

## A Juridical Analysis of the Arrest and Detention Process under Indonesian and Thai Procedural Law

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| Article Info                                                                                                                                                                                                                                          | Abstract                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| Received: 10-07-2026<br>Revised: 15-09-2026<br>Accepted: 16-09-2026<br>Published: 17-09-2026<br><br><b>Keywords:</b><br>Arrest; Detention;<br>Indonesian Criminal<br>Procedure Code;<br>Criminal Procedure<br>Code of Thailand;<br>Judicial Oversight | Arrest and detention are coercive measures that restrict a person's right to liberty, and their implementation must therefore be subject to the principles of human rights protection and due process of law. This article juridically analyzes the regulation of the arrest and detention process under Indonesia's Criminal Procedure Code (KUHAP) and the Criminal Procedure Code of Thailand, and identifies the fundamental similarities and differences between the two legal systems, particularly regarding judicial oversight. This research employs a normative legal method that is descriptive-analytical in nature, using statutory, comparative, and conceptual approaches. Data were collected through library research on primary, secondary, and tertiary legal materials and analyzed qualitatively through deductive reasoning. Preliminary findings indicate that KUHAP places the authority to arrest and detain in the hands of investigators and public prosecutors, with ex post facto judicial oversight exercised through the pretrial (praperadilan) mechanism, whereas the Thai Criminal Procedure Code positions the court as an ex ante controller from the outset through its authority to grant detention permits. This structural difference in oversight has implications for the level of protection afforded to suspects in each country. The article recommends strengthening preventive judicial control mechanisms in the reform of Indonesia's criminal procedure law as a step toward more fully realizing the principle of due process of law. |
| Info Artikel                                                                                                                                                                                                                                          | Abstrak                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Kata Kunci:</b><br>Penangkapan;<br>Penahanan; Kitab<br>Undang-Undang<br>Hukum Acara Pidana<br>Indonesia; Kitab<br>Undang-Undang<br>Hukum Acara Pidana<br>Thailand; Pengawasan<br>Yudisial;                                                         | Penangkapan dan penahanan merupakan tindakan paksa yang membatasi hak seseorang atas kebebasan, sehingga pelaksanaannya harus tunduk pada prinsip-prinsip perlindungan hak asasi manusia dan proses hukum yang adil (due process of law). Artikel ini menganalisis secara yuridis pengaturan proses penangkapan dan penahanan menurut Kitab Undang-Undang Hukum Acara Pidana (KUHAP) Indonesia dan Kitab Undang-Undang Hukum Acara Pidana Thailand, serta mengidentifikasi persamaan dan perbedaan mendasar antara kedua sistem hukum tersebut, khususnya terkait pengawasan yudisial. Penelitian ini menggunakan metode hukum normatif yang bersifat deskriptif-analitis, dengan pendekatan perundang-undangan, perbandingan, dan konseptual. Data dikumpulkan melalui studi                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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kepastakaan terhadap bahan hukum primer, sekunder, dan tersier, kemudian dianalisis secara kualitatif menggunakan penalaran deduktif. Temuan awal menunjukkan bahwa KUHAP menempatkan kewenangan penangkapan dan penahanan di tangan penyidik dan penuntut umum, dengan pengawasan yudisial yang bersifat *ex post facto* (setelah tindakan dilakukan) melalui mekanisme praperadilan; sebaliknya, hukum acara pidana Thailand menempatkan pengadilan sebagai pihak yang melakukan pengawasan *ex ante* (sebelum tindakan dilakukan) sejak awal melalui kewenangannya dalam memberikan izin penahanan. Perbedaan struktural dalam hal pengawasan ini berdampak pada tingkat perlindungan yang diberikan kepada tersangka di masing-masing negara. Artikel ini merekomendasikan penguatan mekanisme pengawasan yudisial yang bersifat preventif dalam reformasi hukum acara pidana Indonesia sebagai langkah menuju perwujudan prinsip *due process of law* secara lebih utuh. (3).

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## INTRODUCTION

Criminal law enforcement in a state governed by the rule of law must be carried out on the basis of human rights protection. A rule-of-law state places law as an instrument for limiting state power in order to prevent arbitrary conduct by law enforcement officers against citizens. (Chaiyasit, 2022)

This idea is consistent with both the *rechtsstaat* and rule of law conceptions, which place law, rather than power alone, as the foundation for every state action toward its citizens. In this context, criminal procedure law plays a strategic role as a guide for conducting fair and civilized law enforcement because it directly regulates how state power to restrict an individual's liberty may be exercised lawfully and proportionately.

One of the most crucial stages of criminal procedure is arrest and detention. These measures constitute coercive actions that directly restrict an individual's right to liberty; therefore, they must be implemented carefully, proportionately, and in accordance with applicable laws and regulations. (Bowen, 2022)

Errors in carrying out arrest and detention may result in human rights violations and undermine the principle of justice within the criminal justice system. Arrest and detention are not intended solely for investigative purposes; they must also continue to guarantee the protection of suspects' rights, including the right to humane treatment, the right to legal assistance, and the application of the presumption of innocence. Accordingly, criminal procedure law must be capable of balancing the interests of law enforcement with the protection of individual rights.

From the perspective of international human rights law, personal liberty and security of person are among the rights most vulnerable to abuse by the state. The United Nations Human Rights Committee has emphasized that every deprivation of liberty must be based on grounds and procedures established by law and must be subject to an effective mechanism of judicial control in order to prevent arbitrary detention. (Committee, 2020)

These international standards affirm that judicial control is not merely an administrative formality, but a substantive safeguard of an individual's right to liberty. The earlier and more independently judicial control is exercised from the initial stage of coercive measures, the narrower the opportunity for abuse of authority by law enforcement officers. (UNODC, 2022)

In Indonesia, provisions concerning arrest and detention are governed by the Code of Criminal Procedure (KUHAP). KUHAP regulates the formal and substantive requirements for arrest and detention, the duration of detention, and mechanisms for supervising actions taken by law enforcement officers. (Mahmud, 2023)

These three issues are closely interconnected. Arrests without an adequate legal basis generally stem from weak preliminary evidence used to justify investigators' actions. Detention without objective and subjective grounds reflects a tendency to treat detention as an automatic step rather than a measure genuinely based on concrete concerns that the suspect may flee, destroy evidence, or repeat the offense. Meanwhile, limitations in the supervision of official authority demonstrate that the available control mechanism, namely pretrial review, can only be activated after the arrest or detention has occurred, making it corrective rather than preventive.

This condition demonstrates a gap between legal norms and their implementation in practice. Such a gap may, in turn, erode public confidence in the criminal justice system, particularly at the earliest stage when an individual first comes into contact with state power. (Bedner, 2020)

Developments in modern criminal law thought also require the strengthening of due process of law at every stage of criminal proceedings. This principle emphasizes that every state action toward an individual must be based on law and carried out through fair procedures. (Lindsey, 2020) Accordingly, the regulation and implementation of arrest and detention must be continuously evaluated to ensure that they do not conflict with this principle. Such evaluation should ideally not be limited to a normative study of a single legal system, but should also involve comparison with another country whose social, cultural, and legal traditions are relatively similar, so that the resulting analysis is more contextual and applicable.

In addition to Indonesia, Thailand, as a Southeast Asian country, also has a criminal procedure system governed by the Criminal Procedure Code of Thailand. This Code regulates the authority of law enforcement officers to arrest and detain, including provisions on warrantless arrest in certain circumstances and the role of courts in authorizing detention. (MacCargo, 2021)

These provisions reveal a significant mechanism of judicial control, in which the role of the court does not arise only during the adjudication of the merits, but is already present from the stage at which coercive measures are imposed on a suspect. (Phongpaichit, 2021) Although they arise from different legal backgrounds, Indonesia and Thailand face a common challenge in maintaining a balance between effective law enforcement and the protection of human rights.

The differences in criminal procedure regulation and practice between the two countries are therefore important to examine through a comparative law approach. Comparative law enables researchers to identify similarities and differences in legal regulation and to assess the strengths and weaknesses of each legal system. (Harding, 2020)

Through this approach, a more comprehensive understanding can be obtained of how arrest and detention are regulated and implemented in different legal systems. A comparison between Indonesia's KUHAP and the Criminal Procedure Code of Thailand is expected to make an academic contribution to the development of criminal procedure theory and to provide practical recommendations for the reform of Indonesian criminal procedure law. (Hamzah, 2021)

This is particularly important in view of ongoing discussions concerning the reform of KUHAP so that it is more consistent with human rights principles and developments in international law. Although reform efforts have been discussed for a considerable period, several fundamental issues relating to the supervision of coercive measures, including arrest and detention, still require thorough academic analysis to ensure that the direction of reform is properly targeted.

Based on the foregoing, this study considers it necessary to conduct a juridical analysis of arrest and detention procedures under KUHAP and the Criminal Procedure Code of Thailand in

order to obtain a comprehensive account of their normative regulation and implications for the protection of suspects' rights. (Bedner A. , 2020)

This research is expected to contribute to strengthening a just criminal justice system. Accordingly, the study is prepared as part of an academic effort to examine in depth the comparative regulation of arrest and detention in Indonesia and Thailand while also providing input to policymakers for the improvement of national criminal procedure law. (Ashworth, 2021)

The principles of justice and the prohibition of arbitrary conduct in law enforcement have, in essence, been affirmed in the Qur'an. One of the principal verses serving as a foundation is Q.S. An-Nisa verse 58, which emphasizes the obligation to fulfill trusts and uphold justice in adjudicating disputes. (Bedner A. , Indonesia Criminal Justice and the Rule of Law , 2020)

Q.S. An-Nisa (4): 58

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

*"Indeed, Allah commands you to return trusts to their rightful owners, and when you judge between people, to judge with justice. Excellent indeed is what Allah instructs you. Indeed, Allah is All-Hearing, All-Seeing."*

This verse demonstrates that the authority held by law enforcement officers is a trust that must be exercised justly. In the context of arrest and detention, such authority may not be used arbitrarily, but must be grounded in law and justice.

*Hadith Narrated by At-Tirmidhi*

أَرَوْا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يُحْطَىٰ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُحْطَىٰ فِي الْعُقُوبَةِ

*"Avoid imposing hudud punishments upon Muslims as far as you are able. If there is a way to release a person, then release him, for it is better for a leader to err in granting pardon than to err in imposing punishment."* (Narrated by At-Tirmidhi).

This hadith emphasizes the principle of prudence in criminal law enforcement, particularly that law enforcement officers should not hastily impose punishment where doubt remains. Its substance is consistent with the presumption of innocence, the principle of in dubio pro reo, and due process of law in modern criminal procedure. Therefore, arrest and detention, as restrictions on an individual's right to liberty, must be based on strong evidence and lawful procedures and must not be carried out arbitrarily.

Based on the issues described above, a study of arrest and detention under the Indonesian Code of Criminal Procedure and the Criminal Procedure Code of Thailand is essential for comprehensively understanding the relevant statutory provisions, thereby preventing misunderstandings that could delay the fulfillment of justice for justice seekers.

## RESEARCH METHOD

Research methods constitute the scientific procedures used to conduct research in accordance with the nature and characteristics of the object of inquiry. Their function is to serve as an instrument for understanding the problem under investigation, whether in the social sciences, legal science, or other fields. (Setiawan, 2021)

In order to obtain optima research results and preserve the validity of the legal arguments developed, this study is conducted through the following stages and methods  
This study uses normative legal research. Normative legal research examines law as norms or rules applicable in society. The principal focus of this study is the positive legal provisions governing arrest and detention within the Indonesian and Thai criminal procedure systems. Accordingly, the research does not empirically investigate the conduct of law enforcement officers, but instead analyzes legislation, legal doctrines, and legal principles relevant to the object of study.

This research is descriptive-analytical. It is descriptive because it aims to systematically describe the regulation of arrest and detention under Indonesian and Thai criminal procedure law. It is analytical because it not only describes the applicable legal provisions but also examines the differences, similarities, and implications of the two systems, particularly the role of judicial oversight in protecting individual liberty.

This study employs three mutually complementary approaches: the statutory approach, the comparative law approach, and the conceptual approach.

The statutory approach is applied by examining the laws and regulations governing arrest and detention, particularly the Indonesian Code of Criminal Procedure (KUHAP) and the Criminal Procedure Code of Thailand. This approach is used to understand the legal basis, procedures, and limitations on the authority of law enforcement officers in making arrests and imposing detention, including formal and substantive requirements, time limits, and mechanisms of control over their implementation.

The comparative law approach is used to compare the systems of arrest and detention in Indonesia and Thailand. It aims to identify similarities and differences in legal regulation, especially concerning the role of courts in supervising arrest and detention. The comparison is not limited to the textual level of legal norms, but also examines the institutional structures that implement those norms, thereby providing a more complete picture of how each legal system operates.

The conceptual approach is used to examine legal concepts relevant to this study, such as coercive measures, judicial oversight, human rights, and due process of law. This approach is important in providing a theoretical basis for analyzing the applicable legal provisions, particularly because some of these concepts are not always expressly defined in statutory texts and therefore require reference to legal doctrine and scholarly opinion. The data sources in this study consist of primary, secondary, and tertiary legal materials.

Primary legal materials are authoritative and binding legal sources, consisting of the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 concerning Criminal Procedure (KUHAP), Law Number 39 of 1999 concerning Human Rights, Law Number 48 of 2009 concerning Judicial Power, and the Criminal Procedure Code of Thailand. Secondary legal materials are sources that explain primary legal materials, including criminal procedure textbooks, scholarly legal journals, previous research findings, and expert legal opinions relevant to the object of study. Tertiary legal materials are supporting sources, such as legal dictionaries and legal encyclopedias, which assist in understanding the legal terms and concepts used in this research.

## **RESULTS AND DISCUSSION**

### **Fundamental Concepts and Genreal Principles of Arrest and Detention in the Criminal Justice System**

Arrest and detention are important components of the criminal justice system intended to ensure that criminal proceedings can be conducted effectively and fairly. Because these measures restrict an individual's right to liberty, their implementation must be grounded in law and the principles of human rights protection. Constitutionally, protection of individual liberty is guaranteed by Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which provide that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as the right to protection of self, family, honor, dignity, and property. (McCargo, 2021) These constitutional provisions constitute the highest legal foundation binding all subordinate norms, including KUHAP. Accordingly, every provision

concerning arrest and detention is essentially a further elaboration of the constitutional guarantees of personal liberty and security.

**a. Definition and Legal Basis of Arrest**

Under Indonesian law, arrest is regulated in Article 1 point 20 of the Code of Criminal Procedure (KUHAP), which defines arrest as an action by an investigator temporarily restraining the liberty of a suspect or defendant where sufficient evidence exists for the purposes of investigation or prosecution. This provision demonstrates that arrest is not an act that investigators may undertake freely, but one contingent upon sufficient preliminary evidence. Further provisions concerning arrest are distributed across several interrelated articles. Article 16 of KUHAP provides that an arrest may be made by an investigator or assistant investigator against a person strongly suspected of committing a criminal offense on the basis of sufficient preliminary evidence; therefore, arrest may not be based on suspicion alone. Article 17 of KUHAP requires an arrest warrant, except in cases of *flagrante delicto*. This requirement constitutes a form of formal control ensuring that the legality of every arrest can be traced by the suspect, the suspect's family, or a supervisory institution. Article 18 of KUHAP further regulates the contents of an arrest warrant, which must state the suspect's identity, the reasons for arrest, and a brief description of the case, thereby enabling the suspect to understand clearly the basis for the measure imposed.

Article 19 paragraph (1) of KUHAP provides that arrest may be carried out for no longer than one period of twenty-four hours. This time limit is intended to prevent arrest from continuing indefinitely and effectively becoming informal detention without compliance with lawful detention procedures. Taken together, these provisions demonstrate that arrest may not be arbitrary, but must satisfy strict legal requirements relating to evidence, procedure, and duration.

**b. Definition and Legal Basis of Detention**

Under Article 1 point 21 of KUHAP, detention is the placement of a suspect or defendant in a designated place by an investigator, public prosecutor, or judge pursuant to their order, in the circumstances and manner prescribed by law. (Harahap, 2020)

Unlike arrest, which is highly temporary, detention restricts liberty for a considerably longer period; therefore, its requirements are regulated in greater detail under KUHAP. Article 20 of KUHAP provides that detention may be ordered by investigators, public prosecutors, and judges in accordance with the stage of the proceedings.

Article 21 paragraph (1) of KUHAP provides that detention may be imposed only where there is concern that the suspect will flee, destroy evidence, or repeat the offense. These three grounds are known as the subjective requirements for detention, the assessment of which lies with the competent official on the basis of concrete facts and circumstances rather than general assumptions. In addition to these subjective requirements, KUHAP regulates objective requirements through Article 21 paragraph (4), which provides that detention may be imposed only for offenses punishable by imprisonment of five years or more, or for certain offenses expressly specified by law.

Article 22 of KUHAP regulates the forms of detention, namely detention in a state detention facility, house detention, and city detention, each involving a different degree of restriction on liberty, from the strictest to the relatively least restrictive. Articles 24 through 29 of KUHAP regulate detention periods and mechanisms for extension at each stage of the proceedings, from investigation and prosecution to trial, with different maximum periods applicable at each stage.

**c. Legal Principles Governing Arrest and Detention**

Arrest and detention must be guided by a number of legal principles that serve as safeguards for suspects' rights. The first is the presumption of innocence, regulated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which provides that every person suspected,

arrested, detained, prosecuted, or brought before a court must be presumed innocent until a final and binding court judgment determines otherwise.

The second principle is due process of law, guaranteed by Article 28D paragraph (1) of the 1945 Constitution, which requires every legal process to be conducted fairly and in accordance with lawful procedure. (Nasution, 2021)

The third principle is the protection of human rights, affirmed in Law Number 39 of 1999 concerning Human Rights, particularly Articles 4 and 33, which provide that every person has the right to liberty and may not be arbitrarily arrested or detained. (Rahardjo, 2020)

These three principles do not operate independently but mutually reinforce one another. The presumption of innocence places suspects in a position where they may not be treated as though guilt has already been established; due process of law ensures that every restriction on liberty is imposed through lawful procedures; and human rights protection serves as the overarching framework affirming that personal liberty is a fundamental right that may be restricted only in the circumstances and manner strictly prescribed by law. (Kurniawan, 2022)

### **Arrest and Detention under the Criminal Procedure Code of Thailand**

Under the Thai legal system, arrest and detention are regulated by the Criminal Procedure Code of Thailand. The basic principle is that a person may only be arrested pursuant to a court-issued arrest warrant, except in cases of *flagrante delicto*. Following arrest, the suspect must be brought promptly before a judge.

The Criminal Procedure Code of Thailand authorizes judges to determine whether detention may be imposed or extended. Every application for an extension of detention must receive court approval. Judicial oversight is therefore exercised from the outset, providing stronger protection for individual liberty. This system demonstrates that Thai law places substantial emphasis on the role of courts in controlling the use of coercive measures by law enforcement officers. (Kurniawan, Penahanan Dan Hak Asasi Manusia dalam KUHAP, 2022).

#### **a. Legal Basis of Arrest**

Section 66 of the Criminal Procedure Code of Thailand provides that, as a general rule, an arrest must be made pursuant to a court order or arrest warrant. This provision places judicial authorization as a general condition for the legality of arrest, in contrast to KUHAP, which vests investigators themselves with the authority to issue arrest warrants.

Section 78 of the Criminal Procedure Code of Thailand provides exceptions to this principle, permitting arrest without a warrant only in cases of *flagrante delicto*, where there are strong grounds to believe that the suspect will flee, or where arrest is necessary to prevent the destruction of evidence or repetition of the offense. These exceptions are substantively similar to the subjective requirements for detention under KUHAP, although in the Thai system they apply at the arrest stage rather than the detention stage. (Chaiyasit K. , 2022)

#### **b. Obligation to Bring the Suspect Before a Judge**

Section 87 of the Criminal Procedure Code of Thailand requires that, following arrest, the suspect be brought before a court within 48 hours for authorization of detention. This provision confirms that court involvement does not await examination of the merits but arises immediately after a person is deprived of liberty, thereby keeping the interval between the coercive measure and judicial control very short.

**c. Judicial Authority over Detention**

Section 87 paragraph (2) of the Criminal Procedure Code of Thailand provides that detention may be ordered only where a judge considers it necessary in the interests of the investigation, due to a risk of flight, or due to a risk of destruction of evidence. Accordingly, the determination of whether the requirements for detention are satisfied is not left to investigators or public prosecutors, but belongs to the judge from the first application. Section 87 paragraph (4) further provides that every extension of detention must obtain court approval, so that no extension may occur automatically without judicial involvement. (Phongpaichit, Law, Courts, and Accountability in Thailand, 2021)

**d. Detention Time Limits and the Principle of Judicial Oversight**

Section 87 of the Criminal Procedure Code of Thailand also provides that detention during the investigation stage must proceed incrementally and within prescribed limits, with judicial control at every stage of extension, and is therefore not automatic. All detention measures remain under the direct control of the court from the outset, and law enforcement officers may not detain a person without judicial authorization.

**Comparative Analysis of Judicial Oversight in Indonesia and Thailand**

Under Indonesia's KUHAP system, the initial authority to arrest and detain lies with investigators and public prosecutors, while court supervision is exercised through the pretrial review mechanism regulated in Article 77 of KUHAP. By contrast, under the Thai system, courts play a greater role from the outset in supervising detention.

This difference demonstrates that, although both countries follow the civil law tradition, their approaches to protecting human rights in arrest and detention procedures have different characteristics. The Thai system places greater emphasis on judicial control, whereas the Indonesian system relies more heavily on normative limitations established by KUHAP. Article 77 of KUHAP provides that courts exercise supervision through pretrial review, which includes examining the legality of arrest and detention. Such supervision is *ex post facto*, meaning that the arrest or detention has already taken place before the suspect or the suspect's family may apply to the court for review of its legality. The *ex post facto* character of this mechanism has several consequences. First, the burden of activating the control mechanism rests on the suspect or legal counsel rather than operating automatically within the system. Second, while pretrial proceedings are ongoing, the suspect generally remains detained, meaning that the potential harm caused by an unlawful detention has already occurred before the pretrial decision is issued. Third, pretrial decisions generally examine the formal legality of the arrest or detention and do not always thoroughly assess the substantive sufficiency of the evidence. By contrast, the *ex ante* character of the Thai system places the judge in the position of granting prior authorization before detention may be imposed or extended. Consequently, unsupported detention can be prevented before it actually occurs because the judge has assessed the adequacy of the grounds for detention before the suspect loses liberty for an extended period.

Despite structural differences in judicial oversight, this study also identifies several fundamental similarities between the two legal systems. The first similarity lies in the principle of legality, under which arrest and detention may only be carried out on grounds and through procedures prescribed by law, rather than at the unrestricted discretion of officials. The second similarity lies in time limitations: both KUHAP and the Criminal Procedure Code of Thailand prescribe specific time limits for arrest and detention so that coercive measures cannot continue indefinitely. The third similarity lies in recognition of subjective grounds—risk of flight, destruction

of evidence, or repetition of the offense—as a basis for detention, although the authority responsible for determining whether these grounds are satisfied differs between the two systems.

The most prominent difference, as discussed above, concerns the timing of court involvement. The Indonesian system places initial authorization in investigators and public prosecutors, with corrective court control exercised through pretrial review, whereas the Thai system places principal authorization in judges from the arrest stage through detention. Another difference concerns the maximum period of arrest before presentation to a higher authority: KUHAP limits arrest to one period of twenty-four hours without expressly requiring appearance before a judge, whereas the Criminal Procedure Code of Thailand expressly requires that the suspect be brought before a court within 48 hours.

The originality of this research lies in its focus and analytical approach to arrest and detention under Indonesian and Thai criminal procedure law. In particular, it examines differences in regulation and judicial oversight practices concerning arrest and detention as restrictions on the individual right to liberty. This focus distinguishes the study from previous research, which generally examined arrest and detention within a single legal system or discussed them normatively without in-depth comparative analysis.

Most previous studies of arrest and detention in Indonesian criminal procedure have tended to focus on the authority of investigators and public prosecutors and on the pretrial review institution as a supervisory mechanism. Such studies generally assess the effectiveness of pretrial review in determining the legality of arrest and detention after the measures have been carried out. However, they rarely relate the position of judicial oversight to the timing of that oversight—whether it is exercised before or after an individual's liberty is restricted. As a result, the human rights dimension of preventing violations from the outset of criminal proceedings has not been optimally examined. In contrast to those earlier studies, this research specifically places judicial oversight at the center of the analysis. It compares two different models of supervision: *ex post facto* review through the pretrial mechanism in the Indonesian legal system and *ex ante* review through judicial authority to authorize detention under the Thai legal system as regulated by the Criminal Procedure Code of Thailand. Through this approach, the study not only compares differences in legal norms but also analyzes the systemic implications of those differences for the protection of individual liberty.

The originality of this study also lies in selecting Thailand as the comparative object. Comparative criminal procedure studies in Indonesia have generally compared Indonesia with common-law countries or European jurisdictions. Thailand, however, is a Southeast Asian country that likewise follows the civil law tradition but has different criminal justice characteristics, particularly the active role of courts from the initial stage of detention. The comparison between Indonesia and Thailand therefore provides a new perspective that is more regionally relevant and contextually appropriate.

Moreover, this research is not only descriptive-comparative but also analytical-critical. It examines how differences in the structure of authority between law enforcement officers and courts in the two systems affect the potential for abuse of power in arrest and detention. In this context, the study highlights that the Thai system provides a greater role for judges in safeguarding due process of law, whereas the Indonesian system emphasizes restrictions on official authority through the normative provisions of KUHAP, accompanied by corrective judicial supervision.

The different structures of judicial oversight in the two legal systems have significant implications for the level of protection afforded to suspects. In a system employing *ex ante* control, such as Thailand, potential harm caused by unsupported detention can be prevented earlier because judicial assessment occurs before detention is imposed or extended. By contrast, in a system employing *ex post facto* control, such as Indonesia, correction of unsupported detention can only be obtained after the suspect has already experienced a restriction of liberty, making the restoration of rights through pretrial review reparative rather than preventive.

Consistent with the long-standing discourse on KUHAP reform, these comparative findings open space for arguments in favor of strengthening preventive judicial control within Indonesian criminal procedure without mechanically replicating Thailand's entire institutional structure. Such strengthening may include accelerating access to mechanisms for reviewing the legality of detention, reinforcing the objective and subjective requirements for detention so that detention is not used routinely, and strengthening the independence and speed of the pretrial review process so that its supervisory function more closely reflects the protective spirit embodied in due process of law.

From the foregoing, it may be concluded that this research has clear originality in terms of its object of study, methodological approach, and scholarly contribution. It differs substantially from previous studies because it places judicial oversight at the center of the analysis and employs a contextual comparative approach between two countries that both follow the civil law tradition. Accordingly, this research is worthy of further development as an original study possessing novelty in the field of criminal procedure law.

## **CONCLUSION.**

Based Based on the discussion and findings above, the following conclusions may be drawn. First, the legal regulation of the arrest and detention of suspects under the Indonesian Code of Criminal Procedure rests on Article 1 points 20 and 21 and Articles 16 through 31 of KUHAP, which authorize investigators, public prosecutors, and judges to conduct arrest and detention, with *ex post facto* court supervision exercised through the pretrial review institution regulated in Article 77 of KUHAP.

Second, the legal provisions governing arrest and detention under the Criminal Procedure Code of Thailand are based on Sections 66, 78, and 87, which position the court as the institution controlling coercive measures from the initial stage, both through the requirement of an arrest warrant and through the obligation to bring the suspect before a judge within 48 hours to obtain authorization for detention, thereby establishing *ex ante* judicial oversight.

Third, the fundamental similarities between the two legal systems lie in the principle of legality, limitations on duration, and recognition of subjective grounds for detention. The most prominent difference concerns the timing of court involvement in arrest and detention: the Indonesian system places court control after the measure has been implemented, whereas the Thai system places court control before or concurrently with its implementation.

These differences in oversight structure have implications for the level of protection afforded to suspects in each legal system. The comparative study is therefore expected to contribute academically to the development of criminal procedure theory and to serve as a consideration for policymakers in formulating the direction of Indonesian criminal procedure reform, particularly by strengthening more preventive mechanisms of judicial control over arrest and detention.

Further research should deepen this analysis by examining Indonesian pretrial decisions and Thai judicial practice more comprehensively so that the normative analysis developed in this study

may be enriched by an account of its practical application within the criminal justice systems of both countries

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