ACCESS TO JUSTICE: AN EFFECTIVE PRETRIAL MODEL TO GUARANTEE THE RIGHT TO DEFENSE FOR SUSPECTS IN INDONESIA

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Abstract

This paper examines the ineffectiveness of the pretrial mechanism in Indonesia in guaranteeing the right of suspects to submit and request examination of exculpatory evidence during the investigation stage. Although the Criminal Procedure Code (CPC) provides a legal basis for this right, no rules guarantee that investigators will conduct such examinations, as evidenced by several cases in which investigators ignored such requests. This study is normative legal research, employing a statutory, conceptual, and comparative approach. It compares the Brady Rule in the United States, which requires prosecutors to disclose evidence favorable to the defendant, and the Dutch model of the '*rechter-commissaris*', which grants judges the authority to oversee investigative actions actively. The results of this study recommend expanding the authority of pretrial judges to order investigators to examine mitigating evidence based on requests from the suspect or their legal counsel. This reform is important to realize

the principles of fair trial, *favor defensionis*, and equality of arms, as well as to strengthen constitutional protection of human rights and the values of Pancasila. Preliminary hearings, as conceptualized here, can address the injustices that remain unresolved despite decades since the enactment of the CPC in 1981.

Keywords: Access to Justice; Pretrial; Fair Trial; Brady Rule; *Favor Defensionis*.

Introduction

In the criminal justice system, everyone is entitled to fair treatment when facing legal problems.[1] The pre-adjudication stage is critical in upholding the principle of a fair trial because the investigation conducted by investigators is not transparent like a court trial, which is open to the public.[2] At both the investigation and trial stages, a person suspected or accused of a crime has the right to defend themselves, which is one of the manifestations of the principle of fair trial.[3]

During the investigation stage, the suspect or their legal counsel may present exculpatory evidence.[4] Article 184(1) of Law No. 8 of 1981 on Criminal Procedure (CPC) stipulates that admissible evidence includes witness testimony, expert testimony, documents, evidence, and the defendant's testimony.[5] At the pre-adjudication stage, relevant evidence as mitigating evidence for the suspect includes witnesses, experts, and documents, and its development also includes electronic evidence as regulated in Law of the Republic of Indonesia Number 1

[1] Aleš Završnik, "Criminal Justice, Artificial Intelligence Systems, and Human Rights," *ERA Forum* 20, no. 4 (2020), https://doi.org/10.1007/s12027-020-00602-0.
[2] Erwin Susilo, *Surat Dakwaan, Keberatan/Eksepsi, Dan Bentuk Penyelesaian Hukumnya* (Bandung: Citra Aditya Bakti, 2020).
[3] Aleksandr Viktorovich Grinenko et al., "'Right To Defense Against Criminal Prosecution And Right To A Fair Trial In Short Inquiry," *Relacoes Internacionais No Mundo Atual* 3, no. 32 (2021).
[4] Erwin Susilo and Muhammad Rafi, "Pendekatan Favor Defensionis Dalam Merealisasikan Hak Terdakwa Untuk Menghadirkan Saksi Atau Ahli," *Veritas et Justitia* 10, no. 2 (2024): 343–63, https://doi.org/10.25123/vej.v10i2.8479.
[5] Eddy O.S. Hiariej, *Hukum Acara Pidana* (Tangerang Selatan: Universitas Terbuka, 2017).

of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions.[6] Article 7 of the CPC grants investigators the authority to examine and seize documents, summon people to be heard and examined as suspects or witnesses, and bring in experts as needed to investigate a case.[7] From this provision, it can be interpreted that investigators have the authority to examine evidence in the form of witnesses, documents, experts, and suspects. Additionally, investigators are obligated to summon mitigating witnesses from the suspect if requested, as stipulated in Article 116(4) of the CPC. In the 2025 Draft CPC, the obligation of investigators to summon and examine witnesses for the benefit of the suspect is contained in Article 36, which states that investigators are obliged to summon and examine witnesses who can benefit the suspect. The testimony of such witnesses shall be recorded in the investigation report.

Although there is a legal basis requiring investigators to summon and examine witnesses who may mitigate the suspect's case, violations of this provision still occur in practice. For example, in the case of suspect Budi, which has been ongoing since 2018, the investigative practices do not align with legal provisions, as the mitigating witnesses submitted were not summoned by the investigators, resulting in the case file remaining pending.[8] In a Constitutional Court hearing filed by M. Yasin Djamaludin, the applicant's witness Johannes Rettob revealed his experience as a suspect at the Mimika District Attorney's Office, where the request to present mitigating witnesses was not granted until the case file was transferred to the court.[9] Lawyer

[6] Eddy Daulatta Sembiring and Erwin Susilo, *Perkembangan Sistem Peradilan Pidana (Mengurai Dalam Konteks Global Dan Analisis Konsep Indonesia)* (Bandung: Citra Aditya Bakti, 2024).
[7] Riadi Asra Rahmad, *Hukum Acara Pidana* (Depok: Rajawali Pers, 2019).
[8] Redaksi Radar, "Saksi Meringankan Tak Kunjung Dipanggil, Berkas Tersangka Budi Belum Jelas! Yang Salah Siapa?," Radar Online, 2025, https://www.radaronline.id/2025/04/30/saksi-meringankan-tak-kunjung-dipanggil-berkas-tersangka-budi-belum-jelas-yang-salah-siapa/.
[9] Sri Pujianti, "Kisah Saksi Saat Jalani Proses Penyidikan," Mahkamah Konstitusi Republik Indonesia, 2023, https://www.mkri.id/index.php?page=web.Berita&id=19397.

Andanan Idris expressed his disappointment with the Lampung Regional Police for refusing to examine mitigating witnesses.[10]

Although the legal provisions governing the right of suspects to present mitigating evidence are adequate, the criminal justice system in Indonesia still lacks an effective mechanism to compel investigators to comply with such requests. In other words, when suspects submit a request to present mitigating evidence but investigators do not follow up on it, there are no explicit rules guaranteeing the fulfillment of this right in the investigation process.

This oversight of the power of investigators must be addressed immediately, especially considering that Indonesia is currently reforming its CPC. One important mechanism to address this issue is through judicial control, because without adequate oversight of the executive, particularly investigators, there is a high potential for the rules, procedures, and legal principles to be ignored.[11] The main hope for judicial control is realized through the pretrial institution.[12] Judicial control is important in the criminal justice system, as emphasized by Rachel E. Barkow, who argues that the system of checks and balances designed in the late 18th century is one way to prevent unlimited state power.[13]

The pretrial institution has the authority to oversee the investigative powers. Under Article 77 of the CPC, the authority of the pretrial institution includes reviewing the legality of arrest, detention, termination of investigation, or termination of prosecution, as well as granting compensation and/or rehabilitation to an individual whose criminal case is terminated at the investigation or prosecution stage.[14]

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[10] Dedy Apriadi, "Pengacara Andanan Idris SH Angkat Bicara: Polda Lampung Ogah Periksa Saksi Meringankan," Tintainformasi, 2025, https://tintainformasi.com/2025/04/pengacara-andanan-idris-sh-angkat-bicara-polda-lampung-ogah-periksa-saksi-meringankan/.

[11] Daniel Epps, "Checks and Balances in the Criminal Law," *Vanderbilt Law Review* 74, no. 1 (2021).

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

[13] Benjamin Levin, "De-Democratizing Criminal Law," *Criminal Justice Ethics* 39, no. 1 (2020), https://doi.org/10.1080/0731129x.2020.1736371.

[14] Erwin Susilo et al., "Pretrial Failures in Ensuring the Merit of Cases: Critical Analysis and Innovative Reconstruction," *Journal of Ecohumanism* 8, no. 4 (2024): 8602–12, https://doi.org/10.62754/joe.v3i8.5477.

The Constitutional Court later expanded this authority through Decision No. 21/PUU-XII/2014, which includes reviewing the legality of the designation of suspects, searches, and seizures.[15]

Although pretrial review is considered an important achievement in the CPC, this institution can only function when there is a request from a party who feels aggrieved, so it is post factum in nature.[16] Pretrial judges in this process are passive, meaning that they only examine cases when there is a pretrial request and cannot act on their own even if they are aware of procedural errors. The judge focuses on formal aspects, like administrative requirements, and they cannot assess the case's substance, even if officials acted unlawfully. Thus, the role of the pretrial judge is limited, and they only wait for a petition from the aggrieved party to initiate an examination.[17]

Several studies have examined pretrial institutions in Indonesia. Nurbaedah says pretrial examination covers both legality and case substance.[18] Elkristi Ferdinan Manuel and Mandira Bienna Elmir argue that expanding the scope of pretrial, triggered by corruption cases, have led to injustice because corruption suspects often use it as a tool.[19] Albertus Luter et al. found that after the Constitutional Court's decision, pretrial became a new legal phenomenon that caused a surge in pretrial requests.[20] Dinar Kripsiaji and Nur Basuki Minarno

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[15] Erwin Susilo, *Permasalahan Praperadilan, Ganti Rugi Dan/ Atau Rehabilitasi Ditinjau Dari Segi Teori, Norma Dan Paraktik* (Bandung: Alumni, 2020).

[16] Rocky Marbun and Iskandar Muda Sipayung, "Shift in Procedural Law for Examining Pretrial Applications," *KnE Social Sciences*, 2022, https://doi.org/10.18502/kss.v7i15.12092.

[17] Dwi Nurahman, . Maroni, and A. Irzal Fardiansyah, "Design of Pretrial Institution with the Concept of Preliminary Examining Judge in the Reform of Indonesian Criminal Procedure Law," *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024): 3932–38, https://doi.org/10.57239/pjlss-2024-22.2.00290.

[18] Nurbaedah Nurbaedah, "Juridical Study of Reforming the Criminal Procedural Law System Regarding Pretrial Institutions after Constitutional Court Decision in Indonesia," *Jurnal Akta* 9, no. 2 (June 28, 2022): 141, https://doi.org/10.30659/akta.v9i2.21530.

[19] Elkristi Ferdinan Manuel and Mandira Bienna Elmir, "Perluasan Praperadilan Sebagai Bentuk Due Process of Law: Perlindungan Hak Asasi Manusia Dan Keadilan Sosial," *PUSKAPSI Law Review* 2, no. 1 (2022), https://doi.org/10.19184/puskapsi.v2i1.31189.

[20] Albertus Luter, Ramlani Lina Sinaulan, and Mohamad Ismed, "Pretrial: The Suspects' Ultimate Weapon and Correction Tool for Investigators to Be More

compared the implementation of pretrial in Indonesia and the Netherlands.[21] Muhammad Ilham Samuda et al. examined the issue of false testimony in pretrial hearings related to corruption crimes, finding that regulations are not yet in line with the values of Pancasila justice and that there is a need to reconstruct the rules to address differences in perception between investigators and judges.[22] Finally, Zahri Kurniawan et al. emphasized the importance of applying the exclusionary rule so that pretrial judges can examine the material aspects of evidence.[23]

Based on the previous explanation, no regulations explicitly stipulate pretrial hearings as a place for suspects or their legal counsel to file complaints, especially when exculpatory evidence requested from investigators is not presented or examined, and this practice still occurs. In addition, this issue has not been examined in previous studies. Therefore, to achieve a more just criminal justice system, further research is needed by posing two main questions: (1) what is the essence of pretrial regulation in the Indonesian criminal justice system?, and (2) what kind of pretrial model is effective as a judicial control mechanism to ensure that the suspect's right to defense is optimally realized? This study aims to examine the nature of pretrial in the Indonesian criminal justice system from various perspectives, particularly within the framework of Pancasila as the national philosophy and the mandate of the constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945). Additionally, this study seeks to formulate a more effective pretrial model as a legal protection instrument for suspects, ensuring that the right to defense is fulfilled optimally.

Professional From the Perspective of Legal Expediency," *Policy, Law, Notary and Regulatory Issues (POLRI)* 1, no. 2 (2022), https://doi.org/10.55047/polri.v1i2.154.

[21] Dinar Kripsiaji and Nur Basuki Minarno, "Perluasan Kewenangan Dan Penegakan Hukum Praperadilan Di Indonesia Dan Belanda," *Al-Mazaahib: Jurnal Perbandingan Hukum* 10, no. 1 (2022), https://doi.org/10.14421/al-mazaahib.v10i1.2573.

[22] Muhammad Ilham Samuda et al., "Reconstruction of Regulation of Giving False Testimony at Pretrial Sessions in Corruption Cases in Indonesia Based on Pancasila Justice," *Scholars International Journal of Law, Crime and Justice* 06, no. 08 (2023), https://doi.org/10.36348/sijlcj.2023.v06i08.004.

[23] Zahri Kurniawan et al., "Exclusionary Rule Principle and Constitutional Rights Protection in Evidence Seeking," *International Journal of Advanced Research* 10, no. 04 (2022), https://doi.org/10.21474/ijar01/14623.

This study is a normative legal study that relies on a statutory approach, a conceptual approach, and a comparative law approach.[24] Through a statutory approach, this study analyzes the provisions of the CPC and related regulations on the protection of the rights of suspects during the investigation stage, particularly those related to pretrial mechanisms. The conceptual approach is used to examine principles such as *fair trial*, *equality of arms*, and *favor defensionis* as the basis for building a criminal justice system that guarantees a balance between the state and the individual. Meanwhile, a comparative law approach is employed by comparing the Dutch *rechter-commissaris* model and the American *Brady Rule* principle, which requires prosecutors to disclose evidence favorable to the defendant. This comparison aims to formulate a more effective and adaptive pretrial model as a judicial control mechanism to ensure the right to defense of suspects from the pre-adjudication stage.

The Nature of Pretrial Proceedings in the Indonesian Criminal Justice System

Access to justice can be understood as the ability and opportunity of individuals or groups to obtain legal protection and a fair and effective resolution of cases.[25] In a legal system, access to justice encompasses several vital aspects that must be fulfilled:[26]

1. The existence of clear rules that guarantee the rights and obligations of citizens and mechanisms for fair resolution of problems without discrimination.
2. The level of citizens' knowledge of their rights, obligations, and ways of resolving legal problems, including the availability of information and trust in relevant institutions.
3. The ease with which citizens can obtain the legal assistance they need, including access in remote areas and affordable costs.

[24] Zainuddin Ali, *Metode Penelitian Hukum, Jakarta*, *Sinar Grafika*, 2022.
[25] Jawad Ahmad and Georg Von Wangenheim, "Access to Justice: An Evaluation of the Informal Justice Systems," *Liberal Arts and Social Sciences International Journal (LASSIJ)* 5, no. 1 (2021), https://doi.org/10.47264/idea.lassij/5.1.16.
[26] Alan Gutterman, "What Is Access to Justice?," *SSRN Electronic Journal*, 2022, https://doi.org/10.2139/ssrn.4050575.

4. The existence of a judicial mechanism that is accessible, affordable, and quick in processing cases, considering factors such as cost, location, and security.
5. The process of resolving cases is conducted openly and impartially, where the public can present their cases correctly, and there are guarantees of institutional independence and clear decisions.
6. The ability of judicial institutions to enforce and ensure compliance with decisions, including sanctions for non-compliance.

In criminal cases, access to justice is crucial because individuals face the state. Therefore, institutions are needed to ensure that the rights of citizens are not neglected and can be optimally utilized. Everyone has the right to a fair trial. For example, in Europe, the right to a fair trial is regulated in Article 6 of the European Convention on Human Rights, which guarantees everyone the right to 'a fair and public hearing within a reasonable time by an independent and impartial tribunal.' The minimum rights of defendants in criminal cases are also regulated in detail, such as the right to be clearly informed of the charges, adequate time and facilities to prepare a defense, the right to be assisted by a legal advisor, and the right to an interpreter if necessary."[27]

In addition, the principle of fair trial is also contained in the International Covenant on Civil and Political Rights (ICCPR) Article 14, which affirms the equality of all before the courts and the right to a fair, open, and without undue delay trial. This article also comprehensively regulates the rights of defendants, from notification of charges to the right to defense, examination of witnesses, and protection against coercion to confess guilt. Specifically for children, judicial procedures must consider their age and the purpose of rehabilitation. The ICCPR also regulates the right to review decisions and compensation in case of a miscarriage of justice."[28] Indonesia has

[27] Ganna Sobko et al., "Problems And Conflicts Related To Measures To Ensure The Right To A Fair Trial In Accordance With The European Convention On Human Rights," *Janus.Net* 14, no. 2 (2023), https://doi.org/10.26619/1647-7251.14.2.14.

[28] David Weissbrodt, *The Right to a Fair Trial under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*, *The Right to a Fair Trial*

ratified the ICCPR through Law No. 12 of 2005,[29] so that these principles of fair trial are embedded in the national criminal justice system, they are universal and must be upheld consistently.

A set of rights in a fair trial aims to create a balance between the state and the individual. In this context, it is essential to uphold the principle of equality of arms in the criminal justice system, which requires equality between the state and the individual. The concept of equality of arms was first mentioned in 1968 in the case of Neumeister v. Austria. Then, in 1993, in the case of *Dombo Beheer v. the Netherlands*, the European Court of Human Rights stated that although this phrase is not written in the Convention, this principle of justice still requires 'equal opportunities' for both parties in a case. This means that each party must be given the same conditions to present their case, including evidence, without any party being significantly disadvantaged compared to the other.[30]

In criminal cases, where there is a natural imbalance between the prosecution and the defense, the principle of equality of arms is fundamental to ensure the trial is fair. This principle also applies, albeit at a lower level of jurisdiction. *Equality of arms* does not mean that both parties have exactly the same power, but rather that each party has an equal opportunity to file claims and obtain legal protection. No party should have greater rights in the judicial process than another. In criminal cases, this means that the defense must be on an equal footing with the prosecution.[31] In short, this concept is interpreted as the right of every person to have equal opportunities in legal proceedings, including the right to be heard, present evidence, examine witnesses, and obtain legal assistance if necessary.[32] In addition, the opportunities provided by the state through pretrial

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under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, 2021, https://doi.org/10.1163/9789004501911.

[29] Rohmad Adi Yulianto, "Integrasi Prinsip Non-Refoulement Dengan Prinsip Jus Cogens Pada Kebijakan Penanganan Pengungsi Di Indonesia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020), https://doi.org/10.30641/kebijakan.2020.v14.493-516.

[30] Fardin Y. Khalilov, "'Equality of Arms' in Criminal Procedure in the Context of the Right to a Fair Trial," *RUDN Journal of Law* 25, no. 3 (2021), https://doi.org/10.22363/2313-2337-2021-25-3-602-621.

[31] Khalilov.

[32] Laura Carlson, "Access to Justice," *Available at SSRN 4957539*, 2024, https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4957539.

mechanisms are not interpreted as partiality but as a form of equality so that suspects can maximally exercise their right to defense.

The opportunity to defend oneself is one of the most essential guarantees in the principle of a fair trial.[33] The presence of a pretrial institution in the Indonesian criminal justice system is essentially a manifestation of the right to defense for suspects. In this context, suspects are given space to fight against the actions taken against them. This understanding is in line with the inspiration for the establishment of pretrial in the principle of habeas corpus.[34] Habeas corpus is a legal principle that guarantees a person's right not to be detained arbitrarily without a valid legal basis. This principle serves as a protective mechanism for individual freedom by allowing detainees or third parties to apply to the court to review the legality of their detention and, if it is found to be unlawful, to have it declared null and void. Habeas corpus is one of the essential pillars in a legal system that upholds human rights and justice and ensures protection from unfair or arbitrary detention by the state.[35] Although inspired by *habeas corpus*, pretrial in Indonesia has a broader scope of authority. These provisions can be seen in Article 77 of the CPC in conjunction with Constitutional Court Decision No. 21/PUU-XII/2014, which covers:[36]

a. Assessment of the legality of arrest, detention, termination of investigation, or termination of prosecution, which was later expanded by the Constitutional Court to include the determination of suspects, searches, and seizures; and
b. Requests for compensation and/or rehabilitation for persons whose criminal cases were terminated at the investigation or prosecution stage.

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[33] Julia Palma, "Derecho a La Defensa En El Procedimiento Administrativo," *Revista Científica Cultura, Comunicación y Desarrollo* 6, no. 1 (2021).

[34] Erwin Susilo, "Rekonstruksi Praperadilan, Ganti Kerugian Dan/ Atau Rehabilitasi Sebagai Sarana Perlindungan Hukum Bagi Tersangka" (Program Studi Magister Ilmu Hukum Universitas Syiah Kuala, 2023).

[35] Micah Quigley, "What Is Habeas?," *U. Pa. L. Rev* 173 (2024): 453, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/pnlr173&section=13.

[36] Ricky Indra Gunawan, "Effectiveness of Pretrial Decisions on the Implementation of Confiscation and Its Legal Implications," *Ius Poenale* 1, no. 1 (2020), https://doi.org/10.25041/ip.v1i1.2068.

In essence, pretrial review is a legal institution that serves to supervise investigative actions and protect the fundamental rights and freedoms of humans and citizens. Supervision by judges, as stipulated in legislation, is necessary to ensure that the rights, freedoms, and interests of the parties involved in criminal proceedings are respected.[37] In this context, the function of judicial control is an essential mechanism for guaranteeing respect for human rights and individual freedoms, particularly at the stage of detention of suspects alleged to have committed criminal offenses. Through the role of pretrial review, this control is intended to ensure that every act of coercion is carried out lawfully, does not deviate from authority, and is in accordance with applicable legal principles.[38] Therefore, pretrial review is seen as the front line in ensuring that the investigation process does not violate the law or arbitrarily deprive individuals of their freedom. Thus, judicial control over investigative actions is understood as an instrument that limits the state's power over intrusive investigative practices and a mechanism for redress in the event of violations.[39]

In the Indonesian criminal justice system, the purpose of pretrial review largely depends on the constitutional mandate contained in the fourth paragraph of the Preamble to the 1945 Constitution, which states that the state is established to 'protect the entire Indonesian nation and all of Indonesia's blood."[40] In criminal law, this protection includes guarantees that law enforcement is carried out legally and fairly, including during the investigation stage. According to Article 1 paragraph (3) of the 1945 Constitution, 'The Indonesian state is a state based on the rule of law'; every action of the government, including law enforcement officials, must be subject to the principles of

[37] Vasyl Nastyuk et al., "Judicial Control over Investigative (Search) Actions That Require Prior Permission," *Revista Amazonia Investiga* 9, no. 28 (2020), https://doi.org/10.34069/ai/2020.28.04.18.

[38] Elizaveta Kuzmichova-Kyslenko et al., "Judicial Control over the Observance of Human Rights and Freedoms during the Detention of a Person," *Cuestiones Políticas* 39, no. 69 (2021), https://doi.org/10.46398/cuestpol.3969.40.

[39] Oleh Tarasenko et al., "Investigative Judge As A Subject to Criminal Procedure," *Journal of Legal, Ethical and Regulatory Issues* 23, no. 3 (2020).

[40] Abdul Azis, "Keabsahan Penetapan Tersangka Sebagai Objek Praperadilan Pada Tindak Pidana Korupsi," *Pamulang Law Review* 4, no. 2 (2022), https://doi.org/10.32493/palrev.v4i2.17741.

applicable law.[41] Pretrial proceedings are a form of Article 24 paragraph (1) of the 1945 Constitution, which states, "Judicial power is an independent power to administer justice in order to uphold law and justice."[42] Pretrial proceedings serve as judicial control over the actions of law enforcement officials at the pre-adjudication stage, such as arrest, detention, termination of investigation or prosecution, and seizure and search, as further regulated in the CPC. In this case, pretrial proceedings function as judicial control. As a result, Article 28D paragraph (1) of the 1945 Constitution guarantees that 'Every person shall have the right to recognition, guarantees, protection, and certainty of the law and equal treatment before the law."[43]

According to this explanation, pretrial proceedings constitute a form of procedural justice. As procedural justice, pretrial proceedings require an approach that emphasizes fair, impartial, dignified, and respectful treatment by law enforcement officials—including police, lawyers, and judges—towards individuals. In this context, when individuals feel they have been treated fairly in the legal process, they tend to be more accepting of the outcome and have greater trust in the judicial institutions.[44] Procedural justice does not stand alone but is intended to lead to the achievement of substantive justice that provides real protection for the constitutional rights of citizens.[45]

Therefore, pretrial proceedings, which are a form of procedural justice, aim to protect citizens from arbitrary investigations, thereby supporting the realization of substantive justice, which is in line with

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[41] La Niasa, St. Fatmawati L, and Amir Faisal, "Penerapan Restorative Justice Dalam Kerangka Ultimum Remidium Terhadap Penanganan Tindak PIdana," *Sultra Law Review* 4, no. April (2022).

[42] Maulana Hasanudin, "The Role of Judges in Dealing with Community Development," *Walisongo Law Review (Walrev)* 2, no. 2 (2020), https://doi.org/10.21580/walrev.2020.2.2.6597.

[43] Rocky Marbun, "Trikotomi Relasi Dalam Penetapan Tersangka: Menguji Frasa 'Pemeriksaan Calon Tersangka' Melalui Praperadilan," *Undang: Jurnal Hukum* 4, no. 1 (2021), https://doi.org/10.22437/ujh.4.1.159-190.

[44] Daniel K. Pryce and George Wilson, "Police Procedural Justice, Lawyer Procedural Justice, Judge Procedural Justice, and Satisfaction With the Criminal Justice System: Findings From a Neglected Region of the World," *Criminal Justice Policy Review* 31, no. 9 (2020), https://doi.org/10.1177/0887403419900230.

[45] Kate Vredenburgh, "Bureaucratic Discretion, Legitimacy, and Substantive Justice," *Critical Review of International Social and Political Philosophy* 26, no. 2 (2023), https://doi.org/10.1080/13698230.2022.2133829.

the values of Pancasila as the philosophical foundation of the Indonesian nation.[46] Pancasila in the Indonesian legal system is not only interpreted as an abstract norm but also institutionalized in writing in the Preamble to the 1945 Constitution, particularly in the fourth paragraph, which contains the values of 'Belief in One God, Just and Civilized Humanity, Unity of Indonesia, and Democracy guided by the wisdom of deliberation/representation, as well as the realization of social justice for all Indonesian people."[47]

Teguh Prasetyo then elaborated the essence of these Pancasila values through his theory of dignified justice, which emphasizes that justice is not only upheld through formal legal norms but must also integrate ethical and moral values that are alive in society.[48] In this approach, ethics is not positioned as subordinate to law but rather as equal and substantial in shaping and upholding human justice. This theory is based on Pancasila as the philosophical foundation and highest norm of the Indonesian nation, so that law is understood as a means of social engineering and dispute resolution and as a guardian of dignity, honor, and social order based on constitutional morality. Dignified justice is justice that makes the ethical dimension an integral part of legal practice, making law not merely an instrument of power but a reflection of the soul of a nation that upholds human dignity.[49]

In this perspective, law is no longer understood as mere formal rules but as a means to ensure that every legal action is rooted in divine and human values. Justice is considered dignified when law, certainty, and utility are exercised to protect the dignity of human beings as creatures of God Almighty. Therefore, dignified justice must be able to *nguwongke uwong*—humanize humans—that is, provide

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[46] Vivin Frindiyani, Akih Mohamad Naehu, and Rosidah Rosidah, "Filsafat Pancasila Sebagai Pedoman Hidup Bangsa Indonesia," *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, Dan Politik* 6, no. 1 (2023), https://doi.org/10.47080/propatria.v6i1.2504.

[47] Yasser Arafat, "Pemikiran Filosofis Pancasila Dalam Pengelolaan Sumber Daya Perikanan," *Borneo Law Review* 6, no. 1 (2022), https://doi.org/10.35334/bolrev.v6i1.2648.

[48] Teguh Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum* (Bandung: Nusamedia, 2019).

[49] Fradhana Putra Disantara, "Perspektif Keadilan Bermartabat Dalam Paradoks Etika Dan Hukum," *LITIGASI* 22, no. 2 (2021), https://doi.org/10.23969/litigasi.v22i2.4211.

protection for humans from oppressive powers and guarantee the existence of humans as valued subjects in the social order.[50]

Thus, in essence, pretrial proceedings in the Indonesian criminal justice system are procedural justice that carries a constitutional and philosophical mission to guarantee respect for the fundamental rights of citizens, prevent abuse of power, and realize substantive justice. In this regard, pretrial proceedings serve as a means of realizing fair trial and equality of arms with the noble values contained in Pancasila and the 1945 Constitution. The existence of pretrial proceedings also proves that the Indonesian state, based on the rule of law, also places human dignity at the center of every law enforcement process. Through the approach of dignified justice theory, pretrial proceedings are considered a judicial control mechanism that is not only legally valid but also morally valid. Law cannot be separated from the ethical and religious values that exist in society, because true justice is justice that can maintain the dignity of human beings as creations of God Almighty.

An Effective Pretrial Model to Guarantee the Right to Defense for Suspects in Indonesia

All subsystems must strictly adhere to fair trial standards in the criminal justice system. This situation reminds us of Blackstone's famous saying, 'It is better to let ten guilty men go free than to convict one innocent man."[51] Judicial errors in sentencing are the greatest failure in the administration of justice, because even though the principle of '*res judicata pro veritate habetur si bis de eadem re ne sit action'* states that a judge's decision is considered correct and binding, the process of overturning that decision takes a long time. As a result, someone who is actually innocent must languish behind bars, which is clearly a grave injustice.[52]

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[50] Teguh Prasetyo and Jeferson Kameo, "Tipologi Tindak Pidana Ekonomi Dalam Perspektif Keadilan Bermartabat," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 2 (2020), https://doi.org/10.30996/jhbbc.v3i2.3479.

[51] Ally Possi, "'It Is Better That Ten Guilty Persons Escape than That One Innocent Suffer': The African Court on Human and Peoples' Rights and Fair Trial Rights in Tanzania," *African Human Rights Yearbook / Annuaire Africain Des Droits de l'Homme* 1 (2022), https://doi.org/10.29053/2523-1367/2017/v1n1a15.

[52] Nabil Khabirpour, "The Principles of Effectiveness, Effective Judicial Protection and the Rule of Law," *European Human Rights Law Review* 2023, no. 5 (2023).

The criminal justice system must reflect material truth, i.e., the truth that occurred in the facts, not merely formal or normative. This is in accordance with the provisions of Article 183 of the CPC, which states that "a judge may not impose a criminal penalty unless, based on at least two valid pieces of evidence, he is convinced that the criminal act actually occurred and that the defendant is guilty of committing it."[53] Substantive truth simply refers to events that actually occurred, and the search for these facts must be conducted thoroughly through the criminal justice process, from the investigation stage to the trial.[54] The evidence gathered determines the defendant's fate; if the evidence does not meet legal standards, the defendant must be acquitted. Therefore, judges must assess proof very carefully and cautiously so that justice and truth can be achieved optimally.[55]

From the outset of the investigation process, investigators must understand that the main objective of criminal law is to find the material truth, not simply to win the case as in civil cases.[56] Although determining whether the defendant is guilty is the judge's domain, errors in the investigation process can significantly influence the judge's decision. Examples include errors in forensic investigations, such as laboratory testing errors, invalid or misleading expert testimony, and misuse or misinterpretation of forensic evidence. These factors often contribute to wrongful convictions.[57]

In the United States, which is known for its adversarial trial system, wrongful convictions are also inevitable. Over the past 30 years (1989–

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[53] Erwin Susilo and Dharma Setiawan Negara, "Enhancing Evidentiary Fairness in Indonesian Criminal Law: Adapting Brady v. Maryland Principles for Equitable Trials," *Kanun Jurnal Ilmu Hukum* 27, no. 1 (2025): 152–74, https://doi.org/https://doi.org/10.24815/kanun.v27i1.44351.

[54] Erwin Susilo and Muhammad Rafi, "Konstruksi Yuridis Pengaturan Bantuan Juru Bahasa Bagi Terdakwa," *Litigasi* 25, no. 2 (2024): 188–203, https://doi.org/dx.doi.org/10.23969/litigasi.v25i2.17359.

[55] Ariman Sitompul, "The Use of Forensic Physician Expertise In View of Health Law Against Murder Cases," *SASI* 29, no. 1 (2023), https://doi.org/10.47268/sasi.v29i1.1281.

[56] Yingying Qu and Sai On Cheung, "Logrolling 'Win-Win' Settlement in Construction Dispute Mediation," *Automation in Construction* 24 (2012), https://doi.org/10.1016/j.autcon.2012.02.010.

[57] Catherine L. Bonventre, "Wrongful Convictions and Forensic Science," *WIREs Forensic Science* 3, no. 4 (2021), https://doi.org/10.1002/wfs2.1406.

2019), 2,468 people have been exonerated, with a total of more than 21,000 years of prison time lost. Texas has the highest number of exonerations, with 363 cases, followed by Illinois (303), New York (281), California (205), and Michigan (99). The majority of those exonerated are men, with a high proportion of Black individuals, such as 47% in Texas and 74% in Illinois, indicating racial bias in wrongful convictions. The types of crimes most often leading to exonerations were murder, sexual offenses, and drug offenses. The main factors contributing to wrongful convictions included witness misidentification, false confessions, false accusations, false testimony, official misconduct, and faulty forensic evidence, with DNA playing a key role in about 25% of exonerations.[58]

Conditions in the United States reinforce the notion that miscarriages of justice can occur even when the judicial process is fair and transparent. However, if the process is unfair, the negative impact will be far greater and harm many parties. In Indonesia, the investigation process plays a crucial role in the criminal justice system, as it still relies heavily on recording statements from witnesses, experts, and suspects, as well as other investigative actions documented in the investigation report (BAP).[59] The BAP is an essential document because it forms the basis for the public prosecutor in preparing the indictment.[60] In addition, the BAP also plays a crucial role in court proceedings. Per Article 163 of the CPC, 'If the testimony of a witness in court differs from their statement in the report, the presiding judge shall remind the witness of the distinction and request an explanation of the differences, which shall be recorded in the trial report."[61] This provision indicates that the

[58] Neal Davis Law Firm, "Exonerations by State (Report): Statistics on Wrongful Convictions in the United States," 2025, https://www.nealdavislaw.com/criminal-defense-guides/exonerations-by-state-2019/.
[59] Arnaldo Vinerdi and Setiyono, "Pencabutan Keterangan Terdakwa Yang Termuat Dalam Berita Acara Pemeriksaan Tingkat Penyidikan Pada Proses Persidangan Di Pengadilan," *Reformasi Hukum Trisakti* 5, no. 4 (2023), https://doi.org/10.25105/refor.v5i4.18639.
[60] Erwin Susilo, *Surat Dakwaan, Keberatan/Eksepsi, Dan Bentuk Penyelesaian Hukumnya* (Bandung: PT Citra Aditya Bakti, 2020).
[61] Dyana Putri Saudila, "Legalitas Keterangan Saksi Verbalisan Dalam Kasus Persetubuhan Terhadap Anak Berdasarkan KUHAP (Putusan

description of the investigation results must at least be consistent with what happened in court. Suppose there are significant discrepancies between the BAP and the testimony in court, although the judge has the discretion to assess and decide. In that case, those variations may still cause confusion and potentially lead to errors in sentencing.

All evidence, whether incriminating or exculpatory, must be examined thoroughly in criminal proceedings.[62] Although suspects have the right to submit exculpatory evidence, they often require the assistance of investigators to present it. This is due to practical constraints, such as obtaining documentary evidence from a company that needs a seizure warrant from the head of the district court in accordance with Article 38 of the CPC.[63] If an exculpatory witness is willing to appear or the documentary evidence is already in the possession of the suspect or their legal counsel, the process of submitting and examining evidence becomes easier and can be taken into account in determining whether to continue or terminate the case.

To overcome these obstacles and improve legal protection for suspects, the principle of *favor defensionis* needs to be developed in the Indonesian criminal justice system. This principle serves as a basis for granting special rights to suspects or defendants and their defense counsel, as well as establishing obligations for the authorities to take procedural measures in the interests of the defense. The aim is to reduce the imbalance of rights between the parties in criminal proceedings.[64]

Nomor:165/Pid.Sus/2018/Pn.Kpg)," *SUPREMASI : Jurnal Hukum* 5, no. 2 (2023), https://doi.org/10.36441/supremasi.v5i2.1144.

[62] Amir Junaidi, *Hukum Acara Pidana Antara Teori Dan Praktek* (Universitas Islam Batik Surakarta, 2017).

[63] Erwin Susilo and Muhammad Rafi, "Implikasi Hukum Dari Barang Bukti Yang Tidak Dihadirkan: Analisis Konstruktif Dan Perspektif Inovatif," *KRTHA BHAYANGKARA* 18, no. 2 (2024): 448–64, https://doi.org/https://doi.org/10.31599/krtha.v18i2.2719.

[64] Olha V Malakhova, "Institute of Favor Defensionis According to the Code of Criminal Procedure of Ukraine 2012," *Odeca*, 2022, https://dspace.onua.edu.ua/bitstream/handle/11300/24980/Malakhova O. Institute of favor defensionis according to the Code....pdf?sequence=1.

The principle of equality of arms requires that the prosecution and the defense have equal legal capacity so that the trial is fair.[65] This principle does not make the state and individuals exactly equal but rather equalizes their opportunities and rights as much as possible. This can be achieved by imposing additional obligations on the stronger party (the state) and granting special rights or advantages to the weaker party (the defense). This is the essence of the principle of *favor defensionis*, which is a rule that grants special rights to the defense so that they can effectively counter the charges. [66] This principle strengthens the right to a more effective defense, such as the right to present exculpatory evidence.[67]

The principle of *favor defensionis* has developed quite rapidly in Europe. Meanwhile, in the common law system, we can take the example of the United States through the Brady Rule, which is a legal principle that requires prosecutors to disclose evidence that is favorable to the defendant and would materially affect the judge's decision to guarantee a fair trial and prevent miscarriages of justice.[68] Furthermore, Rachel Moran, in her research, found a constitutional obligation established by the United States Supreme Court in the *Brady v. Maryland* (1963) decision, which requires prosecutors to disclose to the defense any evidence that is mitigating or favorable to the defendant, i.e., evidence that is relevant to the determination of guilt or punishment.[69] This obligation was later expanded in *Giglio v. United States* to include evidence that could undermine the credibility of government witnesses, such as police officers (in Indonesia, arresting officers or verbal witnesses). In *Kyles v. Whitley*, the Court emphasized that prosecutors are not only responsible for evidence they know

[65] Khalilov, "'Equality of Arms' in Criminal Procedure in the Context of the Right to a Fair Trial."
[66] Dušica Miladinović-Stefanović and Saša Knežević, "The Elimination Of The Legal Deficiencies Of Final Judgments," *TEME*, 2024, https://doi.org/10.22190/teme231115061m.
[67] Oleksandr Drozdov and Iryna Basysta, "Examination of Evidence at the Initiative of the Court of Appeal in Criminal Proceedings," *Social and Legal Studies* 6, no. 1 (2023), https://doi.org/10.32518/sals1.2023.25.
[68] Prisha Mehta and Ryne Sandel, "Understanding the Significance & Complexity of the Brady Rule," *Journal of Student Research* 10, no. 3 (2021), https://doi.org/10.47611/jsrhs.v10i3.1595.
[69] Rachel Moran, "Brady Lists," *Minnesota Law Review*, 2023, https://doi.org/10.2139/ssrn.4054540.

about themselves but are also required to search for and disclose evidence known to other government officials involved in the case, including the police. Violating this obligation is considered a violation of due process, even if committed without malicious intent.[70] Thus, the *Brady Rule* establishes an active and affirmative duty for prosecutors to ensure that all evidence that mitigates or casts doubt on the credibility of witnesses, especially regarding violations by law enforcement officials, is disclosed to the defendant.

Although the principles of *favor defensionis* and the *Brady Rule* focus more on the trial process, both reinforce the argument that the state is not always required to present detrimental evidence to the defendant. Conversely, the state is also obligated to present mitigating evidence, whether it comes from investigators or prosecutors as state representatives. In addition, the Brady Rule emphasizes the importance of the state's obligation not to conceal mitigating evidence before a case is brought to court. Therefore, this principle needs to be developed in Indonesia by extending this obligation to the investigation stage to optimize the protection of the suspect's right to defense from the outset of the legal process.

After obtaining the basic concept, the next step is to identify an overview of the pretrial model that can be used as a principle for development in Indonesia. One example that can be taken is the model from the Netherlands, where the pretrial judge is referred to as a commissioner judge (*rechter-commissaris*),[71] also known as the examining judge.[72] This judge acts as a supervisory body over coercive measures, such as arrest, detention, and seizure. The *rechter-commissaris* is an institution that originated from the civil law system and has the authority to review the legality of coercive measures by law

[70] Deborah Won, "The Missing Algorithm: Safeguarding Brady against the Rise of Trade Secrecy in Policing," *Michigan Law Review* 120, no. 1 (2021), https://doi.org/10.36644/mlr.120.3.missing.

[71] Joske Graat, "The Role of the National Investigating Judge in EPPO Proceedings," Working Paper Series No. 03/22, 2022, https://jmn-eulen.nl/wp-content/uploads/sites/575/2022/05/WP-Series-No.-03-22-The-role-of-the-national-investigating-judge-in-EPPO-proceedings-J.-Graat.pdf.

[72] Joep Lindeman, Pauline Jacobs, and Miranda Boone, "Pretrial Detention in the Netherlands: Absolutely Low, Relatively High," in *European Perspectives on Pretrial Detention: A Means of Last Resort?*, 2023, https://doi.org/10.4324/9781003159254-8.

enforcement officials, whose function is similar to that of the pretrial court in Indonesia.[73]

However, the authority of the *rechter-commissaris* in the Netherlands is much broader than that of the pretrial judge in Indonesia. The *rechter-commissaris* not only conducts administrative reviews of the legality of arrests, detentions, the termination of investigations or prosecutions, and the designation of suspects, as in Indonesia, but also conducts a substantive preliminary examination of the case. They have the authority to examine defendants and witnesses, grant or deny coercive measures such as detention, search, and seizure, and provide opinions to prosecutors on whether a case should proceed to court or be resolved through alternative mechanisms such as compensation.[74] In the Dutch criminal justice system, the examining judge plays a vital role in overseeing the legality and progress of investigations led by public prosecutors. They grant permission for intrusive investigative measures such as wiretapping, house searches, and extension of detention during the investigation stage. These judges also have the authority to examine witnesses at the prosecutor's request. Still, they do not decide cases in the main trial because they are not trial judges but instead investigating judges who guarantee the validity of the pretrial process independently of the prosecution.[75] The following are the comprehensive powers of the *Rechter-Commissaris* in the Netherlands based on the *Wetboek van Strafvordering* (Dutch Code of Criminal Procedure), specifically Articles 170–183:

1. Conducting judicial investigations (*gerechtelijk vooronderzoek*)
   Pursuant to Articles 170(1) and 180, the judge commissioner may initiate an investigation at the request of the public prosecutor (*officier van justitie*) or if assigned by the court. This

[73] F. S. Siagian, "Juridical Analysis for the Rights of Interested Third Parties in Filing Pretrial Applications in the Indonesian Criminal Justice System," *Legal Brief* 12, no. 2 (2023): 231–40, https://doi.org/10.35335/legal.Juridical.

[74] H. Sunarso et al., "Reconstruction of the Pretrial Decision on the Delegation and the Main Trial Process in Indonesia Based on Justice Value," *Scholars International Journal of Law, Crime and Justice* 3, no. 12 (2020), https://doi.org/10.36348/sijlcj.2020.v03i12.005.

[75] Neal R Dekker, Mariska Feigenson, "Visual Presentations in Dutch Police Interrogations: An Analysis and Lessons for the United States," *Ariz. J. Int'l \& Comp. L* 37, no. 2 (2020): 169–216, http://arizonajournal.org/wp-content/uploads/2020/04/Dekker-Feigenson-Visual-Presentations.pdf.

investigation aims to gather in-depth facts and evidence before the case proceeds to the next stage.

2. Hearing and examining witnesses (*getuigenverhoor*)
   Pursuant to Article 181, the investigating judge has the authority to summon and examine witnesses and suspects with full authority, including asking investigative questions to obtain objective and complete information.
3. Authorizing and supervising coercive measures (*dwangmiddelen*)
   The examining judge has the authority to authorize and supervise coercive measures such as provisional detention (*voorlopige hechtenis*), search (*huiszoeking*), seizure (*inbeslagneming*), and telephone tapping (*telefoon tappen*). This is regulated in Articles 59a-59c, Articles 96a-104, and Articles 126m-126n.
4. Resolving disputes between suspects and prosecutors regarding the investigation process
   Pursuant to Articles 32-34 and 187d, if a suspect files an objection regarding access to files or actions taken by the public prosecutor, the supervisory judge may issue a decision to resolve the dispute.
5. Supervising the legality and proportionality of actions taken by investigators and prosecutors
   Per Articles 170 and 174(1), the supervising judge acts as an independent supervisor to ensure that the entire investigation process is conducted fairly and does not violate the suspect's human rights.
6. Issuing special permits for specific investigative techniques
   The supervisory judge may grant permission for special investigative measures such as *heimelijke observatie* (covert surveillance) and wiretapping, as provided in Articles 126g, 126m, and 126t.
7. Issuing orders for expert examinations (*deskundigenonderzoek*)
   Per Articles 150 and 195-198, the investigating judge may appoint experts to conduct medical, psychiatric, or technical examinations as part of the investigation process.
8. Closing the investigation and submitting a report to the court
   After the investigation is completed, per Article 182(4), the investigating judge concludes the examination and submits the case file to the prosecutor for prosecution.

Although ideally, the reform of the pretrial institution in Indonesia should be directed towards the *rechter-commissaris* model as in the Dutch legal system, the realization of this idea requires comprehensive reform of the criminal procedure law, both in terms of institutional structure, distribution of authority, and strengthening of judicial control in the investigation stage. Therefore, in the short term, a more reasonable approach is to expand the scope of authority in existing pretrial institutions. One concrete form of this expansion is to grant pretrial judges the authority to order investigators to examine mitigating evidence submitted by the suspect or their legal counsel if the investigators ignore such requests.

The application mechanism follows the pretrial procedures outlined in Article 78 of the CPC, specifically requiring submission to the district court and examination by a single judge with the assistance of a court clerk.[76] [77] Then, based on Article 82 paragraph (1) letter c of the CPC, the judge must issue a decision within seven days from the start of the trial.[78]

The legal implications of the pretrial ruling are detailed in Article 82(3) of the CPC, such as an order to release the suspect if the arrest or detention is deemed unlawful, an order to continue the investigation or prosecution if the termination is unlawful, the inclusion of rehabilitation or compensation, and an order to return seized items not related to evidence.[79] In addition, in practice, if the pretrial decision declares that the designation of a suspect is unlawful, then the designation must be annulled by law.[80]

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[76] D. Y. Witanto, *Hukum Acara Praperadilan Dalam Teori Dan Praktik: Mengurai Konflik Norma Dan Kekeliruan Dalam Praktik Penanganan Perkara Praperadilan* (Depok: Imaji Cipta Karya, 2019).

[77] M. Yahya Harahap, *Pembahasan, Permasalahan Dan Penerapan KUHAP; Penyidikan Dan Penuntutan*, *Sinar Grafika* (Sinar Grafika, 2016).

[78] Nova Ariati, "Kebijakan Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Dalam Hukum Positif Di Indonesia," *Jurnal Panji Keadilan : Jurnal Ilmiah Nasional Mahasiswa Hukum* 2, no. 2 (2020), https://doi.org/10.36085/jpk.v2i2.1177.

[79] Lukman Ilman Nurhakim and Efa Laela Fakhriah, "Hak Kurator Untuk Mengajukan Praperadilan Terhadap Boedel Kepailitan Yang Diletakkan Sita Pidana," *Kertha Patrika* 42, no. 3 (2020), https://doi.org/10.24843/kp.2020.v42.i03.p06.

[80] Hernawan Satrio Nugroho, "Kewenangan Lembaga Pengadilan Dalam Menetapkan Sah Atau Tidaknya Status Tersangka Kasus Korupsi Di Sidang Praperadilan," *Verstek* 8, no. 1 (2020), https://doi.org/10.20961/jv.v8i1.39622.

In relation to the concept proposed in this study, two suggestions need to be seriously considered in revising the CPC to strengthen the judicial control function of pretrial proceedings over investigative actions. First, the scope of pretrial proceedings should be expanded by adding a provision to Article 77 of the CPC with the following wording:

> "In the event that the investigator ignores the request of the suspect or legal counsel to examine evidence that is mitigating through the investigation mechanism, the suspect or legal counsel has the right to submit a request to the pretrial judge in the jurisdiction where the investigation is being conducted so that the investigator carries out the action mentioned above."

This formulation provides a legal basis for the suspect or legal counsel to proactively ensure that the investigative process is conducted objectively, not solely focused on incriminating evidence, but also accommodating the suspect's right to evidence that is favorable to their position. This step also expands the role of the pretrial judge in overseeing the investigation.

Second, to strengthen the effectiveness of this norm, a provision regarding the legal consequences of the pretrial ruling should be added to Article 82(3) of the CPC with the following wording:

> "If the pretrial ruling states that the investigator unlawfully failed to examine evidence that is mitigating, the judge shall order the investigator to examine such evidence immediately."

The element of 'order' in pretrial decisions is crucial because only *condemnatory* decisions—i.e., those containing concrete orders—can be effectively enforced.[81] Through this normative formulation, it is hoped that the Indonesian criminal justice system can be transformed into a system that is adaptive and responsive to the protection of the rights of suspects, particularly in the context of strengthening judicial control as part of the principle of *checks and balances*.[82] The presence of judicial

[81] Muhammad Ali, Ardilafiza Ardilafiza, and Jonny Simamora, "Benchmark For Determination Of Forced Money In Execution Of State Administrative Court Judgment," *Bengkoelen Justice : Jurnal Ilmu Hukum* 10, no. 1 (2020), https://doi.org/10.33369/j_bengkoelenjust.v10i1.11353.

[82] Adam Ilyas and Dicky Eko Prasetio, "Problematika Peraturan Mahkamah Konstitusi Dan Implikasinya," *Jurnal Konstitusi* 19, no. 4 (2022), https://doi.org/10.31078/jk1943.

control at the pre-adjudication stage guarantees the accountability of investigations and plays a vital role in ensuring fair access to justice.

As stated in the literature, the concept of *access to justice* encompasses the conditions and mechanisms that enable the state to guarantee the fulfilment of the fundamental rights of citizens based on universal human rights principles and the constitution's mandate.[83] By strengthening this access, the criminal justice system will better protect individuals from potential abuse of authority by law enforcement officials. The implementation of such judicial control is also a manifestation of the principle of equality before the law as emphasized in Article 27, paragraph (1) of the 1945 Constitution, which states that 'all citizens shall be equal before the law and government and shall be required to uphold the law and government without exception."[84] By providing adequate space for suspects to access substantive justice, the criminal justice system not only upholds the law procedurally but also affirms human values, as expressed by Teguh Prasetyo,[85] regarding the importance of a legal system that humanizes humans.

Conclusion

The existence of pretrial proceedings in the Indonesian criminal justice system is an essential instrument in ensuring procedural justice, particularly in monitoring the actions of investigators to ensure they do not conflict with the law, human rights, and the principles of a fair trial. However, in practice, the authority of pretrial proceedings is currently limited to formalistic reviews, is passive in nature, and cannot provide optimal protection for the defendant's right to defense, especially when investigators disregard requests to examine

[83] Nurani Ajeng Tri Utami et al., "Evaluation of Legal Aid Service Quality and Supervision in Indonesia and Malaysia," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (2025): 187–216, https://doi.org/10.53955/jhcls.v5i1.502.

[84] Nadya Thamariska, Suzanalisa Suzanalisa, and Sarbaini Sarbaini, "Penerapan Asas Persamaan Dihadapan Hukum (Equality Before The Law) Terhadap Pelaku Tindak Pidana Umum Suku Anak Dalam (SAD) Di Wilayah Hukum Polres Sarolangun," *Legalitas: Jurnal Hukum* 15, no. 1 (2023), https://doi.org/10.33087/legalitas.v15i1.438.

[85] Jeferson Kameo and Teguh Prasetyo, "Hakikat Hukum Ekonomi (Internasional) Dalam Perspektif Teori Keadilan Bermartabat," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020), https://doi.org/10.20885/iustum.vol27.iss2.art5.

evidence that could mitigate the charges. Therefore, it is necessary to expand the scope of pretrial review and grant new powers to judges to order the examination of mitigating evidence so that investigations can proceed in a fairer and balanced manner. This expansion reflects the application of the principle of *favor defensionis*, which grants special rights to the defense and affirms the importance of *equality of arms* between the state as the prosecutor and the individual as the suspect. Learning from the practices of other countries, the Brady Rule in the United States shows that the state is obliged to present incriminating evidence and has a constitutional responsibility to provide access to exculpatory evidence, including that held by other agencies. Similarly, in the Dutch legal system, the role of the *rechter-commissaris* illustrates a substantive and active form of judicial oversight of the investigation process. By expanding the authority of pretrial proceedings in this direction, Indonesia's criminal justice system can uphold human dignity as desired by Pancasila and the constitution. Therefore, it is urgent to strengthen pretrial institutions by reforming the CPC to build a criminal justice system that protects citizens' rights and freedoms from potential state abuse of power.

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