

Pretrial Justice through Rawlsian Fairness: Comparative Human Rights Perspectives from Indonesia and the United Arab Emirates

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Abstract

This research aims to analyze the pretrial mechanism from the perspective of Justice as Fairness by John Rawls thru a comparative study between Indonesia and the United Arab Emirates, as well as to reconstruct a Pretrial Justice model oriented toward strengthening the protection of human rights. The research uses a normative juridical method with legislative, conceptual, and comparative approaches. The research results show that pretrial detention is a fundamental instrument for maintaining the balance between state authority in law enforcement and the protection of individual rights. Indonesia has shown progressive development thru the expansion of pretrial objects, while the United Arab Emirates implements a more preventive judicial oversight model thru the involvement of judges from the early stages of the criminal process. Based on these findings, the research reconstructs the Pretrial Justice Based on Rawlsian Fairness model, which is built on six pillars: equal basic liberties, fair equality of opportunity, proportional limitation of state authority, judicial independence, accountability of law enforcement officials, and the availability of effective legal remedies. This model emphasizes the importance of harmonizing the Criminal Procedure Code with the development of the Constitutional Court's jurisprudence and international human rights standards to build a more preventive, consistent, and accountable judicial oversight system, thereby achieving substantive procedural justice while strengthening the protection of human rights within Indonesia's criminal justice system.

Keywords: *Justice as Fairness, Pretrial Justice, Pretrial, Human Rights, Comparative Law.*

A. INTRODUCTION

The protection of human rights in the criminal justice system constitutes one of the principal indicators reflecting the quality of the rule of law and the extent to which a state upholds the principle of due process of law (Prasetio, Masnun, & Noviyanti, 2025; Via Dianti et al., 2024). Among the various mechanisms designed to safeguard these rights, the pretrial justice mechanism plays a highly strategic role as an instrument of judicial oversight over the actions of law enforcement authorities, particularly during the stages of criminal investigation and inquiry (Setyowati, 2020). The establishment of this mechanism is intended to prevent the abuse of power, arbitrary arrest and detention, as well as various forms of violations of suspects' rights before their cases are examined in the main trial. Accordingly, the pretrial mechanism should not merely be understood as an administrative procedure within criminal procedural law, but also as a constitutional safeguard that ensures a fair balance between the state's interest in law enforcement and the protection of individuals' fundamental rights (Gaffar et al., 2021).

In the development of modern legal systems, the orientation of the criminal justice system is no longer directed solely toward the effective suppression of crime, but also toward the realization of procedural justice that ensures equal protection for all parties involved (Mentovich et al., 2023). This paradigm finds a strong philosophical foundation in John Rawls' theory of justice, particularly the concept of justice as fairness, which regards the fundamental liberties of every individual as inviolable rights and requires that all public institutions be organized in accordance with the principles of equal basic liberties and the fair distribution of social benefits (Martha Eri Safira, 2019). From Rawls' perspective, the legitimacy

of a legal institution is determined not only by its success in achieving particular social objectives, but also by the extent to which its procedures treat every individual fairly, rationally, and without discrimination (Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, 2021). Accordingly, the pretrial mechanism provides a relevant forum for assessing whether criminal procedural law complies with the principle of fairness as articulated by Rawls, particularly when the state exercises its coercive powers against its citizens.

The urgency of examining pretrial justice has grown in parallel with increasing international attention to the protection of human rights within criminal proceedings. Various international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), affirm that every individual has the right to be protected against arbitrary arrest, to have their case reviewed by an independent and impartial tribunal, and to have access to an effective remedy whenever their fundamental rights have been violated (Putriyanti et al., 2025). These principles have evolved into universal standards that have influenced the development of national legal systems across various jurisdictions, although their implementation varies according to each country's legal system, constitutional traditions, and socio-political characteristics (Gunawan et al., 2024).

Indonesia and the United Arab Emirates (UAE) present two distinct legal models that offer a compelling basis for comparison in this context. Indonesia has developed its pretrial mechanism within the civil law tradition inherited from Dutch law through the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana—KUHP), which has subsequently undergone significant

evolution through Constitutional Court decisions and judicial practice. The expansion of the scope of pretrial review—including the judicial examination of suspect designation, searches, and seizures—reflects an increasingly progressive approach to the protection of human rights. By contrast, the United Arab Emirates has developed a legal system that combines the civil law tradition, the principles of Islamic law (Sharia), and modern legal reforms aimed at enhancing legal certainty and judicial efficiency. Recent reforms in substantive criminal law and criminal procedure have demonstrated efforts to strengthen the protection of suspects' rights through improvements in investigative procedures, judicial supervision of detention, and greater access to legal assistance. The differences in philosophical foundations, institutional structures, and legal cultures between the two countries provide a rich analytical framework for examining how the principle of fairness is realized through different pretrial mechanisms.

A considerable body of previous research has examined pretrial mechanisms from various perspectives. In Indonesia, most studies have focused on the expansion of pretrial jurisdiction following the Constitutional Court's decisions, the effectiveness of judicial oversight over investigative authorities, and the implications of expanding the scope of pretrial review for legal certainty and criminal law enforcement. Other studies have explored the protection of human rights in criminal procedure through constitutional approaches and the perspective of due process of law. Meanwhile, research on the criminal justice system of the United Arab Emirates has generally concentrated on legislative reform, judicial modernization, the harmonization of national law with Sharia, and the enhancement of human rights protection within the framework of modern legal institutions. At

the international level, comparative studies of pretrial judicial oversight have predominantly focused on European jurisdictions or Anglo-Saxon legal systems, particularly with regard to judicial review of law enforcement actions.

Nevertheless, several important gaps remain in the existing literature. First, most studies continue to regard pretrial proceedings merely as an institution of criminal procedural law, without integrating the philosophy of justice as a normative framework for evaluating the legitimacy of judicial procedures. Second, comparative studies specifically examining Indonesia and the United Arab Emirates from a human rights perspective remain limited, despite the fact that both jurisdictions represent different legal traditions while simultaneously undergoing substantial judicial and institutional reforms. Third, relatively few studies have employed John Rawls' theory of justice as fairness as a conceptual framework for assessing whether pretrial mechanisms genuinely ensure an equitable distribution of rights protection, prevent the excessive concentration of state power, and maintain an appropriate balance between the interests of law enforcement and respect for individual liberty. These academic gaps indicate that the relationship between procedural justice, human rights protection, and Rawlsian theory continues to require more comprehensive examination through a comparative legal approach.

In response to these research gaps, this article offers a new perspective by constructing a concept of pretrial justice through the integration of Rawlsian fairness, human rights law, and a comparative analysis of Indonesia and the United Arab Emirates. The novelty of this study lies in three principal aspects. First, it positions the theory of justice as fairness as a normative framework for evaluating

the quality of human rights protection within pretrial mechanisms, rather than treating it merely as an abstract philosophical concept. Second, it develops a comparative analysis of two jurisdictions with distinct legal traditions, thereby enabling the identification of best practices in protecting suspects' rights during the pre-adjudication stage. Third, it proposes a conceptual model of pretrial justice that is oriented not only toward procedural legality but also toward the principles of equality, proportionality, accountability, and respect for human dignity as the substantive foundations of human rights protection.

This study aims to analyze how John Rawls' principle of justice as fairness is implemented within the pretrial mechanisms of Indonesia and the United Arab Emirates, to identify the similarities and differences in the protection of human rights provided by the two legal systems, and to formulate a model of pretrial justice that is more responsive to the development of international human rights standards. The findings are expected not only to contribute to the development of procedural justice theory within criminal procedural law but also to provide normative recommendations for the reform of Indonesia's criminal procedure through a comparative approach that strengthens the protection of human rights without compromising the effectiveness of law enforcement.

This study employs a normative legal research approach, focusing on the examination of legal norms, principles, doctrines, and legal concepts governing the pretrial justice mechanism from a human rights perspective (Masnun, Muh. Ali, Prasetio, Dicky Eko, 2025). A normative legal research approach was adopted because the primary objective of this study is to analyze the legal construction of pretrial justice based on John Rawls' theory of Justice as Fairness and to compare

the normative regulation and implementation of pretrial mechanisms in Indonesia and the United Arab Emirates. Accordingly, this study conceptualizes law as a normative system (law as a normative system) and examines its coherence, consistency, and relevance in safeguarding human rights within the criminal justice process.

This research employs several methodological approaches, namely the statutory approach, the conceptual approach, the comparative approach, and the philosophical approach. The statutory approach is used to examine the legal provisions governing the pretrial mechanism in Indonesia, particularly the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana—KUHAP), and a series of Constitutional Court decisions that have expanded the scope of pretrial review. In addition, the study analyzes the criminal procedure legislation and federal regulations of the United Arab Emirates, particularly those relating to the protection of suspects' rights, judicial oversight of investigative authorities, and the mechanisms for reviewing the legality of coercive measures in criminal proceedings. The analysis further incorporates international legal instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), as universal benchmarks for assessing the conformity of national legal frameworks with international human rights principles.

The conceptual approach is employed to examine the legal doctrines and theories relating to the rule of law, due process of law, the right to a fair trial, judicial control, procedural justice, and the protection of human rights within the

criminal justice system. The principal theoretical framework of this study is John Rawls' theory of Justice as Fairness. Through this framework, the study evaluates whether the pretrial mechanism reflects the principles of equal basic liberties, fair equality of opportunity, and the proportional limitation of state authority in protecting individual rights prior to the commencement of the main trial.

Furthermore, the comparative approach is utilized to compare the normative construction of pretrial mechanisms in Indonesia and the United Arab Emirates. The comparison is conducted from a functional perspective by examining how each legal system regulates judicial oversight of law enforcement actions during the pre-adjudication stage, including the legality of arrest, detention, searches, seizures, and the protection of suspects' procedural rights. The comparative analysis is directed not only toward identifying similarities and differences in legal norms but also toward evaluating the effectiveness of these regulatory frameworks in ensuring the protection of human rights in accordance with the principles of procedural justice. The philosophical approach is subsequently employed to assess the moral legitimacy and rationality of these legal norms through the lens of Rawlsian justice, thereby providing a robust theoretical foundation for formulating an ideal model of pretrial justice.

The study relies exclusively on secondary data, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include statutory legislation, constitutional provisions, judicial decisions, Constitutional Court judgments, federal legislation of the United Arab Emirates, and international legal instruments concerning human rights and criminal justice. Secondary legal materials comprise scholarly books, reputable national and international journal

articles, previous research findings, academic commentaries, and literature discussing John Rawls' theory of justice, criminal procedure, human rights law, and comparative law. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other reference sources that provide clarification of the legal concepts employed in this research.

Legal materials were collected through library research by systematically identifying, inventorying, and classifying all relevant legal sources according to the themes of the study (Eka N.A.M. Sihombing, 2022). All legal materials were subsequently organized systematically to facilitate the analysis of the relationship between legal norms, legal doctrines, and human rights principles within the pretrial mechanisms of the two jurisdictions under study. The legal materials were analyzed qualitatively using a prescriptive method. The analytical process commenced with the identification and systematic organization of the relevant legal norms, followed by legal interpretation employing grammatical, systematic, historical, and teleological methods in order to obtain a comprehensive understanding of the legal provisions governing pretrial proceedings.

Subsequently, a comparative analysis was conducted to identify the similarities, differences, strengths, and weaknesses of the regulatory frameworks in Indonesia and the United Arab Emirates. The findings were then evaluated through the normative framework of John Rawls' theory of Justice as Fairness to assess the extent to which the respective pretrial mechanisms embody the principles of procedural justice, the protection of human rights, equality before the law, and the proportional limitation of state authority. Based on the overall findings, this study formulates normative recommendations for a Pretrial Justice model grounded in the

principles of Rawlsian Fairness as a framework for strengthening Indonesia's pretrial system through comparative insights drawn from the legal experience of the United Arab Emirates.

B. RESULT AND DISCUSSION

1. Pretrial Justice from the Perspective of Justice as Fairness: A Comparative Analysis of Human Rights Protection in Indonesia and the United Arab Emirates

In essence, the pretrial mechanism constitutes a constitutional safeguard designed to maintain a balance between the state's authority to enforce the law and the protection of individuals' fundamental rights (Yanuarto et al., 2024). In a modern rule-of-law state, the authority of law enforcement officials to conduct arrests, detention, searches, seizures, or to designate an individual as a criminal suspect cannot be regarded as an expression of absolute state power (Hananto Widodo, Muh. Ali Masnun, Intan Lovisonnya, Dicky Eko Prasetyo, 2026). Rather, every measure that restricts human rights must comply with the principles of legality, proportionality, accountability, and judicial oversight by an independent court (Dicky Eko Prasetyo, Muh Ali Masnun, 2024; Prasetyo, 2023). Accordingly, the pretrial mechanism has evolved not merely as a component of criminal procedural law but as a human rights protection mechanism that ensures the exercise of the state's coercive powers remains within the bounds of justice. This perspective is consistent with the evolution of the rule-of-law paradigm, which no longer views law solely as an instrument of social control but also as a means of safeguarding individual rights and freedoms.

Within this context, John Rawls' theory of Justice as Fairness provides a highly relevant philosophical foundation for evaluating the legitimacy of the pretrial mechanism. Rawls argues that justice constitutes the first virtue of social institutions, making it the fundamental standard against which the legitimacy of legal and political institutions should

be assessed (Dyszy, 2021). Just as truth serves as the primary standard in scientific inquiry, justice constitutes the primary standard for assessing the legitimacy of a legal system and public institutions. According to Rawls, an institution cannot be justified merely because it promotes efficiency, order, or social stability if, in doing so, it sacrifices the fundamental rights of individuals. Accordingly, the legitimacy of law depends not only on the formal validity of legal norms but also on the extent to which those norms are formulated and implemented in accordance with rational principles of justice and with due respect for human dignity (Masnun et al., 2025).

The concept of Justice as Fairness Is founded on the assumption that principles of justice would be rationally chosen by individuals situated in the original position behind the veil of ignorance. Under this hypothetical condition, individuals possess no knowledge of their future social status, wealth, political power, religion, race, or position within society. This lack of knowledge encourages each individual to select rules that provide equal protection for all members of society, since anyone may ultimately find themselves in the position most vulnerable to the abuse of state power (Firdaus et al., 2024). This perspective bears significant relevance to the pretrial mechanism. When an individual is designated as a criminal suspect, arrested, or detained, they occupy a structurally weaker position than the state. The state possesses law enforcement institutions, legal authority, resources, and the legitimacy to exercise coercive powers, whereas the individual faces the risk of losing personal liberty, reputation, and other civil rights. Accordingly, if the principles of criminal procedure were designed from the perspective of the veil of ignorance, every rational individual would favor the existence of an effective system of judicial oversight over the actions of law enforcement authorities, since no one can be certain that they will never find themselves in the position of being subjected to criminal investigation or prosecution by the state.

Rawls further formulates two fundamental principles of justice. The first is the principle of equal basic liberties, which holds that every individual is entitled to the same fundamental freedoms, provided that such freedoms are equally guaranteed to all others (Sunaryo, 2022). These liberties include the rights to personal liberty, freedom from arbitrary arrest, legal protection, an independent judiciary, and equal treatment before the law. In the context of pretrial proceedings, this principle affirms that any restriction on an individual's liberty through arrest or detention may only be imposed where it is based on a clear legal foundation, carried out in accordance with lawful procedures, and subject to oversight by an independent judicial authority. The state may not invoke the objective of effective crime control as a justification for disregarding the fundamental rights of suspects, since liberty is a fundamental right that may be restricted only proportionately and in accordance with the law.

The second principle consists of the difference principle and fair equality of opportunity. This principle requires that any inequalities in the distribution of power or social benefits are justifiable only if they operate to the greatest benefit of the least advantaged members of society while simultaneously ensuring equal opportunities for all individuals (Westerstrand, 2025). Within the criminal justice system, there exists a clear imbalance between the state, as the holder of law enforcement authority, and the individual who becomes the subject of criminal investigation. Law enforcement authorities are empowered to conduct arrests, detention, seizures, summonses, and, within legally prescribed limits, the use of force, whereas individuals are protected only by the safeguards provided under the law. Accordingly, maintaining this balance requires a corrective mechanism in the form of pretrial proceedings, which enables individuals to challenge the legality of actions taken by state authorities before an independent judicial body. In this sense, the pretrial mechanism serves as an institutional embodiment of Rawlsian justice

by establishing an appropriate balance between state power and the protection of individual rights.

Rawls' conception further demonstrates that procedural justice is inseparable from the protection of human rights (Prasetio, Masnun, & Widodo, 2025). Human rights are not merely rights recognized by constitutions or international legal instruments; rather, they constitute the moral precondition for the legitimate exercise of state authority (Dicky Eko Prasetio, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, 2024). Under international human rights law, any restriction on an individual's liberty is permissible only if it satisfies the requirements of legality, necessity, proportionality, and oversight by an independent authority. These standards demonstrate that the protection of human rights extends beyond the substantive outcome of judicial decisions to encompass the entire criminal process prior to trial, including the stages of preliminary inquiry and criminal investigation. Accordingly, the pretrial mechanism serves as a crucial safeguard to ensure that the actions of law enforcement authorities remain within constitutional limits and do not devolve into arbitrary exercises of state power.

The relationship between Rawls' theory and the principle of due process of law likewise demonstrates a close conceptual connection. The principle of due process of law requires that every exercise of state power affecting individuals be carried out in accordance with fair, transparent, and accountable legal procedures (Vu Cao & Cao, 2025). The essence of this principle lies not merely in ensuring the existence of a formal legal basis, but also in guaranteeing that legal procedures provide individuals with a genuine opportunity to defend their rights. In the context of pretrial proceedings, the principle of due process of law is manifested through an individual's right to challenge the legality of arrest, detention, searches, seizures, and the designation of a person as a criminal suspect. This right serves as a safeguard against the potential abuse of authority by law enforcement officials. Accordingly, the pretrial mechanism functions not only as an administrative component of

criminal procedural law but also as a constitutional safeguard that ensures the effective realization of due process of law.

The principle of due process of law is closely intertwined with the concept of the rule of law. A state governed by the rule of law is not characterized solely by the existence of statutory legislation; it also requires effective limitations on state power through robust oversight mechanisms. Within this framework, the judiciary serves as a check on executive authority, ensuring that the exercise of state power remains within the boundaries prescribed by law. Rawls argues that just institutions must secure the fundamental liberties of every individual through impartial and non-discriminatory procedures. Consequently, judicial independence in adjudicating pretrial applications constitutes a critical element in the realization of procedural justice. Judges are not merely responsible for determining whether investigators have complied with formal procedural requirements; they must also ensure that any restriction on individual liberty is supported by lawful grounds, satisfies the principle of proportionality, and respects human dignity.

The concept of a fair trial likewise forms an Integral component of Justice as Fairness. Although the right to a fair trial is commonly associated with judicial proceedings, its protection, in reality, begins at the earliest stages of the criminal justice process. An unlawful arrest, detention without an adequate legal basis, or the designation of a suspect without sufficient preliminary evidence may undermine the fairness of the entire criminal process. Accordingly, the pretrial mechanism serves as a preventive safeguard designed to ensure that violations of individual rights are addressed before they develop into more serious infringements. This perspective is fully consistent with Rawls' theory, which maintains that justice must be embedded in the design of institutions and legal procedures from the outset rather than evaluated solely on the basis of their final outcomes. In other words, justice cannot be measured exclusively by the correctness of judicial decisions but

must also be assessed by the fairness of the procedures governing every stage of law enforcement.

From the perspective of international human rights law, the protection of individual liberty constitutes a universal principle. The prohibition of arbitrary arrest and detention, the right to be brought promptly before a judge, the right to legal assistance, the right to be informed of the reasons for arrest, and the right to challenge the legality of actions taken by state authorities all form part of the minimum standards that every rule-of-law state is expected to uphold. The existence of these international standards demonstrates that the pretrial mechanism is not merely an administrative necessity within domestic legal systems but also a means through which states fulfill their international human rights obligations. Consequently, the evaluation of pretrial mechanisms in both Indonesia and the United Arab Emirates should not be confined to compliance with domestic law alone but should also assess their consistency with the universal principles of human rights protection.

Based on the foregoing discussion, it can be concluded that the theory of Justice as Fairness provides a comprehensive normative framework for evaluating the quality of pretrial mechanisms within the criminal justice system. A pretrial mechanism that conforms to Rawlsian principles of justice not only ensures legal certainty in the enforcement of criminal procedure but also maintains an appropriate balance between state authority and individual rights through independent judicial oversight, the protection of fundamental liberties, respect for due process of law, and equal access to justice. Accordingly, Rawls' theory serves not only as a philosophical foundation for assessing the legitimacy of pretrial mechanisms but also as a normative framework for evaluating the extent to which a legal system is capable of providing substantive protection of human rights. This conceptual framework forms the basis for comparing the regulation and implementation of pretrial mechanisms in Indonesia and the United Arab Emirates,

thereby enabling an assessment of how each legal system operationalizes the principles of Justice as Fairness in protecting human rights during the pre-adjudication stage.

Within the Indonesian legal system, the pretrial mechanism is designed as an institution of judicial oversight over the actions of law enforcement authorities during the pre-adjudication stage. Normatively, pretrial proceedings are governed by Articles 77 to 83 of the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana—KUHAP). These provisions authorize the District Court to determine the legality of arrests, detention, the termination of investigations, the termination of prosecutions, as well as claims for compensation and rehabilitation submitted by individuals whose criminal cases have been discontinued at either the investigation or prosecution stage (Artadinata & Lasmadi, 2023). Under the original framework of the Indonesian Criminal Procedure Code (KUHAP), the scope of pretrial proceedings was deliberately limited, with the primary objective of providing judicial oversight over measures that directly restrict an individual's liberty, particularly arrest and detention. This design reflected the prevailing philosophy of Indonesian criminal procedure when the KUHAP was enacted in 1981, namely, that pretrial proceedings should function as a procedural corrective mechanism rather than as a forum for examining the substantive merits of criminal evidence.

Nevertheless, developments in law enforcement practice have demonstrated that the limited scope of pretrial review as prescribed by the KUHAP is no longer sufficient to provide effective protection of human rights. In practice, several law enforcement measures with significant implications for individual rights—including the designation of a person as a criminal suspect, searches, and seizures—were excluded from the matters that could be challenged through pretrial proceedings. This situation created a gap in legal protection, as individuals could be subjected to substantial restrictions on their rights without access to an effective judicial mechanism for reviewing the legality of such measures. From the perspective of John Rawls' Justice as Fairness, this imbalance reflects

an unequal relationship between state power and the individual. While the state possesses broad authority to exercise coercive powers, individuals are denied an equal opportunity to defend their rights through an independent judicial process.

The most significant development In Indonesia's pretrial mechanism occurred with Constitutional Court Decision No. 21/PUU-XII/2014. In this landmark ruling, the Constitutional Court held that the scope of pretrial review should no longer be confined to arrests, detention, the termination of investigations, and the termination of prosecutions, but should also extend to the judicial review of the designation of criminal suspects, searches, and seizures (Tornado, 2019). The Constitutional Court reasoned that the designation of an individual as a criminal suspect constitutes a legal act with serious implications for the constitutional rights of citizens and, therefore, must be subject to judicial review through the pretrial mechanism. This landmark decision fundamentally transformed the landscape of Indonesian criminal procedure by expanding the function of pretrial proceedings from merely supervising measures that restrict physical liberty to reviewing investigative actions that directly affect an individual's legal status.

From the perspective of Rawls' theory, Constitutional Court Decision No. 21/PUU-XII/2014 may be understood as an effort to strengthen the principle of equal basic liberties. The designation of a criminal suspect is no longer viewed merely as an internal administrative act of investigators but rather as a decision capable of restricting personal liberty, damaging an individual's reputation, and affecting a wide range of civil rights. Consequently, individuals must be afforded equal access to challenge the legality of such measures before an independent judiciary. In essence, the Constitutional Court recognized that the protection of human rights should not begin only after a person has been detained or brought to trial, but must commence at the earliest stage of criminal proceedings, when the state first exercises its coercive authority over the individual.

A further significant development emerged through Constitutional Court Decision No. 42/PUU-XV/2017, which emphasized the importance of an adequate evidentiary standard in the designation of criminal suspects. The Court held that a person may be designated as a suspect only on the basis of at least two legally admissible items of evidence, as required under Article 184 of the KUHAP. Consequently, pretrial proceedings are no longer confined to reviewing the formal legality of investigators' authority but also extend to assessing whether sufficient evidentiary grounds exist to justify the designation of a suspect. This development reinforces the principle of due process of law within Indonesia's criminal justice system by requiring that any restriction of individual rights be supported by fair procedures and adequate evidence.

Nevertheless, the expansion of pretrial jurisdiction has also generated debate concerning the proper boundary between procedural review and substantive examination of criminal cases. Some scholars argue that pretrial judges should not assess the quality or sufficiency of evidence, as such matters fall within the jurisdiction of the trial court responsible for adjudicating the merits of the case. However, if pretrial review were confined exclusively to formal procedural compliance without evaluating the adequacy of the evidentiary basis, it would risk losing its essential function as a safeguard of human rights. From the perspective of Justice as Fairness, procedural justice cannot be separated from the rational exercise of state authority. A procedure may appear formally lawful while nevertheless remaining unjust if it is employed without an adequate basis for restricting an individual's liberty.

A normative analysis of Indonesia's pretrial mechanism indicates that judicial oversight continues to face several limitations. First, pretrial proceedings are inherently reactive, as they may only be initiated after law enforcement authorities have already taken the challenged action. This differs from legal systems that require prior judicial authorization before certain coercive measures are undertaken, particularly prolonged detention or

highly intrusive searches. Second, pretrial decisions generally affect only the legality of the specific measure under review and are not necessarily accompanied by effective mechanisms for holding officials accountable for procedural violations. Third, judicial practice reveals considerable inconsistency in judges' interpretation of the scope of pretrial jurisdiction, particularly following the expansion of reviewable matters through Constitutional Court jurisprudence. These limitations demonstrate that the strengthening of pretrial proceedings through Constitutional Court decisions has not yet produced a comprehensive system of judicial oversight. From a Rawlsian perspective, a just institution must provide legal protection that is both predictable and consistently applied to every individual. Where the outcome of pretrial proceedings depends largely on the interpretative approach of individual judges, the principle of fair equality of opportunity cannot be regarded as fully realized, since access to legal protection may vary across different jurisdictions depending on local judicial practice.

Despite these limitations, the overall development of Indonesia's pretrial mechanism demonstrates an increasingly progressive commitment to strengthening the protection of human rights. The expansion of the scope of pretrial review, the clarification of evidentiary standards for the designation of criminal suspects, and the growing recognition of the importance of due process of law all indicate that Indonesia's legal system is moving toward a model of judicial oversight that is more responsive to the protection of individual rights. From the perspective of Justice as Fairness, these developments may be understood as an institutional effort to reduce the imbalance of power between the state and its citizens by providing broader access to judicial review. Accordingly, Indonesia's pretrial mechanism has evolved from a narrowly conceived procedural remedy into one of the principal pillars of human rights protection within the criminal justice system. Nevertheless, this transformation still requires further strengthening through regulatory harmonization, the establishment of clearer standards for pretrial adjudication, and the

development of effective accountability mechanisms for procedural violations committed by law enforcement authorities. An evaluation of these developments provides an important basis for comparison with the system of judicial oversight under the criminal procedure law of the United Arab Emirates, thereby facilitating the identification of a model of human rights protection that more fully reflects the principles of Justice as Fairness within a comparative legal framework.

The criminal justice system of the United Arab Emirates (UAE) has developed within the framework of a mixed legal system that integrates the civil law tradition, the principles of Islamic law (Sharia), and a series of modern legislative reforms aimed at enhancing both the effectiveness of law enforcement and the protection of human rights (Mustafa & Komalasari, 2024). Unlike Indonesia, which recognizes pretrial proceedings as a distinct judicial mechanism, the criminal procedure system of the United Arab Emirates (UAE) does not establish a separate institution formally designated as a pretrial court or pretrial hearing. Nevertheless, judicial oversight of law enforcement authorities is exercised through a system of judicial supervision over investigative measures, detention, and the use of other coercive measures, as provided under the federal criminal procedure legislation. Accordingly, the protection of suspects' rights in the United Arab Emirates is primarily based on a model of judicial authorization and judicial oversight, whereby judicial authorities play an active role in supervising investigative actions from the earliest stages of criminal proceedings (Mustafa & Komalasari, 2024).

The defining characteristic of this system lies in the close institutional relationship among investigators, the Public Prosecution, and the judiciary in supervising the exercise of state authority. In practice, an individual's detention cannot be prolonged without the approval or supervision of the competent judicial authority, while any extension of the detention period must be legally authorized in accordance with the procedures prescribed by federal legislation. Furthermore, coercive measures that directly restrict an individual's

right to liberty—including, under certain circumstances, searches and seizures—must be supported by a clear legal basis and remain subject to judicial oversight. This model demonstrates that judicial supervision in the United Arab Emirates is predominantly preventive in nature, in contrast to the Indonesian system, which generally provides judicial review only after law enforcement measures have already been carried out through the pretrial mechanism.

These differences reflect two distinct paradigms for safeguarding human rights. Indonesia adopts a model of judicial review after executive action, whereby the legality of law enforcement measures is examined only after those measures have been implemented. By contrast, the United Arab Emirates places greater emphasis on judicial control before or during executive action, involving judicial authorities at the stage when restrictions on individual rights are either contemplated or being implemented (Mustafa & Komalasari, 2024). From the perspective of human rights protection, both models pursue the same objective, namely, preventing the arbitrary exercise of state authority, although they employ different institutional mechanisms. When compared based on the first indicator—the protection of personal liberty—Indonesia has demonstrated significant progress through the Constitutional Court’s expansion of the scope of pretrial review. The designation of criminal suspects, searches, and seizures may now be subjected to judicial scrutiny, thereby providing individuals with broader legal protection than that originally envisaged under the KUHAP. Nevertheless, such protection remains predominantly reactive, as it can only be invoked after the state has already undertaken the challenged action. By contrast, the United Arab Emirates places greater emphasis on restricting the use of coercive measures through judicial authorization and supervision from the outset, thereby minimizing the risk of violations of personal liberty before such measures produce adverse consequences for the individual.

The second indicator concerns the Implementation of due process of law. Indonesia has strengthened this principle through Constitutional Court decisions requiring the existence of at least two legally admissible items of evidence before an individual may be designated as a criminal suspect. This requirement demonstrates that restrictions on individual rights must be grounded in rational and legally accountable procedures. However, its practical implementation continues to face challenges arising from divergent judicial interpretations regarding the sufficiency of evidence and the proper scope of pretrial review. In contrast, the legal system of the United Arab Emirates assigns the Public Prosecution and the judiciary central roles in supervising the legality of investigative measures, ensuring that any restriction on personal liberty is, in principle, subject to legally prescribed procedures from the earliest stage of the criminal investigation. This model reflects a stronger orientation toward procedural control than toward judicial review conducted after the implementation of coercive measures.

The third indicator relates to judicial supervision of arrest and detention. Under the Indonesian system, pretrial judges are authorized to determine the legality of arrests and detention upon application by an interested party. While this mechanism provides individuals with access to judicial protection, its effectiveness largely depends upon the initiative of the affected individual and the timeliness of judicial proceedings. By contrast, in the United Arab Emirates, judicial oversight of detention is exercised through the involvement of judicial authorities in authorizing or approving the extension of detention periods. Consequently, judicial supervision operates in a more systematic manner, as it does not depend entirely upon an application submitted by the suspect or defense counsel.

The fourth indicator concerns access to legal counsel. Indonesian law formally recognizes the right of suspects to legal representation from the investigation stage, as guaranteed under the KUHAP and various legal aid regulations. Nevertheless, practical implementation continues to encounter obstacles, including unequal access to legal

services, the limited number of qualified advocates, and the uneven availability of legal aid, particularly in remote regions and among vulnerable communities. Likewise, the United Arab Emirates recognizes the right to legal representation, particularly in cases involving serious criminal offences. Although the administrative arrangements governing legal aid differ between the two jurisdictions, both legal systems acknowledge that the presence of legal counsel constitutes an essential safeguard for protecting the rights of suspects throughout criminal proceedings.

The fifth indicator concerns the effectiveness of mechanisms for reviewing coercive measures. Indonesia possesses the advantage of a formal pretrial mechanism through which judges may invalidate investigative actions found to be contrary to law. However, the effectiveness of this mechanism remains constrained by the limited scope of review, inconsistencies in judicial interpretation, and the absence of uniform procedural standards in judicial practice. Conversely, the United Arab Emirates adopts a preventive approach through early judicial supervision, thereby ensuring that coercive measures are more effectively controlled before their implementation. Each model possesses distinct strengths and limitations. The Indonesian system provides broader opportunities for correcting unlawful actions after they have occurred, whereas the Emirati system focuses more strongly on preventing violations before individual rights are restricted.

When analyzed through the lens of John Rawls' theory of Justice as Fairness, both legal systems demonstrate efforts to balance the state's interest in law enforcement with the protection of individuals' fundamental rights. Nevertheless, the degree to which this principle is realized differs significantly. Indonesia has undergone progressive development through the expansion of pretrial jurisdiction, thereby strengthening citizens' access to judicial protection. These developments reflect the implementation of the principle of equal basic liberties by providing individuals with broader opportunities to challenge state actions affecting their rights. However, because Indonesia's pretrial

mechanism remains predominantly reactive, legal protection is frequently available only after the restriction of rights has already occurred. By contrast, the legal system of the United Arab Emirates more closely reflects the concept of preventive procedural justice through judicial supervision from the earliest stages of criminal proceedings, ensuring that restrictions on individual liberty receive judicial legitimacy before they are implemented.

From a comparative law perspective, the two jurisdictions offer complementary approaches. Indonesia demonstrates significant progress in expanding access to judicial oversight through the Constitutional Court's progressive interpretation of pretrial jurisdiction, whereas the United Arab Emirates highlights the importance of active judicial involvement from the earliest stages of the exercise of the state's coercive powers. Accordingly, future reforms of Indonesia's pretrial system should focus not only on expanding the scope of judicial review but also on establishing preventive mechanisms for supervising measures that directly restrict individual liberty. Such reforms would strengthen the implementation of Justice as Fairness by ensuring that every exercise of state authority is not merely formally lawful but also substantively just, proportionate, and fully respectful of human dignity and fundamental human rights.

B. Reconstruction of a Rawlsian Fairness-Based Pretrial Justice Model to Strengthen Human Rights Protection in Indonesia

The development of Indonesia's pretrial mechanism demonstrates a significant institutional transformation since the enactment of the Indonesian Criminal Procedure Code (KUHP) and the issuance of a series of Constitutional Court decisions expanding the scope of pretrial review. Nevertheless, these developments have not fully resolved the conceptual and normative shortcomings that continue to characterize Indonesia's criminal procedure system. Fundamentally, the current pretrial framework remains grounded in a reactive model of judicial oversight, whereby judicial review is available only after law enforcement authorities have already undertaken the contested action. As a consequence,

the protection of human rights primarily functions as a remedial mechanism rather than as a preventive safeguard designed to avert violations before they occur (Suratman & Shanty, 2021). As a consequence, once violations of the right to personal liberty have occurred through unlawful arrest, detention, search, seizure, or the designation of an individual as a criminal suspect, the pretrial mechanism is capable only of correcting the legality of such actions and cannot always fully remedy the harm already suffered by the affected individual.

Conceptually, this weakness demonstrates that Indonesia's pretrial framework remains rooted in a legalistic approach that treats procedural compliance as an end in itself rather than as a means of safeguarding citizens' fundamental rights. From the perspective of John Rawls' theory of Justice as Fairness, however, the legitimacy of a legal institution is determined not merely by its conformity with formal legal procedures but also by its capacity to ensure the fair distribution of rights protection among all individuals. A state vested with coercive powers must establish supervisory mechanisms capable of counterbalancing the unequal relationship between law enforcement authorities and ordinary citizens. In this context, pretrial proceedings should not be viewed solely as a forum for reviewing the legality of investigative measures but also as a constitutional safeguard designed to protect individual liberty before the state imposes restrictions upon fundamental rights.

Another normative deficiency lies in the fact that the KUHAP has yet to be comprehensively harmonized with the evolving jurisprudence of the Constitutional Court. Although Constitutional Court Decision No. 21/PUU-XII/2014 expanded the scope of pretrial review to include the designation of criminal suspects, searches, and seizures, this development remains grounded primarily in constitutional adjudication rather than in systematic legislative amendment of the KUHAP. Consequently, a dualism has emerged between statutory provisions and judicially developed legal principles. From the standpoint

of legal certainty, this situation creates the potential for inconsistency in judicial practice because the scope of pretrial jurisdiction depends more heavily on judicial interpretation than on explicit statutory regulation. As a result, variations in judicial practice across different courts may ultimately affect equal access to legal protection.

In addition to the lack of regulatory harmonization, the effectiveness of pretrial proceedings continues to be constrained by issues relating to evidentiary assessment and the scope of judicial review. In practice, there is no uniform standard governing the extent to which pretrial judges may assess the sufficiency of evidence relied upon by investigators when designating an individual as a criminal suspect. Some judges interpret their authority as being limited to reviewing procedural or administrative compliance, whereas others extend their examination to the adequacy and quality of the preliminary evidence. These divergent approaches demonstrate the absence of a clear normative framework defining the boundary between procedural review and substantive evaluation. Consequently, the effectiveness of pretrial proceedings as a mechanism for protecting human rights is diminished, since the extent of legal protection ultimately depends upon the individual interpretation adopted by the presiding judge.

A further issue concerns the absence of an effective accountability mechanism for procedural violations committed by law enforcement officials. In general, pretrial decisions declaring investigative measures unlawful affect only the legal validity of the contested action and are not necessarily followed by institutional evaluation or administrative sanctions against the officials responsible for the procedural violation. Within a democratic rule-of-law system, judicial oversight should serve not only to invalidate unlawful state actions but also to foster a culture of accountability in the exercise of public authority. Without clear consequences for abuses of power, the pretrial mechanism risks losing its preventive function and becoming merely a forum for resolving procedural disputes.

When examined through Rawls' principle of equal basic liberties, these shortcomings indicate that the protection of individual liberty has not yet been accorded the highest priority within Indonesia's criminal procedure system. Restrictions upon personal liberty remain largely dependent upon the discretion of law enforcement authorities, while judicial supervision becomes available only after those restrictions have already been imposed. From the perspective of the veil of ignorance, a just legal system should be designed on the assumption that any individual may one day find themselves subject to criminal investigation by the state. Accordingly, protective mechanisms must be structured so as to guarantee equal protection for all citizens, regardless of their social status, economic position, or political influence.

The comparative analysis of the legal system of the United Arab Emirates offers a different perspective on the protection of human rights during the pre-adjudicative stage. Although the UAE does not recognize a pretrial institution comparable to that of Indonesia, its legal system has developed a more preventive model of judicial oversight through the active involvement of judges and the Public Prosecution in supervising investigative measures from the earliest stages of criminal proceedings. Judicial supervision of detention, prior authorization for measures restricting personal liberty, and procedural oversight mechanisms demonstrate that legal protection is provided not only after state action has occurred but also before the state exercises its coercive powers. This approach reflects the principle that restrictions upon individual liberty must first obtain judicial legitimacy before being implemented.

The comparative analysis identifies several best practices that may be synthesized to strengthen Indonesia's pretrial system. First, greater emphasis should be placed on preventive judicial supervision of measures that directly restrict personal liberty. The experience of the United Arab Emirates demonstrates that early judicial involvement can substantially reduce the risk of abuse of authority by law enforcement officials. Second,

procedural oversight should be harmonized with the protection of human rights so that judicial review extends beyond formal procedural compliance to ensure that every state action satisfies the principles of legality, necessity, and proportionality. Third, stronger accountability mechanisms should be established for procedural violations so that judicial decisions not only correct unlawful actions but also promote continuous institutional reform. These recommendations are consistent with Rawls' principle of fair equality of opportunity, which requires that every individual enjoy equal access to effective legal protection. Within the criminal justice system, such equality entails not merely the formal availability of pretrial proceedings but also the assurance that every individual has access to an independent, impartial, and readily accessible mechanism of judicial oversight before the state restricts his or her fundamental rights. Accordingly, the reconstruction of Indonesia's pretrial mechanism should not be confined to expanding the scope of judicial review, as achieved through Constitutional Court jurisprudence, but should instead aim to establish a more comprehensive, preventive, and human rights-oriented system of judicial oversight.

Viewed through the lens of Justice as Fairness, the comparative analysis of Indonesia and the United Arab Emirates demonstrates that a just judicial institution is not merely one that resolves legal disputes, but one that actively constrains the exercise of state power to ensure that it does not encroach upon the fundamental rights of individuals. Consequently, future reform of Indonesia's criminal procedure law should be directed toward transforming the pretrial mechanism from a corrective remedy into a constitutional system of judicial oversight capable of maintaining an appropriate balance between effective law enforcement and respect for human dignity. This paradigm serves as the conceptual foundation for formulating a Pretrial Justice Based on Rawlsian Fairness model as a reconstructed framework for strengthening the protection of human rights within Indonesia's criminal justice system (Roberts-Cady, 2025). The comparative analysis of

Indonesia's pretrial mechanism and the system of judicial oversight within the criminal procedure law of the United Arab Emirates demonstrates that both jurisdictions fundamentally pursue the same objective: achieving an appropriate balance between effective law enforcement and the protection of human rights. The principal distinction lies in their respective models of judicial oversight. Indonesia continues to regard pretrial proceedings as a form of corrective judicial review, operating only after law enforcement authorities have taken the contested action. By contrast, the United Arab Emirates has developed a more preventive model of judicial oversight, characterized by the active involvement of judicial authorities at the earliest stages of the state's exercise of coercive powers. This distinction suggests that effective protection of human rights depends not only upon the existence of mechanisms for judicial review but also upon an institutional design capable of preventing violations from occurring at the outset of criminal proceedings. Accordingly, reform of Indonesia's criminal procedure law requires a reconstruction of the pretrial paradigm so that it functions not merely as a forum for correcting procedural irregularities, but as a constitutional mechanism for ensuring procedural justice in accordance with the principles of Justice as Fairness.

This reconstruction gives rise to a conceptual framework referred to in this study as the Pretrial Justice Based on Rawlsian Fairness model. The model represents a synthesis of John Rawls' theory of justice, the principles of the rule of law, due process of law, and internationally recognized human rights standards. Unlike the conventional pretrial paradigm, which primarily emphasizes formal legality, this model places the protection of human dignity at the center of every exercise of state authority within the criminal justice process. Accordingly, any restriction upon individual liberty must satisfy three cumulative requirements: it must be legally valid (legality), procedurally fair (procedural fairness), and proportionate to the legitimate objectives of criminal law enforcement (proportionality) (Chidi Paul Orji, Rufus Godswill Nwagbara, Tijani Taiwo Egberongbe, 2025). The first

pillar of this model is equal basic liberties, namely the protection of equal fundamental freedoms. Rawls asserts that basic liberties possess lexical priority and therefore cannot be sacrificed merely for the sake of efficiency or the interests of the majority. Within the context of criminal procedure law, this principle requires that the right to personal liberty, the right to be free from arbitrary arrest or detention, the right to legal assistance, the right to be informed of the reasons for arrest, and the right to have one's case reviewed by an independent judiciary must be recognized as non-derogable rights unless restricted pursuant to clear legal provisions and only where strictly necessary. Accordingly, the Pretrial Justice Based on Rawlsian Fairness model proposes that every measure directly restricting an individual's liberty—including the designation of a suspect, detention, search, seizure, and interception of communications—should be subject to effective judicial oversight. Such oversight should not only operate after the measure has been implemented but should also be exercised before certain coercive measures are carried out whenever they have the potential to impose serious restrictions on fundamental rights.

The second pillar is fair equality of opportunity, referring to equal opportunities in obtaining legal protection. This principle should not merely be understood as the formal right to file a pretrial application; rather, it must be realized through genuine access to justice. In practice, Indonesia's criminal justice system continues to exhibit disparities between individuals who possess sufficient financial resources to obtain legal representation and those who lack adequate means. Consequently, this reconstructed model places a positive obligation upon the State to ensure the availability of effective legal assistance from the stages of preliminary inquiry and criminal investigation. Furthermore, pretrial procedures should be designed to be simple, expeditious, transparent, and free from unnecessary administrative obstacles that may undermine citizens' rights to judicial protection. Thus, the principle of fair equality of opportunity is realized not only through equal legal norms but also through equal access to legal protection mechanisms.

The third pillar is the proportional limitation of state power. Although the State possesses legitimate authority to employ coercive measures for the maintenance of public order and the enforcement of criminal law, such authority must never exceed the legitimate objectives pursued. Every arrest, detention, search, seizure, and other coercive measure must satisfy the principles of legality, necessity, and proportionality. Under this model, judges function not merely as reviewers of the formal legality of law enforcement actions but also as evaluators of the rationality and proportionality of the State's exercise of coercive powers. Judicial oversight therefore extends beyond determining whether procedural requirements have been fulfilled; it also examines whether restrictions upon individual rights are genuinely necessary and proportionate to the objectives of criminal law enforcement.

The fourth pillar is judicial independence, which constitutes the primary prerequisite for achieving procedural justice. Rawls considers independent institutions indispensable for ensuring that principles of justice are applied objectively to every member of society. Accordingly, judges examining pretrial applications must remain free from political pressure, institutional interests, and interference by law enforcement authorities. Judicial independence encompasses not only the freedom of judges in rendering decisions but also the existence of uniform standards of review capable of preventing excessive disparities in pretrial judgments. In the context of reforming Indonesia's criminal procedure law, more detailed regulations concerning the parameters of pretrial review are required to ensure legal certainty and national consistency in judicial decisions.

The fifth pillar is accountability of law enforcement. One of the principal weaknesses of the current pretrial mechanism lies in the absence of a strong connection between pretrial judgments and institutional accountability mechanisms for law enforcement officials found to have violated procedural rules. The Pretrial Justice Based on Rawlsian Fairness model proposes that every judicial decision declaring law enforcement actions unlawful should

entail clear administrative, ethical, and institutional consequences. Such accountability is essential for fostering a law enforcement culture that respects human rights and prevents the recurrence of similar procedural violations. Consequently, pretrial proceedings should function not only as corrective mechanisms addressing individual misconduct but also as instruments for improving the overall governance and integrity of law enforcement institutions.

The sixth pillar is effective legal remedies, namely the availability of effective legal recourse for every individual whose rights have been violated. This principle emphasizes that the protection of human rights cannot be achieved solely through normative recognition but must also be supported by remedial mechanisms that are prompt, accessible, and capable of producing meaningful legal consequences. Accordingly, this model proposes that pretrial judgments should not merely invalidate unlawful investigative measures but should also provide the legal basis for restoring an individual's reputation, reinstating civil rights, granting adequate compensation, and evaluating investigative procedures found to be inconsistent with the law. Through this approach, the pretrial mechanism evolves from a mere instrument for reviewing legality into a comprehensive mechanism for the restoration of human rights.

These six pillars collectively establish an integrated conceptual framework that places procedural justice at the core of the criminal justice system. The Pretrial Justice Based on Rawlsian Fairness model does not seek to diminish the effectiveness of criminal law enforcement; rather, it aims to establish a proportionate balance between the State's interest in combating crime and its constitutional obligation to protect the fundamental rights of every individual. From this perspective, the success of a criminal justice system should not be measured solely by the number of cases prosecuted or the rate of criminal convictions, but also by its ability to ensure that every exercise of State authority is carried out through procedures that are fair, transparent, accountable, and respectful of human dignity.

Accordingly, this model offers a new paradigm for reforming Indonesia's criminal procedure law by shifting the orientation of pretrial proceedings from a mechanism of procedural correction toward a constitutional mechanism for the protection of fundamental rights grounded in John Rawls' Justice as Fairness.

The reconstruction of the Pretrial Justice Based on Rawlsian Fairness model cannot be separated from the evolution of international human rights standards, which recognize individual liberty and procedural justice as fundamental principles of criminal justice systems. From the perspective of international law, restrictions on the right to liberty are justifiable only when prescribed by law, implemented proportionately, supervised by an independent authority, and accompanied by effective remedies in the event of violations. These principles are reflected in the Universal Declaration of Human Rights (UDHR), particularly regarding the prohibition of arbitrary arrest and detention, the right to a fair trial, and equality before the law. More detailed provisions are contained in the International Covenant on Civil and Political Rights (ICCPR), especially those concerning the right to liberty and security of person, the right to be brought promptly before a judge following arrest, the right to trial within a reasonable time, and the right to challenge the legality of detention through effective judicial procedures. Furthermore, the Convention against Torture (CAT) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment emphasize that every person deprived of liberty must be protected against abuse of authority, granted access to legal counsel, and treated in a manner consistent with human dignity.

When compared with Indonesia's pretrial framework, it becomes evident that although most of these principles have received normative recognition, they have not yet been systematically implemented within Indonesia's criminal procedure law. Legal provisions governing the legality of arrest and detention, the right to legal assistance, and pretrial proceedings are indeed available; however, they remain predominantly oriented toward ex

post judicial review. Consequently, the protection of human rights frequently occurs only after restrictions upon individual rights have already taken place. From the perspective of Justice as Fairness, this condition does not fully satisfy the principle of equal basic liberties, since individual liberty has yet to receive genuinely preventive protection. Therefore, the integration of the Pretrial Justice Based on Rawlsian Fairness model with international human rights standards seeks to strengthen judicial oversight from the earliest stages of criminal proceedings, ensuring that every action restricting fundamental rights obtains legal legitimacy before its implementation.

Such integration also requires a paradigm shift in the reform of Indonesia's Criminal Procedure Code (KUHAP). To date, the KUHAP has primarily regulated the procedural relationship between investigators, public prosecutors, and the courts, while developments in human rights protection have largely emerged through Constitutional Court jurisprudence and judicial practice. This situation has resulted in regulatory fragmentation, as legal developments have not consistently been followed by corresponding legislative reforms. Consequently, future reform of the KUHAP should be directed toward the codification of human rights principles that have evolved through Constitutional Court decisions as well as international legal instruments (H. M. A, 2007). This reformulation should encompass the expansion of the scope of pretrial judicial review, the clarification of evidentiary standards for the designation of suspects, the strengthening of the right to legal assistance from the earliest stages of criminal investigation, and the establishment of judicial obligations to assess not only the legality but also the proportionality of law enforcement actions.

Beyond normative reform, the reconstruction of this model also carries significant implications for the institutional reform of Indonesia's criminal justice system. First, it requires strengthening the role of judges as constitutional guardians overseeing the State's exercise of coercive powers. Pretrial judges should no longer be regarded merely as

examiners of the administrative legality of investigative actions, but rather as guardians of constitutional rights. In this capacity, judges should be empowered to determine whether law enforcement measures satisfy the principles of legality, necessity, proportionality, and respect for human rights. Second, stronger coordination mechanisms are required among the police, the public prosecution service, the judiciary, and legal aid institutions so that the protection of suspects' rights is not dependent upon fragmented sectoral approaches but instead becomes an integral component of an integrated criminal justice system. Third, internal oversight mechanisms within law enforcement institutions should be directly linked to pretrial decisions, ensuring that procedural violations produce consequences not only for the individual case under review but also serve as the basis for ethical, administrative, and institutional evaluation.

The Pretrial Justice Based on Rawlsian Fairness model also has important implications for transforming the legal culture of law enforcement authorities. Traditionally, the success of law enforcement has often been measured by the effectiveness of criminal investigations or conviction rates. This paradigm should shift toward an approach that recognizes the protection of human rights as a fundamental indicator of the success of the criminal justice system. From Rawls' perspective, the legitimacy of public institutions is determined not only by their ability to achieve social objectives but also by their capacity to treat every individual fairly. Accordingly, the professionalism of law enforcement officials should be assessed not merely by the success of criminal investigations but also by their adherence to the principles of due process of law, their respect for human dignity, and their ability to maintain an appropriate balance between the interests of criminal law enforcement and the protection of citizens' constitutional rights.

From an academic perspective, the model proposed in this study contributes to the development of criminal procedural law by introducing the paradigm of Rawlsian Pretrial Justice as a synthesis of theories of justice, human rights law, and criminal procedure.

Existing discussions on Indonesia's pretrial mechanism have largely focused on questions of jurisdiction, procedural rules, and the evolution of judicial precedents. This study offers a distinct perspective by employing Justice as Fairness as a normative framework for evaluating the legitimacy of the State's exercise of coercive authority during the pre-adjudication stage. This approach broadens the understanding that pretrial proceedings are not merely formal mechanisms for reviewing investigative actions but rather constitutional safeguards designed to preserve the balance between State power and individual liberty.

From a practical standpoint, the implementation of this model is expected to strengthen the protection of human rights within Indonesia's criminal justice system. Enhancing preventive judicial oversight, expanding access to legal assistance, increasing the accountability of law enforcement authorities, and providing effective remedial mechanisms will reduce the likelihood of arbitrary arrests, unfounded criminalization, and abuses of power during criminal investigations. At the same time, this model preserves the effectiveness of criminal law enforcement by maintaining investigators' authority to conduct criminal investigations while ensuring that every exercise of such authority remains consistent with constitutional principles and internationally recognized human rights standards.

Accordingly, the reconstruction of Pretrial Justice Based on Rawlsian Fairness represents a new paradigm for the reform of Indonesia's criminal procedure law by integrating the principles of procedural justice, the rule of law, respect for human dignity, and international human rights standards into a coherent normative framework. Under this model, pretrial proceedings function as a mechanism of judicial oversight that not only corrects unlawful law enforcement actions after violations have occurred but also prevents abuses of State power through strengthened preventive judicial supervision, judicial independence, institutional accountability, and effective access to legal remedies. Through this orientation, the reform of the Indonesian Criminal Procedure Code (KUHAP) and the

broader criminal justice system is expected not only to enhance legal certainty but also to achieve substantive justice in accordance with John Rawls' Justice as Fairness, thereby ensuring that an equitable, proportionate, and sustainable balance is maintained between the interests of criminal law enforcement and the protection of the fundamental rights of every individual.

C. CONCLUSION

This study concludes that the pretrial mechanism constitutes a fundamental instrument for maintaining the balance between the State's authority to enforce criminal law and the protection of human rights, as reflected in John Rawls' theory of Justice as Fairness, which regards basic liberties, due process of law, and independent judicial oversight as essential prerequisites for the legitimate exercise of State power. The comparative analysis between Indonesia and the United Arab Emirates demonstrates that Indonesia has adopted a progressive approach by expanding the scope of pretrial review to strengthen access to judicial protection, whereas the United Arab Emirates places greater emphasis on a preventive model of judicial oversight through the active involvement of judges from the earliest stages of criminal proceedings. Although these two jurisdictions employ different institutional approaches, both are fundamentally oriented toward preventing arbitrary State action and safeguarding the rights of suspects in accordance with international human rights standards. Accordingly, the reform of Indonesia's criminal procedure law should be directed toward establishing a more preventive, consistent, and accountable system of judicial oversight so that the principles of Justice as Fairness may be more effectively realized in ensuring procedural justice and the protection of human rights.

The reconstruction of the Pretrial Justice Based on Rawlsian Fairness model further emphasizes that the reform of Indonesia's pretrial mechanism should shift from a predominantly corrective paradigm toward a preventive system of judicial oversight. Under this approach, the protection of human rights would not merely be provided after violations have occurred but would also serve to prevent abuses of State authority from the earliest stages of criminal proceedings. This model is founded upon six principal pillars: equal basic liberties, fair equality of opportunity, the proportional limitation of State power, judicial independence, the accountability of law enforcement authorities, and the availability of effective legal remedies. Collectively, these pillars embody John Rawls' principles of Justice as Fairness while remaining consistent with international human rights standards. The model's principal implications include the harmonization of Indonesia's Criminal Procedure Code (KUHP) with the evolving jurisprudence of the Constitutional Court, the strengthening of judges' roles as constitutional guardians, and the establishment of a judicial oversight system that is more consistent, accountable, and oriented toward the protection of human dignity. Accordingly, this model offers a new paradigm for the reform of Indonesia's criminal procedure law, one that not only enhances legal certainty and the effectiveness of criminal law enforcement but also achieves substantive procedural justice by maintaining an equitable balance between the exercise of State power and the protection of the fundamental rights of every individual.

REFERENCES

Artadinata, N., & Lasmadi, S. (2023). Pengaturan Jaksa Penuntut Umum Dalam Penanganan Tindak Pidana Korupsi Berdasarkan Asas Dominus Litis.

PAMPAS: Journal of Criminal Law, 4(3), 311–321.
<https://doi.org/10.22437/pampas.v4i3.28637>

Auriel, P., Beaud, O., & Wellman, C. (Eds.). (2018). *The Rule of Crisis: Terrorism, Emergency Legislation and The Rule of Law*. St. Louis: Springer

Chidi Paul Orji, Rufus Godswill Nwagbara, Tijani Taiwo Egberongbe, P. D. E. C. (2025). A Critique of John Rawls Ethical Principle of Justice and the Problems of Social Justice in Modern Society. *NIU Journal of Legal Studies*, 11(1), 73–80. <https://doi.org/10.58709/niujls.v11i1.2136>

Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, N. (2024). Discrimination Related to Labour Age Limitation in Indonesia : A Human Rights and Comparative Law Perspective. *Suara Hukum*, 6(2), 228–254.

Dicky Eko Prasetyo, Muh Ali Masnun, B. W. (2024). Legal Uncertainty of Golf Game as Sports and Entertainment Branch in Local Tax Imposition. *Wawasan Yuridika*, 4(1), 76–93. <https://doi.org/10.25072/jwy.v8i1.4369>.Abstract

Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker. (2021). Membangun Moralitas dan Hukum Sebagai Integrative Mechanism di Masyarakat Dalam Perspektif Hukum Progresif. *Mimbar Keadilan*, 14(2), 128–138.

Dyszy, M. (2021). THE IDEA OF LIBERTY: JOHN RAWLS AND HERBERT LIONEL ADOLPHUS HART. *Polonia Journal*, 14(1), 56–66.
<https://doi.org/10.36228/PJ.14/2021.4>

Eka N.A.M. Sihombing, C. H. (2022). *Penelitian Hukum* (1st ed.). Setara Press.

Firdaus, K., Utama, Y. J., & Putrijanti, A. (2024). An Analysis of Justice in Tapera

- Based on the Perspective of Jurgen Habermas' Critical Theory and John Rawls' Theory of Justice. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 23(3). <https://doi.org/https://doi.org/10.31941/pj.v23i3.5062>
- Gaffar, S., Karsona, A. M., Pujiwati, Y., & Perwira, I. (2021). The concept of procedural law regarding the implementation of collective agreements with legal certainty in termination of employment in Indonesia. *Heliyon*, 7(4), e06690. <https://doi.org/10.1016/j.heliyon.2021.e06690>
- Gunawan, Y., Putra, M. R. P., Khairi, M. F. Al, & Arumbinang, M. H. (2024). International Law in the Sudanese War 2023: An Overview of the Conflict and Law Enforcement. *Jurnal Suara Hukum*, 6(1), 108–124. <https://doi.org/10.26740/jsh.v6n1.p108-124>
- H. M. A, K. (2007). *Penerapan KUHAP Dalam Praktik Hukum*. UMM Press.
- Hananto Widodo, Muh. Ali Masnun, Intan Lovisonnya, Dicky Eko Prasetyo, N. (2026). Legal Reconstruction of Strengthening the Function of Regional Representation in Indonesia. *Journal of Law and Legal Reform*, 7(2), 517–554. <https://doi.org/https://doi.org/10.15294/jllr.v7i2.43520>
- Martha Eri Safira, U. S. (2019). Analisis Pendekatan Teori Keadilan John Rawls dan Teori Moralitas Immanuel Kant Terhadap Caleg Mantan Narapidana yang Lolos Sebagai Anggota Legislatif dalam Pemilu 2019. *Legal Standing*, 3(1), 131–146.
- Masnun, Muh. Ali, Prasetyo, Dicky Eko, M. (2025). Reconstruction of the Normative Legal Research Paradigm in Responding to Global Challenges: An Epistemological Analysis. *Novum: Jurnal Hukum*, 12(3), 372–384.

<https://doi.org/https://doi.org/10.2674/novum.v12i03.74364>

Masnun, M. A., Prasetyo, D. E., Ikram, D., & P, P. A. (2025). Legal Reform of Legal Profession Amidst the Development of Artificial Intelligence in Indonesia: The Perspective of Mesu Budi's Philosophy of Law. *Novum: Jurnal Hukum*, 12(2), 277–287.

<https://doi.org/https://doi.org/10.2674/novum.v12i02.72355>

Mentovich, A., Prescott, J. J., & Rabinovich-Einy, O. (2023). Legitimacy and online proceedings: Procedural justice, access to justice, and the role of income. *Law & Society Review*, 57(2), 189–213.

<https://doi.org/10.1111/lasr.12653>

Mustafa, C., & Komalasari, R. (2024). Harmony Unveiled: Sharia Law and Human Rights in Dubai's Justice. *Jurnal Alwatzikhoebillah: Kajian Islam, Pendidikan, Ekonomi, Humaniora*, 10(2), 272–284.

<https://doi.org/10.37567/alwatzikhoebillah.v10i2.2725>

Prasetyo, D. E. (2023). Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review di Mahkamah Konstitusi dalam Perspektif HAM. *Hunila*, 2(1), 125–138.

Prasetyo, D. E., Masnun, M. A., & Noviyanti, N. (2025). Post-Election Reconciliation in 2024 as a Constitutional Convention in Indonesia: A Progressive Legal Culture Perspective. *Jambura Law Review*, 7(1), 176–196.

<https://doi.org/10.33756/jlr.v7i1.26999>

Prasetyo, D. E., Masnun, M. A., & Widodo, H. (2025). Affirmative Action for Persons with Disabilities to Ensure the Right to be Elected in General

- Elections. *Nusantara Science and Technology Proceedings*, 1(1), 205–210.
<https://doi.org/10.11594/nstp.2025.4824>
- Putriyanti, E. D., Budiono, A. R., Sukarmi, S., & Dewantara, R. (2025). An Examination of Human Rights Related to the Protection of Debtor Customer Data and Information Through Bank Secrecy Rules. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 7(1), 171–186.
<https://doi.org/10.47006/ijierm.v7i1.389>
- Roberts-Cady, S. (2025). Rawls and Economic Liberties. *Res Publica*, 31(1), 25–45. <https://doi.org/10.1007/s11158-024-09668-w>
- Setyowati, D. (2020). Memahami Konsep Restorative Justice sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan. *Pandecta Research Law Journal*, 15(1), 121–141. <https://doi.org/10.15294/pandecta.v15i1.24689>
- Sunaryo, S. (2022). Konsep Fairness John Rawls, Kritik dan Relevansinya. *Jurnal Konstitusi*, 19(1), 001. <https://doi.org/10.31078/jk1911>
- Suratman, T., & Shanty, W. Y. (2021). Rehabilitasi sebagai Upaya Penanganan dan Pemulihan Penyalahguna dan Pecandu Narkotika. *Bhirawa Law Journal*, 2(2), 157–166. <https://doi.org/10.26905/blj.v2i2.6823>
- Tornado, A. S. (2019). *Reformasi Praperadilan di Indonesia (Tinjauan Teori, Praktek, dan Perkembangan Pemikiran)* (1st ed.). Nusamedia.
- Via Dianti, P. O., Andini, M. A. P., Windari, R., & Da Silva, E. B. (2024). Comparison of Indonesian and Norwegian Laws regarding Criminal Responsibility of perpetrators with Intellectual/Mental Disabilities. *Jurnal*

Suara Hukum, 6(1), 68–90. <https://doi.org/10.26740/jsh.v6n1.p68-90>

Vu Cao, M., & Cao, T. N. A. (2025). Asset Recovery via Non-Conviction based Forfeiture: Rationale for Regulation and Recommendations for Implementation in Vietnam. *Law and Development Review*, 18(1), 97–122. <https://doi.org/10.1515/ldr-2024-0058>

Westerstrand, S. (2025). Towards just democracies in the age of pervasive digital systems—a Rawlsian approach. In *AI & SOCIETY* (pp. 3–5). <https://doi.org/10.1007/s00146-025-02503-7>

Yanuarto, T., Sari, P., Widihihana Suarda, I. G., & Azizah, A. (2024). Pengintegrasian Mediasi Penal Sebagai Penyelesaian Perkara Pidana Ditinjau Dari Perspektif Pembaharuan Hukum Di Indonesia. *Jurnal Rechtsens*, 13(1), 149–165. <https://doi.org/10.56013/rechtsens.v13i1.2845>