West Science Law and Human Rights
Vol. 3, No. 04, October 2025, pp. 470~483

Supervision of Law Enforcement Authority Through Pre-Trial in the 2025 Criminal Code

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Article Info

Article history:

Received Oct, 2025
Revised Oct, 2025
Accepted Oct, 2025

Keywords:

Supervision
Law Enforcement
Pretrial

ABSTRACT

This study aims to analyze whether the 2025 Criminal Procedure Code (KUHAP) has addressed the substantive weaknesses of pretrial proceedings, how law enforcement authorities are monitored through pretrial proceedings in the 2025 Criminal Procedure Code, and how pretrial proceedings differ from those in the 2025 Criminal Procedure Code (KUHAP) with Habeas Corpus in the UK and Rechter Commissioner in the Netherlands. This research is descriptive, using a statutory, conceptual, and comparative legal approach. It utilizes secondary data and is analyzed qualitatively. The results indicate that: 1) Substantially, the 2025 Criminal Procedure Code has attempted to address the weaknesses of pretrial proceedings, namely by expanding the scope and strengthening the pretrial mechanism, with the exception of the still unclear third party, the focus of the examination, and the procedural law used. 2) Supervision of law enforcement authorities through pretrial proceedings in the 2025 Criminal Procedure Code The scope of pretrial proceedings has expanded, with the addition of: suspect determination, searches, seizures, wiretapping, letter inspection, blocking, travel bans, unrelated seizures, case delays, and suspensions. Weaknesses include: a) Coercive measures authorized by the Chief Justice are excluded from pretrial proceedings. b) New pretrial proceedings have not been specifically regulated, and c) the examination of suspects/witnesses/victims is not included in pretrial proceedings. 3) Habeas Corpus only focuses on assessing the validity of a person's detention. The Rechter Commissioner focuses on broad oversight of investigators' actions prior to the investigation (pre-trial), while pretrial proceedings focus on a broad examination and are assessed after the action has been taken (post factum).

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1. INTRODUCTION

One feature of criminal procedure law that is closely related to human rights principles is the implementation of coercive measures by law enforcement. This is because coercive measures are essentially acts of violation or restriction of human rights that are justified/permissible for law enforcement purposes, such as searches and document inspections as violations of the right to privacy, confiscation as violations of the right to property ownership, and arrest and detention as violations of the right to liberty/personal freedom. Similar conditions are found in investigative techniques, such as entrapment, undercover buying, etc., which

often also come into conflict with human rights principles. Therefore, the implementation of all coercive measures and investigative techniques must always be guaranteed in accordance with the provisions of criminal procedure law and human rights principles so that these actions can be considered legitimate restrictions on human rights for law enforcement purposes. However, the practice of Indonesian criminal justice still shows the implementation of coercive measures and investigative techniques that are not in line with criminal procedure law and human rights principles.

Pretrial proceedings are expected to be a key resource for justice seekers to protect their rights from law enforcement officials who abuse their power. However, as they develop, pretrial proceedings still face weaknesses that ultimately harm justice seekers both formally and materially.

Pretrial proceedings are a legal mechanism used to challenge the legality of arrests, detentions, suspensions of investigations, or prosecutions by authorities. During this period, several high-profile cases have tested the limits and effectiveness of pretrial proceedings in the Indonesian legal system [1].

This pretrial motion can be considered an attempt to correct irregularities that occurred during the investigation and prosecution process. The pretrial motion provisions in the Criminal Procedure Code also serve as a requirement for officials involved in the investigation and prosecution process (primarily investigators and public prosecutors) to carry out their duties professionally and to uphold the rule of law [2].

The pretrial process in Indonesia is often criticized for not being fully based on principles of justice. One key issue is the lack of due process in pretrial proceedings. Many suspects feel their rights have been violated, such as arrests without sufficient evidence or detentions exceeding the statutory time limit. This reflects a lack of procedural fairness, which should ensure that any legal action against an individual is carried out fairly and based on clear law.

Furthermore, inconsistencies in pretrial decisions indicate that the system often fails to deliver the justice it envisions. Many cases show differing pretrial judges' decisions for similar cases, reflecting legal uncertainty and potential bias. For example, in some cases involving political figures or high-ranking officials, pretrial decisions tend to favor those with political power or influence. This creates the perception that the legal system is subject to manipulation and is not fully independent or politically influenced [2].

Numerous examples in criminal law enforcement practice demonstrate how easily law enforcement authorities are susceptible to abuse. In criminal law enforcement practice, pretrial mechanisms are often not implemented optimally and have caused numerous problems.

In carrying out their duties, law enforcement officials, particularly police, prosecutors, and judges, often engage in actions that violate laws and regulations. This is based on numerous cases of abuse of authority by law enforcement officials, such as cases of wrongful arrest and unlawful coercion by police investigators. For example, the torture incident in the narcotics case of Muhammad Arfandi Ardiansyah, May 16, 2022, who was declared dead during the investigation process and was found with many wounds all over his body [3]. Then in the case of Pegi Setiawan. To prove his innocence, Pegi Setiawan filed a pretrial motion against the West Java Regional Police's suspect status determination. On July 8, 2024, the Bandung District Court granted the motion. In its decision, the judge declared Pegi's suspect status invalid due to violations of legal procedures, including the absence of a prior summons and a lack of sufficient evidence. Judge Eman Sulaeman ordered the investigation to be halted and Pegi's reputation restored [4].

This is indicated by research conducted by the Institute for Criminal Justice Reform (ICJR) in 2010. Of 80 pretrial decisions, only two were granted, or approximately 3%. The remaining 68, or 85%, were rejected, nine,

or 11%, were dismissed, and one application was rejected [5].

Ideally, the oversight mechanism for law enforcement officers in a criminal justice process in Indonesia through pretrial is expected not only to be limited to law enforcement and human rights protection alone, but also as a means of limiting arbitrary power from law enforcement through a horizontal oversight system carried out by the community, as the philosophical will of the principle of equality before the law and government. The suboptimal use of the pretrial mechanism, one of which can be seen from the minimal use of this mechanism in a criminal process, even though pretrial is the right of all suspects/defendants when their civil liberties are deprived [6].

Luhut MP Pangaribuan stated that, although this concept is an adaptation of Habeas Corpus, judges in pretrial proceedings tend to be ineffective in supervising investigators or prosecutors, particularly in the use of coercive powers. This is due to the numerous gaps in regulations and difficulties in applying them to real-world situations [7].

The authority granted by the state to law enforcement officers has led to arbitrary actions by individuals, and their practices tend to be discretionary. This is due to the ineffectiveness of the pretrial system under the Criminal Procedure Code (KUHAP) as a system of checks and balances.

There have been many discussions on the theme or issue of pretrial, for example, the one reviewed by the Institute for Criminal Justice Reform which conducted a study on criminal law reform and the criminal justice system. In addition, there was a study conducted by: Tristam P. Moeliono and Widati Wulandari with the title of the principle of legality in criminal procedural law: criticism of the Constitutional Court's decision on pretrial [8]. This study analyzes the validity of the Constitutional Court's authority to amend criminal procedural law provisions by declaring several articles in the Criminal Procedure Code unconstitutional and further expanding the authority of judges in pretrial forums. Next, I Made Wisnu Wijaya Kusuma, I Made Sepud, and Ni Made Sukaryati Karma, entitled "Pretrial Legal Efforts in the Criminal Justice System in Indonesia [9]. This study analyzes the regulation of pretrial motions in the Indonesian criminal justice system and the validity of pretrial motions that have not yet been decided upon if the main matter of the case has been tried. Darwin, Dahlan, and Suhaimi then conducted a legal analysis of pretrial motions from the perspective of the criminal justice system [10]. This study analyzes the expansion of pretrial authority beyond the Criminal Procedure Code and the legal consequences of pretrial decisions from the perspective of the criminal justice system. Furthermore, Glendy J. Kaurow, entitled "Pretrial from a Human Rights Perspective According to the Criminal Procedure Code,"[1]This study analyzes the authority of the District Court regarding pretrial motions according to the Criminal Procedure Code and the protection of human rights according to the Criminal Procedure Code [11]. Furthermore, Sri Wulandari with the title of the study is about pretrial motions in criminal law [12]. This study analyzes the procedures for pretrial hearings and pretrial filings. Finally, Ramsen Marpaung and Tristam Pascal Moeliono's paper, "Comparative Law between the Principle of Habeas Corpus in the English Criminal Law System and Pretrial in the Indonesian Criminal Justice System," presents the paper [13]. This research focuses on examining the issue of the practice of using and/or misusing pre-trial legal institutions in comparison with the concept of Habeas Corpus from the British criminal justice system.

Looking at previous research, although they have a similar theme, namely the issue of pretrial, previous research only examined the regulations on pretrial authority and the procedures for its implementation in the criminal justice system in Indonesia based on the 1981 Criminal Procedure Code. While in this research, it will focus on examining the renewal of the pretrial concept in the 2025

Criminal Procedure Code, and whether the renewal of the pretrial concept guarantees legal protection for suspects, as well as a comparison of pretrial in 2025 with the concept of Habeas Corpus in England and Rechter Commissioner in the Netherlands. This is the distinguishing element and element of novelty of this research compared to previous research, so this research is worthy and very important to be done.

Referring to the background above, the problems that can be formulated in this study are: 1) Has the 2025 Criminal Procedure Code accommodated the weaknesses of the substance of pretrial? 2) How is the supervision of law enforcement authorities through pretrial in the 2025 Criminal Procedure Code? and 3) How is the difference between pretrial in the 2025 Criminal Procedure Code and Habeas Corpus in England and Rechter Commissioner in the Netherlands?

2. RESEARCH METHODS

This research is descriptive in nature with the approaches used to examine the research problems are: 1) Conceptual approach, which is an approach to tracing legal sources, 2) Statute approach, which is an approach that deduces legal norms contained in the Criminal Procedure Code and other laws and regulations that are related to pretrial, and 3) Comparative approach, which means that a review of the legal principles of the three criminal justice systems will be carried out, namely Pretrial, Habeas Corpus and Rechter Commissaris to look for similarities, differences, and intersections. The data used in this research is secondary data using primary legal materials, secondary legal materials, and tertiary legal materials. The data collection technique is carried out using literature studies, then analyzed qualitatively.

3. RESULTS AND DISCUSSION

3.1 Accommodation of Pre-Trial Weaknesses in the 2025 Criminal Procedure Code

In essence, the purpose of pretrial proceedings is to uphold the law and protect the human rights of suspects/defendants during the investigation and prosecution stages. However, in practice, pretrial proceedings focus solely on administrative requirements, thus preventing substantive justice from being realized. Substantive justice emphasizes fair and contextual outcomes. In its application, this justice often faces a dilemma between rigidly adhering to formal rules and adapting the rules to achieve more morally and socially just outcomes. There are several weaknesses of pretrial proceedings under the 1981 Criminal Procedure Code that can prevent substantive justice from being achieved [14]:

a. Pretrial motions are post-factum, meaning they can only be filed after coercive measures have been taken. This prevents pretrial judges from effectively supervising the investigators' authority from the outset.
b. The pretrial hearing process tends to focus on administrative aspects. Judges generally only evaluate the completeness of documents without examining the substance or material aspects of the case in depth [15].
c. A pretrial judge will only act upon a motion. Consequently, oversight of investigators' authority is limited, potentially undermining the primary objective of establishing a pretrial institution.
d. Once the main trial proceeds, the pretrial motion is deemed irrelevant or automatically dismissed. This practice risks depriving the suspect of the right to challenge the legality of the law enforcement's actions, thus casting doubt on the principle of justice.
e. Although pre-trial is part of criminal procedural law, its application often uses civil procedural law mechanisms, thus creating ambiguity in practice.
f. The short seven-day deadline for pretrial proceedings often fails to translate into effective case management. This situation is exacerbated by the absence of

investigators or prosecutors from court hearings.

g. The effectiveness of pretrial proceedings depends heavily on the involvement of legal counsel. However, there is no explicit obligation for legal representation, and many suspects lack sufficient legal knowledge. This often makes the pretrial process less effective.

In addition, there are also weaknesses in pre-trial, namely: the lack of clarity regarding interested third parties who can file a pre-trial (Article 80), the limited actions of investigators who are the object of pre-trial (Article 77), the validity of the examination of suspects/witnesses, wiretapping, suspension of detention or entrapment (covert purchases and handovers under supervision) cannot be tested, and it is still possible to take legal action to the High Court against the determination of the invalidity of the termination of investigation or prosecution (Article 83 paragraph 2). The existence of these legal efforts is contrary to and not in line with the principle of a fast pre-trial hearing.

Pre-trial proceedings were deliberately designed to test the validity of the actions of investigators and public prosecutors in criminal trials, but normatively, the weaknesses in pre-trial proceedings in the 1981 Criminal Procedure Code must be improved in order to achieve supervision of investigators' actions.and public prosecutors and the protection of suspects from arbitrary action.

Over time, the weaknesses in the pretrial provisions in the 1981 Criminal Procedure Code were annulled and revised through Constitutional Court decisions. The Constitutional Court decisions that refined the pretrial provisions in the 1981 Criminal Procedure Code are as follows:

a. Constitutional Court Decision Number 21/PUU-XII/2014 expands the object of pre-trial (Article 77 of the Criminal Procedure Code) to include the validity of suspect determination, searches and confiscations.
b. Constitutional Court Decision Number 102/PUU-XIII/2015 which states that Article 82 paragraph (1) letter d of Law Number 8 of 1981 concerning Criminal Procedure Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as the phrase "a case has begun to be examined" is not interpreted as "a pretrial motion is dropped when the main case has been transferred and the first trial has begun on the main case on behalf of the defendant/pretrial petitioner".
c. Constitutional Court Decision Number 65/PUU-IX/2011, states that Article 83 paragraph (2)Criminal Procedure Codeon the contrary to1945 Constitutionbecause it is considered discriminatory by giving investigators and public prosecutors the right to appeal against pretrial decisions, while suspects/applicants for pretrial do not have the same rights, so that the Article no longer has binding legal force, which means that pretrial decisions are now final and cannot be appealed. Article 83 paragraph (1) of the Criminal Procedure Code emphasizes that pretrial decisions cannot be appealed. In fact, through Constitutional Court Decision No. 65/PUU-IX/2011, the right to appeal for investigators and public prosecutors as stated in Article 83 paragraph (2) of the Criminal Procedure Code was abolished, because it was considered discriminatory. Thus, appeals were completely closed to all parties. Based on Article 45A of Law No. 5 of 2004 concerning the Supreme Court, it is expressly stated that pretrial decisions cannot be appealed. This means that the cassation route is also closed. Initially, through SEMA No. 4 of 2014, the Supreme Court opened the possibility of submitting a PK against pretrial decisions if there were indications of legal smuggling. However, interpretations of legal smuggling vary, resulting in

conflicting decisions and creating legal uncertainty. To end this debate, the Supreme Court issued PERMA No. 4 of 2016 concerning the Prohibition of Pretrial Review Decisions, which expressly states that pretrial decisions cannot be reviewed. Following the issuance of MK Decision No. 65/PUU-IX/2011, Article 45A of the Supreme Court Law, and PERMA No. 4 of 2016, all avenues of appeal, cassation, and PK are closed for pretrial decisions.

d. Constitutional Court Decision Number76/PUU-X/2012And98/PUU-X/2012 Expanding the definition of "interested third party" in Article 80 of the Criminal Procedure Code for pre-trial proceedings. This definition now includes witnesses, victims, informants, NGOs, or community organizations, allowing them to file lawsuits to halt investigations or prosecutions for the sake of justice and legal certainty.

Then, one of the updates to the Criminal Procedure Code in Law Number 20 of 2025 concerning the Criminal Procedure Code is the strengthening of the Pretrial mechanism contained in Articles 158-164 of the 2025 Criminal Procedure Code.

Article 158 states: The district court has the authority to examine and decide, in accordance with the provisions of this Law regarding:

a. whether or not the implementation of Coercive Measures is legal;
b. whether or not the termination of the investigation or termination of prosecution is valid;
c. request for Compensation and/or Rehabilitation for a person whose criminal case was stopped at the investigation or prosecution stage;
d. Confiscation of objects or goods that are not related to criminal acts;
e. delay in handling the case without a valid reason;
f. Suspension of detention.

Specifically regarding coercive measures, Article 89 determines the forms of coercive measures including:

a. Determination of Suspect;
b. Arrest;
c. Detention;
d. Search;
e. Foreclosure;
f. Tapping;
g. letter checking;
h. Blocking; and
i. Prohibition for suspects or defendants to leave Indonesian territory.

Then Article 159 determines (1) The authority of the district court as referred to in Article 158 is implemented by the Pre-Trial. (2) The Pre-Trial is led by a single judge appointed by the head of the district court and assisted by a clerk.

Article 160 stipulates: (1) A request for an examination regarding the legality or otherwise of the implementation of Coercive Measures as referred to in Article 158 letter a is submitted by the Suspect, the Suspect's Family, or his Advocate to the head of the district court, stating the reasons. (2) A request for an examination regarding the Confiscation of objects or goods as referred to in Article 158 letter d is submitted by a third party. (3) A request for an examination regarding the legality or otherwise of the implementation of Coercive Measures submitted by the Suspect, the Suspect's Family, or his Advocate as referred to in paragraph (l) may only be submitted 1 (one) time for the same matter. (4) A Pretrial Application as referred to in Article 158 letters a and c cannot be submitted if the Suspect has fled or is on the wanted list.

Article 161 stipulates: An application to examine the validity or otherwise of the termination of an investigation or the termination of a prosecution as referred to in Article 158 letter b may be submitted by the victim, the reporter, or their legal representative to the head of the district court by stating the reasons.

Then Article 162 regulates: Applications for Compensation and/or Rehabilitation due to the invalid termination of Investigation or termination of Prosecution

as referred to in Article 158 letter c are submitted by the Victim or reporter to the head of the district court by stating the reasons.

Specifically, the pretrial examination procedure is regulated in Article 163: (1) The pretrial examination procedure is determined as follows: a. within a period of 3 (three) days from the date the request is received, the appointed Judge shall determine the trial date; b. in examining and deciding on the application as referred to in Article 16O to Article 162, the Judge shall hear statements from the Suspect or his Advocate, the Suspect's Family, interested parties, Investigators, or Public Prosecutor; c. the examination as referred to in letter b shall be carried out quickly and within a maximum period of 7 (seven) days from the date the application is read, the Judge must have issued his decision; in the event that the respondent is not present for 2 (two) hearings, the pretrial examination shall continue and the respondent shall be deemed to have waived his rights; e. as long as the examination as referred to in letter c has not been completed, the examination of the main case in court cannot be held;

Meanwhile, regarding legal remedies against pretrial decisions, this is regulated in Article 164: (1) Pretrial decisions regarding applications as referred to in Articles 16O to 162 cannot be appealed. (2) The provisions as referred to in paragraph (1) are excluded from pretrial decisions that determine the invalidity of the termination of investigation or prosecution so that a final decision can be requested from the high court in the relevant jurisdiction.

Below are described and compared the weaknesses of pre-trial proceedings in the 1981 Criminal Procedure Code and the improvements to pre-trial proceedings in the 2025 Criminal Procedure Code.

Table 1
Weaknesses and Improvements in Pre-Trial

No	**Weaknesses of Pre-Trial in the 1981 Criminal Procedure Code**	**Improvements to Pretrial Procedures in the 2025 Criminal Procedure Code**
1	Actions are tested after the action is carried out	Article 160 and Article 161 stipulate that the examination is carried out by submitting a request regarding actions that have been carried out by the investigator or public prosecutor.
2	Examination is limited to administration	Not set
3	Inspection after application	Article 160 and Article 161 stipulate that the examination is carried out by submitting an application and stating the reasons.
4	The application will be dismissed if the case has begun to be examined by the District Court	163 paragraph 1 e states that if the pre-trial petition examination has not been completed, then the main case examination cannot be held
5	Examination using civil procedural law	Not set
6	Short inspection time limit (7 days)	Article 163 paragraph 1 c still emphasizes that the examination of a pretrial application takes a maximum of 7 days.
7	It is not regulated that applicants can be accompanied by a legal representative/advocate.	Can be accompanied by an advocate as regulated in Article 160 - Article 162
8	Unclear meaning of Third Party	Not set
9	Limited objects of pretrial	Article 158 adds 10 new pre-trial objects, namely: a)Confiscation of objects or goods that are not related to a criminal act, b). delay in handling a case without a valid reason, c). suspension of detention, d) determination of a suspect, e) search, f) confiscation, g).) letter checking, h) wiretapping, i) blocking, and j)) prohibition for suspects or defendants to leave Indonesian territory.

10	An appeal may be filed against the invalidity of the termination of an investigation or prosecution (Article 83 paragraph 2)	Article 164 paragraph (2) still regulates the possibility of an appeal against the invalidity of the termination of an investigation or prosecution. However, Constitutional Court Decision Number 65/PUU-IX/2011 stated that Article 83 paragraph 2 of the 1981 Criminal Procedure Code is in conflict with the 1945 Constitution because it only gives rights to investigators/public prosecutors (discrimination).

3.2 Supervision of Law Enforcement Authority through Pre-Trial in the 2025 Criminal Procedure Code

In Article 1 number 15 of the 2025 Criminal Procedure Code, it is explained that Pretrial is the authority of the district court to examine and decide on objections submitted by the suspect or the suspect's family, the victim or the victim's family, the reporter, or the advocate or legal aid provider who is authorized to represent the legal interests of the suspect or victim, regarding the actions of the Investigator in conducting the Investigation or the actions of the Public Prosecutor in conducting the Prosecution according to the methods regulated in this Law.

Not all actions by investigators and public prosecutors can be tested for legality in a pretrial hearing. Article 158 of the 2025 Criminal Procedure Code defines the objects of a pretrial motion in a limited manner, namely:a). the validity or otherwise of the implementation of Coercive Measures, b). the validity or otherwise of the termination of the Investigation or the termination of the Prosecution, c). the request for Compensation and/or Rehabilitation for a person whose criminal case was terminated at the Investigation or Prosecution stage, d). the confiscation of objects or goods that are not related to the crime, e). the postponement of the handling of the case without a valid reason and f). the suspension of detention. The actions of investigators and public prosecutors that are classified as coercive measures as regulated inArticle 1 number 14 and Article 89 of the 2025 Criminal Procedure Code are:a) determination of suspect, b) arrest, c) detention, d) search, e) confiscation,f) checking letters,g) wiretapping, h) blocking, andi) prohibition for suspects or defendants to leave Indonesian territory.

Regarding the object of this pretrial, the explanation of Article 158 letter a of the Criminal Procedure Code2025explains and limits that: Coercive measures that have received permission or approval from the head of the district court are not the object of a pre-trial. In the Criminal Procedure Code2025, firm coercive measures to determine the existence of permission/approval from the Head of the District Court are searches (Article 113 paragraph 1), confiscation (Article 119 paragraph 1), and blocking (Article 140 paragraph 2).

Specifically for wiretapping, the conditions and procedures are not regulated in the Criminal Procedure Code.2025Article 136 of the Criminal Procedure Code2025 onlydetermines that: (1) investigators may conduct wiretapping for investigative purposes (2) Provisions regarding wiretapping as referred to in paragraph (1) are regulated by the Law on Wiretapping.Considering that wiretapping violates the right to privacy, is only carried out by investigators/certain parties, and is only carried out in certain criminal acts, judicial supervision is very necessary, namely permission from the Head of the District Court so that there are Checks and Balances and it is not misused for political or non-legal purposes.

When compared to the 1981 Criminal Procedure Code, there are 10 pre-trial objects in the 2025 Criminal Procedure Code, namely a)Confiscation of objects or goods that are not related to a criminal act, b). Delay in handling a case without a valid reason, c). Suspension of detention, d) determination of a suspect, e) search, f) confiscation, g).) Letter inspection, h) wiretapping, i) blocking, and j)) prohibition

for suspects or defendants to leave Indonesian territory. However, before the Criminal Procedure Code2025, in practice the validity of searches, seizures and determination of suspects has been requested and even granted by pretrial judges, even though the 1981 Criminal Procedure Code does not regulate the validity of searches, seizures and determination of suspects as objects of pretrial. Until finally through the Constitutional Court Decision Number 21/PUU-XII/2014, added 3 objects of pretrial in Article 1 number 10 and Article 77 of the 1981 Criminal Procedure Code. Therefore, the object of pretrial is completely new in the Criminal Procedure Code2025 only 7, namely:a)Confiscation of objects or goods that are not related to a criminal act, b). delay in handling a case without a valid reason, c). suspension of detention, d).) letter checking, e) wiretapping, f) blocking, and g) prohibition for suspects or defendants to leave Indonesian territory.

Thus, the actions of investigators and public prosecutors whose validity can be tested in pre-trial hearings are 11 actions, namely: a) determining a suspect, b) arrest, c) detention, d) search, e)examination of letters, f) wiretapping g) prohibition of suspects or defendants from leaving Indonesian territory, h) the validity or otherwise of the termination of the investigation or the termination of the prosecution, i). Confiscation of objects or goods that are not related to the crime, j). Delay in handling the case without a valid reason and k). Suspension of detention.

Then dIn assessing the validity of the 11 actions of investigators and public prosecutors in the examination at the pretrial hearing, the sole judge will see to what extent the requirements for the validity of the 11 actions of investigators and public prosecutors are applied to the suspect and/or goods. Without any rules that determine the validity requirements for an investigator's and public prosecutor's actions, the pretrial judge cannot assess whether an investigator's and public prosecutor's actions are valid or not, according to procedure or not.

There are 10 actions of investigators and public prosecutors whose requirements and procedures are regulated in the New Criminal Procedure Code, namely: a) determining a suspect (Article 90-Article 92), b) arrest (Article 93-Article 98), c) detention (Article 99-Article 111), d) searches (Article 112-Article 117), e)letter checking(Article 137-Article 139), f) prohibition for suspects or defendants to leave Indonesian territory,g)whether or not the termination of the investigation (Article 24 paragraph 2) or the termination of the prosecution (Article 71 paragraph 2) is valid, h). Confiscation of objects or goods that are not related to the crime (Article 123), i). Postponement of case handling (Article 13 paragraph 1 and Article 23 paragraph 6) and k). Suspension of detention (Article 111).

The weaknesses related to the object of this pretrial are: a) The explanation of Article 158 excludes coercive measures that require permission from the Head of the District Court from being the object of pretrial. b) Several new objects of pretrial have not been regulated in detail, thus creating legal uncertainty in their testing, and c) The examination of suspects/witnesses/victims is not made the object of pretrial.

Regarding the examination of suspects, Law Number 20 of 2025 concerning the Criminal Procedure Code requires recording during examinations, namely using surveillance cameras (CCTV). Article 30 paragraph (1) of the 2025 Criminal Procedure Code stipulates that every examination of a person suspected of committing a crime must be recorded using a surveillance camera (Closed Circuit Television / CCTV) during the examination. This is intended to prevent torture, intimidation, and abuse of investigators' authority, as well as being supporting evidence for the suspect's defense at trial.

Then Article 30 paragraph (2) of the Criminal Procedure Code also states that CCTV recordings can be used for the purposes of investigation, prosecution, defense of suspects/defendants, and examination in court at the request of a judge if necessary. Further technical provisions regarding the control, use, and management of surveillance camera recordings will be regulated through

government regulations as stated in the provisions (Article 30 paragraph 3).

Article 31 of the Criminal Procedure Code also states that before an examination is conducted, investigators are required to inform the suspect of their right to legal assistance or assistance from an advocate. This reinforces the due process of law principle, in accordance with the principle of equal rights before the law.

Although the presence of CCTV recordings during the questioning of suspects is expected to minimize violence against suspects, according to the author, it still raises problems related to technical arrangements, control, access, and weak/potentially problematic data protection mechanisms.

First: Ownership and control of recordings rests with the investigator/official being investigated. Recordings are held by investigators, thus weakening the principle of checks and balances: the party producing the evidence also controls the archives—posing the risk of concealment, manipulation, or withholding access. Kontras highlighted this issue and recommended that they be managed by an independent party.

Practical implications / counter-arguments: while mandatory recording increases transparency, investigators' exclusive control over raw files makes it easier to alter/conceal if there is no robust hashing/chain-of-custody mechanism.

Second: Technical regulations (retention, access, integrity, encryption, forensic evidence) are not yet detailed. The 2025 Criminal Procedure Code (KUHAP) mentions mandatory recording but leaves many technical matters to implementing regulations (Government Regulations/Regulations). Until these regulations are issued, there are operational gaps: how long they should be retained, who can access them, how evidence is verified, and who is responsible for file integrity. Legal news sources report the mandatory recording but state that the technical details will be further developed. The risk is that without forensic standards, the authenticity of recordings could be questioned in court.

Third: Privacy and personal data protection, along with minimal safeguards, are in place. Recording of examinations violates the privacy rights of suspects, witnesses, and victims (e.g., witnesses to sexual violence, children, or persons with disabilities). The law does not yet regulate specific protections (limited editorial provisions on security or restrictions on the use of recordings for publication). The National Commission on Human Rights (Komnas HAM) and academics have long advocated for the installation of CCTV as a safeguard, but also emphasize the need for victim protection.

Fourth: Infrastructure availability & equal access (disparities between regions) The recording obligation requires adequate equipment & storage. In practice, police stations/examination rooms in remote areas may not be technically ready (costs, network, electricity, secure storage). Media reports indicate widespread implementation challenges. Consequence: Uneven implementation, resulting in inconsistencies in the protection of suspects' rights.

Fifth: Unclear access rights for defense attorneys/prosecutors/judges and objection procedures for unavailable recordings. While the article states that recordings can be used for defense purposes, it lacks sufficient detail regarding the technical rights of defense attorneys (original copies vs. transcripts, format, access fees), the timeframe for requests, and sanctions for investigators refusing to provide recordings. Practitioner criticism points to the need for a mechanism for requesting and sanctioning records.

Although the 2025 Criminal Procedure Code makes a step forward in requiring the recording of examinations, the main weaknesses are: control of recordings by investigators, minimal technical/forensic/retention arrangements, inadequate personal data protection, disparities in infrastructure, and unclear access/sanction procedures.

3.3 The difference between Pre-Trial in the 2025 Criminal Procedure Code with Habeas Corpus in England and Rechter Commissioner in the Netherlands

3.3.1 Habeas Corpus in England

Lexically or grammatically, the term Habeas Corpus means 'to take control of someone's self [16]. In short, this concept is a legal remedy to challenge the implementation of someone's detention. Its definition can be viewed from two perspectives. Materially, it means a legal action against someone's detention. Formally, it is manifested through a court order, known as a "great writ." This order serves as a means of monitoring and re-monitoring the legality of a person's detention [17]. The document is addressed to the agency currently detaining a person. A Habeas Corpus writ, also known as the Habeas Corpus Act, typically states that if a detainee is in the custody of an agency, that agency is obligated to bring the detainee before a court within 2 (two) days of their detention and provide legal evidence that led to their detention [18].

The introduction of pretrial motions in the Criminal Procedure Code on December 31, 1981, was inspired by the principles of Habeas Corpus in the Anglo-Saxon system, which provide fundamental guarantees for the protection of human rights. Adnan Buyung confirmed that pretrial motions adopted the concept of Habeas Corpus [19].

Comparing Habeas Corpus and pretrial in the criminal justice system means it is necessary to compare the concept and regulation of Habeas Corpus as a mechanism for monitoring the authority of law enforcement officers regarding arrest and detention in the British criminal justice system with the Indonesian criminal justice system in the form of pretrial.

The criminal justice system is a theory that deals with efforts to control crime through cooperation and coordination between institutions that are tasked with this by law [20].

The British criminal justice system includes law enforcement elements similar to those of other Anglo-Saxon countries, namely the police, the prosecution service, the courts, including juries, the legal profession, and correctional institutions [20].

Magistrates Courts (English Magistrates' Court) is the court of first instance for criminal cases. All criminal cases begin in this court and then the majority, namely around 90% (ninety percent) end up in Magistrates' Courts, and those tried and tried are:

1) Initial trial of a criminal offense;
2) Application for guarantee;
3) Issuance of summons and arrest/detention or search warrant;
4) Plea of guilt;
5) The initial process of crown court or sentencing (verdict) [20].

*Habeas Corpus*In essence, it is a control mechanism (supervision) of Magistrates Court judges regarding procedural matters in criminal law enforcement, especially regarding arrests and detentions carried out by the British police in the Integrated System of Policing [6].

According to Oemar Seno Adji, the testing mechanism for the legality of an arrest and detention is therefore an indruising of a person's rights and freedoms, so that testing by the court is very urgent to be carried out [3]. Although magistrates and pretrial judges have the same authority to determine the validity of coercive measures, such as arrest and detention, a clear difference between the two lies in the timing of the review. In pretrial proceedings, the review is conducted after all coercive measures have been taken, not at the start of the investigation. Consequently, this oversight mechanism is neither efficient nor effective in protecting citizens, particularly suspects, from potential abuse of authority by investigators and prosecutors [6].

There are 3 (three) differences in the application of pre-trial when compared with the concept of Habeas Corpus, namely:

1. The difference lies in the time of the test, in Habeas Corpus the test of the validity of the coercive efforts of arrest and detention is carried out from the beginning of the investigation as the direct

authority of the court judge against the authority of the investigator and prosecutor as an active role of the state to protect its people (the Magistrate judge supervises the performance of the police). To carry out an arrest and detention of someone, the investigator must have a warrant from the court, whereas in pretrial it turns out that the test is only carried out after all coercive efforts have been carried out with a warrant from the superior of the investigator or prosecutor himself. The test can also only be carried out if the suspect or his family files a pretrial application (objection);

2. The difference lies in the method of testing. Habeas Corpus's scope is much broader. The pretrial judge merely examines administrative procedures, such as the completeness of documents. This means that if all required administrative requirements are met, the coercive measure is considered valid by the court. Therefore, the testing is very superficial and does not address the substance.
3. The scope of the review differs. In Habeas Corpus, the Magistrate Judge's in-depth review is the legality of the arrest and detention by the police. The Magistrate's Court's oversight mechanism is implemented before any coercive arrest or detention is undertaken [6].

3.3.2 Rechter Commissaris in the Netherlands

The Netherlands implements a concept of oversight of its criminal justice system under the name of Commissioner Judge or Rechter Commissaris. This institution plays a crucial role in overseeing and acting as an executive. In carrying out its oversight function, the Rechter Commissaris has the authority to control all coercive measures taken by law enforcement officials (investigators and prosecutors) regarding the legality or illegality of their actions [21].

*Rechter Commissioner*to become an institution that represents the active role of judges with its function in supervising all forms of coercive measures (dwang middelen), confiscation, detention, house and body searches, and examination of documents [21].

In the Netherlands, the Rechter Commissioner is placed as an inseparable part of the criminal justice system. This means that the Rechter Commissioner himself is an integral part of the entire hierarchical supervisory system attached to the Justitie (Judge) over the Openbaar Ministrie (Prosecutor), and the Prosecutor over the Police. In more detail regarding this, it can be understood that the Police are supervised by the Prosecutor, and the Prosecutor himself is supervised by the Judge hierarchically depicting a unified, integrated and harmonious supervisory system. With the enactment of the Dutch position, the Rechter Commissioner. as a supervisor as well as to implement. Furthermore, the Rechter Commissioner. Not only plays the role of examining judge but can also act as investigating judge who can conduct examinations of suspects and witnesses [22].

This concept is better known as a preliminary judicial investigation. Although not all areas of investigation fall within the jurisdiction of the Rechter Commissioner (the police can still exercise investigative authority under the discretion of the Public Prosecutor), the role of the Rechter Commissioner remains fundamental to the criminal justice oversight system [23].

The role of the Rechter Commissioner as a supervisor of preliminary examinations in a series of criminal justice processes allows him to also carry out functions similar to executive power, such as summoning someone, both suspects and witnesses, conducting examinations and providing temporary detention for criminal suspects, and visiting the residences of suspects or witnesses if needed. The Rechter

Commissioner's overall authority in the realm of executive power is intended to emphasize that his position plays an active role in carrying out his responsibility to oversee all aspects of the initial examination process [24].

The significant authority of the Rechter Commissioner in the criminal justice process does not automatically interfere with the police's authority in carrying out their investigations and prosecutions. This includes the use of all forms of coercive measures for the benefit of the criminal case process, but remains limited by applicable laws and regulations [23].

If we compare the Rechter Commissioner (Netherlands) with pre-trial, the Rechter Commissioner focuses on monitoring the investigator's actions broadly before the investigation (Pre-trial), while the Pre-trial has a broad examination focus and is assessed after the action has been carried out (Post factum).

The presence of the Rechter Commissioner provides a new picture of how harmony exists between law enforcement institutions or agencies in carrying out their respective duties to be "on the track" with human rights guarantees.

4. CONCLUSION

1) Substantially, the 2025 Criminal Procedure Code has attempted to address the weaknesses of pretrial proceedings, namely the expansion of objects and strengthening of pretrial mechanisms, so that horizontal legal oversight of the actions of law enforcement officers becomes much stronger than before. However, there are still weaknesses in pretrial proceedings that have not been accommodated in the 2025 Criminal Procedure Code, namely: a) The definition of a third party is still unclear, b) the focus of the examination is only limited to formal/administrative requirements and c) the type of procedural law used.
2) Supervision of law enforcement authorities through pre-trial proceedings in the 2025 Criminal Procedure Code has been expanded.Article 158 of the 2025 Criminal Procedure Code determines the objects of pre-trial: a)determination of suspect, b) Arrest c) Detention, d) search, e) confiscation, f) Wiretapping, g) examination of letters, h)) blocking, i) prohibition of suspect/defendant from leaving Indonesian territory, j) termination of investigation, k) termination of prosecution, l) request for compensation and/or rehabilitation, m) Confiscation of objects or goods that are not related to the crime, n). Delay in handling cases without valid reasons, and o). Suspension of detention. The weaknesses are: a) Explanation of Article 158 excludes coercive measures that require permission from the Head of the District Court which are not objects of pretrial. b) Several new objects of pretrial have not been regulated in detail, thus creating legal uncertainty in their testing, and c) Not making the examination of suspects/witnesses/victims as objects of pretrial.
3) Regarding oversight of law enforcement authorities, Habeas Corpus (UK) focuses solely on assessing the validity of a person's detention and personal liberty. Rechter Commissaris (Netherlands) focuses on broad oversight of investigators' actions prior to the investigation (pre-trial), while pre-trial proceedings focus on a broad examination and are assessed after the action has been taken (post factum)

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