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The Urgency of Strengthening Pretrial Mechanisms in Controlling Coercive Measures within the Indonesian Criminal Justice System

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Abstract: This study is grounded in the growing concern over the limited effectiveness of pretrial mechanisms in supervising coercive measures exercised by law enforcement, which may lead to violations of individual rights and abuse of authority. The research aims to analyze normative weaknesses in the regulation of pretrial proceedings and to formulate a strengthened model of judicial control within the Indonesian criminal justice system. This study employs a normative legal research method using statutory, conceptual, and case approaches, with legal materials derived from primary sources such as the Criminal Procedure Code, relevant laws, and constitutional court decisions, as well as secondary legal literature, all examined through a normative and interpretative legal analysis. The results indicate that despite the expansion of pretrial objects through constitutional interpretation, significant gaps remain in evidentiary standards, judicial authority, and procedural safeguards. This research offers a novel framework by proposing a more substantive and procedural strengthening of pretrial mechanisms aligned with the principles of due process of law. It concludes that reinforcing pretrial institutions is essential to ensure legal accountability and the protection of fundamental rights within the criminal justice system.

Keyword: Pretrial, Coercive Measures, Criminal Justice System, Human Rights Protection.

INTRODUCTION

The Indonesian criminal justice system faces significant challenges in ensuring the protection of human rights, particularly in the implementation of coercive measures by law enforcement authorities. Practices such as arrest, detention, search, and seizure frequently generate controversy regarding their legality and accountability in practice. Within the framework of positive law, these measures are normatively regulated under Law Number 8 of 1981 concerning the Criminal Procedure Code, particularly Articles 16 to 46, with judicial control mechanisms provided through pretrial proceedings under Articles 77 to 83. However, the effectiveness of pretrial as a judicial oversight instrument remains questionable, especially in safeguarding individuals from arbitrary actions by law enforcement officials (Tangahu, 2025). This phenomenon indicates an urgent need to strengthen the role of pretrial mechanisms within the Indonesian criminal justice system (Siagian, 2023).

Empirically, various pretrial decisions reveal inconsistencies in the application of legal standards and the interpretation of judicial authority. This situation has been reinforced by the expansion of pretrial objects through Constitutional Court Decision Number 21/PUU-XII/2014, which includes the determination of suspects as subject to judicial review. Nevertheless, in practice, there remains inconsistency in the evaluation of evidence and the limits of pretrial judges' authority (Simamora et al., 2024). On the other hand, global developments emphasize the importance of judicial oversight in ensuring due process of law as part of the protection of fundamental individual rights (Abuseridze & Kikilashvili, 2025). Therefore, strengthening pretrial mechanisms is not only a national issue but also relevant within the framework of international legal standards.

Previous studies have examined pretrial mechanisms from various perspectives; however, significant research gaps remain. A study by Pane et al. (2025) indicates that pretrial proceedings have not been optimal in controlling coercive measures due to normative limitations within KUHAP. Another study by Foudray & Lowder (2026) highlights weaknesses in evidentiary standards in pretrial proceedings, resulting in disparities in judicial decisions. Furthermore, international research by Widyawati et al. (2025) confirms that pretrial review mechanisms in developing countries continue to face structural and normative challenges. Despite these contributions, there is still a lack of comprehensive research integrating normative analysis with the formulation of a strengthened pretrial model based on the principle of due process of law within the Indonesian context.

Further research by Alimkulov et al. (2023) indicates that pretrial proceedings tend to be formalistic and have not sufficiently addressed the substantive aspects of protecting suspects' rights. This reflects a gap between legal norms and their practical implementation. At the international level, Pane et al. (2025) also emphasizes the importance of strengthening pretrial mechanisms to prevent abuse of authority during the investigation stage. Therefore, a more comprehensive approach is required in examining pretrial mechanisms, not only from a normative perspective but also from the standpoint of human rights protection and legal accountability.

Based on the above discussion, a research gap can be identified in the absence of a systematic model for strengthening pretrial mechanisms capable of addressing both normative and practical weaknesses in controlling coercive measures. Most previous studies have focused primarily on descriptive analyses of regulatory shortcomings without offering applicable conceptual frameworks. In addition, the integration of the due process of law principle into pretrial mechanisms within the Indonesian legal system has not been sufficiently developed (Daswanto, 2024; Faisal, 2023). This condition opens opportunities for more innovative and solution-oriented research.

This study aims to critically analyze the weaknesses in the regulation of pretrial proceedings within Indonesian positive law and to formulate a strengthened model of pretrial mechanisms that are more effective in controlling coercive measures. Specifically, this research focuses on the relationship between pretrial authority, evidentiary standards, and the protection of suspects' rights within the criminal justice system. By employing a normative approach, this study is expected to provide a comprehensive analysis of the existing problems.

The contribution of this research is expected to be both theoretical and practical. Theoretically, it contributes to the development of criminal procedural law, particularly in strengthening pretrial mechanisms based on the principle of due process of law. Practically, the findings are expected to provide recommendations for policymakers in reforming criminal procedural law in Indonesia. Furthermore, this research may serve as a reference for law enforcement officials and academics in improving the quality of law enforcement that upholds justice and respects human rights.

METHOD

Research Design and Approach

This study employs a legal research design based on doctrinal legal research, focusing on the analysis of positive legal norms related to pretrial mechanisms within the Indonesian criminal justice system. The approaches applied include the statute approach, conceptual approach, and case approach. These approaches are selected because the research aims to examine normative gaps and formulate a systematic strengthening of pretrial mechanisms within the framework of due process of law. The normative method is considered appropriate for examining the structure of law and the underlying principles of the criminal justice system in depth (Sihombing & Nuraeni, 2023).

Research Object and Sampling Technique

The object of this study consists of legal regulations and court decisions related to pretrial proceedings and coercive measures in Indonesia. As this research is normative in nature, it does not involve population and sampling in a statistical sense; instead, it applies purposive sampling to select relevant and authoritative legal materials. The selected legal materials include primary, secondary, and tertiary legal sources that are directly related to the research issue. This approach enables the researcher to achieve an in-depth analysis of legal norms as well as evolving judicial practices (Zhao, 2024).

Primary Legal Materials

The primary legal materials used in this study include applicable legal regulations, namely: Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), particularly Articles 16–19 (arrest), Articles 20–31 (detention), Articles 32–37 (search), Articles 38–46 (seizure), and Articles 77–83 (pretrial); Law Number 48 of 2009 concerning Judicial Power; Law Number 39 of 1999 concerning Human Rights; and Law Number 49 of 2009 concerning General Courts. In addition, Constitutional Court Decision Number 21/PUU-XII/2014, which expands the scope of pretrial objects, as well as Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Judicial Review on Pretrial Decisions, are also utilized. The use of these regulations ensures that the analysis is conducted within a valid and current legal framework (Olukoya, 2022).

Secondary and Tertiary Legal Materials

Secondary legal materials consist of scientific literature such as textbooks, reputable national and international journal articles, and previous research findings relevant to pretrial mechanisms and human rights protection. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias used to clarify key concepts in the study. Data collection is conducted through library research by systematically identifying, reviewing, and analyzing relevant legal sources. This method is considered effective in normative research as it allows for a comprehensive exploration of legal norms and doctrines (Snyder, 2019; Xiao & Watson, 2022).

Research Procedure

The research procedure is carried out systematically through several stages. The first stage involves identifying and formulating research problems based on empirical phenomena and research gaps. The second stage consists of collecting legal materials through scientific databases, legislation, and court decisions. The third stage involves classifying and systematizing legal materials according to the research focus. The fourth stage involves the normative analysis of legal materials using methods of legal interpretation, including grammatical, systematic, and teleological interpretation. The final stage involves drawing

conclusions and formulating recommendations for strengthening pretrial mechanisms (Pane et al., 2025).

Data Analysis Technique

The data analysis technique employed in this study is normative legal analysis with a prescriptive approach, aimed at examining legal norms to identify weaknesses, inconsistencies, and legal gaps, as well as to formulate normative solutions. The analysis is conducted by systematically and logically interpreting laws and court decisions, and then comparing them with the principles of due process of law and human rights protection standards. To support the analysis process, the researcher utilizes reference management software such as Mendeley to organize literature sources and ensure citation consistency. This approach enables the research to produce applicable recommendations grounded in modern legal theory (Omirkhanovich, 2021).

RESULTS AND DISCUSSION

Normative Weaknesses of Pretrial Mechanisms in Controlling Coercive Measures

Pretrial mechanisms within the Indonesian legal system are normatively regulated under Law Number 8 of 1981 concerning the Criminal Procedure Code, particularly Articles 77–83, which grant courts the authority to review the legality of arrest, detention, termination of investigation, and prosecution. However, these provisions remain limited in addressing the complexity of modern coercive measures in practice. The absence of explicit regulation regarding evidentiary standards in pretrial proceedings allows judges broad interpretative discretion, resulting in inconsistent decisions. This condition reflects a gap between static legal norms and the dynamic realities of legal practice. These findings are consistent with previous studies indicating that pretrial mechanisms have not functioned optimally as judicial control instruments (Dobbie & Yang, 2021).

In the context of arrest and detention as regulated under Articles 16–19 KUHAP and Articles 20–31 KUHAP, there are no clear parameters regarding the principles of proportionality and necessity. In due process of law theory, any limitation of individual rights must satisfy legality, necessity, and proportionality requirements (Garat, 2025). The absence of such parameters leads pretrial judges to focus primarily on administrative and procedural aspects rather than substantive justice. Consequently, the function of pretrial review becomes narrowly confined. Previous research has also demonstrated that weak evidentiary standards contribute significantly to disparities in judicial decisions (Ribeiro, 2021; Pangaribuan, 2025). Therefore, pretrial mechanisms have not yet fully functioned as instruments for the protection of human rights.

The regulation of search and seizure under Articles 32–37 KUHAP and Articles 38–46 KUHAP reveals similar shortcomings. The lack of ex ante control mechanisms results in pretrial functioning only as an ex post review mechanism. This condition contradicts the principle of preventive justice, which is widely recognized in modern legal systems. In practice, many coercive measures are completed before they can be subjected to judicial review. As a result, legal protection becomes reactive rather than preventive. These findings reinforce previous analyses indicating that pretrial mechanisms remain ineffective in preventing rights violations (Tangahu, 2025).

The issuance of Constitutional Court Decision Number 21/PUU-XII/2014 has indeed expanded the scope of pretrial review, including the determination of suspects. However, this expansion has not been accompanied by procedural strengthening or clear standards of review. In practice, judges often differ in interpreting the legality of suspect designation. This demonstrates that expanding authority without strengthening procedural mechanisms may lead to legal uncertainty. Stark (2024) highlights that such inconsistency constitutes a major issue

in pretrial proceedings. Therefore, harmonization between normative reform and practical implementation is urgently required.

From a theoretical perspective, this condition indicates that pretrial mechanisms in Indonesia remain dominated by legal formalism, emphasizing procedural aspects over substantive justice. This contrasts with the human rights-based approach adopted in many contemporary legal systems. Internationally, pretrial mechanisms have evolved into comprehensive instruments for rights protection (Tran & Van Vu, 2026). This study finds that normative weaknesses constitute the primary cause of the ineffectiveness of pretrial mechanisms in controlling coercive measures. Accordingly, a more progressive and human rights-oriented normative reform is required.

Inconsistency of Judicial Decisions and Authority of Pretrial Judges

The findings of this study indicate significant inconsistency in pretrial decisions, particularly in interpreting judicial authority. Although Law Number 48 of 2009 concerning Judicial Power emphasizes judicial independence, such independence is not always accompanied by consistent legal reasoning. Variations in judicial interpretation result in legal uncertainty in pretrial proceedings. (Dobbie & Yang, 2021) notes that disparities in pretrial decisions have increased in recent years. This condition has negatively affected public trust in the judicial system.

In some cases, pretrial judges adopt a progressive approach by examining substantive aspects, such as the legality of suspect designation. In other cases, judges limit their review strictly to procedural formalities. This inconsistency demonstrates that the boundaries of judicial authority are not clearly defined within KUHAP. (Sikka & Khurana, 2024) identifies subjective judicial interpretation as a key factor contributing to decision disparities. Consequently, pretrial mechanisms fail to provide legal certainty. This situation contradicts the principle of predictability in modern legal systems.

The existence of Supreme Court Regulation Number 4 of 2016 concerning the Prohibition of Judicial Review on Pretrial Decisions, which declares pretrial decisions final, further exacerbates the impact of such inconsistencies. Without corrective mechanisms, erroneous decisions remain legally binding. This creates a tension between the principles of finality and substantive justice. The study finds that the finality of pretrial decisions is not supported by sufficiently rigorous legal reasoning. Therefore, stronger standards for judicial argumentation are necessary. This is essential to ensure the quality of judicial decisions.

From the perspective of adjudication theory, this inconsistency reflects weaknesses in judicial reasoning within pretrial decisions (Andriyani et al., 2026). This contrasts with practices in other jurisdictions where evidentiary standards and evaluation methodologies are more structured (Agapiou, 2025). Indonesia still faces challenges in achieving consistency in pretrial rulings. The findings suggest that inconsistency is not merely a technical issue but also a structural problem. Therefore, reform must be comprehensive. It should encompass regulatory, practical, and institutional aspects.

The novelty of this research lies in its emphasis on the need for standardizing judicial authority based on due process of law principles. Unlike previous studies that primarily identify problems, this research proposes systematic solutions through strengthening interpretative standards. This approach enables pretrial mechanisms to function more effectively as instruments of judicial control. The findings contribute significantly to the development of criminal procedural law in Indonesia. Furthermore, they provide a foundation for broader criminal justice reform.

Model for Strengthening Pretrial Mechanisms Based on Due Process of Law

Based on the normative analysis, this study proposes a model for strengthening pretrial mechanisms grounded in the principle of due process of law. The model emphasizes the balance between state authority and the protection of individual rights within the criminal justice process. Under Law Number 39 of 1999 concerning Human Rights, any restriction on individual liberty must be lawful, proportional, and accountable. Therefore, pretrial mechanisms must be positioned as primary instruments for safeguarding these rights. This approach aligns with the human rights-based approach in modern legal systems.

The strengthening of substantive authority involves explicitly expanding the scope of pretrial review within KUHAP, including the examination of proportionality and necessity in coercive measures. This ensures that law enforcement actions are not only formally lawful but also substantively just. Additionally, evidentiary standards must be clearly defined to reduce disparities in judicial decisions. This study proposes the adoption of the “sufficient preliminary evidence” standard. This approach differs from previous studies that focus solely on expanding pretrial objects (Quattrocolo, 2021; Daswanto, 2024). Consequently, this research offers a more comprehensive and systematic framework.

Furthermore, the model emphasizes the importance of strengthening procedural mechanisms, including granting ex ante authority to pretrial judges. This enables judges to review coercive measures before their execution. Such an approach aligns with the principle of preventive justice in modern legal systems. Research by (Matsiliza, 2024) indicates that weak oversight mechanisms are a major factor in rights violations. Therefore, procedural strengthening is crucial. It also enhances the effectiveness of pretrial mechanisms.

The model also integrates principles of transparency and accountability within pretrial proceedings. Transparency is essential for increasing public trust in the judicial system. Accountability ensures that law enforcement actions can be legally justified. In this context, pretrial mechanisms function not only as control instruments but also as mechanisms of legal legitimacy. The study demonstrates that this approach is more effective than purely formalistic approaches. This constitutes a significant practical contribution to legal reform.

Overall, the findings demonstrate that strengthening pretrial mechanisms is an urgent necessity within the Indonesian criminal justice system. Without comprehensive reform, pretrial mechanisms will continue to face limitations in controlling coercive measures. The model proposed in this study offers an integrative and theory-based solution. Therefore, this research contributes both theoretically and practically. Its implementation is expected to improve the quality of law enforcement and human rights protection in Indonesia.

CONCLUSION

This study confirms the urgency of strengthening pretrial mechanisms in controlling coercive measures within the Indonesian criminal justice system, as current regulatory frameworks remain insufficient to ensure effective judicial oversight. Although Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and subsequent legal developments, including Constitutional Court Decision Number 21/PUU-XII/2014, have expanded the scope of pretrial review, significant normative and procedural gaps persist. These gaps are particularly evident in the absence of clear evidentiary standards, inconsistent judicial interpretation, and the lack of preventive control mechanisms over coercive actions such as arrest, detention, search, and seizure. As a result, pretrial institutions have not fully functioned as effective safeguards against arbitrary actions and potential human rights violations.

The findings demonstrate that the weaknesses of pretrial mechanisms are not only rooted in limited regulatory design but also in the absence of standardized judicial reasoning and procedural safeguards. This condition leads to disparities in judicial decisions and undermines legal certainty, thereby reducing public trust in the justice system. In addressing these issues,

this study proposes a strengthened model of pretrial mechanisms based on the principles of due process of law, which emphasizes the integration of substantive justice, clear evidentiary standards, and enhanced judicial authority, including the introduction of ex ante control. This model represents a conceptual advancement beyond previous studies by offering a systematic and comprehensive framework that aligns legal norms with contemporary human rights standards.

In terms of scientific contribution, this research advances the development of criminal procedural law by providing a normative and prescriptive framework for reinforcing judicial control over coercive measures. It contributes to bridging the gap between formal legal structures and substantive justice by integrating human rights principles into pretrial mechanisms. Practically, the proposed model offers a foundation for legal reform and policy development aimed at enhancing accountability, consistency, and fairness within the criminal justice system. Therefore, strengthening pretrial institutions is not merely a legal necessity but a fundamental requirement for ensuring the protection of individual rights and the integrity of law enforcement in Indonesia.

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