2022), 425–33 https://doi.org/10.1007/s10610-022-09515-9

[31] Irene Wieczorek, 'EU Harmonisation of Norms Regulating Detention: Is EU Competence (Art. 82(2)b TFEU) Fit for Purpose?', *European Journal on Criminal Policy and Research*, 28.3 (2022), 465–81 https://doi.org/10.1007/s10610-022-09521-x

[32] Gijs van Dijck, 'Predicting Recidivism Risk Meets AI Act', *European Journal on Criminal Policy and Research*, 28.3 (2022), 407–23 https://doi.org/10.1007/s10610-022-09516-8

a) "The validity of an arrest, detention, termination of an investigation, or termination of a prosecution;" **b) "Compensation and/or rehabilitation for an individual whose criminal case has been terminated at the investigation or prosecution stage;"** **c) "The validity of the seizure of items as evidence;"** **d) "The validity of the designation of a person as a suspect;"**	a) "The validity of the implementation of coercive measures;" b) "The validity of the termination of an investigation or the termination of a prosecution;" c) "Requests for compensation and/or rehabilitation for an individual whose criminal case has been terminated at the investigation or prosecution stage;" d) "The seizure of objects or items that have no connection to a criminal offense;" e) "The delay in the handling of a case without a valid reason; and" f) "The suspension of the placement of a detainee in a medical facility (detention deferral)."

Source: processed by the author

The provisions concerning "coercive measures" as defined in Article 1, point 14, in conjunction with Article 89 of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) include actions taken by law enforcement officials, such as the designation of a suspect, arrest, detention, search, seizure, examination of correspondence, wiretapping (interception of communications), blocking (of assets or accounts), and the imposition of travel bans preventing a suspect or defendant from leaving the territory of Indonesia. The definition of coercive measures in this framework has been expanded in comparison to the previous Criminal Procedure Code. Under the 1981 Criminal Procedure Code, the formal designation of an individual as a "suspect" was not classified as a coercive measure. Additionally, the 2025 Criminal Procedure Code includes provisions for the blocking of assets/accounts and surveillance as coercive measures, which were not previously addressed in a general manner within the Criminal Procedure Code.[33]

Before the enactment of Law Number 20 of 2025, the authority to conduct wiretapping was regulated on a sectoral basis across various legislative instruments. These instruments included Law Number 5 of 1997 concerning Psychotropic Substances, Law Number 15 of 2003 (which ratified Government Regulation instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into law), and Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons (Nainggolan & Sumardiana, 2025). The regulation of wiretapping has been more thoroughly

[33] Seena Fazel, Amir Sariaslan, and Thomas Fanshawe, 'Towards a More Evidence-Based Risk Assessment for People in the Criminal Justice System: The Case of OxRec in the Netherlands', *European Journal on Criminal Policy and Research*, 28.3 (2022), 397–406 https://doi.org/10.1007/s10610-022-09520-y

integrated into the criminal procedural legal system as a result of its classification as a coercive measure in the 2025 Criminal Procedure Code.[34]

However, this broader definition of coercive measures also has specific legal ramifications. Even though the 2025 Criminal Procedure Code (KUHAP) recognises wiretapping as a form of coercive measure, additional comprehensive regulation is still necessary to address the procedures, implementation standards, and mechanisms for reviewing such measures through pretrial proceedings. This situation has the potential to result in practical challenges, particularly when disputes regarding the legality of surveillance are presented at a pretrial hearing. Indonesia's pretrial framework remains fundamentally unchanged, with the judge remaining an "examining judge" an authority responsible for verifying the validity of the procedures employed to implement coercive measures despite updates. This characteristic is evident in both Law Number 8 of 1981 and Law Number 20 of 2025, which, in theory, restrict judicial review to the procedural legality of investigators' actions. These provisions are intended to enhance legal protection by ensuring that law enforcement is subject to judicial oversight. However, this defined scope of review also raises concerns about how far legal issues that directly affect the legitimacy of the ongoing criminal process can be analysed.[35]

The statute of limitations for prosecution is one matter that requires examination in this context. This legal mechanism restricts the timeframe within which the state may commence a criminal prosecution. This time limit is crucial to safeguard individuals from perpetual uncertainty about facing criminal proceedings, ensure legal certainty, and curb state authority. Consequently, the statute of limitations for prosecution should not be treated as a mere technical exercise in calculating time, but as a fundamental inquiry into the legality of the prosecutor's authority.[36]

In Indonesian criminal law, examining the statute of limitations for prosecution requires a thorough review of substantive criminal law provisions that regulate timeframes and the circumstances that affect their calculation, such as potential suspensions or legal actions that can affect the progression of these time limits. Consequently, examining the statute of limitations requires identifying the relevant legal facts, the nature of the alleged offence, when it occurred, and the applicable legal provisions. This evaluation is independent of the determination of whether an individual has committed a criminal offence; rather, it is intended to determine whether the state retains the legal authority to pursue the prosecution

[34] Ilze Tralmaka, 'Upholding Fundamental Rights in National Arrest Warrant Proceedings in Practice: A Need for Third Level of Judicial Protection?', *European Journal on Criminal Policy and Research*, 28.3 (2022), 451–64 https://doi.org/10.1007/s10610-022-09518-6

[35] Yannick van den Brink, 'Young, Accused and Detained; Awful, But Lawful? Pre-Trial Detention and Children's Rights Protection in Contemporary Western Societies', *Youth Justice*, 19.3 (2019), 238–61 https://doi.org/10.1177/1473225419884658

[36] Lerman, Green, and Dominguez.

of the case in question. Legal certainty may be compromised by ambiguity regarding the appropriate forum and the standards for reviewing objections based on the statute of limitations from a human rights perspective. An individual who is subject to criminal proceedings has a legitimate legal interest in determining whether those proceedings are being conducted under valid legal authority. Article 28D, paragraph (1), of the 1945 Constitution of the Republic of Indonesia guarantees the right to fair legal certainty, protection against arbitrary state action, and legality, which form the foundation of this interest. Therefore, it is imperative to establish a transparent and efficient review mechanism that prevents state authority from being reduced to mere normative provisions and instead allows it to be invoked in concrete disputes during criminal judicial proceedings.[37]

The distribution of authority within the criminal justice system also limits the pretrial review mechanism. On the one hand, the pretrial judge's authority must be explicitly defined to prevent such reviews from developing into an examination of the case's merits. The appropriate trial process must still determine an individual's culpability or innocence. Conversely, these constraints should not prevent the examination of fundamental legal issues that determine the legality of a criminal proceeding.[38] Consequently, the challenge is not a binary decision between granting judges unlimited authority and maintaining absolute, rigorous restrictions. The real challenge is setting the boundaries of judicial review so courts can assess the legality of state authority without judging the merits of a case. It is imperative to strike a balance between protecting human rights and the statute of limitations for prosecution. Not all objections to the statute of limitations should automatically be deemed appropriate for pretrial proceedings, especially when procedural law does not provide a clear basis for such an inquiry. Similarly, courts cannot resolve every statute-of-limitations issue without considering the pertinent facts and legal provisions.[39]

Pretrial Judicial Review and Human Rights Protection in the United States

In the United States, habeas corpus is intended to safeguard fundamental rights by preventing arbitrary actions by law enforcement or legal authorities during unlawful detention and imprisonment. The U.S. Constitution provides that this privilege is not subject to suspension except in cases of rebellion or invasion. This privilege allows an individual in custody to petition the court for a writ of habeas

[37] Pamela K. Lattimore, Cassia Spohn, and Matthew Demichele, 'Reimagining Pretrial & Sentencing', *Contexts*, 20.4 (2021), 14–21 https://doi.org/10.1177/15365042211058120

[38] Rachel Bowman and others, 'Gender in the Courtroom Workgroup: Understanding the Relationship Between the Composition of Workgroups and the Gender Gap in Punishment', *Criminal Justice and Behavior*, 50.3 (2023), 410–28 https://doi.org/10.1177/00938548221140362

[39] Stacie St. Louis, 'Bail Denied or Bail Too High? Disentangling Cumulative Disadvantage by Pretrial Detention Type', *Journal of Criminal Justice*, 82 (2022), 101971 https://doi.org/10.1016/j.jcrimjus.2022.101971

corpus to challenge the constitutionality of their detention. The adversarial process used by the U.S. judicial system includes a "grand jury."[40]

The pre-trial phase of the American criminal justice system begins with a magistrate (or preliminary hearing judge) when a criminal investigation begins, or a complaint is filed. Both the federal judiciary and numerous state courts use grand juries. When police request a warrant for an arrest or search in response to a crime complaint, a preliminary hearing is conducted. The objective of such a hearing is to protect a suspect's fundamental rights from judicial processes conducted without a warrant. Investigators are required to appear in court to have a judge determine whether there is "probable cause" to believe that the suspect committed the offence. This determination is used to validate the suspect's detention and subsequent trial. The case may be dismissed if probable cause is not established. In the next phase, a grand jury evaluates the complaint and allegations, hears preliminary testimony from the victim (or complainant), and returns a formal charge or indictment.[41]

The grand jury concept is designed to guarantee that prosecutions are conducted impartially and without arbitrary behaviour. The framers of the U.S. Constitution acknowledged the jury's significance and enshrined it in the Fifth Amendment. Grand juries are convened as needed. Their purpose is the same as a preliminary hearing: to determine whether there is sufficient justification to require a formal investigation into an alleged crime.[42] A grand jury is used exclusively for serious offences (felonies), and not all states include a grand jury system in their criminal justice systems. Some states utilise it for all cases, while others restrict it to serious crimes. A grand jury is composed of 12 to 23 members who are selected from the general public in a manner that is similar to that of a petit jury, which is responsible for determining the culpability or innocence of an accused individual. To reflect the public's diverse interests, grand jurors are recruited from the community to ensure representation across cultures, ethnicities, and walks of life. A grand jury must obtain at least 12 affirmative votes to render a decision.[43]

After sufficient grounds are established through a preliminary hearing or a grand jury, the process proceeds to an arraignment and a pre-trial conference. At arraignment, the accused is brought before the court, the charges are read, and they are asked to enter a plea of guilty or not guilty before a judge. Before trial, the

[40] Will Dobbie and Crystal S. Yang, 'The US Pretrial System: Balancing Individual Rights and Public Interests', *Journal of Economic Perspectives*, 35.4 (2021), 49–70 https://doi.org/10.1257/jep.35.4.49

[41] Joshua Page and Christine S. Scott-Hayward, 'Bail and Pretrial Justice in the United States: A a of Possibility', *Annual Review of Criminology*, 5.1 (2022), 91–113 https://doi.org/10.1146/annurev-criminol-030920-093024

[42] Chelsea M. A. Foudray and Evan M. Lowder, 'Judicial Decision-Making in the Era of Pretrial Reform', *Psychology, Crime & Law*, 32.2 (2026), 451–78 https://doi.org/10.1080/1068316X.2024.2375225

[43] Jenny E. Carroll, 'The Ever-Shifting Ground of Pretrial Detention Reform', *Annual Review of Law and Social Science*, 19.1 (2023), 75–91 https://doi.org/10.1146/annurev-lawsocsci-120122-092655

parties meet for a pre-trial conference to set the framework for the proceedings, with particular emphasis on evidence presentation and the parties' rights to obtain evidence from one another. Furthermore, a "plea bargain" may be executed, which is an agreement that is reached through negotiation between the prosecutor and the defendant. In exchange for a plea, the prosecutor may dismiss one or more charges or reduce their severity.[44]

The United States is significantly more advanced than countries that use an inquisitorial model in criminal procedure because it places a higher value on human rights, particularly those of suspects and/or defendants. An adversarial model is employed. The adversarial model ensures that the parties involved are treated fairly, fostering respect and preventing the judge from monopolising the definition of justice. Indonesia is not required to adopt the entire common law system to implement an adversarial model, even though the adversarial system is typically associated with common law jurisdictions. The adversarial model can be specifically incorporated into the criminal procedure framework to achieve greater balance, rather than requiring the system to be adopted in its entirety.[45]

The preservation of human rights in the criminal justice system of the United States is not contingent upon a single institution that is equivalent to the pretrial hearing mechanism found in Indonesia. Rather, it is maintained through a series of judicial supervision mechanisms that operate at different stages. These encompass preliminary assessments of the charges and the grounds for detention, grand jury examinations (in jurisdictions where applicable), pretrial motions, and the application of *habeas corpus* to determine the legality of detention under legally specified circumstances. These protections are achieved not only by supervising the actions of law enforcement officials, but also by examining the legal basis and sufficiency of the grounds for continuing criminal proceedings. This diversity of mechanisms attests to this.[46]

The "Suspension Clause" in Article I, Section 9, Clause 2 of the United States Constitution is one of the constitutional foundations for this protection. It restricts the suspension of the right to a writ of habeas corpus, allowing it only in cases of rebellion or invasion where public safety requires such a suspension. Throughout history, habeas corpus has developed into a critical mechanism for petitioning a court to evaluate the legality of an individual's detention. Nevertheless, its availability and scope depend on the legal basis for the petition, the nature of the detention, the court's jurisdiction, and any applicable legal restrictions.

[44] Carroll.
[45] Stephen Koppel and others, 'Examining the Causal Effect of Pretrial Detention on Case Outcomes: A Judge Fixed Effect Instrumental Variable Approach', *Journal of Experimental Criminology*, 20.2 (2024), 439–56 https://doi.org/10.1007/s11292-022-09542-w
[46] Koppel and others.

Consequently, habeas corpus cannot be interpreted as an automatic mechanism that terminates a criminal proceeding or dismisses all charges before trial.[47]

The early stages of a criminal proceeding are supervised through preliminary hearings and probable cause determinations, in addition to habeas corpus. In the federal system, a preliminary hearing is typically required in cases that meet the criteria in Federal Rule of Criminal Procedure 5.1, except as a specific rule specifies. This hearing determines whether there are adequate grounds to suspect that a crime was committed and that the defendant committed it. At this juncture, the defendant may present evidence and cross-examine prosecution witnesses.[48] This mechanism enables judicial review before the advancement of a case, even though the probable cause standard is not identical to the standard of proof necessary to establish culpability at the conclusion of a trial. A grand jury may also review the basis for prosecution, particularly in the federal system. In principle, charges for capital or other serious federal crimes must be based on a grand jury presentment or indictment under the Fifth Amendment to the United States Constitution, subject to any applicable constitutional exceptions. A grand jury is composed of citizens who assess whether sufficient evidence exists to warrant a formal indictment. Although it checks the exercise of prosecutorial authority, a grand jury is not a court that determines a defendant's guilt or innocence. Additionally, the grand jury's proceedings differ from an open, adversarial hearing; therefore, the mere existence of a grand jury does not ensure that all issues affecting a defendant's rights have been fully investigated.[49]

In addition to these mechanisms, a defendant can submit pretrial motions, asking the judge to decide specific legal matters before trial. For example, such objections may concern the legality of the evidence's acquisition, the sufficiency of the charges, or other procedural matters that, under the regulations, may or must be addressed before trial. In this context, safeguarding human rights depends on the defendant's ability to obtain a judicial review of legal objections that could determine whether criminal proceedings continue, as well as an examination of the physical actions taken by law enforcement, such as arrests or detentions.[50] This aspect is pertinent to the prosecution statute of limitations. The federal statute of limitations in the United States is governed by a variety of legal provisions that depend on the nature of the offence. In general, 18 U.S.C. § 3282(a) prohibits initiating a prosecution for a non-capital offence if an indictment is returned or an information is filed more than five years after the offence was committed, unless

[47] Wermink, Light, and Krubnik.
[48] Daniela Oramas Mora, Ojmarrh Mitchell, and Cassia Spohn, 'Does Variation across Judicial Circuits Matter? Examining the Role of Bail Schedules and Pretrial Detention on Drug Case Outcomes in Florida', *Journal of Criminal Justice*, 99 (2025), 102464 https://doi.org/10.1016/j.jcrimjus.2025.102464
[49] Dhami and van den Brink.
[50] Johanna Lacoe, Brett Fischer, and Steven Raphael, 'The Effect of a Pre-Arraignment Legal Representation Pilot on Pretrial Release and Criminal Case Outcomes', *Journal of Quantitative Criminology*, 41.2 (2025), 269–91 https://doi.org/10.1007/s10940-024-09596-1

the law provides otherwise. The specific time frame and its application depend on the provisions applicable to the offence in question. In the federal system, objections to the statute of limitations may be raised through appropriate procedural mechanisms, such as a motion to dismiss the charges, provided that the objection satisfies the requirements outlined in Federal Rule of Criminal Procedure 12. As a result, the statute of limitations is not part of the determination of whether an offence was committed; rather, it is a legal matter that determines whether a prosecution may proceed. This distinction is crucial because the statute of limitations concerns the time constraints the law imposes on the state's authority. In contrast, the merits of a case are evaluated in relation to the criminal liability of the defendant.[51]

These provisions on the statute of limitations affect both the protection of individuals from prosecutions initiated beyond the time limits permitted by law and the principle of legal certainty. State statutes of limitations on prosecution set a clear boundary for the exercise of state authority while reducing the uncertainty that would otherwise persist if an individual remained indefinitely exposed to prosecution for an act committed long ago. However, the mere existence of such a time limit does not necessarily entail that any objection based on the expiration of the limitation period will inevitably result in the dismissal of charges. The court is still required to assess the relevant legal facts, the potential for exceptions or extensions, the timing of the prosecution's commencement, and the applicable legal provisions.[52]

Nevertheless, the United States' judicial oversight system is not wholly immune to concerns about protecting human rights. Pretrial detention can cause substantial economic and social harm to a defendant, according to research on the U.S. pretrial system. However, this harm is not always proportional to the public-interest benefits. Disparities in the pretrial detention procedure have also been identified in other studies, such as differential treatment based on economic status, ethnicity, and race. These results illustrate that substantive justice is not guaranteed by the mere existence of a preliminary review mechanism. The efficacy of human rights protections is still dependent on the quality of judicial deliberation, the opportunity to raise objections, access to legal counsel, and the standards of review.[53]

The United States' experience offers two significant insights for developing Indonesia's pretrial review system from a comparative perspective. Initially, judicial oversight can be implemented through a variety of mechanisms that are specifically designed to address the specific legal issues at hand. Consequently,

[51] Lacoe, Fischer, and Raphael.
[52] Mindy L. Thai and Evan M. Lowder, 'Spotlighting Pretrial Reform: Media Effects on Perceptions of Bail Reform and Pretrial Risk Assessments', *American Journal of Criminal Justice*, 51.5 (2026), 1331–55 https://doi.org/10.1007/s12103-025-09882-z
[53] Campbell and others.

review of the legality of detention, the basis for charges, and the statute of limitations for prosecution need not be confined to a single, monolithic form of examination. Second, the right to raise objections must be accompanied by clear standards of review to ensure substantive protection, not merely a formal mechanism. Therefore, the U.S. system's relevance to Indonesia lies not in adopting its entire adversarial structure or grand jury system, but in the potential to develop mechanisms that effectively evaluate the legality of state authority before initiating lengthy criminal proceedings.[54]

Nevertheless, any comparison must consider the constitutional structures, legal systems, and distribution of authority among law enforcement agencies in both countries. Preliminary hearings, grand juries, pretrial motions, and habeas corpus are distinct concepts with distinct functions and foundations that cannot be directly applied to the Indonesian pretrial system. A more pertinent lesson for Indonesia is the need to define the appropriate forums, standards, and legal consequences for reviewing issues that determine the legality of continuing criminal proceedings, including objections to the statute of limitations.[55] The conceptual separation of the evaluation of the legality of prosecutorial authority from the examination of the merits of a case is supported by the U.S. experience, as indicated by this analysis. This division could serve as a basis for reconstructing the pretrial system to better preserve human rights, without turning preliminary review into a forum for determining an individual's guilt or innocence. In the Indonesian context, such a reconstruction must be formulated with consideration of the substantive criminal law, the Criminal Procedure Code (KUHAP), the statute of limitations for prosecution, and the jurisdictional limits of the presiding judge. The goal is not merely to broaden the scope of pretrial challenges, but to ensure a proportionate, effective, and transparent mechanism for judicial review when objections arise regarding the state's authority to prosecute expiring.[56]

Rethinking Pretrial Justice for Human Rights Protection

The pretrial mechanism's scope and subject matter must be assessed in the context of the discourse surrounding its optimal implementation. The statute of limitations can be invoked as a legal foundation for a pretrial petition to challenge the absence of a statute of limitations (in the context of arguing the invalidity of an SP 3 or the termination of an investigation) or to establish its existence (in the context of arguing the invalidity of a suspect designation). Additionally, the current Indonesian positive law lacks a clear, written definition or delineation of the distinction between "formal" and "material" aspects. It is also not possible to assume that the Criminal Code (KUHP) provisions concern only material aspects.

[54] Elsa Y. Chen, Emily Chung, and Emily Sands, 'Courtroom Workgroup Dynamics and Implementation of Three Strikes Reform', *Law & Policy*, 46.2 (2024), 112–39 https://doi.org/10.1111/lapo.12233
[55] Campbell and others.
[56] Beth Ann Griffin and others, 'A Tutorial for Propensity Score Weighting for Moderation Analysis With Categorical Variables', *Medical Care*, 61.12 (2023), 836–45 https://doi.org/10.1097/MLR.0000000000001922

The commencement of the statute of limitations for prosecution depends on when a criminal offence occurred (tempus delicti), a factual element. As a result, assessing pertinent temporal facts may be necessary when examining the statute of limitations, without needing to investigate whether an individual is criminally liable.[57]

The statute of limitations for prosecution cannot be interpreted as a material issue solely in terms of the state's authority to prosecute an individual for a crime when viewed through the relationship between substantive criminal law and criminal procedural law. It also has a procedural dimension, particularly when it concerns the validity of actions taken by law enforcement authorities during an investigation or prosecution. In this context, the question that must be investigated is not solely whether the statutory time limit has expired, but also the mechanism for judicial review of the actions or decisions of law enforcement officials who disregard the expiration of such a time limit.[58]

Although the statute of limitations is regulated within substantive criminal law, it can still be examined through the mechanisms of criminal procedural law. Nevertheless, the statute of limitations' status as a matter that may affect the legality of the authority to prosecute does not automatically make it a subject of pretrial proceedings. Consequently, it is necessary to distinguish between the statute of limitations as a concept in substantive criminal law, as an issue of the ongoing validity of the authority to prosecute, and as a basis for judicial review within a pretrial judge's jurisdiction. The following table presents a comparison of the numerous perspectives, which classify the statute of limitations as either a formal or substantive aspect:[59]

Table 2. Comparison of the statute of limitations as a formal aspect and a material aspect

Statute of Limitations as a Formal Aspect	Statute of Limitations as a Substantive Aspect
The statute of limitations is a substantive matter, as it is not addressed in the Criminal Procedure Code (KUHAP) which is formal and procedural in nature but rather in the Criminal Code (KUHP), which contains substantive provisions.	There is no clear, written explanation or definition regarding the scope or the specific elements that constitute formal and material aspects.
The essence of the provisions regarding the statute of limitations also points to specific types of criminal offenses for which a time limit for prosecution has been established; therefore, examining the statute of limitations is tantamount to calling into question the criminal offense itself.	When comparing the scope of matters subject to a pretrial hearing with the grounds for terminating an investigation, the expiration of the statute of limitations for a criminal offense should, in principle, serve as a valid basis for a pretrial petition. If an investigation or prosecution reveals

[57] Jayne Mooney and Jarrod Shanahan, 'Rikers Island: The Failure of a "Model" Penitentiary', *The Prison Journal*, 100.6 (2020), 687–708 https://doi.org/10.1177/0032885520968238

[58] Stacie St. Louis, Marlena G. Bolton, and Nick Petersen, 'Is There a (Pre)Trial Penalty? Assessing the Joint Impacts of Pretrial Detention and Trial Conviction on Sentencing', *Crime & Delinquency*, 71.11 (2025), 3419–51 https://doi.org/10.1177/00111287251318984

[59] Ilyas, Afandi, and Qurbani.

	insufficient evidence to proceed to trial, or if the allegations against a suspect do not constitute a criminal offense, the case cannot and should not advance to court. Consequently, the expiration of the statute of limitations ought to be a permissible subject for a pretrial hearing, as it is intrinsically linked to the process of designating an individual as a suspect.
	The scope of pretrial proceedings has increasingly expanded. This is evidenced by numerous pretrial rulings that have granted relief in matters falling outside the scope defined in the Criminal Procedure Code (KUHAP), on the grounds that the process of designating a suspect or other procedural steps taken by investigators violated the suspect's fundamental human rights.

Source: processed by the author

The primary concern with the statute of limitations for prosecution within the pretrial mechanism is not its classification as a formal or substantive matter; rather, it is the lack of a clear mechanism for judicial review of objections to the expiration of prosecutorial authority. As a result, the pretrial process reconstruction should prioritise establishing a well-defined legal basis for authority, clear standards for examination, and clear legal consequences for rulings. This would ensure that the review of the statute of limitations safeguards legal certainty without impeding the merits of the case.[60]

The scope of pretrial in Indonesian positive law is defined in Article 158 of Law Number 20 of 2025, which pertains to the Criminal Procedure Code. This provision covers evaluating the validity of coercive measures and terminating investigations or prosecutions. Nevertheless, the statute of limitations for prosecution is not explicitly identified as a separate subject for review. This raises questions about the appropriate forum and procedure for examining an objection that prosecutorial authority has lapsed because the statute of limitations has expired. Therefore, the question is not whether the statute of limitations is formal or substantive, but whether procedural law provides a sufficient legal basis and mechanism to address such objections. This lack of clarity in the review mechanism can undermine legal certainty from a human rights perspective. A model for reviewing the statute of limitations for prosecution should be based on three fundamental principles: the limitation of judicial authority, the effective protection of human rights, and legality.[61]

[60] Erwin Susilo and others, 'Access to Justice', *Jurnal Hukum Dan Peradilan*, 14.2 (2025), 317–50 https://doi.org/10.25216/jhp.14.2.2025.317-350
[61] Carroll.

The principle of legality necessitates that any review be conducted in accordance with the relevant provisions of substantive criminal law and criminal procedure. A genuine opportunity to challenge the legality of prosecutorial authority is required by the principle of human rights protection. In the interim, the principle of judicial authority limitation requires that the examination remain focused on the specific legal issues raised in the objection, without usurping the public prosecutor's authority or predetermining the suspect's culpability before the trial on the merits.[62]

The first step is to determine the legal basis for the statute of limitations applicable to the alleged criminal offence. This identification includes the duration of the limitation period, its commencement, and any circumstances that, under the law, may preclude or affect its application. This evaluation must consider the criminal law provisions that are relevant to the case at hand, as well as transitional regulations in the event of legislative amendments.[63] As a result, the statute of limitations cannot be ascertained by a straightforward comparison between when the offence was committed and when the prosecution commenced, without first examining the pertinent legal provisions. Accordingly, it is imperative to determine the appropriate forum and legal basis for the authority to assess such an objection. Explicit regulation would ensure that the petitioner's legal standing, the filing requirements, the scope of the examination, and the legal consequences of the resulting decision are clearly defined if the legislature intends for the statute of limitations to be a subject of pretrial proceedings. The relationship between the examination of the statute of limitations and any other objection mechanisms that may be available at different stages of the judicial process should also be clarified by such regulation. This clarity is crucial to prevent overlap of authority and ensure that the review is conducted in accordance with a valid legal process.[64]

Third, the standard of review must distinguish between the legality of the authority to prosecute and the sufficiency of the evidence to establish the elements of a criminal offence. Judges are required to evaluate the statute of limitations provisions and pertinent temporal facts, such as situations in which there is a disagreement regarding the offense's timing or circumstances that affect the time limit's calculation. Nevertheless, this examination is not to determine whether all components of the criminal offence have been established. The review may focus on whether the authority to prosecute exists or has expired, if an objection based on the statute of limitations can be resolved through the presentation of sufficient facts and legal provisions. The scope and mechanisms for such a review must be

[62] Foudray and Lowder.
[63] Jung K. Kim and Yumi Koh, 'Pretrial Justice Reform and Black–White Difference in Employment', *Applied Economics*, 54.12 (2022), 1396–1414 https://doi.org/10.1080/00036846.2021.1976387
[64] Anna S. Knes and others, 'Multi-study Examination of Criminal-legal Professionals' Use of Risk Assessments in Pretrial Decision-making', *Legal and Criminological Psychology*, 30.2 (2025), 268–97 https://doi.org/10.1111/lcrp.12305

clearly defined by procedural law in cases involving factual issues that are inseparable from the merits of the case.[65]

Fourth, the reconstruction must determine the legal repercussions of a decision that resolves an objection based on the statute of limitations. Under relevant regulations, a decision that declares the statute of limitations has expired must explicitly address the legal implications for the continuation of criminal proceedings. Conversely, criminal proceedings may proceed if the objection is unsubstantiated or if legal provisions indicate the time limit has not yet expired, provided all other legal requirements are met. Clarifying these legal implications is imperative to ensure that judicial review does not merely yield a formal declaration. Instead, it provides certainty to law enforcement authorities and interested parties.[66]

The reconstruction of the pretrial review process should not be restricted to the mere addition of the statute of limitations to the list of matters subject to review, as these four elements suggest. Any such normative change must be accompanied by review standards and legal consequences that can be consistently enforced. Without sufficient regulation, introducing a new subject of review could create uncertainty about the limits of judicial authority, the relationship between substantive criminal law and criminal procedural law, and the pretrial process's place within the broader criminal justice system.[67] Additionally, any reconstruction of the pretrial process must recognize that preserving human rights and effective law enforcement are not necessarily mutually exclusive interests. In fact, the legitimacy of law enforcement can be enhanced by establishing distinct limits on prosecutorial authority, which ensures that criminal proceedings are conducted in accordance with relevant regulations. In contrast, an ambiguous review mechanism may create uncertainty for both the authorities exercising their authority and the individuals subject to criminal proceedings.[68]

Nevertheless, the existence of a review mechanism should not be interpreted as an automatic right to halt criminal proceedings whenever the statute of limitations is invoked. Any such objection must be evaluated in light of the relevant legal grounds, the timeline of events, and the provisions governing the application of time limits. This approach is essential to prevent the unlawful use of the review

[65] Jennifer E. Copp, 'Cash Bail and Pretrial Compliance: Evidence from a Court-imposed Policy Shock', *Criminology & Public Policy*, 24.4 (2025), 601–22 https://doi.org/10.1111/1745-9133.70002
[66] Johanna Lacoe, Alissa Skog, and Mia Bird, 'Bail Reform and Pretrial Release: Examining the Implementation of In Re Humphrey', *Criminology & Public Policy*, 24.1 (2025), 123–48 https://doi.org/10.1111/1745-9133.12688
[67] Lauren A. Morgan, Faraneh Shamserad, and Beth M. Huebner, 'Right to Counsel? A Mixed-methods Evaluation of the St. Louis County Initial Appearance Program', *Criminology & Public Policy*, 23.2 (2024), 431–57 https://doi.org/10.1111/1745-9133.12660
[68] Lattimore, Spohn, and Demichele.

mechanism and to ensure the effective exercise of a suspect's right to raise objections.[69]

In this context, the United States offers a comparative lesson in the importance of distinguishing the functions of different judicial oversight mechanisms and creating opportunities to examine specific legal issues before or during trial, in accordance with established rules.[70] Nevertheless, Indonesia's pretrial review process cannot be directly equated with mechanisms such as preliminary hearings, pretrial motions, and habeas corpus, as they have distinct foundations and functions. Consequently, this comparison matters not for replicating institutions, but for clarifying the appropriate standards, forums, and legal consequences for evaluating the legality of state action. As a result, a suitable reconstruction model for Indonesia would address the statute of limitations as a matter of prosecutorial authority, requiring examination through a mechanism with a clear legal foundation. The model should allow objections, set measurable standards for review, limit the scope to avoid encroaching on the merits, and clearly define the legal consequences of any ruling. This method can enhance the effectiveness of law enforcement and maintain legal certainty, while strengthening the role of pretrial as a tool for protecting human rights.[71]

Conclusion

This study establishes three principal findings. First, Indonesia's pretrial review mechanism provides an important judicial safeguard for examining the legality of actions undertaken by law enforcement authorities. Nevertheless, its existing framework does not adequately clarify the boundaries between formal legality and substantive legal assessment, particularly concerning whether the expiration of the statutory limitation period for prosecution may be examined as an issue affecting the legality of prosecutorial authority. Although the statute of limitations constitutes a substantive criminal law institution, its application has procedural implications for the lawful continuation of criminal proceedings. However, under the existing legal framework, such implications do not automatically establish jurisdiction for pretrial judicial review.

Second, the comparative analysis of the United States demonstrates that judicial protection of individual rights before trial may operate through multiple procedural mechanisms, including preliminary hearings, pretrial motions, and habeas corpus proceedings. These mechanisms enable judicial scrutiny of particular legal questions within clearly established jurisdictional boundaries, procedural requirements, and standards of review. Their significance lies not in

[69] Christopher Thomas and others, 'How Do the Consequences of Pretrial Detention on Guilty Pleas and Carceral Sentences Vary between Misdemeanor and Felony Cases?', *Journal of Criminal Justice*, 82 (2022), 102008 https://doi.org/10.1016/j.jcrimjus.2022.102008

[70] Claudia N. Anderson, Joshua C. Cochran, and Andrea N. Montes, 'How Punitive Is Pretrial? Measuring the Relative Pains of Pretrial Detention', *Punishment & Society*, 26.5 (2024), 790–812 https://doi.org/10.1177/14624745231218702

[71] Koppel and others.

providing a directly transferable institutional model, but in demonstrating the importance of clearly defined judicial oversight mechanisms for protecting individual rights against unlawful exercises of state authority. Third, this study proposes a human rights-oriented reconstruction of Indonesia's pretrial review mechanism by considering the inclusion of objections concerning the statute of limitations for prosecution within judicial oversight of prosecutorial legality. Such reconstruction requires explicit legislative authorization and must be grounded in the principles of legality, legal certainty, proportionality, effective judicial protection, and respect for the limits of judicial authority. The proposed framework should establish objective criteria for determining the expiration of prosecution periods, identify the competent judicial forum, regulate procedural requirements for submitting objections, distinguish preliminary judicial examination from adjudication on the merits, and determine the legal consequences of judicial decisions.

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