



Pretrial After the Enactment of Law Number 20 of 2025 on Criminal Procedure Code (KUHP)

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ABSTRACT

The enactment of Law Number 20 of 2025 concerning the Indonesian Code of Criminal Procedure (KUHP) brings fundamental changes to the institution of pretrial examination (praperadilan), which was previously regulated in a limited manner under Law Number 8 of 1981 and had long been criticized as a weak, formal-administrative mechanism for protecting human rights. This study aims, first, to analyze the regulation and expansion of the scope of praperadilan under the new KUHP compared to the old one; and second, to examine the juridical implications of this institutional transformation for the protection of the constitutional rights of suspects, defendants, victims, and other interested parties within the integrated criminal justice system. This research employs a normative juridical method with a statutory and conceptual approach, examining primary legal materials in the form of both laws together with relevant secondary legal materials from prior studies. The findings indicate that the new KUHP expands the object of praperadilan from three to six categories, broadens the scope of eligible applicants to include victims and reporters, and strengthens remedial mechanisms through the exclusionary rule principle. Nevertheless, this expansion also raises risks of abuse of rights through tactical delay as well as institutional implementation challenges that demand stronger implementing regulations, improved capacity of law enforcement officers, and consistent application of due process of law to ensure that the judicial control function of praperadilan operates effectively and fairly.

INTRODUCTION

The Indonesian criminal justice system has entered a new phase since the enactment of Law No. 20 of 2025 on the Code of Criminal Procedure (KUHAP) on December 17, 2025 and became effective as of January 2, 2026, replacing Law No. 8 of 1981 which has been used for more than four decades. The presence of the new code of Criminal Procedure is a logical consequence of the need to harmonize the code of Criminal Procedure with the development of the constitutional system, the dynamics of modern crime, as well as the decisions of the Constitutional Court, which have become a patchwork of the weaknesses of the old code of Criminal Procedure. One of the most fundamental changes lies in the pretrial institution, which was previously often criticized as toothless tiger or "toothless tiger" because of the narrow scope of testing, only limited to the validity of arrest, detention, and termination of Investigation or prosecution, while access to the applicant was limited. Through Article 158 of the new Criminal Procedure Code, the pretrial object is significantly expanded to include searches, seizures that are not related to criminal acts, delays in handling cases without valid reasons, to suspension or abandonment of detention, so that this institution transforms from a formal administrative-control mechanism into a more substantive instrument of judicial control over the actions of law enforcement officers.

Theoretically, this transformation cannot be separated from the paradigm shift of the crime control model towards due process of law, as emphasized in various studies that Criminal Procedure Law should function as an instrument of constitutional restraint of punitive power, not merely a means of legitimizing punishment. Previous studies have shown that the application of the principle of due process of law in Indonesian criminal justice practice still faces structural obstacles, especially at the suspect determination stage which often causes disputes over the validity of evidence and procedures. Another study also revealed the phenomenon of a high number of failed pretrial applications in court, which indicates the weak substantive testing power of this institution within the framework of the old code of Criminal Procedure. On the other hand, the inconsistency of the judge's interpretation of the phrase "examination of prospective suspects" in the ratio decidendi Constitutional Court Decision No. 21/PUU-XII/2014 also led to the disparity of pretrial decisions regarding the validity of the determination of suspects.

Studies based on District Court decisions also confirmed that the practice of due process of law in the Indonesian criminal justice system has not been fully consistently applied at the pre-adjudication stage, while sectoral regulatory changes such as the ITE Law also show implications for the protection of individual rights relevant to the pretrial control function. Recent studies on the application of the principle of due process of law in Criminal Procedure Law also confirm the urgency of strengthening the mechanisms of judicial control at the stage of Investigation and prosecution. Although the literature above has reviewed many pretrial issues within the framework of the old Criminal Procedure Code, studies that specifically analyze institutional transformation and pretrial functions after the implementation of Law Number 20 of 2025 are still very limited considering that this regulation will only be effective in early 2026.

There is a real research gap between the normative study of the old established Criminal Procedure Code and the need for current analysis of the new norm, especially related to the expansion of pretrial objects, strengthening compensation and rehabilitation remedies, as well as potential new problems such as the rigidity of the one shot rule, the risk of abuse of process, and the threat of over-litigation that can burden the justice system. The novelty of this study lies in comprehensively examining how the pretrial normative design in the new Criminal Procedure Code is able to address the structural weaknesses that have been inherent in the old Criminal Procedure Code, as well as identifying the practical implications and challenges of its application in the integrated criminal justice system in Indonesia. Based on the description, This study formulated two main problems. First, How is the regulation and expansion of the scope of pretrial in Law No. 20 of 2025 on criminal procedure compared to pretrial regulation in Law No. 8 of 1981? Second, what are the juridical implications of the pretrial institutional transformation on the protection of the rights of suspects, defendants, and interested parties in the criminal justice process in Indonesia?

In line with the formulation of the problem, this study aims, firstly, to analyze normatively the regulation and expansion of the scope of pretrial in the new Criminal Procedure Code as a form of renewal for the weaknesses of pretrial regulation in the old Criminal Procedure Code. Second, this study aims to identify and assess the juridical implications of pretrial institutional transformation towards strengthening human rights protection in the integrated criminal justice system after the implementation of Law Number 20 of 2025. This

research is expected to provide benefits both theoretically and practically. Theoretically, this study is expected to enrich the treasury of Criminal Procedural Law, especially in the development of the concept of judicial control over the actions of investigators and prosecutors after the reform of the Criminal Procedure Code. In practical terms, the results of this study are expected to be input for formulating implementing regulations, law enforcement officers, academics, and legal practitioners in understanding and implementing new pretrial mechanisms consistently, so as to realize legal certainty, substantive justice, and more optimal human rights protection in the Indonesian criminal justice system.

METHOD

This study uses the method of normative juridical Law Research, which is a form of research that focuses on the study of written legal norms (law in books) as the main object of analysis, with the aim of identifying, constructing, and finding the principles of law in order to answer the legal issues faced. Normative juridical research was chosen because the topic under study, namely the transformation of pretrial institutions after the implementation of Law Number 20 of 2025 on Criminal Procedure Code, is basically a matter of enforceability, consistency, and conformity of new legal norms to the principles of due process of law, so it does not require field data collection (field research), but is quite traced through library studies of available legal materials. The approaches used in this study include statute approach or statutory approach, by systematically reviewing Law Number 20 of 2025 on Criminal Procedure Code and comparing it with Law Number 8 of 1981, and conceptual approach or conceptual approach, in order to analyze legal concepts such as judicial control, due process of law, and protection of suspects' rights that underlie the formation of the new norm.

The legal materials used consist of three types, namely primary legal materials in the form of legislation and relevant Constitutional Court decisions; secondary legal materials in the form of books, scientific journals, and previous research results; and tertiary legal materials in the form of legal dictionaries and encyclopedias that support the understanding of technical terms. The technique of collecting legal materials is carried out through library research, namely by browsing, reading, and reviewing legal documents related to the object of research. Furthermore, all collected legal materials were analyzed qualitatively by descriptive-analytical

method, which describes the applicable legal norms systematically and then analyzes them to find the juridical implications and their relevance to strengthening the pretrial function in the Indonesian criminal justice system

RESULTS AND DISCUSSION

Regulation and expansion of the scope of pretrial in Law No. 20 of 2025 compared to Law No. 8 of 1981

Provisions regarding pretrial in Law No. 8 of 1981 on Criminal Procedure Law are briefly regulated in Article 77 to Article 83, which limits the object of examination to only three things, namely the validity or not of arrest and detention, the validity or not of termination of Investigation or prosecution, as well as requests for compensation and/or rehabilitation for parties whose cases are stopped (law no. 8 of 1981). The narrowness of the object has led the pretrial institution for more than four decades to be criticized as a mere formal-administrative mechanism, as affirmed in a study that highlights how the update of the Criminal Procedure Code is directed to expand the scope of such tests so that they no longer simply assess the completeness of the administrative requirements of forced efforts. Law Number 20 of 2025 explicitly overhauls these provisions through Article 158, which formulates six categories of pretrial objects: the validity or not of the implementation of forced efforts; whether or not the termination of the investigation or prosecution is valid; request for compensation and/or rehabilitation; seizure of objects not related to criminal acts; delay in handling cases without valid reasons; and suspension or abandonment of detention.

The most significant expansion lies in the inclusion of the phrase "forced effort" as a unified object, which, according to Article 89 and Article 1 Number 14 of this law, includes the determination of suspects, arrest, detention, search, seizure, mail inspection, wiretapping, blocking, up to a ban on traveling outside the territory of Indonesia. Thus, the determination of suspects, which previously could only be tested through the jurisprudence of the Constitutional Court, has now been firmly integrated into the norms of the law, so that it no longer depends on the interpretation of judges in a casuistic way. This condition is in line with the findings that confirm that the update of the Criminal Procedure Code strengthens the guarantee of protection of the rights of suspects as well as confirms the application of the principle of due process of law in the investigation process. The expansion of the object is also seen in the inclusion of confiscation of goods

that are not related to criminal acts and delays in handling cases without valid reasons as a new object that is completely unknown in the old code of Criminal Procedure. The provision regarding the delay in handling this case is important to note because it has the potential to be a double-edged sword: on the one hand, it serves to protect justice seekers from the inaction of law enforcement officers, but on the other hand it has the potential to be abused as an instrument to slow down legal proceedings if it is not accompanied by clear objective criteria regarding what is meant by "valid reasons".

In addition to expanding the objects, the new code of Criminal Procedure also expands the subjects who are entitled to apply for pretrial detention. In the old code of Criminal Procedure, an application regarding the validity or not of arrest and detention can only be submitted by the suspect, his family, or attorney, while the application regarding the termination of the investigation or prosecution is submitted by the investigator, public prosecutor, or interested third party. The provisions of Article 160 to Article 162 of the new Criminal Procedure Code expand this scope in more detail: applications regarding the legality or legality of the implementation of forced efforts are submitted by suspects, the suspect's family, or his lawyer; applications related to the seizure of objects are submitted by third parties; while applications regarding the termination of the investigation or prosecution and compensation and rehabilitation can now also be submitted by the victim, the complainant, or his attorney. This expansion of the subject confirms the shift in the view that pretrial is no longer merely an instrument of suspect protection, but rather a horizontal control mechanism that proportionately balances the interests of suspects, victims, and justice-seeking communities.

In terms of procedure, the new code of Criminal Procedure maintains the principle of speedy trial as stipulated in Article 163, which stipulates that the judge must establish the day of the hearing within three days of the application being received and pass a verdict no later than seven days from the start of the examination, a provision that is substantially identical to Article 82 of the old code of Criminal Procedure. However, there are a number of previously unknown procedural improvements, including the provision that in the event that the respondent does not attend the trial twice, the pretrial examination continues and the respondent is considered to have waived his rights, as well as the limiting provision that an application regarding the legality or not of the implementation of forced efforts

can only be submitted once for the same thing, or what is known as the one shot rule. This one shot rule provision is a normative answer to the classic problem of filing pretrial applications repeatedly by suspects solely to hinder the investigation process, a phenomenon that has empirically occurred in the practice of handling corruption cases.

The affirmation of this kind of procedure shows that the legislator seeks to balance between the fulfillment of the right of material testing of suspects and the need to maintain the efficiency of the criminal justice process, in line with the emphasis on the principles of professionalism and accountability in the conduct of investigations and investigations. Thus, the normative comparison shows that the new code of criminal procedure does not simply re-codify, but carries out a paradigmatic reconstruction of the pretrial function itself, from a mere formal testing mechanism to an instrument of substantive control over the entire range of coercive actions of law enforcement officers.

Juridical implications of pretrial Institutional Transformation on the protection of the rights of suspects, defendants, and interested parties

Pretrial institutional transformation carries significant juridical implications for the protection of the constitutional rights of suspects, especially through the strengthening of remedial mechanisms. Article 163 paragraph (3) of the new Criminal Procedure Code details the consequences of pretrial decisions more comprehensively than Article 82 paragraph (3) of the old Criminal Procedure Code, including the obligation for investigators to release suspects if the determination of suspects is declared invalid, the obligation to continue investigations or prosecution if the termination is declared invalid, and new provisions that confirm that evidence obtained from searches, seizures, wiretapping, and examination of letters that are declared invalid cannot be used as evidence. This last provision basically adopts the principle of exclusionary rule, which is commonly known in the modern criminal procedure system, namely the exclusion of the use of evidence obtained against the law, thereby strengthening the pretrial function as a mechanism that not only assesses procedural validity, but also has direct implications for the validity of material evidence in the examination of the main case.

Nevertheless, such normative strengthening does not necessarily eliminate the fundamental tension between the efficiency of law enforcement and the protection of the rights of suspects. The

study, which highlights the expansion of detention discretion and the duration of coercive attempts in the new Criminal Procedure Code, reveals a strong paradigm shift towards a crime control model that prioritizes the efficiency of investigations, including digital-based investigations, which risk undermining international standards on the promptly principle as stipulated in the International Covenant on Civil and Political Rights (ICCPR) if not balanced with adequate judicial supervision. This argument is relevant linked to the duration of detention provided for in Article 102 and Article 103 of the new code of Criminal Procedure, which stipulates that detention at the investigation stage can be carried out for a maximum of twenty days and extended for a maximum of forty days, while at the prosecution stage the twenty-day provision applies, which can be extended by thirty days. Although quantitatively the duration is relatively equivalent to the regulation of Article 24 and Article 25 of the old code of Criminal Procedure, the main issue does not lie in the length of time, rather, the extent to which pretrial institutions are able to function as instruments of effective and not merely procedural control over the use of such authority is a challenge that demands judicial independence and more material evidence-testing authority.

The expansion of pretrial objects and subjects also raises new risks in the form of abuse of rights by litigants, especially in complex corruption cases. This phenomenon is empirically illustrated in the case of e-KTP with defendant Setya Novanto, where the expansion of pretrial objects after the decision of the Constitutional Court Number 21/PUU-XII/2014 is used as a tactical delay strategy to hinder the investigation process. The review confirms that the logical limits on the protection of the rights of suspects in order not to develop into abuse of rights should rest on two main parameters, namely the fulfillment of the good faith aspects of the applicant and the objectivity of the administrative formalities of the submitted application. Supreme Court Regulation No. 4 of 2016 has actually been designed to limit the competence of pretrial judges so as not to enter the subject matter of the case, but its effectiveness in the field is still relative and very dependent on the progressiveness of judges in detecting the motives behind the application and the professionalism of investigators in minimizing formal defects since the early stages of the investigation.

The provisions of Article 160 paragraph (3) and Paragraph (4) of the new Criminal Procedure Code which limit the submission of an application only once for the same thing, and prohibit the submission of an application if the suspect has fled or is on The Wanted list, can be understood as a direct normative

response to the tactical delay issue. However, a new object in the form of "delay in handling cases without a valid reason" as stipulated in Article 158 letter e has the potential to become a new gap if the parameters of "valid reasons" are not regulated in detail through implementing regulations, thus opening up space for interpretation disparities between pretrial judges in various regions. This condition is increasingly relevant given the complexity of handling corruption and other economic crimes that often involve tracing the flow of funds and securing assets, as revealed in a study on the authority of investigators in handling corporate embezzlement crimes, which concluded that although the normative regulation of investigative authority has been adequate, the potential for abuse of authority remains a real obstacle in implementation. Comparison with the dynamics of law enforcement Post-corruption

Law Number 1 of 2023 on the Criminal Code also shows that the elimination of the specificity of handling corruption offenses in the material Criminal Codification has the potential to weaken the synergy between the material criminal law and the Criminal Procedure Law in efforts to eradicate corruption, so that strengthening the pretrial control function becomes increasingly crucial to close the gap left by changes in the material law level. The effectiveness of pretrial normative transformation ultimately cannot be separated from the institutional readiness of law enforcement officers in implementing the new provisions. A review of the implementation of the authority of police investigators after the implementation of the new Criminal Procedure Code found that although the update of the law strengthens the guarantee of protection of suspects' rights and increases the accountability of the investigation process, its implementation in the field is still faced with obstacles that are structural, normative, and cultural, including limited human resources, lack of support for facilities and infrastructure, and the need to adjust the work culture of the apparatus to the new paradigm of procedural law.

Similar challenges have also been identified in the context of handling criminal acts that require high technical expertise, such as corporate embezzlement, where the complexity of the case and the limited technical capacity of the investigator to trace the flow of electronic funds are separate obstacles that affect the effectiveness of the pretrial supervision function of the investigator's actions. From the institutional perspective of Investigation and investigation in general, the new Criminal Procedure Code places pretrial mechanisms and court supervision as an instrument limiting the authority of investigators and

investigators in carrying out legal actions, ranging from receiving reports, looking for evidence, to carrying out forced efforts, in order to prevent abuse of authority. The strengthening of the supervisory function is also in line with the spirit of Criminal Procedure reform more broadly which is also accommodated through the integration of restorative justice mechanisms in the new Criminal Procedure Code and the National Criminal Code, which places the restoration of the situation as the goal of law enforcement, not solely oriented to the imposition of sanctions.

The linkage between the strengthening of pretrial and restorative approaches confirms that the transformation of Indonesian Criminal Procedure Law is moving systemically towards a more humanistic paradigm, but its success at the practical level depends heavily on the consistency of the application of human rights principles by all Integrated Criminal Justice subsystems, from the police, prosecutors, advocates, to the courts. Overall, the discussion above shows that Law Number 20 of 2025 on Criminal Procedure Code has carried out a fairly basic normative transformation of pretrial institutions, both in terms of expanding objects, expanding subjects, and strengthening remedy mechanisms. This transformation is a progressive step in answering the structural weaknesses of the old Criminal Procedure Code that had limited the function of pretrial as an instrument of judicial control. However, as shown by the various studies that have been described, the success of this transformation at the implementation level still depends on a number of prerequisites, namely the independence and progressiveness of judges, institutional readiness and technical capacity of law enforcement officers, the availability of derivative regulations governing the objective parameters of norms that are still open, as well as the consistency of the application of the principle of due process of law at all stages of the criminal justice process. Without the fulfillment of these prerequisites, the expansion of pretrial authority has the potential to cause new problems in the form of decision disparities, abuse of process, and over-litigation which can ultimately burden the criminal justice system as a whole.

CONCLUSION

This study concludes that Law Number 20 of 2025 on Criminal Procedure Code has made a fundamental transformation of pretrial institutions, either through the expansion of objects from three to six categories, the expansion of the applicant's subject which now includes victims and reporters, or

the strengthening of remedy mechanisms in the form of exclusion of evidence obtained illegally. This transformation confirms the paradigm shift from administrative-formal control mechanisms to more substantive judicial control instruments in supporting the principle of due process of law. The implication is that the strengthening also raises new risks in the form of disparity in the interpretation of judges, the potential for abuse of rights through tactical delays, and the burden of implementation for law enforcement officers who are not fully ready structurally and culturally. Therefore, it is recommended that the Supreme Court immediately draft the Supreme Court regulation as a technical guideline that regulates the objective parameters of open norms, especially the phrase "valid reasons" in delaying the handling of cases, along with increasing the capacity of judges and investigators and strengthening the internal supervision system, so that the pretrial function can run effectively without compromising legal certainty and Human Rights Protection in the Indonesian criminal justice system.

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