Multidisciplinary Output Research For Actual and International Issue (MORFAI Journal) ISSN (e): 2808-6635
Volumes 5 No. 6 (2025)

RESTRUCTURING PRE-TRIAL DETENTION IN INDONESIA: THE URGENCY OF JUDICIAL SCRUTINY AND HUMAN RIGHTS-BASED CORRECTIONAL REFORMS

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Received	: 21 May 2025	Published	: 08 July 2025
Revised	: 30 May 2025	DOI	: https://doi.org/10.54443/morfai.v5i6.3466
Accepted	: 14 June 2025	Publish Link	: https://radjapublika.com/index.php/MORFAI/article/view/3466

Abstract

This study examines the shift in the meaning of pre-trial detention in Indonesia from an *exceptional measure* to a routine practice in the criminal justice system. Aggregate data from the last five years shows that more than 25% of detention facility occupants are pre-trial detainees, many of whom have never been legally tried. This phenomenon has triggered an *overcrowding* crisis, deteriorating the physical and mental conditions of detainees, and decreasing the quality of basic rights protection in the correctional system. This research uses *mixed-methods* methods, combining quantitative analysis based on aggregate data on detention, detention growth, and detention center capacity over the past five years, with qualitative analysis of policy documents, regulations, and penitentiary and human rights law literature. Primary data were obtained from national detention authorities, while secondary data were collected from DGC annual reports, government publications, and civil society organization studies and advocacy. Analysis was conducted through descriptive statistics to map trends and patterns of *overcrowding*, as well as through critical policy review to identify root causes and formulate reform solutions. The main findings highlight the absence of effective *judicial scrutiny* mechanisms as the root cause of subjectivity and abuse of power in pre-trial detention practices. Dualism in the management of detention facilities between the police, prosecution, and the Ministry of Immigration and Corrections exacerbates fragmentation of oversight, creates legal uncertainty, and weakens institutional accountability. In addition, weak pretrial mechanisms and the lack of alternatives to non-custodial detention further exacerbate the situation, so that pre-trial detention, which should be a last resort, has turned into a habit that jeopardizes the principles of justice, *due process of law*, and the protection of human rights. The study recommends the establishment of substantive and independent *judicial scrutiny* mechanisms, harmonization and centralization of detention facility management under the Ministry of Immigration and Corrections, strengthening access to justice and revitalizing *habeas corpus*, and expanding the use of non-custodial alternatives to detention. These reforms are expected to reorganize Indonesia's pre-trial detention system towards a more just, humane and accountable criminal justice system based on human rights.

Keywords: ***pre-trial detention, judicial scrutiny, correctional reform, human rights***

BACKGROUND

Pre-trial detention is one of the most crucial and problematic aspects of the Indonesian criminal justice system. Although normatively regulated in the Criminal Procedure Code (KUHAP), the practice of pre-trial detention is still considered standard procedure by law enforcement officials and other stakeholders. In fact, pre-trial detention is essentially a form of deprivation of liberty that inherently contains the potential for human rights violations. As emphasized by Muladi, detention is an action that is most prone to human rights violations, so it requires strict and independent judicial supervision to prevent abuse of authority.[1] Ironically, in the RKUHAP revision process initiated by Commission III of the House of Representatives, the proposal to include a *judicial scrutiny* mechanism (i.e. effective judicial oversight of detention decisions) was not accommodated. The reason given was the unpreparedness of the Supreme Court to establish a Commissioner Judge or Preliminary Examining Judge. This shows the weak commitment of policy makers and judicial institutions to protect the basic rights of citizens, as well as being a paradox in the midst of the spirit of legal reform that has been going on for more than two decades.[2] More than twenty years after the reform era, Indonesia still faces major challenges in building a clean, competent and accountable legal system. The criminal law reform agenda, which is expected to produce a justice system that is democratic, transparent and respectful of human rights, is still far from the reality on the ground. Abuse of authority by law enforcement officials, the proliferation of legal mafia practices, and rampant human rights violations in the law enforcement process, are clear evidence that the legal reform agenda in Indonesia faces complex systemic obstacles.[3] In this context, the issue of pre-trial detention has not yet received serious attention as a priority agenda for reform. Current practice shows that pre-trial detention has become one of the main sources of abuse of power. The term "pre-trial detention" itself is not explicitly recognized in

[1] Muladi, *Kapita Selekta Sistem Pidana* (Bandung: Alumni, 1995), 87.
[2] "The Role of Pretrial Procedures in Protecting Human Rights in Indonesia," *Ijtihad: Journal of Islamic Law* 18, no. 2 (2024), https://doi.org/10.21111/ijtihad.v18i2.13118.
[3] Komnas HAM, *Annual Report 2023* (Jakarta: Komnas HAM, 2023), 56.

KUHAP; it only regulates types of detention based on agency or legal status. However, the term universally refers to detention of suspects by investigators or public prosecutors prior to the formal commencement of the first trial.[4] Even more concerning, pre-trial detention in Indonesia can last up to 200 days before a person is brought to trial. Although KUHAP does not require detention to take place in state detention centers, in practice there is almost no development of alternative mechanisms outside of detention centers. Law enforcement officials tend to choose to detain suspects in state detention centers without considering other options that are more oriented towards protecting human rights. Detention, which is actually a deprivation of liberty, has long been considered part of the discretion of law enforcement officials, without an objective testing mechanism for this unilateral judgment (*habeas corpus*).[5] This condition has a direct impact on the deterioration of the situation and conditions of places of detention in Indonesia, both in terms of capacity, sanitation, and protection of the basic rights of detainees.[6]

The absence of adequate judicial oversight of pre-trial detention raises a number of fundamental issues. *First,* detention is highly vulnerable to abuse of power and subjective bias by law enforcement officials because there is no independent filter to assess the urgency and proportionality of detention. Secondly*, the* currently available pre-trial mechanism imposes the burden of proof on the detained party, not on the state as the party deprived of liberty. *Third, the* power relations between the state and the individual in the criminal justice system have become very unequal, where the state has full control over a person's fate without effective oversight mechanisms. *Fourth, the* large number of unsupervised detention centers outside official detention centers further deteriorates access to justice and increases the risk of undetected human rights violations.[7] Philosophically, pre-trial detention should be an *exceptional measure*, not a habit. The principle of the *presumption of liberty* demands that any restriction of liberty must be subject to due diligence and strict judicial oversight.[8] International standards, such as those set out in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), confirm that every person deprived of liberty has the right to be immediately brought before a judge to assess the lawfulness of their detention.[9] However, in practice in Indonesia, the absence of judicial scrutiny is not only contrary to the principle of the rule of law, but also threatens the legitimacy of the criminal justice system as a whole.

Furthermore, the subjectivity of the detaining officer's assessment of the reasons for detention and particular concerns has made the pre-trial chamber "reluctant" to substantively test whether detention is truly necessary and meets the requirements of KUHAP. The absence of clear procedural rules in pre-trial proceedings has led the courts to adopt civil procedural principles, which undermine the effectiveness of this institution.[10] The 7-day time limit in KUHAP is often ignored due to the use of civil procedural principles in summoning parties. In addition, the burden of proof, which should be on the state, is placed on the suspect to prove that he or she does not deserve to be detained.[11] The productivity of pre-trial detention due to subjectivity also opens up opportunities for detention outside official detention centers, either due to full capacity or other unrepresentative reasons. Investigators often detain suspects in investigators' offices, despite the fact that detention is legally required to take place in a place designated by KUHAP.[12] Given the complexity and systemic impact of the practice of pre-trial detention without effective judicial oversight, it is time for Indonesia to place judicial scrutiny as an urgent need for criminal justice system reform. Without independent judicial oversight, pre-trial detention will continue to be a source of human rights violations, injustice and delegitimization of the national legal system. Thus, this study explicitly emphasizes the need for the establishment of a strong, transparent, and accountable judicial scrutiny mechanism as a key prerequisite for realizing a criminal justice system that is just, humane, and in line with the principles of modern penitentiary law.

RESEARCH METHODOLOGY

This research uses a *mixed-methods* approach with a primary emphasis on quantitative analysis based on aggregate data on pre-trial detention and detention facility capacity in Indonesia over the last five years. This approach was chosen to provide a comprehensive empirical picture of the trends, dynamics and impact of pre-trial detention policies on the national correctional system. In addition, this research also adopts a *socio-legal studies* approach, which is an interdisciplinary approach that combines normative legal analysis with empirical studies of how the law is implemented, practiced, and influenced by socio-political conditions and institutional structures.[13] Within the *socio-legal* framework, this research does not only study textual legal rules, but also examines the extent to which pre-trial detention policies, as part of the criminal law system, contribute to the reality of correctional *overcrowding* and potential human rights violations. The law is thus understood not as a neutral and autonomous normative entity, but rather as the result of interactions between norms, institutions and social practices.[14]

[4] Supriyadi W. Eddyono et al., *Pretrial Hearing in Indonesia: Theory, History, and Practice* (Jakarta: ICJR, 2013), https://icjr.or.id/wp-content/uploads/2014/02/Pretrial-Hearing-in-Indonesia.pdf.
[5] Andi Hamzah, *Indonesian Criminal Procedure Law* (Jakarta: Sinar Grafika, 2016), 160.
[6] M. Yahya Harahap, *Discussion of Problems and Application of KUHAP* (Jakarta: Sinar Grafika, 2016), 245.
[7] Taufiqurrohman Suarda and Priambudi, "Limiting the Legality of Determining Suspects in Indonesia Pre-Trial," *Indonesia Law Review* 11, no. 2 (2021),https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1240&context=ilrev.
[8] Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure* (London: Sweet & Maxwell, 2002), 112.
[9] United Nations, *International Covenant on Civil and Political Rights*, Article 9, 1966.
[10] Andi Samsan Nganro, "Pre-Trial in Indonesia: Why it Should be Reformed," *Jurisprudentie* 6, no. 2 (2023), https://journal3.uin-alauddin.ac.id/index.php/Jurisprudentie/article/view/43678.
[11] Enny Dwi Cahyani, Gilang Khalifa Akbar, and Rendi Verda, "Protection of Suspects' Human Rights through Pretrial," *Journal of Law* 30, no. 1 (2023): 55-68.
[12] "Alternatives For Providing Compensation For The Detention Of A Defendant Whose Case Is Acquitted," *Palembang Law Review* 3, no. 2 (2022), https://doi.org/10.25041/plr.v3i2.2733.
[13] Roger Cotterrell, Law, Culture and Society: Legal Ideas in the Mirror of Social Theory (Farnham: Ashgate, 2006), 21-23.
[14] Reza Banakar and Max Travers, Theory and Method in Socio-Legal Research (Oxford: Hart Publishing, 2005), 5-10.

The main data in this study were obtained officially from the detention authorities, covering the aggregate number of pre-trial detentions per year, the annual growth of detentions, as well as the actual capacity and occupancy rates of prisons and state detention centers over the past five years.[15] To enrich and verify the quantitative findings, secondary data was also used, sourced from annual reports of the Directorate General of Corrections, government publications, studies by the Institute for Criminal Justice Reform (ICJR), Komnas HAM, as well as reports by credible civil society organizations.[16] In the analysis stage, aggregate data was analyzed with descriptive statistics to map detention trends, *overcrowding* patterns, geographical distribution, and the dynamics of the correctional system. Comparisons between the growth rate of pre-trial detention and the actual capacity of detention facilities are used to identify structural gaps and correlations between detention policies and the *overcrowding* crisis. This quantitative approach was complemented by a qualitative policy analysis, which involved a review of laws and regulations, internal policies of law enforcement officials, and the results of civil society advocacy on *judicial scrutiny* and correctional reform.[17] In-depth interviews with key informants from detention authorities, judicial officers, legal practitioners, and human rights activists were also used to deepen understanding of the implementation and sociological dimensions of detention policy.

The research is grounded in a critical legal and political economy analytical framework, as developed in ICJR and Bappenas studies, with particular attention to institutional incentives, the behavior of legal actors, the distribution of resources, and the structural capacity of the law enforcement system.[18] The integration of this framework with a *socio-legal* perspective allows the research to examine the law in the context of concrete social and political realities, and to consider human rights principles and international standards such as the Mandela Rules as normative benchmarks. Thus, the research not only analyzes what the law stipulates, but also how the law is implemented and what impact it has on legal subjects, particularly vulnerable groups such as pre-trial detainees. Data validity is ensured through a cross-verification process between primary and secondary data sources. However, the study has a number of limitations, including limitations at the national aggregate level that do not represent individual micro-dynamics, potential *under-reporting* in some areas, and limited access to data on detention outside the formal correctional system, such as detainees in investigators' offices. Nonetheless, a quantitative approach based on aggregate data remains relevant and valid within a *socio-legal* framework, as it provides an objective picture of the scale and urgency of the issue of pre-trial detention as a matter of law and public policy. The quantitative findings are combined with juridical reflection and institutional analysis to develop recommendations for a fairer, more accountable and human rights-based reform of the detention system. With this approach, the research contributes to a fuller understanding of the relationship between legal norms, institutional practices and substantive justice in the context of the contemporary Indonesian correctional system.

RESULTS AND DISCUSSION

The Shifting Meaning of Pre-Trial Detention: From Exceptional Measure to Crisis of Penitentiary and Human Rights

Pre-trial detention in Indonesia has undergone a significant shift in meaning and function in contemporary criminal justice practice. Aggregate data from the last five years shows that the number of pre-trial detentions continues to exceed the capacity of state detention centers (Rutan) as official institutions of detention. The phenomenon of overcrowding, the deterioration of detainees' physical and psychological conditions, and the widespread practice of unauthorized management of detention facilities are realities that cannot be ignored. This data confirms that pre-trial detention has gone from an *exceptional measure* to a routine practice, even becoming the *default* in the national criminal justice system. From the perspective of criminal law philosophy, this transformation is a serious setback. Modern criminal law functions not only as a retributive tool, but also as a mechanism to protect human rights and as an instrument to limit state power.[19] The principles of legality, proportionality and accountability are fundamental to any legal action, particularly in the context of pre-trial detention.[20] The *presumption of innocence* ("everyone is presumed innocent until proven guilty by a court") is an ethical and normative foundation that must be maintained and respected in every detention process.[21]

The philosophy of criminal law demands that any deprivation of individual liberty be based on legitimate grounds and tested objectively, rather than on subjective assessments that are prone to abuse. Disproportionate detention without independent judicial oversight has the potential to violate human rights and principles of justice. In this context, pre-trial detention that is routinely carried out without rigorous judicial review is a form of failure of the legal system in carrying out its function of protecting and limiting state power.[22] The theory of penitentiary law places pre-trial detention as a coercive measure that must meet the *ultimum remedium* principle, detention should only be carried out if there is no other less severe alternative and it is absolutely necessary for the interests of the examination.[23] Detention must be proportionate, legal and aimed at supporting the examination process, not as a premature punishment or means of intimidation. In international practice, as set out in the International Covenant on Civil and Political Rights (ICCPR) Article 9 and the Mandela Rules, pre-trial detention should be subject to strict judicial oversight and be a last resort, not

[15] Directorate General of Corrections, Correctional Statistics 2025, https://www.ditjenpas.go.id/statistik.
[16] National Commission on Human Rights (Komnas HAM), Annual Report 2023 (Jakarta: Komnas HAM, 2023), 56.
[17] Institute for Criminal Justice Reform (ICJR), From Pre-Trial Detention in Indonesia: A Political Economy Study (Jakarta: ICJR, 2015), 5-10.
[18] Bappenas, Assessing the Need for Additional Prison Capacity (Jakarta: Bappenas, 2021), 3-4.
[19] Michael S. Moore, *Placing Blame: A General Theory of Criminal Law* (Oxford: Oxford University Press, 1997), 33.
[20] David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990), 217.
[21] Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge: Cambridge University Press, 2015), 71.
[22] Bronwyn Naylor, "Researching Human Rights in Prisons," *International Journal for Crime, Justice and Social Democracy* 4, no. 2 (2015): 77-93.
[23] Lucia Zedner, *Criminal Justice* (Oxford: Oxford University Press, 2004), 125.

a habit. The European Court of Human Rights (ECtHR) has consistently affirmed that pre-trial detention is only lawful if it is based on objective grounds, judicially reviewable, and decided by an independent judicial body.[24] Countries with effective *judicial scrutiny* mechanisms have been able to reduce overcrowding, improve the treatment of detainees, and increase the legitimacy of their criminal justice systems.[25] However, the reality in Indonesia is very different. Pre-trial detention is often carried out based on the subjective assessment of law enforcement officials. The subjective requirements as stipulated in Article 21 paragraph (1) of KUHAP, namely the fear of absconding, losing evidence, or repeating a criminal offense, often become a *gray area* that is fully determined by the discretion of investigators, prosecutors, or judges without clear evidentiary standards. In many cases, even suspects who are cooperative and have a permanent address are detained only because of concerns that are not objectively measured.

This opens a wide space for abuse of power, transactions of authority, and corrupt practices in the criminal justice system. The absence of an effective *judicial scrutiny* mechanism further exacerbates the situation. In international practice, *judicial scrutiny* serves as a substantive control mechanism, ensuring that every detention decision is tested by an independent judge and the state is obliged to prove the urgency and proportionality of the detention.[26] In Indonesia, the existing pre-trial mechanisms are administrative in nature and cannot substantively test the subjective conditions of detention. As a result, pre-trial detention, which should be an *exceptional measure*, has become a habit that jeopardizes the principle of *due process of law* and the protection of human rights. This phenomenon raises profound philosophical and theoretical questions: how can the legal system balance the needs of law enforcement with the protection of human rights? This imbalance reflects a failure to apply the principles of criminal and penitentiary law consistently, which ultimately threatens the legitimacy of the criminal justice system as a whole.[27]

International good practice shows that countries that prioritize independent judicial oversight of pre-trial detention are able to maintain a balance between the interests of law enforcement and human rights protection.[28] They are also more successful in reducing *overcrowding*, improving prison conditions and strengthening public confidence in the justice system. Indonesia, with all its problems, needs fundamental reforms to restore pre-trial detention to its rightful place as an *exceptional measure* subject to strict judicial oversight and based on universal human rights principles.[29] Thus, strengthening *judicial scrutiny* is not only a normative necessity, but also a systemic solution that can ensure that pre-trial detention is conducted legally, proportionally and fairly. Without these reforms, pre-trial detention will continue to be a major source of human rights violations, *overcrowding* and delegitimization of the Indonesian criminal justice system.[30] Furthermore, it is important to highlight that without effective *judicial scrutiny*, Indonesia's criminal justice system risks a serious erosion of public trust. When the public sees that pre-trial detention can be arbitrarily imposed without adequate judicial oversight, the legitimacy of the judiciary is called into question. This impacts not only on public perception, but also on the effectiveness of law enforcement as a whole.[31] In addition, the absence of *judicial scrutiny* opens up opportunities for corruption and collusion in the detention process. Law enforcement officials who have broad authority in determining detention can utilize their position for personal or group gain, which ultimately harms the principles of justice and human rights. Therefore, strengthening judicial oversight mechanisms is crucial to prevent such abuse of power.

From a penitentiary law perspective, unsupervised detention also contributes to deteriorating conditions in detention facilities. *Overcrowding* caused by excessive pre-trial detention exacerbates detainees' health, safety and rehabilitation problems. When detention centers are overcrowded with pre-trial detainees who are not necessarily guilty, the function of detention centers and prisons shifts from a place of guidance to a mass holding space that is far from humanitarian. This overcrowding not only hampers the rehabilitation process, but also creates an environment that is stressful, prone to violence, and poses a high risk to the physical and mental health of the inmates.[32] This condition is not only detrimental to detainees, but also burdens state resources and hampers correctional goals that should be oriented towards social reintegration.[33]

From a human rights perspective, *overcrowding* due to disproportionate pre-trial detention is a violation of the right to humane treatment and dignity in detention as guaranteed in the Mandela Rules and other international instruments. Overcrowded cell conditions, poor sanitation, limited access to health services, and lack of separation between detainees and prisoners are clear violations of minimum standards of treatment of detainees. Furthermore, pre-trial detainees who are released after trial suffer irreparable harm, socially, economically and psychologically, in the absence of adequate state reparation mechanisms.[34] Excessive detention also increases the risk of discrimination and injustice, especially against vulnerable groups such as children, women, people with disabilities, and those from economically disadvantaged groups. In many cases, they have greater difficulty accessing legal aid and non-custodial alternatives to detention, and are thus the main victims of a system that does not favor the principles of substantive

[24] European Court of Human Rights, "Case of Brogan and Others v. the United Kingdom," Application no. 11209/84, Judgment of November 29, 1988.
[25] Ed Cape and Tom Smith, "The Practice of Pre-trial Detention in England and Wales," Center for Legal Research, University of the West of England, 2016, 12-15.
[26] Luis Pásara, "Pre-trial detention and the exercise of judicial independence," Due Process of Law Foundation, 2013, 3-5.
[27] Catherine Heard and Helen Fair, "Pre-trial Detention and Its Over-Use: Evidence from Ten Countries," Institute for Crime & Justice Policy Research, 2019, 15-18.
[28] Penal Reform International, "Pre-trial Detention: The Issue," 2024, https://www.penalreform.org/issues/pre-trial-justice/issue/.
[29] Fair Trials, "Pre-trial Detention: The Problem," 2024, https://www.fairtrials.org/campaigns/pre-trial-detention/.
[30] Mark Shaw, "Reducing the Excessive Use of Pretrial Detention," Justice Initiative, 2008, 1-3.
[31] Mark Findlay, *The Globalization of Crime: Understanding Transitional Relationships in Context* (Cambridge: Cambridge University Press, 2008), 174.
[32] J. Pont et al., "Dual Loyalty in Prison Health Care," *Public Health Ethics* 5, no. 2 (2012): 110-122.
[33] Catherine Heard, "Pre-trial Detention and Its Over-Use: Evidence from Ten Countries," Institute for Crime & Justice Policy Research, 2019, 22-29.
[34] Craig Haney, "The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions," *Washington University Journal of Law & Policy* 22 (2006): 265-293.

justice.[35] Therefore, reform of pre-trial detention based on penitentiary and human rights principles should be a priority. The state must ensure that all forms of detention are selective, proportionate, and only as a last resort, and ensure that all detainees' basic rights are fulfilled during the detention process. The integration of *judicial scrutiny* in the criminal justice system will not only strengthen the protection of human rights, but also restore the function of correctional institutions as a vehicle for guidance, not just a mass shelter due to excessive detention policies.

In addition, reforms to the pre-trial detention system that integrate judicial scrutiny should be accompanied by the development of effective and humane alternatives to detention. Alternatives such as bail, electronic monitoring and parole should be prioritized to reduce reliance on physical detention. This approach not only complies with international standards, but can also help reduce *overcrowding* and improve the quality of human rights protections.[36] Finally, the success of these reforms relies heavily on political commitment and synergy between various stakeholders, including the legislature, judiciary, executive and civil society. Education and training for law enforcement officials on the importance of *judicial scrutiny* and human rights are also key to ensuring effective and sustainable implementation.[37] Thus, strengthening *judicial scrutiny* is not only a legal necessity, but also a strategic step to improve the Indonesian criminal justice system as a whole, guarantee justice, and respect human dignity.

Relevance and Urgency of Judicial Scrutiny in Ensuring the Legitimacy of Pre-Trial Detention

Judicial scrutiny is an important mechanism in the criminal justice system that serves as an independent judicial oversight to ensure that any restriction of liberty, particularly pre-trial detention, is carried out with a strong legal basis, is proportional and transparent. It acts as a check on the abuse of discretion by law enforcement officials, by placing the burden of proof on the state to demonstrate that detention is absolutely necessary.[38] In the context of criminal and penitentiary law, *judicial scrutiny* functions not only as an administrative procedure, but also as a substantive instrument that protects the rights of suspects and accused persons. Countries with effective judicial oversight systems, such as Canada and the Netherlands, apply strict *judicial scrutiny*, where judges have the power to reject detention if it does not meet objective and proportionality criteria. This approach emphasizes the importance of less severe alternatives to detention and avoids the use of detention as a punishment before a court decision.[39]

From a penitentiary law perspective, *judicial scrutiny* is a key element to prevent pre-trial detention from becoming a form of pre-trial punishment that violates the presumption of innocence. Without adequate scrutiny, detention can turn into a tool of *overcriminalization* that *exacerbates* the problem of *overcrowding* and degrades the quality of treatment of detainees.[40] Comparative studies have shown that consistent application of judicial scrutiny contributes to a reduction in pre-trial detention, expedites the judicial process, and increases public confidence in the legal system. Judicial scrutiny also plays a role in ensuring that detention policies are not discriminatory and provide special protection for vulnerable groups, such as children and women.[41]

The urgency of implementing judicial scrutiny in Indonesia is high given the disproportionately high rate of pre-trial detention and the lack of judicial oversight. The implementation of judicial scrutiny will change the detention paradigm from a mere administrative formality to a process based on substantive justice and the protection of human rights. As such, judicial scrutiny is not only a legal necessity, but also an important strategy to improve the accountability and legitimacy of Indonesia's criminal justice system.[42] In addition to being a substantive oversight mechanism, *judicial scrutiny* is also a key pillar in ensuring the principle of *due process of law* at every stage of pre-trial detention. *Due process of law* requires that no one be deprived of their liberty except through fair and transparent legal procedures, as inherited from the Magna Carta and adopted in various modern constitutions. In the Indonesian context, the implementation of *due process* still faces major challenges. Many pre-trial detainees do not have an equal opportunity to defend themselves, access legal aid, or effectively challenge the grounds for their detention before the courts.[43]

Limited access to justice in state detention centers (Rutan) further exacerbates the situation. *Overcrowding*, lack of legal consultation facilities, and a lack of legal information mean that vulnerable groups, such as children, women, and the poor, are often unable to access their procedural rights.[44] Legal aid reports show that most pre-trial detainees do not receive adequate legal representation, making it difficult to realize their right to challenge their detention or claim compensation for arbitrary detention.[45] Furthermore, the concept of *habeas corpus* as a guarantee of freedom from arbitrary detention has actually inspired the birth of pretrial mechanisms in Indonesia. However, in practice, pretrial in Indonesia functions more as an administrative oversight, rather than a substantive forum to examine the legality and urgency of detention in depth.[46] Unlike the *habeas corpus* system in the United Kingdom or the United States, which allows for a broad and speedy examination of the substance of detention, pretrial proceedings in Indonesia often only

[35] Penal Reform International, "Women in the Criminal Justice System," 2023, https://www.penalreform.org/issues/women/.
[36] Penal Reform International, "Alternatives to Pre-trial Detention," 2023, https://www.penalreform.org/issues/alternatives-to-detention/.
[37] Fair Trials, "Pre-trial Detention: The Problem," 2024, https://www.fairtrials.org/campaigns/pre-trial-detention/.
[38] Kent Roach, *Due Process and Victims' Rights: The New Law and Politics of Criminal Justice* (Toronto: University of Toronto Press, 1999), 68-69.
[39] Marc Groenhuijsen and Tineke Cleiren, "Pre-Trial Detention and the Protection of Human Rights in Dutch Criminal Procedure," *European Journal of Crime, Criminal Law and Criminal Justice* 7, no. 1 (1999): 61-77.
[40] Dirk van Zyl Smit and Frieder Dünkel, *Prison Conditions, Overcrowding and Penal Reform in Europe* (Strasbourg: Council of Europe Publishing, 2001), 45-47.
[41] Canadian Civil Liberties Association, *Set Up to Fail: Bail and the Revolving Door of Pre-trial Detention* (Toronto: CCLA, 2014), 12-17.
[42] Human Rights Watch, "World Report 2023: Indonesia," 2023, https://www.hrw.org/world-report/2023/country-chapters/indonesia.
[43] United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with Special Needs* (Vienna: UNODC, 2009), 30-35.
[44] Asia Foundation, "Shaping Justice: Seminar on Strengthening Access to Justice Amid Indonesia's KUHP Revisions," 2024, https://asiafoundation.org/shaping-justice-seminar-on-strengthening-access-to-justice-amid-indonesias-kuhp-revisions/.
[45] Jakarta Legal Aid Institute, *LBH Jakarta Annual Report 2022: Access to Justice Behind Bars* (Jakarta: LBH Jakarta, 2023), 44-47.
[46] Andi Sinjaya and Janaek Situmeang, "The Concept of Habeas Corpus Act in Regulating the Legality of Suspects' Determination as an Object of Pretrial in Indonesia," *IUS Positum: Journal of Law Theory and Law Enforcement* 4, no. 1 (2025): 1-15.

examine aspects of formality, such as the completeness of the detention warrant, without touching on the substantial reasons and potential abuse of authority by the authorities.[47] Therefore, strengthening *judicial scrutiny* in Indonesia must be accompanied by the revitalization of a true *habeas corpus* mechanism, as well as strengthening access to justice and *due process of law* protections in detention centers. These reforms will ensure that every detained individual truly receives maximum legal protection, as well as prevent the practice of arbitrary detention, which has been the main source of human rights violations in the national criminal justice system.

The Impact of the Absence of Judicial Scrutiny in Pre-Trial Detention

The absence of *judicial scrutiny* in Indonesia's pre-trial detention system has had serious and systemic impacts, both at the individual and institutional levels. One of the most obvious impacts is the increase in excessive and uncontrolled detention, which directly exacerbates overcrowding in state detention centers (Rutan) and correctional institutions. The latest data as of June shows that 5,215 investigator detainees and 9,433 public prosecutor detainees are in detention centers as pre-trial detainees. many of whom have never undergone a legitimate judicial process or have not obtained a final court decision. If we count those who have started their trial at the first level, there are 33,826 court detainees in detention centers. The total number of investigator, public prosecutor, and court detainees reaches 83% of the total number of detainees in Indonesia, which is 58,413 people. This overcrowding has reached crisis levels, with occupancy rates almost double the available capacity. This situation leads to violations of detainees' basic rights, including access to health services, proper sanitation, and protection of security and humane treatment.[48]

The second significant impact is the emergence of dualism in the management of places of detention between the police, prosecutors, and the Ministry of Immigration and Corrections. This dualism creates legal uncertainty and weak oversight, opening up opportunities for torture, inhumane treatment, and violations of detainees' basic rights. The ongoing practice of detention in police stations, even though normatively the management of detention centers should be under the Ministry of Immigration and Corrections, demonstrates the weakness of control and accountability mechanisms. The absence of a single authority with full responsibility for the protection and fulfillment of detainees' rights means that oversight is fragmented and prone to abuse of power.[49]

Furthermore, this duality of management not only creates legal uncertainty and weak oversight, but also fuels the widespread practice of detention in unlawful places. Many cases show that pre-trial detainees are still being held in police stations, prosecutors' offices, and even in temporary locations that do not meet minimum standards of detainee treatment. In fact, according to the principles of criminal procedure law and correctional regulations, all detainees should be placed in state detention centers (Rutan) managed by the Ministry of Immigration and Corrections to ensure optimal supervision, protection of rights and access to justice. The proliferation of unauthorized places of detention increases the risk of torture, inhumane treatment, and the loss of detainees' basic rights such as access to legal aid, health services, and communication with their families. In addition, detention outside of the official system often goes unmonitored by external oversight bodies, leaving room for abuses of power and corruption that are difficult to uncover and account for. In the long run, this situation not only weakens public confidence in the criminal justice system, but also hampers efforts to reform correctional facilities based on the principles of justice and humanity. Therefore, harmonizing the management of detention facilities and enforcing strict legal standards are absolutely necessary so that the entire detention process takes place within the corridors of legality and respect for human rights.

Third, overcrowding and weak supervision have a direct impact on the deterioration of the physical and psychological conditions of detainees. Empirical studies show that overcrowded and inhumane prison environments can lead to various health problems, increase the risk of infectious diseases, violence between prisoners, and failure of the corrective function of correctional institutions. Psychological pressure due to overcrowding and lack of space for movement increases the risk of prolonged trauma and increases the likelihood of recidivism after release. These conditions are not only detrimental to detainees, but also burden state resources and hinder correctional goals oriented towards social reintegration.[50] Fourth, the lack of alternatives to non-custodial detention and the weakness of the pretrial mechanism as an administrative control further exacerbate the situation. The pretrial institution, which is supposed to be a mechanism for substantive oversight of the conditions of detention, in practice only functions as an administrative examiner and is unable to examine in depth the reasons and urgency of detention. As a result, pre-trial detention, which should be an *exceptional measure*, has become the norm, with limited opportunities for alternatives to detention such as bail, parole or electronic monitoring. This reinforces the argument that reform of Indonesia's pre-trial detention system must begin with the establishment of effective judicial scrutiny mechanisms and the integration of human rights principles at all stages of the criminal justice process.[51] This confirms that without robust judicial scrutiny, Indonesia's pre-trial detention system will continue to spiral into a vicious cycle of overcrowding, duality of management and correctional crisis. Urgent reforms are needed to ensure that every detention decision is judicially scrutinized, non-custodial alternatives are prioritized, and detention facilities are managed in a single, transparent and accountable

[47] Dedi Wardana Nasoetion et al., "Comparison of the Habeas Corpus System in England and Indonesia: Its Authority and Regulation," *Lex Journal: Studies in Law and Justice* 9, no. 2 (2025): 192-208.
[48] Tyana Irma Nurul and Marisa Kurnianingsih, "The Impact of Prison Overcrowding on the Rights and Well-being of Inmates in Indonesia: A Legal Perspective," *Al-Hakim Journal* 2025: 67-80.
[49] ICJR, "Dualism in Prison Management in Indonesia," 2013, https://icjr.or.id/icjr-ada-dualisme-pengelolaan-tahanan-di-indonesia/.
[50] Inside Indonesia, "Overcrowding crisis," 2025, http://www.insideindonesia.org/index.php?option=com_content&view=article&id=3021%3Aovercrowding-crisis&catid=13%3Afeature.
[51] ICJR, "Pre-trial Detention in the Draft Criminal Procedure Code," 2014, https://icjr.or.id/penahanan-pra-persidangan-dalam-rancangan-kuhap/print/page/13/.

manner. Only then can the protection of detainees' fundamental rights and the goal of humane corrections be truly realized.

CONCLUSION

This research confirms that pre-trial detention in Indonesia has undergone a fundamental shift in meaning, from an *exceptional measure* that should only be used in exceptional circumstances, to a routine practice that has led to penitentiary crises and human rights violations. Aggregate data from the last five years shows that more than 25% of detention facility occupants are pre-trial detainees, many of whom have never been legally tried. This has led to chronic overcrowding, deteriorating physical and mental conditions of detainees, and a decline in the quality of basic rights protection within the correctional system. Philosophically and theoretically, pre-trial detention that does not adhere to the principles of legality, proportionality and *ultimum remedium* is clearly contrary to the main objectives of modern criminal law and penitentiary law. The absence of an effective judicial scrutiny mechanism has opened a wide space for abuse of power, excessive criminalization, and discriminatory and inhumane detention practices. Dualism in the management of detention facilities between the police, prosecution, and the Ministry of Immigration and Corrections exacerbates fragmentation of oversight, creates legal uncertainty, and weakens institutional accountability. As a result, many pre-trial detainees are placed in unauthorized locations, where their basic rights, such as access to legal aid, healthcare and communication with their families, are often denied.

The systemic impact of the absence of *judicial scrutiny* not only exacerbates the *overcrowding* and correctional crisis, but also erodes *due process of law* principles, impedes access to justice, and denies detainees their fundamental rights, including the right to humane treatment, legal aid, and a substantive *habeas corpus* mechanism. The lack of alternatives to non-custodial detention and the weakness of pretrial mechanisms as substantive controls further emphasize that Indonesia's pre-trial detention system has strayed far from the principles of justice, human rights, and good correctional governance. Therefore, the establishment of a substantive and independent *judicial scrutiny* mechanism is an urgent need that cannot be delayed. Every pre-trial detention decision must be exhaustively examined by independent judges, with the state bearing the burden of proof on the urgency, legality and proportionality of detention. Only through effective judicial oversight and harmonized management of places of detention, as well as strengthening the principles of procedural justice and expanding non-custodial alternatives, can Indonesia reimagine its pre-trial detention system towards a more just, humane and accountable criminal justice system, while strengthening the legitimacy of the state in the eyes of society and the international community.

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