

Comparison Of The Pretrial System In Indonesia And The Us

Haeranah¹

¹Assoc. Professor of Law of Faculty of Law, Hasanuddin University

Achmad Dzulfikar Musakkir²

² Doctorate Students of Law of Faculty of Law, Hasanuddin University

Jims Oktovianus³

³ Doctorate Students of Law of Faculty of Law, Hasanuddin University

Miftah Idris⁴

⁴Doctorate Students of Law of Faculty of Law, Hasanuddin University

Email: miftahidris86@gmail.com

Abstract

The pretrial system in Indonesia and in America clearly has differences based on the state legal system in each of these countries. In Indonesia, the implementation of pretrial is clearly regulated in the Criminal Procedure Code, while in America, which has a decentralized legal system, where the stages are regulated by federal and state laws which may differ in all jurisdictions in America. To find out comprehensively the comparison in the pretrial system that exists in Indonesia and America, so the research method used in this study is normative legal research with a comparative approach. From the research results, it was found that the outline of the comparison of the pretrial system between the two countries, such as the process of arrest and detention, as well as the concepts of bail and pretrial release, showed variations between the two countries. Indonesia uses the temporary release option, while the United States generally uses bail and conditional release mechanisms. Motions and pretrial hearings in Indonesia involve pretrial procedures, which focus on examining the legality of enforcement actions, while the United States allows pretrial motions and hearings on a variety of issues. Finally, the right to legal counsel is recognized in both countries, although provisions regarding public defenders may differ.

Keywords: Pretrial; Legal System; Comparison.



INTRODUCTION

The pretrial stage plays an important role in the criminal process because it establishes the basis for the next trial process, besides that, it holds supervisory measures against law enforcement officials so that in exercising their authority they do not abuse their powers as stipulated in the Criminal Procedure Code (KUHP) (Anang Shopan Tornado, et. al., 2020). It involves various legal procedures and safeguards to protect the rights of individuals accused of crimes. Pretrial systems can vary widely between different countries, reflecting variations in legal frameworks, procedures and rights granted to individuals. This paper aims to provide a comparative analysis of pretrial systems in Indonesia and the United States, highlighting the similarities and differences that exist between the two jurisdictions.

In Indonesia, the pretrial stage is regulated in the Criminal Procedure Code (Article 1 Number (10) KUHP), which regulates the procedures and requirements for arrest, detention and search. The principle of legality, or the "principle of legality," is fundamental to the Indonesian legal system and ensures that law enforcement actions are based on a clear legal basis. During the pretrial stage, individuals have the opportunity to challenge the lawfulness of their arrest, detention or search through a special procedure called pretrial. This allows them to assert their constitutional rights and seek remedies if their rights have been violated.

On the other hand, the United States has a decentralized legal system, where the pretrial stage is governed by federal and state laws which may differ across jurisdictions. The Fourth Amendment to the United States Constitution provides protection against unreasonable searches and seizures, while the Fifth and Sixth Amendments guarantee due process rights and the right to legal counsel. The pretrial stage in the United States involves procedures such as arrest, bail determination, pretrial motions, and hearings, which serve to protect individual rights and ensure fairness in the criminal justice system.

This comparative analysis will explore various aspects of the pretrial system in Indonesia and the United States. It will examine the legal framework, including relevant laws and regulations, and the procedures and practices followed in each jurisdiction. In addition, this paper will explore areas such as arrest and detention processes, concepts of pretrial bail and acquittal, motions and pretrial hearings, and the right to legal counsel. By examining these elements, we can gain a deeper understanding of the similarities and differences between Indonesia's and the United States' pretrial systems and identify potential areas for improvement or exchange of best practices.



RESEARCH METHOD

The type of research used is Normative Legal Research which provides a legal description of the comparative pretrial system in Indonesia and America with a research approach, namely a comparative approach. The type of data used is secondary data where the data generated from this research is library data or secondary data. To obtain secondary data, the authors conducted a search for primary, secondary and tertiary legal materials. After obtaining data related to this research, the data will be analyzed in several ways to obtain qualitative research results. The commonly used way is to classify the data then systematize the data and then interpret it critically. After the process has been passed, the final data will be re-evaluated to support solving a problem in research (Soejono Soekanto, 2006). Overall, this comparative analysis aims to contribute to existing knowledge about pretrial systems, encourage discussion of the strengths and weaknesses of different approaches, and encourage cross-jurisdictional learning to improve the fairness and effectiveness of pretrial proceedings in both Indonesia and the United States.

RESULT AND DISCUSSION

The pretrial systems in Indonesia and the United States differ in several aspects, including the legal framework, procedures, and rights granted to individuals during the pretrial stage. The following is a general comparison of pretrial systems in the two countries:

Legal Framework

Pretrial stages in Indonesia are guided by the Criminal Procedure Code (KUHP). The Criminal Procedure Code is a comprehensive legal framework that regulates the procedural aspects of criminal cases in this country, all of which are inseparable from the birth of the Criminal Procedure Code based on two reasons, namely the reason for creating a provision that can support the implementation of a fair trial and the reason for the urgency to replace procedural law products that are colonialistic in nature as stated in the Herzeine Inlandssch Regulation (HIR) (Ministry of Justice, 1982).

Not only that, the Criminal Procedure Code provides a set of rules and regulations that outline the procedures, rights and obligations of individuals involved in the pretrial stage, including law enforcement agencies, prosecutors and courts.

The Criminal Procedure Code sets out the main principles and procedures to be followed during the pretrial stage. This ensures that the pretrial process adheres to the principle of legality or the "principle of legality" which requires that all actions taken by law enforcement officials



and other officials must be based on a clear legal basis and in accordance with established procedures.

In the Criminal Procedure Code, the pretrial stage includes several important aspects, including arrest, detention, search and individual rights. It sets out the conditions and procedures under which a person may be arrested, the duration of detention, and the grounds for carrying out a search and seizure. Moreover, the Criminal Procedure Code guarantees individual rights during the pretrial stage. These rights include the right to legal counsel, the right to be informed of the reasons for their arrest, the right to question the lawfulness of their arrest, detention or search, and the right to request temporary release under special conditions set by the court.

The Criminal Procedure Code also provides guidelines for pretrial procedures which are a special mechanism in the pretrial stages in Indonesia. Pretrial allows individuals to challenge the legality of their arrest, detention or search by submitting a formal petition to the court. Courts then examine the legality of actions taken by law enforcement agencies and may order the release of the individual if their rights have been violated (Ratna Nurul Alfiah, 1986).

Pretrial principally examines and assesses the truth and accuracy of coercive measures carried out by investigators and public prosecutors in matters relating to the accuracy of arrest, detention, termination of investigations and prosecution as well as compensation and rehabilitation. The expansion of Pretrial objects in the intended Indonesian criminal law system, including the discovery of good law against the provisions stipulated in the Criminal Procedure Code articles will be able to achieve the goal of its formation in accordance with the will of the legislators (P.A.F. Lamintang & Theo Lamintang, 2010).

The pretrial stage in the United States is governed by a combination of federal and state laws, which can vary across jurisdictions. This decentralized legal system allows each country to establish its own procedures and rules regarding pretrial proceedings, subject to certain constitutional restrictions.

Before determining enforcement and legal representation of what claims, remedies or defenses you can bring in a particular case, we need to know which jurisdiction's laws apply (Thomas A. Mauet & David Marcus, 2015). However, if the complaint raises a variety of jurisdictions, state law will apply one way or another. This situation prompts the question of choice of law i.e. the law enacted in federal or state courts (Thomas A. Mauet & David Marcus, 2015).

At the federal level, the United States Constitution and federal laws provide the overall



framework for pretrial proceedings. The Fourth Amendment protects against unreasonable searches and seizures, and the Fifth and Sixth Amendments guarantee due process rights, including the right to a fair and speedy trial, the right to be informed of allegations, the right to appear before witnesses, and the right to legal representation.

In addition to constitutional provisions, each state has its own laws, ordinances, and rules governing the pretrial stage. These state laws can vary widely, and even within a single state, different jurisdictions may have slightly different procedures and requirements.

Specific aspects of the pretrial stages regulated by this law include procedures for arrest, length of detention, stipulation of bail, pretrial motions, discovery of evidence, and other procedural matters. For example, some states may have specific time limits in which a person must be brought before a judge for a preliminary hearing or bail examination, while others may have different procedures for granting pretrial acquittal or setting bail amounts.

In addition, state and local jurisdictions may establish their own rules and practices to ensure the efficient functioning of pretrial proceedings. This includes the establishment of a pretrial services agency to provide supervision and support to individuals released prior to trial, as well as the availability of a pretrial diversion program for certain lower-level offenders.

The variability in pretrial stages across jurisdictions reflects the unique legal traditions and systems of the United States. This allows flexibility in adapting pretrial proceedings to local needs, while ensuring that fundamental constitutional rights are protected.

However, it is important to note that regardless of variation, the overarching principles of due process and fairness apply to the pretrial stage in all jurisdictions. The constitution sets fundamental standards that guide the treatment of individuals during pretrial proceedings, ensuring that their rights are respected and that they have access to legal representation and a fair opportunity to present their case.

Arrest and Detention

In Indonesia, the process of arrest and detention at the pretrial stage is regulated in the Criminal Procedure Code (KUHAP) (Article 77 of the Criminal Procedure Code).¹ When there is a reasonable suspicion that a person is involved in a crime, the police have the authority to make an arrest. This reasonable suspicion is usually based on information or evidence suggesting the individual's involvement in criminal activity.

Definitive stipulation is a stipulation issued by a state administration agency or official



based on applicable laws and regulations, which is concrete, individual and final in nature which creates legal consequences for a person and civil legal entity (Article 1 Number 5 Law Number 5 of 1986).

Once a person has been arrested, the police have the authority to detain them for a certain period of time to carry out further investigations and determine if there is sufficient evidence to proceed with the case. According to the Criminal Procedure Code, the initial detention period is 1x24 hours, meaning that the person can be detained for up to 24 hours from the time of arrest.

However, in certain circumstances, such as the complexity of the case or the need for further investigation, the detention period can be extended to a maximum of 3x24 hours. This extension must be with permission from the public prosecutor or judge based on an official request from the police.

During the period of detention, detained persons have certain rights, including the right to obtain legal counsel, the right to be informed of the reasons for their arrest, and the right to communicate with family members. They must also be treated humanely and not subjected to any form of physical or psychological violence.

At the end of the detention period, the police consult with the public prosecutor evaluating the evidence gathered during the investigation. Based on this assessment, a decision is made whether to proceed with the case. If there is insufficient evidence, the person may be released, whereas if there is sufficient evidence, the case will proceed to the next stage, which may involve filing charges, further investigation, or handing over to the prosecutor's office.

It is important to note that specific details and procedures regarding arrest and detention may vary depending on the circumstances, the gravity of the violation, and other factors. KUHAP provides a general framework for these processes, but implementation and practice may differ in practice. Because law enforcement is a process to make legal wishes come true. The will of the law is the mind of the legislature which is formulated in legal regulations. The law enforcement process also extends to law making, and will also determine how law enforcement is carried out. In its implementation, the law enforcement process culminates in its implementation by law enforcers in the process of arrest and detention (Satjipto Rahardjo, 2009).

In the United States, pretrial arrest and detention are governed by federal and state laws, which vary from jurisdiction to jurisdiction. When there is probable cause to believe that a person has committed a crime, law enforcement officials have the authority to make an arrest.



Probable cause refers to a reasonable belief, based on facts and circumstances, that a crime was or is being committed by the individual concerned. This standard serves as a constitutional safeguard, ensuring that arrests are based on reasonable suspicion.

Following arrest, the duration of detention may vary depending on several factors, including jurisdiction and the seriousness of the offence. In less severe cases, a person can be released on citation, requiring them to appear in court at a later date. For more serious offences, or if the person poses an aviation risk or danger to society, they may be detained until a formal hearing or bail decision is made.

The length of detention at the pretrial stage can range from several hours to several days. This is generally intended to allow law enforcement sufficient time to gather additional evidence, complete any necessary documents, and prepare for the next steps in the criminal justice process.

In the United States, pretrial detention periods are subject to constitutional restrictions to protect individual rights. The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and the Fifth and Sixth Amendments guarantee due process rights, including the right to a speedy judicial determination of probable cause and the right to be notified of such allegations.

Specific procedures and detention schedules during the pretrial stage may also be affected by state laws, court rules, and local practice. Some jurisdictions have imposed specific time limits within which a person must be brought before a judge for a preliminary hearing or determination of bail.

It should be noted that the length of detention at the pretrial stage must be reasonable and proportionate to the circumstances of the case. Excessive or unreasonable detention can violate a person's constitutional rights and may result in legal action.

Overall, the United States pretrial system emphasizes the importance of probable cause of arrest and allows for variations in the duration of detention based on jurisdiction and the seriousness of the offence, while also ensuring that the constitutional rights of individuals are protected during the pretrial stage.

Warranties and Pretrial Waiver

In Indonesia, the concept of guarantee, as it is commonly understood in other legal systems, is not well established. Instead, states use a different approach known as temporary release (suspension) during the pretrial stage. This concept allows individuals who have been



arrested or detained to request release from custody based on certain conditions set by the court.

Temporary release in Indonesia is granted by the court after considering various factors, including the nature of the offence, the risk of escaping, and the potential danger posed by the person if released. The court may impose special conditions that the person must comply with while released, such as surrendering his passport, reporting regularly to the authorities, or refraining from certain activities.

The purpose of temporary release is to strike a balance between the interests of justice and individual rights. This allows individuals to be released from detention under certain conditions while ensuring that they appear in court for further proceedings and do not pose a risk to society.

The decision to grant temporary release is at the discretion of the court, and may be subject to the application for bail or bail by the individual or their representatives. This guarantee serves as a form of guarantee that the person will meet the requirements set by the court and will appear for future court proceedings.

It is important to note that the specific conditions for provisional release and the criteria used to determine eligibility may vary depending on the circumstances of the case and the judgment of the court. Court decisions are based on an assessment of an individual's risk of escape, potential harm to society, and the interests of justice as a whole.

Using the concept of temporary release rather than traditional bail, Indonesia aims to balance individual rights with the need to ensure their appearance in court and protect the interests of justice. This approach recognizes the unique legal framework and cultural context of the Indonesian legal system while still providing a mechanism for individuals to secure their release under certain conditions during the pretrial stage.

Based on the description above, it can be concluded that the pretrial institution is an instrument to prevent the arbitrariness of law enforcement officials against someone who is undergoing a legal process which will lead to upholding and protecting the law (Moechgiyarto, 2015).

In the United States, the concept of bail is well established and commonly used during the pretrial stage. Bail allows individuals who have been arrested or detained to secure their release from custody by sending money or property as collateral. The purpose of bail is to ensure an individual's appearance in court for further proceedings.

When a person is placed on bail, they have the option to pay the amount demanded,



which serves as a guarantee that they will attend all scheduled court hearings. If they fulfill the conditions of their release and appear in court as required, the bail amount is returned to them at the end of the case, regardless of the outcome.

The specific bail amount is determined by a variety of factors, including the severity of the offense, the individual's criminal history, their ties to the community, and the likelihood of escape. In some cases, bail may be set at a standard amount based on the type of offence, while in other cases, judges assess individual circumstances and set a personalized bail amount.

In addition to traditional bail, the United States also offers other pretrial release options. Conditional release may be granted, which imposes special conditions on individual release. These conditions can include supervised release, where the person is required to report regularly to a pretrial services officer, or electronic monitoring, where their movement is monitored using an ankle bracelet or similar device.

The availability and terms of the pretrial acquittal option can vary across jurisdictions and depend on the nature of the offence, the individual's criminal history and the discretion of the judge. The aim is to provide an alternative to detention while still guaranteeing public safety and the appearance of the accused in court.

It is important to note that the benefit system in the United States has been criticized for its potential to perpetuate socioeconomic disparities. In recent years, efforts have been made to reform guarantee practices and seek alternatives that prioritize risk assessment and the principle of not holding individuals solely for their inability to pay bail.

Overall, the bail system in the United States plays an important role in the pretrial stage, enabling individuals to secure their release by posting bail, while also providing alternative pretrial release options to ensure the administration of justice and public safety.

Motion and Pretrial Hearings

In Indonesia, the pretrial stage includes a special legal procedure known as pretrial, which allows individuals to challenge the lawfulness of their arrest, detention or search. Pretrial provides a mechanism for individuals to request a review of actions taken by law enforcement agencies during the pretrial stage.

The purpose of pretrial is to protect the rights of individuals and to ensure that their arrest, detention or search is carried out according to the law and does not violate their fundamental rights. This allows individuals to challenge perceived irregularities or violations of law that may have occurred during the pretrial process.



To initiate a pretrial, the person or their attorney submits a formal application to the court specifically requesting a review of the legality of the act committed by a law enforcement agency. The court then examines the application and considers the arguments put forward by the applicant and the opposing party, usually represented by the public prosecutor.

In the pretrial process, the court evaluates the legality of the arrest, detention or search in question. This includes checking whether there is sufficient evidence or reasonable suspicion to justify action taken by law enforcement, whether proper procedures have been followed, and whether individual rights are upheld.

Based on its evaluation, the court can reach one of several possible outcomes. If it turns out that the action was carried out within the limits of the law, then the court will reject the request, and the pretrial process will continue. However, if the court finds that the act was unlawful or violated the rights of the person, the court may order the person's release and declare the act null and void.

It is important to note that pretrial procedures are not an opportunity to re-argue the merits of the underlying criminal case. The focus is solely on examining the legality of actions taken at the pretrial stage. A court decision in a pretrial process does not determine guilt or innocence but serves as a legal assessment of whether the act in question is legal or not.

Pretrial serves as an important mechanism for protecting individual rights during the pretrial stage in Indonesia. This allows for an independent judicial review of the legality of an arrest, detention or search, ensuring that law enforcement agencies act according to the law and respect individual fundamental rights.

Everything is done to ensure whether or not the procedure is legal to become an object of pretrial, an assessment can be described based on the aspects of decency and public order, as well as logical and systematic juridical thinking (Eddy O.S. Hiariej,,2015).

In the United States, the pretrial stage involves the submission and consideration of various pretrial motions to address legal issues and matters relevant to the case. This motion serves as a mechanism for both the prosecution and defense to assert their rights and present arguments before the trial begins.

Pretrial motions may be tabled by either party to raise specific issues that could impact the outcome of the case. One common type of pretrial motion is a motion to suppress evidence. This motion is filed when either party believes that certain evidence was obtained unlawfully or violated constitutional rights. The court then reviews the motion and determines whether evidence should be removed from the trial.



Another type of pretrial motion is a motion to reject charges. This motion is usually filed by the defense, arguing that the charges brought against the defendant are legally insufficient or do not possess the evidence necessary to proceed to trial. The court evaluates the motion and decides whether to dismiss the charges or allow the case to proceed.

Other pretrial motions may include requests for discovery, which seek disclosure of evidence and information in the possession of the opposing party, requests for clarification or interpretation of legal matters, or motions relating to the receipt of expert testimony.

Pretrial motions are usually resolved through a pretrial hearing, where the parties present their arguments and evidence to the court. This hearing provides an opportunity for both parties to present their positions and for the court to make a decision on the legal issues raised in the motion.

During pretrial hearings, the court may also deal with other matters related to the case, such as setting a trial date, considering plea bargains, or resolving procedural disputes between the parties.

The purpose of pretrial motions and hearings is to ensure that legal issues are addressed and resolved before the trial begins. By addressing these issues beforehand, it helps streamline the trial process and promotes fairness and efficiency.

It is important to note that specific procedures and rules regarding motions and pretrial hearings may vary between the different jurisdictions and courts in the United States. Each jurisdiction may have its own set of rules and procedures governing the filing, adjudication, and settlement of pretrial motions.

Right to be Accompanied with the Lawyer

In Indonesia, individuals have the right to legal counsel during the pretrial stage, ensuring that they are adequately represented and have access to legal advice and assistance. While this right is recognized, it is important to note that the provision of public defender services or legal aid may be limited in practice. All of this is the spirit of the Criminal Procedure Code to respect human rights (M. Yahya Harahap, 2002).

The right to legal counsel is enshrined in the Indonesian legal system to protect individual rights and ensure a fair and balanced pretrial process. This allows individuals to have a legal professional who can guide them through the legal process, advise them on their rights, and help them deal with the complexities of the legal system.

The Criminal Procedure Code has the spirit of elevating and placing suspects or



defendants in a position of standing, at least there are four basic rights of suspects that cannot be stripped by law enforcers, including equality of rights and position and obligations before the law, must be presumed innocent or presumed innocent, arrest or detention is based on sufficient preliminary evidence, as well as the right to prepare a self-defense.

However, the availability of public defenders or legal aid services in Indonesia may be constrained by a variety of factors, including limited resources, the geographical spread of cases, and the high demand for legal aid. As a result, individuals who cannot afford private legal representation may face challenges accessing legal counsel (M. Yahya Harahap, 2002).

In cases where a public defender is not available, individuals may need to seek private legal representation at their own expense or rely on assistance from family members, friends, or non-governmental organizations that provide legal aid services.

Various efforts have been made to improve the provision of legal aid services in Indonesia, including the establishment of legal aid organizations and initiatives to expand access to justice. However, the availability of legal counsel during the pretrial stage remains an area that requires further attention and development to ensure that individuals have meaningful access to legal representation.

It is very important to uphold the right to legal counsel during the pretrial stage because it protects individual rights, helps ensure fair process, and enables effective participation in the legal process. Recognizing the importance of legal assistance, further efforts are needed to increase the availability and accessibility of legal aid services to support individuals who need legal assistance during the pretrial stage in Indonesia.

In the United States, the right to legal counsel is a fundamental constitutional guarantee, which is protected by the Sixth Amendment to the United States Constitution. This right ensures that individuals who cannot afford a lawyer are provided with legal representation during the pretrial and criminal proceedings and that this is a client's need and priority.

People seek Legal Counsel when they have a problem that needs to be managed and resolved. therefore, must first identify the client's problems and needs, look at it broadly. The client's needs, seen from his perspective, may conflict with possible solutions. But figuring out what the client wants to happen is the first step in dealing with the issues that brought him to the attorney in the first place (Thomas A. Mauet & David Marcus).

For individuals who cannot afford private attorneys, the United States guarantees the provision of public defenders. Public defenders are government-funded attorneys who are specifically assigned to represent individuals who meet certain criteria of financial need.



The qualification criteria for public defenders vary across jurisdictions, as each state has its own eligibility guidelines and requirements. Generally, individuals must demonstrate their inability to afford legal representation and may be asked to provide financial information or undergo an aptitude test to determine their eligibility.

The attorney-client relationship must be formally established by written agreement, for several reasons. First, a written instrument is significantly discreet for each relationship contract. Second, the agreement would prove the existence of an attorney-client relationship for privilege purposes. Third, the agreement will define the work that must be done, what will not be done, and the basis for compensation, all of which are necessary for a good working relationship with the client. Fourth, Model Rule 1.5 requires that a client be informed, “preferably in writing,” of how fees are determined and of all material facts regarding the representation. Although a written agreement signed by the client is required only in cases of contingencies and referrals, good practice dictates its use in all cases. For all these reasons, you need a written agreement with the client (Thomas A. Mauet & David Marcus).

Once deemed eligible, individuals are appointed as public defenders who will represent them during the pretrial stage and throughout the course of their case. Public defenders are licensed attorneys who have the same legal qualifications and responsibilities as private defense attorneys.

Public defenders play an important role in ensuring that individuals who cannot afford legal representation have access to competent and dedicated legal counsel. They provide a wide range of services, including conducting legal research, advising their clients on legal options and strategies, negotiating with prosecutors, and representing their clients in court hearings and trials.

While public defenders fulfill an important function within the criminal justice system, it is important to recognize that public defender offices often face challenges due to their heavy caseload, limited resources, and the complexity of the cases they handle. Despite these challenges, public defenders are committed to upholding the rights of their clients and ensuring a fair and just due process.

In recent years, there has been growing recognition of the need to provide adequate resources and support to public defender offices to ensure that individuals receive effective legal representation. Efforts are underway to address issues such as caseload management, funding, training and overall improvement of the quality of representation provided by public defenders.

The guarantee of the right to legal counsel, including the provision of a public defender,



demonstrates the United States' commitment to upholding the principles of fairness, due process of law, and equal access to justice for all individuals, regardless of their financial means.

CONCLUSION

The pretrial stage in both countries is governed by specific legal frameworks and includes procedures and rights for individuals involved in criminal proceedings. In Indonesia, the pretrial stage is governed by the Criminal Procedure Code (KUHP), whereas the United States relies on federal and state laws which may vary between jurisdictions. Arrest and detention processes, as well as the concepts of bail and pretrial release show variations between the two countries. Indonesia uses the temporary release option, while the United States generally uses bail and conditional release mechanisms. Motions and pretrial hearings in Indonesia involve pretrial procedures, which focus on examining the legality of enforcement actions, while the United States allows pretrial motions and hearings on a variety of issues. Finally, the right to legal counsel is recognized in both countries, although provisions regarding public defenders may differ. It serves as an overview and acknowledges that specific practices may vary from country to country, influenced by jurisdictional factors and case-specific.

REFERENCE

- Adnan Buyung Nasution, *t.t.*, Praperadilan vs Hakim Komisaris, Newsletter Komisi Hukum Nasional.
- Anang Shophan Tornado, 2020, Praperadilan dan Hakim Tunggal, Ed.. I, Banjarmasin, Pt. Borneo Development Project.
- Eddy O.S. Hiariej, 2015 "Hal Ihwal Praperadilan", Papers submitted daily of Kompas, Jakarta, 8 April 2015.
- Law Number 5 of 1986 concerning State Administrative Court
- M. Yahya Harahap, 2002, Pembahasan Permasalahan dan Penerapan KUHP: Penyidikan dan Penuntutan, Sinar Grafika, Jakarta
- Ministry of Justice, Decree of the Minister of Justice concerning Guidelines for the Implementation of Criminal Procedure Codes, Decree of the Minister of Justice No. M.01.07.03 TH. 1982
- Moechgiyanto, 2015 "Praperadilan dalam Konteks Penegakan Hukum di Indonesia", Journal of Ilmu Kepolisian, edisi 083, June-December 2015



- P.A.F. Lamintang & Theo Lamintang, 2010, Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana dan Yurisprudensi, Sinar Grafika, Jakarta
- Ratna Nurul Alfiah, 1986, Praperadilan dan Ruang Lingkupnya, Akademika Pressindo, Jakarta.
- Ratna Nurul Alfiah, 1986, Praperadilan dan Ruang Lingkupnya, CV. Akademika Presindo, Jakarta.
- Satjipto Rahardjo, 2009, Penegakan Hukum Suatu Tinjauan Sosiologi, Genta Publishing, Yogyakarta
- Soejono Soekanto, 2006, Pengenalan Penelitian Hukum, Grafindo, Jakarta.
- The Criminal Procedure Code (KUHP)
- Thomas A. Mauet & David Marcus, 2015, Pretrial, Edisi ke 9, Wolters Kluwer, New York

