JIHAD: Jurnal Ilmu Hukum dan Administrasi
Vol. 7 No. 4 Desember 2025
p-ISSN : 2745-9489, e-ISSNl 2746-3842
DOI: *10.36312/jihad.v7i4.9580/https://ejournal.mandalanursa.org/index.php/JIHAD/issue/archive*

Judicial Scrutiny in the Ruling of the Kuhap

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Abstract

Article Info

Article history:
Received: 18 October 2025
Publish: 1 December 2025

Keywords:
Judicial Scrutiny;
Pre-trial;
Criminal Procedure Code Bill.

Abstract

The Draft Criminal Procedure Code of 2025 "reverts" to using the institution of Pretrial as an instrument that implements the function of judicial scrutiny. Previously, the values of accountability were realized in the institution of Commissioner Judges and Preliminary Examining Judges. The institution of pretrial itself has been criticized from both normative and implementation aspects in the 1981 Criminal Procedure Code. This article aims to analyze the formulation of pre-trial in the Draft Criminal Procedure Code 2025. By using doctrinal research, this article argues that the pretrial formulation in the Draft Criminal Procedure Code 2025 has not comprehensively implemented the values of accountability as the crystallization of the principle of judicial scrutiny. Despite some progressive provisions, normatively, the Bill characterizes pretrial as an institution that acts post-factum and is limited to administrative functions. The formulation of pretrial still maintains a reactive function where its work is based solely on requests. In addition, the scope of pretrial proceedings formulated in the definition tends to be degraded by subsequent operational articles.

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1. INTRODUCTION

The development of the Criminal Procedure Code Bill (KUHAP) shows quite interesting dynamics, both in terms of process and substance. In terms of process, the House of Representatives (DPR), as the holder of the initiative for this bill, has set a target of completion by the end of 2025. However, on April 27, 2025, the discussion was declared temporarily postponed while focusing on strengthening public participation and transparency. Most recently, the House of Representatives (DPR) stated that deliberations on the Criminal Procedure Code Bill would be expedited so that it could be passed according to the initial target of the end of 2025. The dynamics of the discussions on the Criminal Procedure Code Bill are also inseparable from the discourse surrounding the contents of the Criminal Procedure Code itself. Some believe that the substance of the Criminal Procedure Code Bill still does not comprehensively address the problems of the existing criminal justice system. The group that is part of the Civil Society Coalition for the Reform of the Criminal Procedure Code, which consists of twenty NGOs working in the legal field, then submitted nine crucial materials that were considered problematic, along with demands that these issues be discussed in depth.

These various issues, simplified, can encompass the pre-trial, adjudication, and post-trial stages. Pre-trial issues, for example, encompass clarity on mechanisms for responding to public reports and accountability for coercive measures. Furthermore, restitution mechanisms and guarantees for the rights of suspects, convicts, and victims are the focus

of attention in the pre-trial phase. The legal system of evidence and clarity on regulations related to electronic trials are also considered problematic in the adjudication phase. This article seeks to elaborate on these issues, focusing on one instrument in criminal procedural law assumed to carry the function of controlling and holding law enforcement accountable: the pre-trial motion. Although not as prominent as the topic related to the tug-of-war of authority in the form of the principal functional **differentiation** and **master of the case**, pretrial is one of the things that has been discussed in the drafting of the Criminal Procedure Code Bill.

Draft Criminal Procedure Code version of March 24, 2025 "**return** "using pretrial institutions as an instrument of accountability for the actions of law enforcement officers. A concept inspired by *Have a Body* in England as well *Judge Commissioner* in the NetherlandsThis has experienced a tug-of-war over its recognition in the Criminal Procedure Code Bill. After the enactment of Law Number 8 of 1981, the draft Criminal Procedure Code introduced several institutions as a replacement for pretrial proceedings. For example, the Commissioner Judge was introduced in the 2004 draft of the Criminal Procedure Code up to the 2011 draft. Then, from 2012 to the most recent draft, *up to date* (March 24, 2025) The concept of Commissioner Judge was replaced with Preliminary Examining Judge (hereinafter referred to as HPP). Upon closer inspection, the replacement only covers the terminology; otherwise, there are no substantial differences in terms of function and authority. The emergence of these institutions is due to the many problems that exist in the pre-trial institution in the Criminal Procedure Code.

This article examines the concept of pretrial proceedings used in the 2025 Criminal Procedure Code Bill, primarily from the perspective of judicial scrutiny. It begins with the question, "To what extent does the formulation of pretrial proceedings in the Criminal Procedure Code Bill reflect the function of judicial scrutiny? "*Judicial scrutiny* comprehensively?" This article aims to reveal the derivation of meaning from *judicial scrutiny and* the equivalent of the concept and its urgency in the criminal justice system. Considering the instrument *judicial scrutiny* in the Draft Criminal Procedure Code (RUU KUHAP), the concept of a commissioner judge and a HPP was previously constructed. This article attempts to compare the formulations of these concepts. This comparison not only examines the differences and similarities but also provides an opportunity to examine the strengths and weaknesses of the pretrial formulation in the latest RUU KUHAP. Based on a literature review process, this article rests on the initial proposition that the pretrial formulation in the RUU KUHAP does not comprehensively accommodate the various negative evaluations of its implementation in the KUHAP *existing*.

The analysis of this article is divided into four parts. After an introduction containing the background, novelty of the perspective, and the purpose of this article, the first part will dissect the "Concept of *Judicial Scrutiny*" from a grammatical point of view by looking at various equivalent terms that are relevant. Examine the derivation of the meaning contained in the term *judicial scrutiny* and the equivalent term at least contributes to strengthening the philosophical basis of the demand for the availability of a mechanism for correction and supervision of government power of *among other things* law enforcement. The second part will elaborate on the "Urgency of Judicial Scrutiny in the Criminal Justice System." This section aims to reinforce the ambiguous foundations of the existing reality, where demands for control and accountability of law enforcement officers tend to be distracted by banalities. The third part substantively examines the "Instruments Judicial *Scrutiny in* the Criminal Procedure Code and the Draft Criminal Procedure Code. This section will explore the mechanisms in the Criminal Procedure Code and the Draft Criminal Procedure Code that uphold the values of judicial scrutiny. This analysis will also examine the advantages and disadvantages of these instruments. The fourth section will analyze the

"Problems of Pretrial in the Draft Criminal Procedure Code." As a mechanism that upholds the values judicial *scrutiny*, it turns out that normatively, the formulation of pretrial proceedings in the Draft Criminal Procedure Code still leaves various problems. This article concludes with a Conclusion containing conclusions and recommendations.

2. METHOD

This research is doctrinal legal research using various primary and secondary legal materials. Reading materials related to *Judicial Scrutiny* Sourced from books, journal articles, and summary reports, these are then analyzed to find their values and significance. Furthermore, the crystallization of the meaning of judicial scrutiny will be used as an analytical instrument for the provisions on Pretrial, Commissioner Judges, and Preliminary Examining Judges contained in the Criminal Procedure Code and the 2004 Criminal Procedure Code Bill up to the latest draft in 2025. Interpretive techniques such as grammatical interpretation to uncover the meaning of various terms and systematic interpretation to understand the context of meaning in various legal instruments are also used in this article. The results of the analysis using these various instruments are then presented in descriptive-explanatory ways to answer research questions and draw conclusions.

3. DISCUSSION AND DISCUSSION

a. Draft *Judicial Scrutiny*

Conceptually, *judicial scrutiny interpreted* as:

"*Is a legal framework used by courts, particularly the Supreme Court, to evaluate the constitutionality of government actions. This scrutiny involves applying different standards or levels of review, which help establish the expected outcomes of constitutional claims by parties involved in cases. There are three main levels of judicial scrutiny: ordinary scrutiny, intermediate scrutiny, and strict scrutiny*".

If the definition is analyzed, the conceptual *scrutiny includes* the phrase "*legal framework*" or the framework used by the courts. The important function of *judicial scrutiny* covered by the word "*scrutiny*" itself is interpreted as "*the careful and detailed examination of something in order to get information*". In addition, this concept also includes the function "*to evaluate*" or evaluate the actions of the government.

The concept of judicial scrutiny also corresponds in meaning to *judicial oversight.* This concept refers to the authority held by the courts to oversee the behavior of other government officials. Historically, this concept is a form of rejection of *maxim* which is in England and Wales, namely "*the king can do no wrong*". This concept was criticized by Justice Stevens, who stated that public officials have the opportunity and sometimes violate the laws that bind them. Therefore, individuals should have the same right to bring claims against the government. Courts should provide a forum for redressing grievances.

In addition, the concept of judicial scrutiny also has overlapping meanings with judicial *review*. Referring to Black's Law Dictionary, *judicial interpreted* as:

> *"A court's power to review the actions of other branches or levels of government; esp. the court's power to invalidate legislative and executive actions as being unconstitutional*."

The form of authority inherent in this term is the review function carried out by both the executive and legislative branches. In other sections, *judicial review also* refers to "*…of the government and to determine whether such actions are consistent with the constitution*", so in this context, the implementation of judicial *review* also includes

constitutional parameters. In practice in Indonesia, for example, this authority refers to one of the powers held by the Constitutional Court.

The concept of judicial scrutiny in its journey is confronted with another concept, namely judicial *deference*. In a historical context, this doctrine is associated with the arguments of the United States Supreme Court in the case *Chevron v. Natural Resources Defense Council* related to the lawsuit from *Natural Resources Defense Council*(NRDC) against *Environmental Protection Agency*(EPA) related to the term "*stationary source* "which is interpretable. The NRDC then sued, arguing that the EPA misinterpreted the provision, resulting in a reduction in environmental protection standards. The Supreme Court ruled in favor of the EPA. This case established the doctrine of judicial *deference*.

This doctrine emphasizes that "*that judges should not second-guess the decisionmaker under review or impose their own judgments about the wisdom of a policy*". Say "*deference*" which is grammatically interpreted as "respect" refers to the attitude of the judiciary which chooses not to intervene of *action* internal to an institution on the grounds that the problem falls within the "professional expertise" of the decision maker. If associated with the concept *judicial scrutiny*, *judicial deference* is a concept that limits the judicial authority to control, test, and decide on executive actions, which can take the form of actions by law enforcement officers. In the Indonesian context, this concept is seen in the practice of the Constitutional Court, which refuses to process an application on the grounds that it constitutes an "*open legal policy*" from the government. Meanwhile, in the context of criminal law enforcement, the phrase "professional expertise" or internal agency refers to the discretionary authority held by law enforcers.

However, this doctrine has been criticized as an open-ended doctrine used by courts to justify any decision. This doctrine is also opposed by various actors as a concept that results in a decline in the application of law and inadequate protection of human rights of *Strengthening* Judicial oversight is important not only for the long-term public interest but also to strengthen the protection of human rights. Regarding this, Solove then said that *judicial scrutiny is* a concept "*balancing*" against the doctrine judicial *deference*.

Elaborating on the meaning outlined previously, *judicial scrutiny* in general, the criminal justice system embodies values related to accountability. This concept emphasizes that law enforcement and accountability are a package that goes hand in hand. Therefore, this article focuses on the value of judicial *scrutiny* on the accountability aspect. The urgency of this value is the substance of the next sub-discussion.

b. Urgency of *Judicial Scrutiny in* the Criminal Justice System

This section aims to reveal the value of accountability as a derivation of the concept judicial *scrutiny*. In terminology, accountability is defined as:

> "*Principle according to which a person or institution is responsible for a set of duties and can be required to give an account of their fulfilment to an authority that is in a position to issue rewards or punishment*".

One important emphasis of the definition is*"...responsible for a set of duties..."* which in essence refers to accountability for all actions taken by law enforcement officers. In other words, all decisions and actions taken by law enforcement officers are not value-free, but are bound not only by existing rules and guidelines but also by accountability for those actions. Therefore, the issue of authority is also important when discussing accountability.

United Nations Office on Drugs and Crime(UNODC) once issued guidelines on police accountability which elaborately explains the relationship between the extent of police authority and the importance of accountability. *handbook* is explained that the extensive authority held by law enforcement officials, particularly the police, tends to lead to human rights violations. This situation then places accountability as crucial. Furthermore, accountability emerges as a necessity when the police or law enforcement officials can ignore regulations without consequences. In other words, the absence of consequences is a form of impunity for police misconduct.

Accountability is also an inherent element of the broader concept of the criminal justice system. Jones, for example, states that every element of the criminal justice system, including the police, prosecutors, courts, and correctional institutions, must be accountable to the public, victims, and offenders. In line with this, Mardjono Reksodiputro stated that the principle of accountability in the criminal justice system has a derivation of meaning that places an obligation on law enforcement officials to be accountable for their behavior during the pre-trial stage.

The concept of accountability in the criminal justice system then influences the psychology of law enforcement officers. Every element of the criminal justice system is required to carefully consider all its actions. They are psychologically affected, as all actions taken in law enforcement are subject to critical scrutiny and accountability. Due to this, Simon said that the concept of accountability also includes the concept of transparency. This is based on the assumption that accountability is not possible for people who are outside of observation. In addition to improving the quality of investigations, transparency also encourages a cautious attitude from law enforcement officials.

Furthermore, accountability itself cannot be separated from other principles such as integrity and due diligence. Integrity itself is described as a value where various elements of the criminal justice system must consistently respect reliable and evidence-based procedures. Meanwhile, due diligence emphasizes that the investigation and adjudication processes must have mechanism *check and balance to* ensure that the decisions of elements of the criminal justice system can be repeatedly tested, culminating, if necessary, in a trial where the state must prove the case.

However, this concept of accountability sometimes creates a discourse regarding the discretionary powers of law enforcement officials. Regarding this, Breitel stated that discretion should not be eliminated or reduced, but rather controlled to avoid inequality, arbitrariness, discrimination, and oppression. In conclusion, Breitel proposed a proportion related to the form of accountability, namely through internal control alone. An accountability format that emphasizes internal control is narrower when compared to other forms such as Murphy where accountability is constructed in a format *Front-End*, that is a process that requires prior authorization and ends with an external agent including a court.

This shows two forms of accountability that can be carried out, namely internally which can take the form of reports and reviews by superiors and externally which includes supervision by the courts which in this article is conceptualized as judicial *scrutiny*. Accountability and oversight limited to internal matters are considered ineffective by some experts, primarily due to various factors. One is the consolidation of power. Lippke describes this as a tendency among law enforcement officials to sideline and allow shortcomings or violations committed by other officials, resulting in ineffective oversight. The work of one law enforcement official is criticized and even overturned by other law enforcement officials.

For example, prosecutors must monitor and question police work, including overseeing the arrests they make and the evidence they gather. Unfortunately, it's well known that prosecutors rely on the police for much of their criminal investigation work, and they are understandably reluctant to challenge police evidence and claims. Good relationships sometimes take precedence over integrity and thoroughness. This also aligns with Harkristuti Harkrisnowo's opinion, which states that horizontal oversight is unreliable because it's difficult for officials within the same institution to enforce regulations. Vertical oversight is carried out by superiors, but it is highly dependent on the superior's own quality in supervising their subordinates. External oversight is crucial, carried out by other institutions.

This form of accountability is in line with the arguments of other experts who state that; the best solution, although difficult to implement - is a structured mechanism where a specialist judge would be exclusively allowed, under a specific set of provisions, to review investigative steps as well as other procedural restrictive measures that are highly invasive of fundamental rights. This concept, upon closer examination, points to the supervisory institutions introduced in the Criminal Procedure Code Bill, such as the Commissioner Judge and the HPP. A description of the characteristics of these institutions will be the subject of the next sub-discussion.

c. Instruments of *Judicial Scrutiny in* the Criminal Procedure Code and the Draft Criminal Procedure Code

The Criminal Procedure Code Bill implements functional judicial *scrutiny in* several forms. In the 2004 to 2011 Draft Criminal Procedure Code, the concept judicial *scrutiny was constructed* within the function of a Commissioner Judge. Meanwhile, in the 2012 Criminal Procedure Code Bill, Commissioner Judges were replaced with Preliminary Examining Judges. By the Criminal Procedure Code Bill, Commissioner Judges are defined as “officials authorized to assess the course of investigations and prosecutions, and other authorities specified in this Law.” Meanwhile, HPP is defined as “officials authorized to assess the course of investigations and prosecutions, and other authorities specified in this Law.” If observed, these two concepts are not different. In fact, the drafters of the Law tended to only replace the term “Commissioner Judge” with “Preliminary Examining Judge.” Other aspects such as Position, Nature of Authority, Object of Examination, and its objectives also do not show substantial differences.

In substance, both the Commissioner Judge and the HPP are constructed with broader functions when compared to the Pretrial as regulated in the Criminal Procedure Code. One analysis can be seen from the function of granting permission to carry out coercive measures. While in the Criminal Procedure Code, which uses the pretrial institution, permission for coercive measures is requested from the Chief Justice of the District Court, in the Draft Criminal Procedure Code, which uses the Commissioner Judge and the HPP, the function of the Chief Justice of the District Court is replaced by these two institutions. Another aspect is that both the Commissioner Judge and the HPP are constructed with an initiative function, meaning that actions taken are not solely based on requests as is the reactive function of the Pretrial. A more detailed comparison between the Commissioner Judge and the HPP with the Pretrial in general can be seen in the following table.

Aspect	Pre-trial (KUHAP 1981)	Commissioner Judge (Criminal Procedure Code Bill 2004–2011)	Preliminary Examining Judge (2012 Criminal Procedure Code Bill–etc.)
Legal basis	Articles 77–83 of the Criminal Procedure Code (Law No. 8 of 1981).	Draft Criminal Procedure Code 2004, 2008, 2010, 2011 (not yet in effect).	2012 Criminal Procedure Code Bill and its advanced versions.
Judge's Position	Single judge in the District Court.	A single judge at the National Court, specifically appointed as *Commissioner Judge*.	PN judges who are specifically assigned as *Preliminary Examining Judge*.
Properties of Mechanism	Characteristic of **reactive**→ can only be submitted after action has been taken (e.g. after detention or seizure).	Characteristic of **preventive & proactive**→ supervision and granting of permission before or when coercive measures are taken.	Characteristic/initial **test (quasi-adjudicative)** → assess the validity/invalidity of initial evidence and processes before the case goes to court.
Object of Examination	- The validity/invalidity of arrest and detention. - The validity/invalidity of termination of investigation/prosecution. - Compensation and rehabilitation.	- Permission & supervision of coercive measures (arrest, detention, search, seizure). - Complaints of suspects. - Supervision of wiretapping & other coercive measures.	- The validity of coercive measures. - Test of sufficient preliminary evidence. - Initial assessment of the legality of the investigation and prosecution process.
Objective	Providing legal protection for suspects/defendants from arbitrary actions by authorities.	Ensure early protection of human rights & become a mechanism/check *and balance against* the authority of investigators/prosecutors.	Ensuring that only legitimate cases can be brought to court; testing the legality of cases from the outset.
Advantages	Fast & simple mechanism.	Stronger in preventing rights violations; early monitoring.	More comprehensive in testing the legality of cases.
Shortcomings / Criticism	Limited to certain objects; its decisions are often considered less effective.	Criticized for potentially increasing the burden on the District Court & overlapping with pre-trial functions.	Criticized for potentially slowing down the legal process & intervening in investigations.

However, the 2025 Criminal Procedure Code Bill then reintroduced the Pretrial Institution as an instrument that carries out the function of *judicial scrutiny* at first

glance, this mechanism has been significantly modified to take into account various criticisms and input from the public. However, this article finds that the pretrial concept in the latest Criminal Procedure Code Bill still leaves various problems and, in substance, is unable to comprehensively embody the values of judicial *scrutiny* will be explained in the next sub-discussion.

d. Problems of Pre-Trial in the Draft Criminal Procedure Code

Several evaluation results show that pre-trial is not effective as a control instrument. and has many shortcomings both in normative aspects and at the implementation level. Pretrial legal norms in the Criminal Procedure Code tend to be designed to create a passive function coupled with limited allocation of authority. In practice, the institution, which was originally conceived as a concept of *You have a body. This* is nothing more than an administrative instrumentwhich tends to have a formal legalistic character. The pretrial institution limits its role only as *examining judge which* relies on the quantity of formal prerequisites, but does not play a far-reaching role investigating *judge which* examines the procedural validity of law enforcement. This is certainly a new area of inequality, because the Criminal Procedure Code itself in substance tends to provide high discretionary authority to law enforcement officers.

The normative problems and implementation of pre-trial proceedings are at least an indication that there are serious problems related to procedural accountability of law enforcement, particularly at the stage *pre-trial* Institutions such as Commissioner Judges and HPP were then introduced as alternative concepts to Pretrial. Although based on the same idea as Pretrial, **Andi Hamzah** said there are several different elements between Pre-trial and Commissioner Judge, including:

1. The Commissioner Judge is a separate organization and is separate from the District Court.
2. Commissioner Judges are given more proactive authority compared to passive pre-trials (just waiting for the application).
3. The Commissioner Judge can function as a filter and determine the suitability of a case to be submitted to court.
4. The commissioner judge's office is located near the detention house (RUTAN).

Besides that, **Fachrizal Afandi** stated that the concept of a Commissioner Judge could implement judicial oversight of the actions of law enforcement officers during the pre-trial phase. This mechanism is intended to promote control and accountability, ensuring that coercive measures and evidence collection are not carried out using violence and violating human rights. The same is expected of the HPP as a replacement for the Commissioner Judge. The HPP is considered to have a compatible mechanism for creating a criminal justice system that is fair, impartial and objective to prevent various forms of deviations committed by law enforcement officers such as corruption, monopoly of power and arrogance.

On the other hand, some experts view the Commissioner Judge as a mechanism that is incompatible both in terms of concept and the factual conditions of the criminal justice system in Indonesia. **Eddy Hiariej** For example, some argue that the concept of commissioner judges is difficult to implement in Indonesia. Indonesia's geographical location, separated by numerous islands, poses a challenge to the strict Criminal Procedure Code (KUHAP) regulations regarding time limits. Furthermore, the already heavy caseload also poses a barrier to the implementation of commissioner judges. Indonesia's geographical conditions have been a concern for many experts in implementing the concept of Commissioner Judges. This is considered less than ideal, especially if Commissioner Judges are only available in major cities. On the other

hand, institutionally, Commissioner Judges are a new institution, faced with the reality of limited state budgets for establishing and providing facilities.

Furthermore, if we refer to the formulation of articles related to Commissioner Judges and HPPs in various draft Criminal Procedure Codes, they do not appear to comprehensively address the issues raised in pretrial hearings. Commissioner Judges and HPPs are still characterized as having limited functions of *examiner judge*. The practical consequence is that both the Commissioner Judge and the HPP will only examine administrative quantities. In addition, the weakness of the pretrial is that it is after *the fact* The Commissioner Judge and HPP concepts do not provide a solution. The next question is, does the pretrial concept in the latest version of the Criminal Procedure Code Bill address the problems encountered in previous pretrial proceedings?

The March 2025 version of the Criminal Procedure Code Bill regulates pretrial proceedings in several articles. Pretrial proceedings are defined as:

> *"... the authority of the district court to examine and decide on objections submitted by the Suspect or the Suspect's Family, the Victim or the Victim's Family, the reporter, or the Advocate who is authorized to represent the legal interests of the Suspect or Victim, regarding the actions of the Investigator in conducting the Investigation or the actions of the Public Prosecutor in conducting the Prosecution in accordance with the methods regulated in this Law."*.

If you look closely at the formulation, one of the new features is the addition of victims or their families as parties who can file a pretrial motion. The Criminal Procedure Code Bill places greater emphasis on victims by granting comprehensive rights within the articles. A progressive development when compared to the Criminal Procedure Code which only limits the applicant to "*suspect, family or attorney, investigator,* student/public *or interested third parties*". In addition to victims, the Criminal Procedure Code Bill also comprehensively emphasizes the rights of suspects, defendants, witnesses, people with disabilities, women and the elderly as regulated in Chapter VI.

Furthermore, pretrial proceedings are designed as a process that must be completed. In other words, if the pretrial process is not completed, the main case cannot be examined. This provision is also a positive aspect compared to the Criminal Procedure Code, where a pretrial motion is dismissed if the main case has already been examined. In practice, this Criminal Procedure Code mechanism creates loopholes and is often exploited by law enforcement to avoid clarification during pretrial proceedings. The tendency to stall while expediting the trial process has become commonplace. This renders pretrial proceedings essentially a complementary mechanism that lacks any dignity in the eyes of law enforcement. Therefore, this provision in the Draft Criminal Procedure Code deserves to be appreciated.

However, despite these progressive aspects, the pretrial provisions in the Criminal Procedure Code Bill still have several problems. These problems include: ***First***, pretrial still maintains its character after *the fact*-because this mechanism does not have the right of initiative, everything is based on application. In contrast, for example, to the HPP, the 2012 Criminal Procedure Code Bill in one part allows the HPP to take action based on its own initiative. ***Second***, pre-trial proceedings clearly demonstrate an administrative character and tend to be formal and legalistic. This can be seen in the formulation of the explanation of Article 149 paragraph (1) letter a: "*"Coercive measures that have received permission from the head of the district court are not included in the objects of pre-trial proceedings."*. In addition to placing pre-trial

proceedings solely in the administrative examination body, this formulation simultaneously degrades the objectivity of pre-trial proceedings and maintains their character as *examiner judge* and not up to *investigating judge*.

Third, although the Draft Criminal Procedure Code expands the scope of coercive measures that can be requested in pretrial to include; searches; seizures; wiretapping; examination of documents; and prohibitions for suspects to leave Indonesian territory. However, this broad definition is then reduced by the formulation of Article 149 of the Draft Criminal Procedure Code which includes the validity or otherwise of the implementation of Coercive Measures; b. the validity or otherwise of the termination of Investigation or Prosecution; c. requests for Compensation and/or Rehabilitation for a person whose criminal case is terminated at the Investigation or Prosecution level. It is said to be reduced because when linked to the investigative authority regulated in Article 7 of the Draft Criminal Procedure Code, coercive measures are only one part of that authority. In other words, not all investigators can be held accountable for their exercise of their authority. This contradicts the definition of pretrial proceedings above, particularly the phrase "*...on the actions of investigators in conducting investigations or the actions of public prosecutors in conducting prosecutions…"*which should be interpreted to include all the implementation of investigators' actions within the scope of their authority.

This description also demonstrates that the pretrial concept in the latest version of the Criminal Procedure Code (KUHAP) Bill, despite several innovations and expanded formulations, still leaves many normative issues. Existing issues that have been the subject of serious evaluations in the past remain. This further confirms that the new Criminal Procedure Code still poses several challenges in terms of accountability for law enforcement.

4. CLOSING

The results of the analysis of this article show that the concept judicial *scrutiny* is an important aspect in criminal procedural law and the criminal justice system in general. In terms of meaning, *judicial scrutiny focuses* on the accountability function of the actions of law enforcement officers. The Criminal Procedure Code Bill implements this functional judicial *scrutiny through* the institution of Commissioner Judges, Preliminary Examining Judges, and the latest version of the Criminal Procedure Code Bill reverts to the use of the Pretrial Procedures (Praperadilan) institution. Although the concept of Pretrial Procedures has been modified normatively, the provisions still leave various issues, including provisions that still maintain the limited function of pretrial procedures *after the fact* and tends to operate solely within the administrative realm of justice. Furthermore, the formulation of pretrial proceedings in the Draft Criminal Procedure Code (RUU KUHAP) demonstrates an inconsistent authority structure and tends to be based on operational articles.

5. SUGGESTION

This article was written during a period when the Criminal Procedure Code (KUHAP) bill was still undergoing intensive deliberations in the House of Representatives (DPR). Given that the government and the DPR have targeted the KUHAP to be passed in early 2026, this article can serve as substantial consideration for the DPR, particularly regarding accountability instruments for law enforcement officers. The criticisms and input presented in this article should serve as material for serious discussion by the drafting team. Therefore, the KUHAP that is passed will not simply be a product flooded with various

authorities from law enforcement officers, but must also be balanced with proportional accountability mechanisms that guarantee the upholding of human rights.

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