



Closing the Injustice Gap: Reconstructing Pre-trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries

Menutup Celah Ketidakadilan: Rekonstruksi Praperadilan sebagai Effective Remedy bagi Korban Penghentian Penyelidikan

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Article Info

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History:

Submitted: 14-05-2025
Revised: 24-11-2025
Accepted: 11-12-2025

Keyword:

Pre-trial Hearings; Legal Protection for Victims; Termination of Inquiry; Indonesian Criminal Justice System; Access to Justice.

Kata Kunci:

Praperadilan; Perlindungan Hukum bagi Korban; Penghentian Penyelidikan; Sistem Peradilan Pidana Indonesia; Akses terhadap Keadilan.

Abstract

This article analyses the constitutional and procedural implications of the absence of pre-trial authority to review decisions to terminate preliminary inquiries (*penghentian penyelidikan*) in Indonesia's criminal justice system. While suspects are afforded robust due process guarantees through pre-trial mechanisms, victims lack a commensurate judicial forum to contest unilateral police decisions to terminate proceedings at the preliminary inquiry stage. This procedural asymmetry engenders a structural lacuna, conceptualised herein as an "injustice gap." Employing a normative legal research method, the study examines the 1981 Criminal Procedure Code (KUHP 1981), the newly approved 2025 Criminal Procedure Code (KUHP 2025), relevant Constitutional Court decisions, and related judicial practices within the theoretical frameworks of John Rawls's theory of justice and Lon L. Fuller's concept of the internal morality of law. The analysis demonstrates that the current asymmetrical distribution of protections between suspects and victims is incompatible with the constitutional principles of equality before the law, legal certainty, and the right to an effective remedy. Accordingly, the article proposes three reform pathways: (1) explicitly regulating the termination of preliminary inquiries as an object of pre-trial review; (2) constitutional reinterpretation by the Constitutional Court; or (3) establishing a Preliminary Examining Judge (*Hakim Pemeriksa Pendahuluan*, HPP) to reconstruct pre-trial proceedings as an effective remedy for victims.

Abstrak

Artikel ini mengkaji implikasi konstitusional dan prosedural dari ketiadaan kewenangan praperadilan untuk menguji penghentian penyelidikan dalam sistem peradilan pidana Indonesia. Tersangka memperoleh jaminan due process yang relatif kuat melalui mekanisme praperadilan, sedangkan korban tidak memiliki forum yudisial yang sepadan untuk menggugat keputusan sepihak kepolisian untuk menghentikan perkara pada tahap penyelidikan. Ketimpangan ini menimbulkan kekosongan struktural yang dalam tulisan ini disebut sebagai "celah ketidakadilan" (*injustice gap*). Dengan metode penelitian hukum normatif, studi ini menelaah KUHP 1981, KUHP 2025, putusan-putusan Mahkamah Konstitusi yang relevan, serta praktik peradilan terkait melalui kerangka teori keadilan John Rawls dan konsep moralitas internal hukum Lon L. Fuller. Analisis menunjukkan bahwa asimetri perlindungan antara tersangka dan korban tidak selaras dengan prinsip konstitusional persamaan di hadapan hukum, kepastian hukum, dan hak atas upaya hukum yang efektif (*effective remedy*). Oleh karena itu, artikel ini mengajukan tiga pilihan pembaruan: (1) pengaturan eksplisit penghentian penyelidikan sebagai objek praperadilan; (2) reinterpretasi konstitusional oleh Mahkamah Konstitusi; atau (3) pembentukan Hakim Pemeriksa Pendahuluan (HPP) untuk merekonstruksi praperadilan sebagai upaya hukum yang efektif bagi korban.



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A. INTRODUCTION

1. Background¹

The Indonesian criminal justice system has structurally delineated the Inquiry (*Penyelidikan*) and Investigation (*Penyidikan*) phases since the enactment of Law No. 8 of 1981 concerning Criminal Procedure (KUHAP 1981).² The newly adopted Criminal Procedure Code 2025 (KUHAP 2025) maintains—and in some respects reinforces—that distinction. Article 1(8) of the KUHAP 2025 expressly defines an Inquiry as a sequence of actions aimed at determining whether a particular event constitutes a criminal offence and whether the matter warrants escalation to a formal Investigation.³ The framework governing termination most starkly exemplifies the regulatory disparity between these two phases.

Under KUHAP 1981, Article 109(2) authorizes investigators to terminate an Investigation where: (i) there is insufficient evidence; (ii) the incident is established not to be a criminal offence; or (iii) the investigation must be discontinued by operation of law. In such circumstances, the investigator must notify the Public Prosecutor, the suspect, or the suspect's family and issue a formal Order to Terminate Investigation (*Surat Perintah Penghentian Penyidikan*, SP3).⁴ KUHAP 2025 expands upon this model. Article 25 KUHAP 2025 sets out a more detailed and enumerated catalog of lawful grounds for terminating an Investigation—including, in addition to the classic reasons, *ne bis in idem*, expiry of the statute of limitations, the suspect's death, withdrawal of a complaint in complaint-based offenses, the conclusion of a Restorative Justice settlement, and the payment of specified maximum fines—and requires investigators to notify the Public Prosecutor, the victim,

¹ This article is adapted from the Author's Master's Thesis, 'Rekonstruksi Mekanisme Kontrol Yudisial dalam Sistem Peradilan Pidana Guna Mengatasi Kegagalan Sistemik Praperadilan dalam Melindungi Hak Korban Tindak Pidana' (Universitas Brawijaya, 2025). It narrows the thesis's broader scope to specifically address the constitutional implications of Inquiry termination.

² Republic of Indonesia, *Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana* [Law No. 8 of 1981 on Criminal Procedure] (KUHAP), <https://peraturan.bpk.go.id/Details/47041/uu-no-8-tahun-1981>; Simon Butt and Tim Lindsey, "The Criminal Procedure Code," in *Crime and Punishment in Indonesia*, ed. Tim Lindsey and Helen Pausacker (Abingdon: Routledge, 2020), 44–69, <https://doi.org/10.4324/9780429455247-4>.

³ Republic of Indonesia, *Rancangan Undang-Undang tentang Hukum Acara Pidana* [Draft Law on Criminal Procedure] (Draft KUHAP, March 20, 2025 version), art. 1 (general provisions on *penyelidikan* and *penyidikan*), <https://icjr.or.id/wp-content/uploads/2025/03/RUU-KUHAP-20-Maret-2025.pdf>; Corruption Eradication Commission (KPK), "17 Isu Krusial dalam RUU HAP Terkait Pemberantasan Korupsi" [17 Crucial Issues in the Draft Criminal Procedure Code Related to Corruption Eradication], summarising that art. 1(8) RUU HAP defines *penyelidikan* as the search for and discovery of a criminal event, accessed July 15, 2025, https://cms.kpk.go.id/storage/tinymce/uploads/pdf/1752850555_17%20isu%20krusial%20dalam%20RUU%20HAP%20terkait%20Pemberantasan%20Korupsi.pdf.

⁴ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), art. 109(2); Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) yang Diterbitkan Berdasarkan Perdamaian antara Tersangka dan Pelapor dalam Delik Biasa" [Termination of Investigation Order (SP3) Issued Based on Settlement between Suspect and Reporter in Ordinary Offenses], *Wacana Paramarta: Jurnal Ilmu Hukum* 21, no. 1 (2022): 29–38, <https://prin.or.id/index.php/JURRISH/article/view/113> (explaining the three grounds in Article 109(2) and the requirement to notify the public prosecutor and the suspect/family via an SP3).

and the suspect within one day of issuing a termination decision.⁵ In other words, at the Investigation stage, both Codes conceptualise termination as a formal legal act, strictly circumscribed by statute and subject to mandatory notification duties.

By contrast, neither KUHAP 1981 nor KUHAP 2025 contains a dedicated provision equivalent to Article 109(2) or Article 25 regulating the termination of an Inquiry (*Penghentian Penyelidikan*). KUHAP 1981 is notably silent regarding the legal status, substantive grounds, and procedural mechanisms for terminating a preliminary Inquiry.⁶ KUHAP 2025 does refer in passing, in Article 19(3), to the possibility that a case review (*gelar perkara*) of Inquiry results may conclude that the incident is “not a criminal offense,” in which case the investigator “does not proceed to the Investigation stage”; however, the Code fails to articulate the grounds in an exhaustive list, does not stipulate a formal decision instrument comparable to the SP3, and imposes no requirement for notification of the complainant or victim.⁷ As a result, the termination of an Inquiry is not conceptualised in either Code as a formalised, procedurally structured legal act analogous to the termination of an Investigation, and remains normatively under-regulated.

Article 1(10) of KUHAP 1981 establishes Pre-trial proceedings (*Praperadilan*) as a special authority of the district court to examine and decide, *inter alia*, the legality of arrest and detention, the lawfulness of the termination of an Investigation or a Prosecution, and claims for compensation and rehabilitation. Article 77 KUHAP 1981 reiterates that the district court may rule on “the lawfulness of arrest, detention, termination of Investigation or termination of Prosecution” and on compensation and rehabilitation arising when authorities discontinue a criminal case at the Investigation or Prosecution stage.⁸ KUHAP 2025 essentially reproduces this structure in its chapter on Pre-trial, again listing coercive

⁵ Republic of Indonesia, *Rancangan Undang-Undang tentang Hukum Acara Pidana* (Draft KUHAP, March 20, 2025 version), arts. 24–25 (mandating SPDP notification to the public prosecutor, suspect, and victim; detailing grounds for termination of investigation including *ne bis in idem*, limitation period, death, withdrawal of complaint, restorative settlement, and payment of maximum fines; and imposing a one-day notice obligation).

⁶ A. F. Qurrotaa'yun, “Penghentian Penyelidikan Perkara Pidana Ditinjau dari Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana” [Termination of Criminal Inquiry Reviewed from the Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation] (Undergraduate thesis, Universitas Nasional, 2024), 10–12, <https://repository.unas.ac.id/id/eprint/11721/>.

⁷ Republic of Indonesia, *Rancangan Undang-Undang tentang Hukum Acara Pidana* (Draft KUHAP, March 20, 2025 version), art. 19(1)–(4) (mandating case review of inquiry results to determine whether an event is a criminal offense and stopping at that point if it is not); Forum Kajian dan Diskusi Pidana (FKDP), “Catatan Terhadap RCUHAP” [Notes on the Draft Criminal Procedure Code], accessed April 18, 2025, <https://id.scribd.com/document/886533832/Catatan-Terhadap-RCUHAP-FKDP-Final> (criticising Article 19(3) for allowing *penyidik* to decide that an event is “not a crime” without a clear mechanism for notifying victims or enabling challenge).

⁸ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), arts. 1(10), 77 (defining pretrial and listing objects including arrest, detention, termination of investigation or prosecution, and compensation/rehabilitation); Institute for Criminal Justice Reform (ICJR), *Praperadilan di Indonesia: Praktik dan Permasalahan* [Pretrial in Indonesia: Practices and Problems] (Jakarta: ICJR, 2014), <https://icjr.or.id/wp-content/uploads/2014/02/Praperadilan-di-Indonesia.pdf>.

measures and the termination of Investigation or Prosecution as reviewable acts, while omitting any mention of the termination of an Inquiry.⁹ Because neither KUHAP 1981 nor KUHAP 2025 recognises the termination of an Inquiry as an object of Pre-trial review, it falls structurally beyond the reach of judicial scrutiny.

In practice, this statutory vacuum has compelled reliance on internal police protocols to address the normative gap. National Police Regulation No. 6 of 2019 on Criminal Investigation (Perkap 6/2019) now primarily governs the termination of an Inquiry. Article 9 Perkap 6/2019 provides that once the Inquiry team has submitted its report, investigators must convene a case review (*gelar perkara*) to decide whether the reported event constitutes (a) a criminal offence or (b) not a criminal offence. Where the case review concludes that the event is not a criminal offence, investigators terminate the Inquiry, and any objection from the complainant triggers a further internal case review by the investigator's superior.¹⁰ However, as a unilateral, police-administered intra-organizational procedure—often lacking meaningful complainant participation—this mechanism is structurally vulnerable to institutional bias and cannot substitute for the judicial guarantees that KUHAP 1981 and KUHAP 2025 must explicitly mandate.¹¹

The East Luwu case in South Sulawesi starkly illustrates this systemic vulnerability. In that case, the police terminated an Inquiry into allegations that a biological father had sexually abused his three children, invoking “insufficient evidence” as the ground for closure. The decision precipitated widespread public criticism, exemplified by the viral hashtag *#PercumaLaporPolisi* (“Reporting to the Police Is Useless”).¹² The National Commission on Violence Against Women (Komnas Perempuan) subsequently issued an open recommendation

⁹ Republic of Indonesia, *Rancangan Undang-Undang tentang Hukum Acara Pidana* (Draft KUHAP, March 20, 2025 version), arts. 151–59 (reproducing the objects of review as coercive measures and termination of investigation or prosecution, without mentioning termination of inquiry); Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), *Naskah Akademik RUU KUHAP: Tinjauan Kritis dan Rekomendasi* [Academic Draft of the Criminal Procedure Bill: Critical Review and Recommendations] (Jakarta: LeIP, 2024), <https://prin.or.id/index.php/JURRISH/article/view/6023>

¹⁰ Republic of Indonesia, National Police, *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 6 Tahun 2019 tentang Penyidikan Tindak Pidana* [Regulation of the Chief of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation] (Perkap No. 6/2019), art. 9, <https://pusdikmin.com/perpus/file/PERKAP%20NOMOR%20%206%20%20TAHUN%202019%20TENTANG%20PENYIDIKAN%20TINDAK%20PIDANA.pdf> (requiring a *gelar perkara* on inquiry results to decide whether an event is a criminal offence or not, and terminating inquiry where it is “not a criminal offence”).

¹¹ Jessica, Jason Wiratama, and Suhandri Sirait, “Gelar Perkara dalam Proses Penyelidikan di Kepolisian Daerah Sumatera Utara” [Case Screening in the Inquiry Process at the North Sumatra Regional Police], *Kertha Semaya: Journal Ilmu Hukum* 10, no. 3 (2022): 673–85, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/82792/43348> (describing *gelar perkara* as an internal, investigator-led forum whose recommendations are implemented administratively, with complainant participation depending on police discretion).

¹² “East Luwu: Ministry Prepares to Reinvestigate 2019 Rape Case,” *Antara News*, October 9, 2021, accessed March 27, 2025, <https://en.antaranews.com/news/193533/east-luwu-ministry-prepares-to-reinvestigate-2019-rape-case>; “Keluh Warga Ramai #PercumaLaporPolisi: Memang Percuma?” [Citizens Complain About #PercumaLaporPolisi: Is It Really Useless?], *CNN Indonesia*, October 14, 2021, accessed April 14, 2025, <https://www.cnnindonesia.com/nasional/20211014165320-12-707927/keluh-warga-ramai-percuma-lapor-polisi-memang-percuma>.

urging the Chief of the National Police to reopen the case “in the best interests of the child victims.”¹³ Despite this high-level intervention, the police response remained confined to internal processes, reinforcing public skepticism regarding the availability of meaningful external review. Under the current statutory framework of KUHAP 1981—and essentially carried over into KUHAP 2025—victims have no clearly defined judicial mechanism to challenge the legality of a decision to terminate an Inquiry. In such circumstances, the State, which is constitutionally mandated to protect its citizens, effectively abdicates its responsibility, leaving victims without access to justice and allowing serious allegations to be closed without any authoritative legal resolution.¹⁴

Consequently, the delegation of authority to terminate Inquiries under National Police Regulation No. 6 of 2019 (Perkap 6/2019) has produced significant distortions in the legal protection framework. In the absence of any statutory mechanism for Pre-trial review of Inquiry terminations under either KUHAP 1981 or KUHAP 2025, the discretionary power to discontinue an Inquiry remains unfettered, effectively enabling investigators to act as the final arbiters of whether a criminal offence has occurred. Such concentrated discretion is difficult to reconcile with the principles of checks and balances that are fundamental to a constitutional democracy. Extending the pre-trial mechanism to encompass judicial scrutiny of Inquiry terminations is therefore not a mere technical adjustment in procedural law, but a structural imperative to prevent arbitrary denials of justice. Legal protection, in this sense, is inseparable from the very purpose of law: safeguarding the rights and legitimate interests of every individual.¹⁵ A notable parallel emerged in the death-in-custody case of Afif Maulana in West Sumatra, where the Legal Aid Institute in Padang (LBH Padang) reported that the victim’s family never received either a formal termination order of investigation or even a Notification of Investigation Progress (*Surat Pemberitahuan Perkembangan Hasil Penyidikan*, SP2HP), thereby effectively foreclosing any realistic opportunity to seek pre-trial relief.¹⁶

¹³ National Commission on Violence Against Women (Komnas Perempuan), “Pernyataan Sikap Komnas Perempuan Tentang Dugaan Tindak Kekerasan Seksual pada 3 Anak di Luwu Timur” [Statement on Alleged Sexual Violence against Three Children in East Luwu], October 18, 2021, accessed March 30, 2025, <https://komnasperempuan.go.id/pernyataan-sikap-detail/pernyataan-sikap-komnas-perempuan-tentang-dugaan-tindak-kekerasan-seksual-pada-3-anak-di-luwu-timur-sulawesi-selatan-jakarta-18-oktober-2021>.

¹⁴ Syailendra Anantya Prawira, “Membedah Dualitas Locus Standi Penghentian Penyelidikan dan Korelasinya dengan Objek Praperadilan” [Dissecting the Duality of Locus Standi for Termination of Inquiry and Its Correlation with the Object of Pretrial], *MariNews* (Supreme Court of Indonesia), November 11, 2025, accessed November 21, 2025, <https://marinews.mahkamahagung.go.id/artikel/membedah-dualitas-locus-standi-penghentian-penyelidikan-dan-09n>.

¹⁵ Republic of Indonesia, National Police, *Regulation of the Chief of the Indonesian National Police Number 6 of 2019 on Criminal Investigation* (Perkap No. 6/2019), art. 9, <https://rowassidik.bareskrim.polri.go.id/wp-content/uploads/2022/09/1.a-PERKAP-NOMOR-6-TAHUN-2019-TENTANG-PENYIDIKAN-TINDAK-PIDANA1.pdf>.

¹⁶ LBH Padang, “LBH Padang Menemukan Kejanggalan Saat Polda Umumkan Menghentikan Kasus Afif Maulana” [LBH Padang Finds Irregularities When Regional Police Announced Termination of Afif Maulana Case], January 2, 2025, accessed April 5, 2025, <https://lbhpadang.org/lbh-padang-menemukan-kejanggalan-saat-polda-umumkan-menghentikan-kasus-afif-maulana/>.

Pre-trial proceedings have long served as a pivotal safeguard within the Indonesian criminal justice system, functioning as a mechanism of judicial oversight to restrain investigative actions that may infringe upon the fundamental rights of suspects. As initially conceived in KUHAP 1981—and maintained in substance by KUHAP 2025—this function reflects the primary objective of criminal procedure: to uphold human rights by striking a careful balance between individual liberty and the public interest, as embodied in the presumption of innocence. Accordingly, the conceptual design of the pre-trial proceeding’s mechanism is heavily suspect-centered, conferring on the district court the authority to review the legality of arrests, detentions, seizures, and the termination of Investigations carried out by law-enforcement authorities, while leaving complainants and victims without a parallel avenue of judicial protection at the Inquiry stage.¹⁷

As a result, the pre-trial proceedings mechanism—designed under the KUHAP 1981 and essentially maintained in KUHAP 2025—remains, at the level of statutory design, focused almost exclusively on the protection of suspects and structurally inaccessible to complainants or victims who have lodged reports with the police. Contemporary legal discourse increasingly recognises that confining pre-trial remedies exclusively to suspects is incompatible with a comprehensive conception of justice. A holistic reading of KUHAP 1981 and KUHAP 2025 in conjunction with the 1945 Constitution reveals that pre-trial proceedings ought to serve a dual function: not only safeguarding the human rights of suspects against coercive state action, but also ensuring that the State fulfils its positive obligation to provide effective legal remedies for victims of crime. The current suspect-exclusive configuration of pre-trial protection systematically neglects this second, equally fundamental, constitutional mandate.¹⁸

In Decision No. 53/PUU-XIX/2021, the Constitutional Court (*Mahkamah Konstitusi*, MK) unequivocally rejected a petition seeking to expand pre-trial authority to include review of the termination of an Inquiry.¹⁹ In its reasoning, the MK acknowledged the petitioners’ arguments for judicial oversight of Inquiry terminations but ultimately adhered strictly to the existing statutory framework. The Court reaffirmed that the competence of pre-trial proceedings, as laid down in KUHAP 1981, is confined to examining the legality of arrests, detentions, seizures, and the termination of formal Investigations and Prosecutions. It

¹⁷ Tim Mann, “Pretrial Hearings: Safeguarding Human Rights or a Gift to Corruptors?,” in *Crime and Punishment in Indonesia*, ed. Tim Lindsey and Helen Pausacker (Abingdon: Routledge, 2020), <https://www.taylorfrancis.com/books/edit/10.4324/9780429455247/crime-punishment-indonesia-tim-lindsey-helen-pausacker>; see also Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHAP)*, ch. X, <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-acara-pidana/download>.

¹⁸ UN Human Rights Committee, *General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (May 26, 2004), para. 15, <https://www.refworld.org/legal/general/hrc/2004/en/52451>.

¹⁹ Constitutional Court of the Republic of Indonesia, *Decision Number 53/PUU-XIX/2021*, December 15, 2021, <https://s.mkri.id/simpp/ds/61b9a6798cde7.pdf>.

therefore explicitly refused to extend judicial power to assess the validity of decisions to terminate an Inquiry.²⁰

The MK's consistent refusal to extend pre-trial jurisdiction to the termination of Inquiries generates a normative void that perpetuates procedural injustice. By adopting a rigidly textual understanding that treats "*pro justitia*" actions as beginning only at the formal Investigation stage, the MK effectively tolerates a zone of unaccountability at the Inquiry stage. This gap disproportionately prejudices victims of sexual violence and other sensitive offences, where initial police assessments—conducted during the preliminary Inquiry—often function as the decisive filter determining case progression. Denying judicial oversight at this critical juncture effectively forecloses access to justice before the formal legal process has even begun. This systemic failure, in turn, compels a fundamental re-examination of the very purpose of pre-trial proceedings: are they to remain a mechanism designed solely to safeguard suspects' rights, or must they evolve into a more inclusive instrument that equally vindicates victims' rights?

From a broader perspective, and in light of the dynamic evolution of law enforcement and the growing societal demand for comprehensive justice, a fundamental reassessment of the function of pre-trial proceedings is imperative. Pre-trial proceedings can no longer be conceived solely as a safeguard for suspects; they must operate as a robust supervisory instrument capable of guaranteeing procedural fairness for both suspects and victims. Extending pre-trial authority to encompass the review of Inquiry terminations would constitute a pivotal step toward a more inclusive and balanced criminal justice system.

Prior scholarship has engaged with the two core themes of this study—Inquiry termination and pre-trial proceedings—although not in an integrated, victim-centered manner. *First*, Aji Setyo Mukti's thesis at the Faculty of Law, Universitas Airlangga, *Termination of Cases at the Inquiry Stage Based on Police Regulation No. 6 of 2019*, examines the discretionary power of investigators and concludes that such discretion is extensive and only loosely confined by statute, thereby generating a significant risk of abuse. The thesis also notes that investigators may reopen Inquiries upon the emergence of new evidence and that, in practice, they often use Notifications of Investigation Progress (SP2HP) to formalise terminations.²¹ *Second*, Sal Sabila Aprilia, in "*Legal Protection of Suspects' Rights Through Pre-trial Mechanisms*," demonstrates that, despite the formal safeguards embedded in the

²⁰ Constitutional Court of the Republic of Indonesia, *Ikhtisar Putusan Perkara Nomor 53/PUU-XIX/2021: Penghentian Penyelidikan Sebagai Objek Praperadilan* [Summary of Decision No. 53/PUU-XIX/2021: Termination of Inquiry as Object of Pretrial], December 15, 2021, accessed May 17, 2025, https://mkri.id/public/content/persidangan/sinopsis/ikhtisar_3412_1251_Ikhtisar%20Putusan%20Nomor%2053%20Tahun%202021_Dian%20Chusnul.pdf.

²¹ Aji Setyo Mukti, "Penghentian Perkara Pada Tahap Penyelidikan Berdasarkan Peraturan Kepala Kepolisian Nomor 6 Tahun 2019" [Case Termination at the Inquiry Stage Based on Police Regulation No. 6 of 2019] (Undergraduate thesis, Universitas Airlangga, 2022).

KUHAP 1981, serious obstacles—such as judicial passivity and procedural delay—continue to undermine the adequate protection of suspects’ rights through pre-trial proceedings.²² *Third*, Ely Kusumastuti, in “The Designation of a Suspect as an Object of Pre-trial Proceedings,” argues that the philosophical foundation of pre-trial proceedings lies in protection against coercive measures and contends that the *ratio decidendi* in the Budi Gunawan pre-trial decision and MK Decision No. 21/PUU-XII/2014—which extended pre-trial review to the designation of suspects—departs from the original philosophy of KUHAP 1981 by conflating questions of procedural legality with determinations of substantive truth, a matter properly reserved for the trial court.²³ *Fourth*, I Made Wisnu Wijaya Kusuma and colleagues, in “Pre-trial Legal Remedies in the Indonesian Criminal Justice System,” reaffirm that, under Article 77 of KUHAP 1981, pre-trial authority is confined to arrests, detentions, and the termination of Investigations or Prosecutions—even after MK Decision No. 21/PUU-XII/2014 broadened the interpretive scope of those provisions.²⁴

While these studies have significantly elucidated the role of pre-trial proceedings in safeguarding suspects’ rights, the specific issue of Inquiry termination remains under-theorised, particularly in relation to its implications for victims. The termination of an Inquiry exists within a normative vacuum in KUHAP 1981—a vacuum that KUHAP 2025 essentially perpetuates—and the absence of a precise mechanism of judicial review at this stage threatens victims’ right to legal certainty. Departing from earlier research, this study offers two theoretical contributions that serve as essential foundations for reconstructing the concept and function of pre-trial proceedings.²⁵

First, this article identifies the absence of pre-trial jurisdiction over Inquiry terminations in both KUHAP 1981 and KUHAP 2025 as a fundamental “constitutional injustice gap.” By demonstrating that victims lack any judicial avenue to challenge discretionary police decisions to discontinue an Inquiry, the analysis shows that the current procedural design

²² Sal Sabila Aprilia, Elizabeth Siregar, and Tri Imam Munandar, “Legal Protection of Suspects’ Rights Through Pretrial Mechanisms,” *PAMPAS: Journal of Criminal Law* 4, no. 1 (2023): 16–32, <https://doi.org/10.22437/pampas.v4i1.24097>.

²³ Ely Kusumastuti, “Penetapan Tersangka Sebagai Obyek Praperadilan” [Suspect Determination as an Object of Pretrial], *Yuridika* 33, no. 1 (2018): 1–18, <https://e-journal.unair.ac.id/YDK/article/view/7258>; see also South Jakarta District Court, *Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel.* (Budi Gunawan v. KPK), February 16, 2015, <https://putusan3.mahkamahagung.go.id/direktori/putusan/1eeb7fe61dd08810bb67d41a5ae67ebc.html>.

²⁴ I Made Wisnu Wijaya Kusuma, I Made Sepud, and Ni Made Sukaryati Karma, “Upaya Hukum Praperadilan Dalam Sistem Peradilan Pidana di Indonesia” [Pretrial Legal Remedies in the Indonesian Criminal Justice System], *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73–77, <https://doi.org/10.22225/juinhum.1.2.2438.73-77>.

²⁵ DPR RI, *Draft Law on the Criminal Procedure Code (KUHAP 2025)*, art. 158 (approved November 18, 2025), <https://berkas.dpr.go.id/akd/dokumen/komisi3-RJ-20251118-081025-6744.pdf>; Syailendra Anantya Prawira, “Membedah Dualitas Locus Standi Penghentian Penyelidikan dan Korelasinya dengan Objek Praperadilan” [Dissecting the Duality of Locus Standi for Termination of Inquiry and Its Correlation with the Object of Pretrial], *MariNews* (Supreme Court of Indonesia), November 11, 2025, accessed November 21, 2025, <https://marinews.mahkamahagung.go.id/artikel/membedah-dualitas-locus-standi-penghentian-penyelidikan-dan-09n>.

is incompatible with the constitutional principles of equality before the law, legal certainty, and the right to an effective remedy guaranteed by the 1945 Constitution.²⁶

Second, the article advances a victim-centered reconstruction of pre-trial proceedings. Drawing on John Rawls's theory of justice and Lon L. Fuller's concept of the internal morality of law, it reconceptualises pre-trial proceedings from a suspect-oriented check on coercive measures into a balanced forum of judicial control that simultaneously shields suspects from arbitrary state power and affords victims an effective right to seek review of the termination of their cases. On this basis, the discussion develops a normative framework and a set of doctrinal proposals for expanding pre-trial authority, with a view to establishing pre-trial proceedings as an integrated mechanism of constitutional protection for both parties.²⁷

2. Research Questions

To provide a structured analysis of the constitutional implications and the reforms required, this study addresses two central research questions:

1. What are the fundamental legal and constitutional implications arising from the absence of pre-trial authority to review the termination of an inquiry?
2. How can pre-trial proceedings be reformulated to expand their jurisdiction over Inquiry terminations, thereby balancing the protection of suspects' rights with the provision of effective legal remedies for victims?

3. Research Methods

To address these research questions, this study employs a normative legal research method that integrates statutory, case-based, and conceptual approaches.²⁸ The primary legal materials consist of the 1945 Constitution; Law No. 8 of 1981 (KUHP 1981); KUHP 2025—understood here as legislation approved by the legislature but not yet formally promulgated in the State Gazette; Law No. 2 of 2002 on the National Police; and Regulation of the Chief of the Indonesian National Police No. 6 of 2019 on Criminal Investigation.²⁹ The analysis also relies heavily on key judicial decisions, including the Constitutional Court's rulings on pre-trial jurisdiction (Decisions No. 21/PUU-XII/2014, No. 9/PUU-XVII/2019, and

²⁶ *The 1945 Constitution of the Republic of Indonesia*, arts. 27(1), 28D(1), <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf>; UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15.

²⁷ John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999); Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969).

²⁸ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119, <https://ojs.deakin.edu.au/index.php/dlr/article/download/70/75>.

²⁹ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHP), <https://peraturan.bpk.go.id/Download/35876/UU%20Nomor%208%20Tahun%201981.pdf>; DPR RI, *Draft Law on the Criminal Procedure Code* (KUHP 2025) (approved November 18, 2025), <https://berkas.dpr.go.id/akd/dokumen/komisi3-RJ-20251118-081025-6744.pdf>; Republic of Indonesia, National Police, *Regulation of the Chief of Police No. 6 of 2019 on Criminal Investigation*, <https://pusdikmin.com/perpus/file/PERKAP%20NOMOR%20%206%20%20TAHUN%202019%20TENTANG%20PENYIDIKAN%20TINDAK%20PIDANA.pdf>.

No. 53/PUU-XIX/2021), as well as landmark pre-trial district court judgments.³⁰ Secondary materials include scholarly literature on criminal procedure, commentaries on KUHAP reform, and the theoretical works of John Rawls and Lon L. Fuller. This article systematically interprets and evaluates these materials within a combined Rawlsian–Fullerian framework of procedural justice.³¹ Furthermore, this study treats references to the East Luwu and Afif Maulana cases not as empirical data in a socio-legal sense, but rather as normative case studies used to test the coherence of the existing legal design against constitutional principles.³²

B. DISCUSSION/ANALYSIS

1. The Impact of the Absence of Pre-trial Authority to Review and Adjudicate the Termination of Inquiry

Before the institutionalisation of pre-trial proceedings, Indonesia’s criminal justice system recognised judicial oversight of coercive measures through the office of the commissarial judge (*rechter-commissaris*) under the *Reglement op de Strafvordering* (Sv). After independence, however, the decision to retain the *Herziene Inlandsch Reglement* (HIR) (Staatsblad 1941 No. 44) as the prevailing procedural regime eliminated any equivalent supervisory judge, creating a prolonged gap in external control that persisted until the enactment of KUHAP 1981.³³

However, the post-1981 model did not fully restore proactive judicial supervision. Legislative and socio-legal accounts indicate that, when KUHAP was drafted, judicial control over coercive measures was deliberately narrowed and replaced by actor-specific internal oversight—labelled the ‘built-in control mechanism’ / ‘built-in controls’. In this design, pre-trial review was introduced as a compromise that is ‘conceptually weaker’ and largely ex post (‘after the fact’), leaving courts with limited time and powers to examine the legality of coercive measures.³⁴

³⁰ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*, https://www.mkri.id/public/content/persidangan/putusan/21_PUU-XII_2014.pdf; Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*, <https://s.mkri.id/simpp/ds/615ea0d5de938.pdf>; Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 9/PUU-XVII/2019*, https://www.mkri.id/public/content/persidangan/sinopsis/sinopsis_perkara_432_Ikhtisar%209_2019.final.pdf; South Jakarta District Court, *Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel.* (Budi Gunawan v. KPK), February 16, 2015, <https://putusan3.mahkamahagung.go.id/direktori/putusan/1eeb7fe61dd08810bb67d41a5ae67ebc.html>.

³¹ Rawls, *A Theory of Justice*, rev. ed.; Fuller, *The Morality of Law*, rev. ed.

³² J. M. Smits, *The Mind and Method of the Legal Academic* (Cheltenham: Edward Elgar, 2012).

³³ National Law Development Agency (BPHN), *Laporan Akhir Pengkajian Hakim Komisaris* [Final Report on the Study of the Commissarial Judge], accessed April 2, 2025, <https://bphn.go.id/data/documents/pk-2011-2.pdf>; United Nations Office on Drugs and Crime (UNODC), *Law No. 8 Year 1981 Concerning the Criminal Procedure*, https://www.unodc.org/cld/uploads/res/document/idn/law_number_8_year_1981_concerning_the_criminal_procedure_html/1.2_Criminal_Procedure.pdf.

³⁴ Fachrizal Afandi, *Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia* (PhD diss., Universiteit Leiden, 2021), 152, 172–73.

Within the current reform framework, KUHAP 2025 regulates pre-trial proceedings in Article 158, expressly empowering district courts to review: (a) the legality of coercive measures (*upaya paksa*); (b) the legality of terminating an Investigation or a Prosecution; (c) requests for compensation and/or rehabilitation arising from the termination of an Investigation or Prosecution; (d) the seizure of goods unrelated to the offense; (e) undue delay in case handling; and (f) the suspension of detention.³⁵

Although Article 158 substantially broadens the pre-trial scope previously set out in Article 77 KUHAP 1981—most notably by adding undue delay and the seizure of goods unrelated to the offence—it preserves the same foundational omission at the preliminary stage: it excludes the termination of an Inquiry from the objects of pre-trial review. The normative vacuum, therefore, persists.³⁶

Even so, the rights-protective ethos of pre-trial proceedings has prompted several district courts to move beyond the strict wording of Articles 1(10) and 77 of the KUHAP 1981. The trajectory shifted markedly after MK Decision No. 21/PUU-XII/2014, which held that pre-trial jurisdiction extends to the lawfulness of suspect designation, searches, and seizures on the ground that these are *pro justitia* acts affecting fundamental rights and therefore warrant judicial oversight. This doctrinal expansion informed subsequent landmark pre-trial rulings, including the South Jakarta District Court's Budi Gunawan decision.³⁷

However, consistent with the maxim *het recht hinkt achter de feiten aan*—"the law limps behind the facts"—legal norms often stagnate. At the same time, society evolves through rapid and unpredictable change.³⁸ In the specific context of pre-trial proceedings, recent developments demonstrate that existing regulations and MK jurisprudence are no longer adequate to deliver comprehensive justice. The MK itself acknowledged this deficiency in Decision No. 21/PUU-XII/2014 when, in reviewing the scope of pre-trial under KUHAP 1981, it observed that:³⁹

"...Nevertheless, in its development, the pre-trial mechanism has been unable to function optimally as it fails to address issues arising in the pre-adjudication process... This limitation has, in fact, led pre-trial proceedings to become entangled

³⁵ DPR RI, *Draft Law on the Criminal Procedure Code (KUHAP 2025)*, art. 158 (approved November 18, 2025), <https://berkas.dpr.go.id/akd/dokumen/komisi3-RJ-20251118-081025-6744.pdf>.

³⁶ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHAP)*, art. 77; DPR RI, *Draft Law on the Criminal Procedure Code (KUHAP 2025)*, art. 158.

³⁷ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*, https://www.mkri.id/public/content/persidangan/putusan/21_PUU-XII_2014.pdf; South Jakarta District Court, *Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel.* (Budi Gunawan v. KPK), February 16, 2015, <https://putusan3.mahkamahagung.go.id/direktori/putusan/1eeb7fe61dd08810bb67d41a5ae67ebc.html>.

³⁸ David Hardiogo et al., "Law and Digitalization: Cryptocurrency as Challenges Towards Indonesia's Criminal Law," *Indonesian Journal of Criminal Law Studies* 10, no. 1 (2025): 297–340, at 317–20, <https://doi.org/10.15294/ijcls.v10i1.22557>.

³⁹ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*, 104, https://www.mkri.id/public/content/persidangan/putusan/21_PUU-XII_2014.pdf.

merely in formalities and administrative matters, thereby deviating from the essence of the pre-trial institution....”

Historically, pre-trial proceedings emerged from the need to balance individual rights against the powers of the police and the prosecution. As a control mechanism, these proceedings sought to prevent arbitrary action against suspects, who occupy a structurally vulnerable position when confronted with the State’s authority to arrest, detain, and seize property.⁴⁰ The foundational concept, however, has long rested on the assumption that “justice” is effectively synonymous with protecting the suspect alone. Consequently, the criminal justice architecture failed to provide victims—whose interests deserve equal consideration—with adequate safeguards.

The East Luwu case involving alleged sexual violence against three minors starkly exemplifies this asymmetry, where the police’s termination of the Inquiry left the victims with no procedural avenue to object. The “insufficient evidence” justification operated as an impermeable barrier, denying the victims access to justice. The discontinuation of the Inquiry effectively foreclosed any statutory pre-trial remedy because, under both KUHAP 1981 and KUHAP 2025, such termination lies outside the scope of pre-trial review.⁴¹

This paradox exposes a fundamental flaw in the conception of rights protection underpinning the criminal justice system. In principle, the State—acting through its law-enforcement apparatus—is the ostensible custodian of the public interest, which by definition encompasses the interests of victims. In practice, however, the State often adopts a detached, ostensibly neutral stance. It rarely takes proactive measures to vindicate victims’ rights. The termination of an inquiry leaves victims without a mechanism to determine whether the decision rests on rigorous legal analysis or merely serves as an administrative expedient to close a case file, showing scant regard for the harm suffered. In this context, the State’s proclaimed role as the protector of victims risks becoming merely symbolic—a rhetorical construct profoundly divorced from the legal reality experienced by those seeking justice.⁴²

⁴⁰ Mann, “Pretrial Hearings,” in *Crime and Punishment in Indonesia*.

⁴¹ National Commission on Violence Against Women (Komnas Perempuan), “Pernyataan Sikap...” [Statement on Alleged Sexual Violence...], October 18, 2021; LBH Makassar, “Siaran Pers: Tentang Penghentian Penyelidikan Kasus Kekerasan Seksual Terhadap 3 Anak di Luwu Timur” [Press Release: On the Termination of the Inquiry into Sexual Violence against Three Children in East Luwu], May 21, 2022, accessed April 5, 2025, <https://lbhmakassar.org/press-release/tentang-penghentian-penyelidikan-kasus-kekerasan-seksual-terhadap-3-anak-di-luwu-timur/>; see also DPR RI, *Draft Law on the Criminal Procedure Code (KUHAP 2025)*, art. 158; Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*.

⁴² UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (December 16, 2005), <https://www.ohchr.org/sites/default/files/2021-08/N0549642.pdf>; United Nations Office on Drugs and Crime, *Handbook on Police Accountability, Oversight and Integrity* (Vienna: UNODC, 2011), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf.

John Rawls argues that fundamental liberties and primary social goods—encompassing personal security, access to legal redress, and a fair opportunity to pursue one’s life plan—constitute fundamental entitlements that any rational actor would demand, irrespective of their social position. Within Indonesia’s existing criminal-procedure framework, however, a pronounced disparity persists. Pre-trial review affords suspects robust procedural safeguards whenever coercive measures imperil their liberty. In contrast, victims have no adequate remedy when investigators unilaterally terminate an Inquiry into their case. Consequently, the distribution of the primary good of an “effective legal remedy” is arbitrarily skewed in favour of the suspect. Since the Equal Liberty Principle requires the equitable enjoyment of fundamental legal protections, an institutional architecture that reserves pre-trial access for a single class of litigants is normatively indefensible, irrespective of efficiency or utility considerations.⁴³

From the perspective of Rawls’s original position, rational agents situated behind the veil of ignorance—unaware of whether they will ultimately be suspects or victims—would not consent to a legal framework in which the right to initiate judicial review is the exclusive privilege of one party. They would instead insist on a rule of procedural symmetry, granting both suspects and victims the right to seek judicial oversight whenever discretionary authority threatens their substantive interests. Utilitarian arguments that limiting pre-trial review promotes investigative efficiency also fail to satisfy the Difference Principle. In this context, the least advantaged are precisely the victims whose pursuit of justice the termination of an Inquiry abruptly halts. Denying them judicial recourse yields no compensating benefit to those most vulnerable. A reform consistent with Rawlsian justice, therefore, mandates the extension of pre-trial jurisdiction—or the establishment of a functionally equivalent mechanism, such as a Preliminary Examining Judge (HPP). Only through such reform can the legal system distribute procedural safeguards equitably, fulfilling both the requirement of equal fundamental liberties and the institutional duty to improve, or at least protect, the position of the most disadvantaged.⁴⁴

The absence of pre-trial proceedings capable of reviewing Inquiry terminations creates a significant lacuna in the law, leaving victims without meaningful means to seek justice. This state of affairs not only reveals a profound imbalance in the legal protection afforded by the State but also fails to meet the standards of substantive justice that should guide every judicial process. Without a mechanism enabling victims to challenge such decisions, state power—manifested through investigators’ discretionary authority—operates without

⁴³ Rawls, *A Theory of Justice*, rev. ed.

⁴⁴ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Belknap Press of Harvard University Press, 2001); Mirjan R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (New Haven: Yale University Press, 1986).

adequate checks and balances, increasing the potential for abuse in the absence of independent judicial oversight.⁴⁵

The problem thus goes beyond the mere addition of another formal function to the existing pre-trial framework; it represents a critical opportunity for the legal system to honour its commitment to balanced justice. Pre-trial proceedings endowed with the authority to review the validity of Inquiry terminations would ensure that the law protects suspects from the misuse of authority and shields victims from arbitrary dismissal of their complaints. Such reform would restore the fundamental purpose of pre-trial proceedings as a supervisory instrument for securing substantive justice, preventing them from degenerating into mere procedural formalities.⁴⁶

Ultimately, this procedural void is more than a technical oversight; it amounts to a systemic contravention of the maxim *ubi jus ibi remedium*—where there is a right, there must be a remedy. When the State grants victims the right to report a crime but denies them any legal avenue to contest the arbitrary closure of that report, the right itself becomes illusory. The termination of an Inquiry serves as a definitive administrative barrier, depriving victims of access to justice before the formal judicial process commences. In this setting, the legal system becomes paradoxical: it promises protection in the abstract. Still, it fails to provide it in practice, leaving the victim's search for the truth entirely subject to the police's discretionary power, with no judicial recourse.⁴⁷

As the guardian of citizens' constitutional and human rights, the MK appears to have adopted an inconsistent approach in Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021. The MK's refusal to extend pre-trial authority to Inquiry terminations is challenging to reconcile with its progressive breakthrough in Decision No. 21/PUU-XII/2014. In that landmark ruling, MK expressly stated:⁴⁸

"...the law must simultaneously adopt the objectives of justice and utility. Thus, as social life becomes more complex, the law must be concretised more scientifically by using a better and more refined language (Shidarta, 2013: 207-214)...."

However, in its 2019 and 2021 decisions, MK declined to reinterpret the scope of pre-trial jurisdiction to include the review of Inquiry terminations. It reasoned that the Inquiry stage is merely preliminary, lacking the degree of certainty required to elevate a case to formal investigation (*pro justitia*). The MK further maintained that this stage

⁴⁵ UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15.

⁴⁶ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 (November 29, 1985), <https://www.refworld.org/legal/resolution/unga/1985/en/57749>.

⁴⁷ UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15; see also Bryan A. Garner, ed., *Black's Law Dictionary*, 11th ed. (St. Paul, MN: Thomson Reuters, 2019), s.v. "ubi jus ibi remedium."

⁴⁸ Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 9/PUU-XVII/2019*, April 15, 2019; Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 53/PUU-XIX/2021*, December 15, 2021; Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*, 56.

remains heavily dependent on the collection of sufficient evidence; in the absence of such evidence, the judicial process cannot proceed, and investigators lack statutory authority to deploy coercive measures (*dwangmiddelen*), such as depriving individuals of their liberty or property.⁴⁹

On this basis, the MK deemed judicial oversight through pre-trial proceedings inapplicable at the Inquiry stage, reasoning that the legislature specifically designed such proceedings to supervise coercive actions. The Court concluded that, because authorities do not formally employ coercive measures during the Inquiry stage, applicants cannot invoke pre-trial review. The Court thus constructs a binary framework that recognises human rights protection as constitutionally relevant only from the formal Investigation stage onward, when the law authorises coercive measures such as detention and seizure.⁵⁰ This formalistic dichotomy also resonates with KUHAP's historical architecture—drafted under the New Order—which institutionalised functional differentiation and internal 'built-in control', thereby privileging police autonomy and minimising external judicial supervision at the earliest stages⁵¹

However, the MK's rigid classification of the Inquiry stage as non-*pro justitia*—predicated solely on the absence of physical coercive measures—overlooks the profound “psychological coercion” inherent in the process. Although an Inquiry may not deprive individuals of liberty through detention, it often leaves them in a legal limbo. Prolonged uncertainty, repeated summonses, and the inevitable social stigma associated with police questioning together constitute a form of invisible coercion that seriously undermines a person's sense of security. To characterise state power as benign at this stage is to ignore the reality that, for the ordinary citizen, the investigative apparatus is intimidating. Refusing judicial oversight based on a formalistic understanding of “force” fails to recognise that the power to keep a person in perpetual uncertainty is itself coercive and demands accountability.⁵²

The authors contend that, although the Inquiry stage does not formally constitute part of the judicial process (*pro justitia*), the activities conducted during this phase significantly influence the trajectory of subsequent criminal proceedings in practice. During an Inquiry, law-enforcement authorities gather intelligence and conduct fact-finding activities—such as interviewing relevant parties, inspecting crime scenes, and compiling reports—that ultimately determine whether a case proceeds to a formal Investigation. Thus, even if authorities do not yet possess statutory authority to restrict liberty at this stage, the practical weight of Inquiry activities remains substantial.⁵³

⁴⁹ Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 9/PUU-XVII/2019*; Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 53/PUU-XIX/2021*.

⁵⁰ Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*, <https://s.mkri.id/simpp/ds/615ea0d5de938.pdf>.

⁵¹ Afandi, *Maintaining Order*, 214.

⁵² *Miranda v. Arizona*, 384 U.S. 436, 448 (1966), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf>; UNODC, *Handbook on Police Accountability, Oversight and Integrity*.

⁵³ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), art. 1(5); Republic of Indonesia, National Police, *Regulation of the Chief of Police No. 6 of 2019 on Criminal Investigation*, art. 32.

Precisely because of these significant practical implications, terminating Inquiries without judicial oversight results in tangible injustices to victims. While the MK maintains that the *pro justitia* process begins only at the formal Investigation stage, it is undeniable that decisions taken during the Inquiry have substantive consequences for victims' access to justice. An independent judicial mechanism to review decisions terminating an Inquiry is therefore essential to ensure transparency and accountability in law enforcement from the very inception of criminal proceedings.⁵⁴

Ultimately, the MK's reasoning raises profound concerns regarding the essence of justice and the balance of legal protection for all parties—a concern already signalled in Decision No. 21/PUU-XII/2014. Viewed through a broader philosophical lens, the law cannot function merely as a rigid instrument of rule enforcement or solely as a shield for suspects' rights.⁵⁵

Confining pre-trial oversight strictly to coercive measures at the Investigation stage implicitly marginalises victims' rights within the criminal justice process. The absence of pre-trial proceedings capable of reviewing decisions that terminate an Inquiry systematically denies crime victims equitable access to justice. In this configuration, the law operates asymmetrically: it shields one party—the suspect—through robust pre-trial safeguards, while disregarding the corresponding imperative to protect victims, whose rights warrant equal consideration by the State.⁵⁶

Collectively, these doctrinal, institutional, and practical deficiencies provide a definitive answer to the first research question: the absence of pre-trial jurisdiction over Inquiry terminations engenders a triad of systemic harms—namely, the denial of an effective remedy for victims; a deepening structural asymmetry between suspects and complainants; and chronic legal uncertainty exacerbated by fragmented jurisprudence and ad hoc administrative responses. It is precisely this triad of harms that the subsequent sections seek to address by reformulating pre-trial objectives and developing concrete reform strategies.

When scrutinised through the lens of Progressive Law as articulated by Satjipto Rahardjo, it becomes evident that the law must remain dynamic and responsive to society's evolving needs. Legal norms should not remain constrained by rigid dogmatics; they must retain sufficient flexibility to adapt to changing social conditions. Interpreting pre-trial proceedings merely as instruments to supervise coercive measures during the formal Investigation stage risks confining the legal system to a narrow and static frame—one that, in practice, allows Inquiry terminations to disregard the community's sense of justice and the interests of victims seeking redress.⁵⁷

⁵⁴ UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15.

⁵⁵ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*.

⁵⁶ *The 1945 Constitution of the Republic of Indonesia*, art. 28D(1).

⁵⁷ M. Z. Aulia, "Progressive Law of Satjipto Rahardjo," *Undang: Jurnal Hukum* 1, no. 1 (2018): 167–90, <https://ujh.unja.ac.id/index.php/home/article/download/20/8/167>.

Furthermore, this limitation of pre-trial authority reveals a legal system that remains reactive rather than proactive. By confining judicial oversight solely to the formal Investigation stage, the law fails to serve as a holistic, preventive safeguard. As illustrated by the East Luwu case, terminating an Inquiry for “lack of evidence” exposes a critical vacuum in victim protection; without pre-trial proceedings to review such determinations, victims are stripped of any effective means to challenge law-enforcement decisions.⁵⁸

The MK’s perspective—restricting pre-trial authority exclusively to oversight of coercive measures during formal investigation—ultimately demonstrates how law can lag behind dynamic social realities. Maxim *het recht hinkt achter de feiten aan* (“the law limps behind the facts”) is particularly resonant in this context: a legal order unable to adapt to societal exigencies risks perpetuating systemic injustice and failing to meet the demand for broader, more inclusive justice.⁵⁹

Consequently, this restrictive interpretation of pre-trial authority requires immediate re-evaluation to ensure that the law operates responsively and equitably for all parties, including victims. Legal protection must not hinge solely on the presence of physical coercion; robust mechanisms must exist to ensure that decisions terminating a case at the Inquiry stage are subject to review and, where necessary, rectification. This imperative aligns with constitutional and international mandates to provide effective remedies for rights violations and to uphold the principles of justice in a genuinely inclusive manner.⁶⁰

Moreover, the issue of Inquiry termination is far from hypothetical. Beyond the East Luwu case—which ended in a vacuum of justice—judicial practice reveals a growing trend in which district courts have accepted and, in some instances, granted pre-trial applications challenging such terminations. These rulings implicitly affirm that the judiciary considers itself authorised to adjudicate these matters. Notable precedents include:

1. *The Banda Aceh District Court’s Decision No. 3/Pid.Pra/2021/PN Bna ruled as follows:*⁶¹
 - a) *Granted the Petitioner’s Pre-trial Application in its entirety;*
 - b) *Declared the Letter of Termination of Inquiry issued by the Respondent to be null and void;*
 - c) *Ordered the Respondent to continue the investigation of the case with Report Evidence registered at the Banda Aceh City Police, Number: LPB/425/VII/YAN.2.5/2018/SPKT dated July 11 2018, concerning allegations of the embezzlement of an original BPKB (Vehicle Registration Certificate) for a*

⁵⁸ National Commission on Violence Against Women (Komnas Perempuan), “Pernyataan Sikap...” [Statement on Alleged Sexual Violence...], October 18, 2021.

⁵⁹ “Relativitas Peraturan dalam Hukum” [The Relativity of Regulations in Law], *Hukumonline*, July 6, 2021, accessed April 22, 2025, <https://www.hukumonline.com/berita/a/relativitas-peraturan-dalam-hukum-lt60e5205a1d473/>.

⁶⁰ UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15..

⁶¹ Banda Aceh District Court, *Putusan Nomor 3/Pid.Pra/2021/PN Bna* [Decision No. 3/Pid.Pra/2021/PN Bna], 2021..

- four-wheeled minibus-type vehicle, Mitsubishi Pajero 2009 with the initial registration number BL 613 ZV, which is currently registered under the number BL 1132 ZK, allegedly committed by M. Rizal bin Alm Harun;*
- d) *The Court imposed the court fees on the Respondent, which amounted to zero.*
2. *The Tangerang District Court's Decision No. 12/Pid.Pra/2022/PN Tng ruled as follows:*⁶²
- a) *Partially granted the Petitioner's Pre-trial Application;*
 - b) *Declared the Decree Number: SK.Lidik/25/IX/2022 dated September 23 2022, regarding the Termination of Inquiry and the Letter of Termination of Inquiry Number: SPP.Lidik/25/IX/RES.1.8./2022 dated September 23 2022, issued by Respondent II, to be legally invalid;*
 - c) *Ordered the Respondents to continue the investigation of the case under Police Report No. LP/B/530/X/2021/PMJ/RESTRO TNG/SEK CPDH dated October 11 2021, concerning allegations of aggravated theft as stipulated in Article 363 of the Indonesian Criminal Code (KUHP) and/or other related offences allegedly committed by the reported parties, Sopar J. Napitupilu and Rasmidi;*
 - d) *The Court imposed the court fees on the Respondents, which amounted to zero.*
3. *The Ende District Court's Decision No. 2/Pid.Pra/2018/PN End ruled as follows:*⁶³
- a) *Partially granted the Petitioner's Pre-trial Application;*
 - b) *Declared that the termination of the Inquiry by the Respondent, concerning allegations of Corruption in the form of Gratification, constituted an abandonment of a criminal act, and thus, the termination of the Inquiry was deemed legally unjustified;*
 - c) *Ordered the Respondent to proceed with the legal process of the alleged Corruption case as recorded in Information Report number: LI / 06 / X / 2015 / Reskrim dated October 5 2015, and the Investigation Order number: Sprin-lidik/09/X/2015/Reskrim dated October 16 2015;*
 - d) *Imposed all pre-trial costs on the State.*

These three decisions underscore the urgent need for legal reform in judicial practice. Operating within a normative vacuum, judges have adopted a progressive stance, engaging in judicial activism to advance justice through *rechtsvinding* (legal construction). In Decision No. 2/Pid.Pra/2018/PN End, for example, the Ende District Court's panel emphasised that adherence to Indonesia's civil-law tradition does not preclude the judiciary from developing the law. Although civil-law judges primarily function as adjudicators rather than legislators, the law prohibits courts from refusing to examine a case (*non liquet*) because the relevant law is unclear or non-existent. On the contrary, judges are statutorily obliged to explore, follow, and understand the legal values and the community's sense of justice, as explicitly mandated by Article 5(1) of Law No. 48 of 2009 on Judicial Power.⁶⁴

⁶² Tangerang District Court, *Putusan Nomor 12/Pid.Pra/2022/PN Tng* [Decision No. 12/Pid.Pra/2022/PN Tng], 2022

⁶³ Ende District Court, *Putusan Nomor 2/Pid.Pra/2018/PN End* [Decision No. 2/Pid.Pra/2018/PN End], 2018.

⁶⁴ Republic of Indonesia, *Law No. 48 of 2009 on Judicial Power*, art. 5(1), <https://peraturan.bpk.go.id/Download/28122/UU%20Nomor%2048%20Tahun%202009.pdf>.

The progressive legal reasoning articulated in the Ende decision is compelling. Judges bear a moral responsibility to uphold the law in a manner that is both legally correct and substantively just. When the rigid application of statutory provisions risks producing injustice, judges are required to prioritise principles of moral justice over mere adherence to statutory formalism. In this sense, ideal law must transcend the textual rigidity of statutes and align with the living law, which embodies prevailing social values and the community's understanding of justice. Justice must not be confined to procedural compliance but must extend to substantive justice grounded in the judge's conscience. Accordingly, the judicial role extends beyond mere rule enforcement: the judge acts as the guardian of a higher form of justice. This role demands acute sensitivity to the moral and social dynamics of society.⁶⁵

The Ende District Court's Decision No. 2/Pid.Pra/2018/PN End thus serves as a compelling testament to the evolving function of pre-trial proceedings within Indonesia's shifting procedural landscape. In this ruling, the panel explicitly invoked MK jurisprudence that has significantly widened the interpretative horizons of pre-trial authority. Consequently, the decision stands not merely as a response to practical legal developments but as a deliberate judicial effort to harmonise the principles of justice with a dynamic legal reality.⁶⁶

Anchoring its reasoning in MK Decision No. 21/PUU-XII/2014, the Ende District Court asserted that pre-trial proceedings now extend beyond the static definitions originally set out in Article 77 KUHAP 1981. Instead, they have evolved into an institution with a broader scope, encompassing critical aspects previously deemed *ultra vires*, such as the determination of suspect status, searches, and seizures. This ruling reflects a profound judicial recognition that pre-trial proceedings must possess sufficient elasticity to adapt to societal exigencies, particularly in checking the coercive authority exercised by law-enforcement agencies.⁶⁷

In this vein, the Ende District Court adopted a further progressive stance, reasoning that the same jurisprudential logic applies *mutatis mutandis* to the termination of an Inquiry. The judges advanced a compelling argument: if pre-trial jurisdiction now extends to scrutinising the designation of suspects, there is no principled justification for insulating Inquiry terminations from similar judicial review. While such judicial assertiveness may invite controversy, it evidences the lower courts' willingness to embrace a dynamic and inclusive interpretation of procedural rights—particularly for victims whom the termination of Inquiries frequently marginalises.⁶⁸ Consequently, this decision stands not only as a

⁶⁵ Republic of Indonesia, *Law No. 48 of 2009 on Judicial Power*, art. 5(1).

⁶⁶ Ende District Court, *Putusan Nomor 2/Pid.Pra/2018/PN End* [Decision No. 2/Pid.Pra/2018/PN End], March 26, 2018, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaebf9701018c22c96e6303731353236.html>.

⁶⁷ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*.

⁶⁸ "Hakim Kabulkan Praperadilan Warga Aceh Besar Terhadap Polresta Banda Aceh" [Judge Grants Pretrial of Aceh Besar Citizen Against Banda Aceh Police], *AJNN*, June 12, 2021, accessed July 1, 2025, <https://www.ajnn.net/news/hakim-kabulkan-praperadilan-warga-aceh-besar-terhadap-polresta-banda-aceh/index.html>.

significant milestone in Indonesian jurisprudence but also as an essential step toward ensuring that justice evolves beyond textual rigidity and aligns with the broader imperatives of human rights protection.⁶⁹

Crucially, while these judicial breakthroughs have introduced much-needed flexibility into the application of law, they also expose a fundamental dilemma concerning the judiciary's role in shaping legal norms. On the one hand, such rulings reflect a laudable, proactive stance by judges seeking to bridge normative gaps; on the other, they reveal the inherent limitations of rigid statutory frameworks in accommodating the increasingly complex and evolving demands of justice. This tension raises a central question: can judicial intervention—which is, by nature, casuistic and sporadic—guarantee a stable and coherent legal order, or does it risk generating new uncertainties and contributing to a fragmented legal landscape that may ultimately prove more detrimental?⁷⁰

According to Lon L. Fuller's conception of the internal morality of law, a legal system commands fidelity only when its rules satisfy certain basic desiderata, including generality, publicity, clarity, consistency, and—crucially—congruence between official action and announced norms. Where statutory regulation is Opaque or incomplete, statutory regulation compels judges to resolve cases through ad hoc, context-specific improvisations. Over time, reliance on such casuistry produces precisely what Fuller warns against: a failure of legal morality in which outcomes become volatile and unpredictable. The legal order then ceases to offer a reliable framework for guiding conduct, securing expectations, or delivering consistent justice.⁷¹

From a Fullerian perspective, Indonesia's current regime governing inquiries into termination exemplifies this pathology. The scarcity of explicit statutory guidance in KUHAP 1981—and, in materially similar fashion, in KUHAP 2025—forces courts and law-enforcement agencies to lean on disjointed precedents and opaque internal administrative mechanisms rather than on clear, publicly promulgated rules. Because these informal practices lack transparent standards and well-defined legal consequences, they cannot serve as a substitute for a coherent, rule-based framework. Far from constraining power, the law risks devolving into a set of discretionary bureaucratic routines that citizens can neither reasonably predict nor effectively contest.⁷²

⁶⁹ United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

⁷⁰ Fuller, *The Morality of Law*, rev. ed.; Jeremy Waldron, "The Rule of Law," *Stanford Encyclopedia of Philosophy* (Spring 2020 ed.), <https://plato.stanford.edu/entries/rule-of-law/>.

⁷¹ Fuller, *The Morality of Law*, rev. ed., esp. "The Morality that Makes Law Possible"; E. W. Tucker, "The Morality of Law, by Lon L. Fuller," *Indiana Law Journal* 40 (1965): 367–73, <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=3571&context=ilj>.

⁷² Republic of Indonesia, National Police, *Regulation of the Chief of Police No. 6 of 2019 on Criminal Investigation*, art. 32; Institute for Criminal Justice Reform (ICJR), "Sembilan Masalah dalam RUU KUHAP" [Nine Problems in the Draft Criminal Procedure Code], March 28, 2025, accessed April 7, 2025, <https://icjr.or.id/sembilan-masalah-dalam-ruu-kuhap/>.

Consequently, piecemeal judicial breakthroughs—such as occasional district-court decisions entertaining challenges to Inquiry terminations—are normatively commendable yet structurally insufficient. In the absence of legislative reform that codifies pre-trial jurisdiction, standing, procedures, and the legal effects of rulings, each new decision adds another isolated fragment to an already fractured legal landscape. A comprehensive statutory revision, anchored in Fuller’s principles of clarity and coherence, is therefore indispensable if pre-trial proceedings are to function as a stable instrument of justice rather than as a sporadic exercise in judicial activism.⁷³

By synthesising the historical development of Indonesia’s pre-trial review, the persistent normative lacuna in KUHAP 1981 and KUHAP 2025, and the philosophical critiques of Fuller and John Rawls, it becomes clear that the absence of pre-trial jurisdiction over Inquiry terminations produces three core consequences. *First*, victims are left without any legal avenue to contest the discontinuance of their cases, resulting in a de facto denial of access to justice. *Second*, fragmented jurisprudence and a vacuum of consistent judicial control erode legal certainty. *Third*, a stark and arbitrary asymmetry of rights emerges—directly contravening Rawls’s Equal Liberty and Difference Principles—protecting only suspects. At the same time, victims, often the most vulnerable parties, receive no commensurate remedy. Accordingly, with respect to Research Question 1, this analysis demonstrates that the legal and sociological repercussions of this normative gap are systemic and demand urgent rectification.⁷⁴

Given the deeply entrenched conservatism surrounding pre-trial proceedings in Indonesia, a comprehensive re-examination of the institution’s foundational objectives must precede any expansion of authority. This theoretical audit is a prerequisite for ensuring that the broadening of pre-trial powers remains consistent with the principles underlying their creation. Future criminal-procedure reforms must aim to redefine pre-trial proceedings, anchoring them firmly in the twin pillars of justice and legal certainty.⁷⁵ As Barda Nawawi Arief cogently argues, the essence and significance of criminal law reform are inseparable from its underlying rationale and urgency; reform must be responsive to societal developments and dynamic legal policy. Viewed in this light, reform is not merely a technical update, but a vital instrument for strengthening Indonesia’s criminal justice system and elevating the standard of human-rights protection.⁷⁶

⁷³ Fuller, *The Morality of Law*, rev. ed.; N. A. Muhamad, “Developing the Legal Philosophy of Lon L. Fuller” (PhD diss., University of Birmingham, 2020), <https://etheses.bham.ac.uk/id/eprint/10561/7/Muhamad2020PhD.pdf>.

⁷⁴ Rawls, *A Theory of Justice*, rev. ed.; UN Human Rights Committee, *General Comment No. 31 [80]*, para. 15.

⁷⁵ Liz Campbell, Andrew Ashworth, and Mike Redmayne, *The Criminal Process*, 5th ed. (Oxford: Oxford University Press, 2019).

⁷⁶ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana [Anthology of Criminal Law Policy]*, 3rd ed. (Bandung: Citra Aditya Bakti, 2005).

2. Reformulating the Objectives of Pre-trial Proceedings

Addressing the second research question, this section undertakes a normative reformulation of the objectives of pre-trial proceedings and a reconsideration of their institutional design. Building on the preceding analysis of the “injustice gap” created by the absence of judicial review at the Inquiry stage, it asks a fundamental but often neglected question: what interests must pre-trial proceedings protect, for whose benefit, and against which manifestations of state power? The ultimate aim is to transform pre-trial proceedings from a fragmented set of procedural safeguards into a constitutionally coherent system of judicial control.⁷⁷

In its pivotal ruling on the judicial review of KUHAP 1981, MK characterised pre-trial proceedings as a breakthrough innovation within Indonesia’s criminal justice architecture. MK explained that, under the colonial *Herziene Inlandsche Reglement* (HIR), premised on an inquisitorial model, no such judicial oversight existed: the colonial regime treated suspects as mere objects of examination and entrenched a presumption of guilt from the outset. By contrast, KUHAP 1981 redefined suspects as legal subjects with dignity and equal rights and established pre-trial proceedings to effectuate that paradigm shift.⁷⁸

The pre-trial institution also traces its origins to the Anglo-Saxon legal tradition as a rights-protecting response, most notably to safeguard personal liberty. In its original context, pre-trial judicial control functioned as a bulwark ensuring that detention or any deprivation of freedom adhered strictly to the law and did not infringe protected rights. This idea influenced Indonesia’s pre-trial model as a supervisory check on coercive measures by law-enforcement authorities. Historically, the writ of *habeas corpus* evolved from a procedural device into a powerful legal remedy against unlawful detention, culminating in England’s Habeas Corpus Act of 1679—a watershed in the history of criminal justice.⁷⁹ Indonesian legislative history also records that the pre-trial hearing was inspired by *habeas corpus*, yet parliamentary compromise resulted in a weaker design than originally proposed.⁸⁰

According to Yahya Harahap, in his seminal treatise on the application of KUHAP 1981, pre-trial proceedings constitute a supplementary jurisdiction that the law vests in the district court, distinct from its primary role in adjudicating substantive criminal and civil disputes. This special mandate encompasses assessing the legality of coercive measures—such as detention and seizure—and reviewing the termination of investigations and prosecutions by investigators and public prosecutors. Harahap argues that, by institutionalising pre-trial

⁷⁷ Campbell, Ashworth, and Redmayne, *The Criminal Process*, 5th ed.

⁷⁸ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*.

⁷⁹ Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge, MA: Harvard University Press, 2010); United Kingdom, Habeas Corpus Act 1679 (31 Cha. 2 c. 2), <https://www.legislation.gov.uk/aep/Cha2/31/2/contents>.

⁸⁰ Afandi, *Maintaining Order*, 173

proceedings in KUHAP 1981, the legislature intended to create a mechanism of horizontal oversight, ensuring that coercive measures that authorities impose on suspects during the Investigation or Prosecution stages strictly comply with due process and statutory requirements.⁸¹ Corroborating this view, Oemar Seno Adji explains that KUHAP introduced the pre-trial concept as a judicial check on the legality of arrests and detentions; because such acts inherently deprive individuals of personal liberty and implicate human rights, they require rigorous court supervision to prevent arbitrariness.⁸²

Synthesising these perspectives, this article defines pre-trial proceedings as a specific authority that the district court exercises to supervise coercive measures that investigators or public prosecutors implement against suspects. This oversight serves as a critical safeguard against the abuse of power by law enforcement officials in the performance of their duties. At the same time, it ensures that suspects—or their families—who endure enforcement actions lacking a legitimate legal basis, or involving mistaken identity (*error in persona*), have a statutory right to seek redress in the form of compensation and rehabilitation.⁸³

The findings detailed in the preceding subsection expose a critical void within the legal-protection framework: the absence of pre-trial authority to review and adjudicate cases that investigators terminate at the Inquiry stage under KUHAP 1981. KUHAP 2025 essentially perpetuates this gap. This omission fundamentally undermines the system's capacity to ensure justice for all parties, particularly victims. As exemplified by the East Luwu case—where the police unilaterally terminated the Inquiry into the alleged sexual abuse of three minors—current practice leaves victims vulnerable and without any statutory judicial avenue within the pre-trial framework to challenge such decisions.⁸⁴ This denial of recourse underscores the urgent need for a more stringent and transparent mechanism of judicial oversight, specifically at the Inquiry stage.

Empirical realities also reveal a significant blurring of the procedural distinction between the preliminary Inquiry and the formal investigation—stages that, theoretically, should be clearly delineated. Although the law requires that the commencement of an Investigation be

⁸¹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan* [Discussion on Problems and Application of the Criminal Procedure Code: Investigation and Prosecution] (Jakarta: Sinar Grafika, 2011).

⁸² Oemar Seno Adji, *Hukum (Acara) Pidana dalam Prospekti* [Criminal (Procedural) Law in Prospection] (Jakarta: Erlangga, 2004).

⁸³ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), arts. 77, 95.

⁸⁴ Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*; National Commission on Violence Against Women (Komnas Perempuan), “Pernyataan Sikap...” [Statement on Alleged Sexual Violence...], October 18, 2021.

reported to the Public Prosecutor by means of a Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan, SPDP*), investigators frequently regard this obligation as onerous precisely because the issuance of an SPDP legally triggers prosecutorial oversight of investigative conduct.⁸⁵ Persistent compliance problems and litigation over late SPDPs further attest to this friction, reinforcing the need for early, reviewable judicial control.⁸⁶

Consequently, law-enforcement officers often seek to extend the Inquiry phase, effectively delaying the formal transition to investigation even when their activities substantively resemble those of a formal Investigation. This tacit strategy is employed to circumvent prosecutorial scrutiny, given that the Public Prosecutor is legally and structurally vested with the authority to supervise the investigation.⁸⁷

The critical problem arises when investigators unilaterally terminate an Inquiry. In such instances, this outcome leaves victims or complainants—who possess a legitimate interest in the case—without any effective judicial recourse to challenge the decision. This dynamic effectively forecloses the pursuit of victims' rights while leaving investigators with unchecked discretionary authority. The existing framework thus places victims in a precarious position, devoid of adequate legal instruments to seek redress when they deem an Inquiry termination unjust.⁸⁸ To clarify this structural disparity, Figure 1 illustrates how the current legal framework generates a distinct “injustice gap” for victims whose cases are closed at the Inquiry stage, in sharp contrast to the remedies available once a case proceeds to the formal Investigation stage.⁸⁹

⁸⁵ Constitutional Court of the Republic of Indonesia, *Decision No. 130/PUU-XIII/2015*, https://www.mkri.id/public/content/persidangan/putusan/130_PUU-XIII_2015.pdf; “MK Tetapkan 7 Hari Penyerahan SPDP ke Penuntut Umum” [Court Rules 7 Days for SPDP Delivery to Public Prosecutor], *Hukumonline*, January 11, 2017, accessed April 6, 2025, <https://www.hukumonline.com/berita/a/mk-tetapkan-7-hari-penyerahan-spdp-ke-penuntut-umum-lt58763386dea5a/>.

⁸⁶ “Dampak Yuridis SPDP Melebihi 7 Hari” [Juridical Impact of SPDP Exceeding 7 Days], *Hukumonline*, February 10, 2022, accessed April 10, 2025, <https://www.hukumonline.com/berita/a/dampak-yuridis-spdp-melebihi-7-hari-lt620604f252479/>; Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 130/PUU-XIII/2015*, accessed April 12, 2025, https://www.mkri.id/public/content/persidangan/sinopsis/ikhtisar_1828_1664_130-PUU-XIII-2015-ok.pdf.

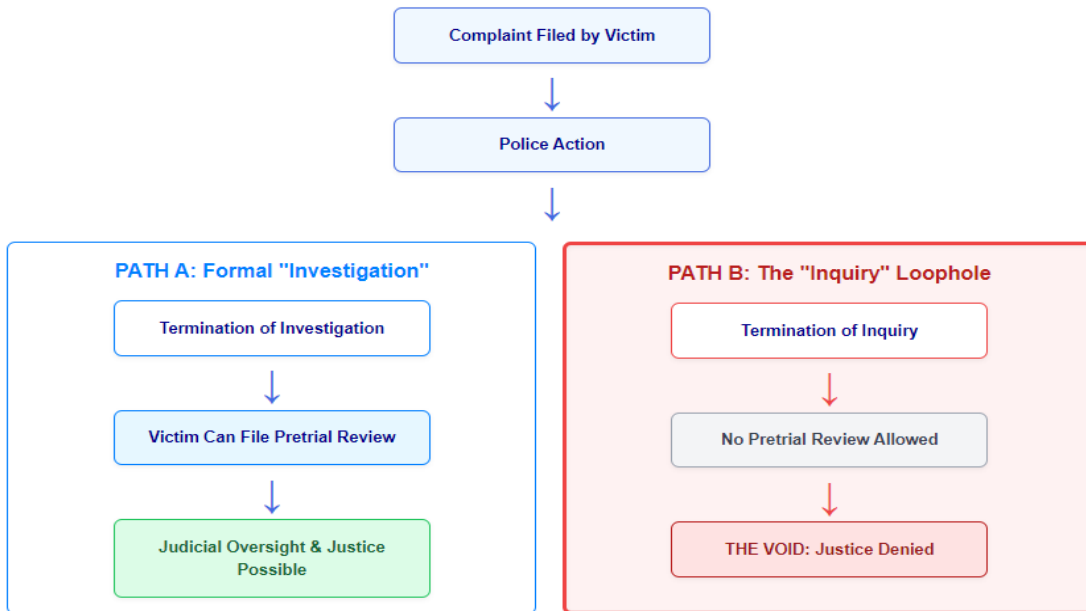
⁸⁷ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHP)*, art. 14(b); Constitutional Court of the Republic of Indonesia, *Decision No. 130/PUU-XIII/2015*.

⁸⁸ Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*.

⁸⁹ Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), “Peringatan Darurat: Presiden Mesti Tarik Draf RUU KUHP” [Emergency Warning: President Must Withdraw the Draft Criminal Procedure Code], November 14, 2025, accessed November 20, 2025, <https://ylbhi.or.id/informasi/siaran-pers/peringatan-darurat-presiden-mesti-tarik-draf-ruu-kuhp/>.

Figure 1 Comparison of Legal Recourse Mechanisms between the Investigation and Inquiry Stages

When a complaint is filed, it can go down two paths. Only one provides a check-and-balance for victims.



Source: Processed by Author, 2025

On closer examination, this predicament reveals a systemic failure to provide a forum in which victims can ensure that every decision—whether to proceed with or terminate an Inquiry—is genuinely grounded in principles of justice. Without effective external oversight, the termination of an Inquiry devolves into a mere instrument of arbitrary power, trapping victims in legal uncertainty and rendering them effectively powerless.⁹⁰

Furthermore, lodging complaints with the Police’s Professional and Security Affairs Division (*Propam Polri*) offers victims limited substantive recourse. Although formally available to those aggrieved by a termination, this mechanism is, at a deeper level, devoid of substantive justice. Propam, whose mandate encompasses only ethics and internal discipline, operates within a normative framework that structurally diverges from the pursuit of substantive legal truth. Reducing corrective action to this internal channel equates justice with the enforcement of disciplinary norms. This approach fails to address the case’s underlying injustice.⁹¹

⁹⁰ Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 53/PUU-XIX/2021*; YLBHI, “Peringatan Darurat: Presiden Mesti Tarik Draf RUU KUHAP”

⁹¹ Republic of Indonesia, National Police, *Perpol No. 7 of 2022 on the Code of Police Ethics and the Police Ethics Commission (KEPP)*, <https://peraturan.bpk.go.id/Download/223910/Perpolri%20No%207%20Tahun%202022.pdf>; A. Syarifuddin, “Peran Propam dalam Menangani Oknum Anggota Polri” [Role of Propam in Handling Rogue Police Members], *Legalitas* 15, no. 2 (2023), <https://legalitas.unbari.ac.id/index.php/Legalitas/article/download/507/284>.

The lack of authority vested in Propam to adjudicate the legality of an Inquiry termination further underscores its inability to address the root of the problem. As a disciplinary enforcement body, Propam limits its scope to internal procedures and cannot undertake the kind of formal legal review envisaged by KUHAP 1981 and KUHAP 2025, in which the district court exclusively adjudicates questions of legality through pre-trial proceedings. Crucially, however, the termination of an Inquiry is not among the objects of pre-trial review under either Code.⁹²

Philosophically, this engenders a state of “procedural impasse”: the complaint mechanism functions mechanically yet fails to reconstruct the legal truth sought by victims. Hierarchical, closed, and self-referential internal oversight rarely aligns professional ethics and legality—a convergence at the heart of any meaningful conception of justice.⁹³

A similar structural limitation afflicts the Ombudsman. While mandated to address maladministration, the Ombudsman lacks judicial coercive power to annul a termination order or compel the reopening of an Inquiry; its tools are recommendations and administrative follow-up. Although the statute requires authorities to implement Ombudsman recommendations within a specified period, enforcement remains administrative or political rather than judicial, offering no guarantee of the concrete relief victims require in this context.⁹⁴

Beyond questions of formal authority, this limitation reveals a more profound schism in justice. Complainants frequently perceive the Ombudsman’s output as an administrative formality rather than substantive redress. Its decisions risk devolving into ethical pronouncements with limited legal enforceability. Consequently, victims who pursue this avenue often face prolonged administrative processes, receiving only unenforceable recommendations that frequently fail to yield concrete action within the administrative system, leaving the core injustice unresolved.⁹⁵

Taken together, both mechanisms—Propam and the Ombudsman—stand as symptoms of the legal system’s inability to provide a genuinely inclusive and responsive forum for

⁹² Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHAP)*, arts. 77–82; Constitutional Court of the Republic of Indonesia, *Decision No. 53/PUU-XIX/2021*.

⁹³ UNODC, *Handbook on Police Accountability, Oversight and Integrity*.

⁹⁴ Republic of Indonesia, *Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia*, art. 38, <https://peraturan.bpk.go.id/Download/29288/UU%20Nomor%2037%20Tahun%202008.pdf>; Ombudsman RI, “Optimalisasi Pelaksanaan Rekomendasi” [Optimizing the Implementation of Recommendations], July 19, 2019, accessed June 19, 2025, <https://www.ombudsman.go.id/artikel/r/artikel--optimalisasi-pelaksanaan-rekomendasi>.

⁹⁵ Agung Ariyanto, Lego Karjoko, and Isharyanto, “Politik Hukum Asas Non-Legally Binding Rekomendasi Ombudsman Republik Indonesia Sebagai Instrumen Pencegahan dan Penanganan Laporan Maladministrasi” [Politics of Law on the Non-Legally Binding Principle of the Ombudsman of the Republic of Indonesia’s Recommendations], *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 1 (2019): 62–73, <https://jurnal.uns.ac.id/hpe/article/view/29194>; “Kekuatan Mengikat Rekomendasi Ombudsman” [Binding Force of Ombudsman Recommendations], *Hukumonline Klinik*, May 22, 2019, accessed April 22, 2025, <https://www.hukumonline.com/klinik/a/kekuatan-mengikat-rekomendasi-ombudsman-lt5cad59a0bd4f8/>.

redress. Ultimately, they function more as symbolic procedural formalities than as instruments of substantive justice, failing to deliver the tangible relief sought by aggrieved parties.⁹⁶

The vacuum of pre-trial review over Inquiry terminations—an omission that insulates discretionary police decisions, denies victims access to justice, and erodes legal certainty—demonstrates that partial administrative remedies such as Propam or the Ombudsman are substantially inadequate. Addressing this normative and structural pathology requires a comprehensive response along one or more of three avenues: (i) legislative amendment of the statutory text; (ii) judicial reinterpretation of existing norms through constitutional adjudication; and (iii) structural reform via a redesign of the institutional architecture.⁹⁷

Having diagnosed the “injustice gap” and its systemic repercussions, the imperative now shifts to designing a coherent remedial architecture. Addressing the second research question, the following analysis moves beyond the question of whether policymakers should expand pre-trial jurisdiction to the question of how they can structure such expansion to satisfy Rawls’s demand for equal fundamental liberties and Fuller’s requirements of legality.⁹⁸ To that end, this article develops a three-part reform proposal consisting of two modes of implementation—legislative and judicial—and one institutional redesign of pre-trial proceedings, aimed at establishing a balanced mechanism of judicial control that protects both suspects and victims.

a. Legislative Strategy: Amending KUHAP 2025 to Review Inquiry Terminations

The most fundamental reform measure is a legislative amendment to KUHAP 2025. At present, both KUHAP 1981 and KUHAP 2025 adhere to the same restrictive statutory formula: they empower pre-trial judges to review the legality of coercive measures (arrests, detentions, searches, seizures) and the termination of Investigations and Prosecutions, yet remain conspicuously silent on the termination of an Inquiry as an object of pre-trial review. This omission preserves a normative vacuum precisely at the stage where victims most frequently encounter the non-judicial, administrative closure of their cases.⁹⁹

A specific legislative amendment is therefore imperative. Article 158 of the KUHAP 2025 must be revised to explicitly include “termination of Inquiry” alongside “termination of

⁹⁶ O. B. Firmansyah, “Kewenangan Profesi dan Keamanan (Propam) dalam Menegakkan Disiplin Anggota Polri” [Authority of Propam in Enforcing Police Discipline], *Judge: Jurnal Ilmiah Hukum* 4, no. 2 (2025): 145–60, <https://journal.cattleyadf.org/index.php/Judge/article/download/1616/897>; Didi Firmansyah, “Tinjauan Kewenangan Ombudsman Republik Indonesia dalam Penyelesaian Maladministrasi Pelayanan Publik” [Review of Ombudsman Authority in Resolving Public Service Maladministration], *PROGRESIF: Jurnal Hukum* 17, no. 2 (2023): 928–42, <https://journal.ubb.ac.id/progresif/article/download/4410/2314>.

⁹⁷ Ariyanto, Karjoko, and Isharyanto, “Politik Hukum Asas Non-Legally Binding...”; Firmansyah, “Kedudukan Ombudsman Republik Indonesia...” [Position of the Ombudsman of the Republic of Indonesia...].

⁹⁸ Rawls, *A Theory of Justice*, rev. ed.; Fuller, *The Morality of Law*, rev. ed.

⁹⁹ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHAP)*, art. 77; Reindra Jasper H. Sinaga, “Menggali Makna Praperadilan Terhadap Penyitaan” [Digging into the Meaning of Pretrial regarding Seizure], *Dandapala* (Badilum MA), November 7, 2025, accessed November 20, 2025, <https://dandapala.com/article/detail/menggali-makna-praperadilan-terhadap-penyitaan>.

Investigation or Prosecution” as a justiciable object of pre-trial review. This textual expansion would close the existing legal gap and align the new Code with the principle that the State must guarantee access to justice from the earliest phase of criminal proceedings.¹⁰⁰ The recent adoption of KUHAP 2025 presents a strategic window for such rectification: rather than merely replicating the structural limitations of the 1981 regime, legislators should seize this opportunity to close the gap in victim protection.¹⁰¹

However, broadening the list of objects of pre-trial review is not sufficient. To ensure legal certainty and operability, the statute must also explicitly codify three critical procedural dimensions: (i) standing (*locus standi*) to petition; (ii) filing deadlines; and (iii) the legal effect of pre-trial rulings.

1) Standing (*Locus Standi*)

The amendment must expressly stipulate that victims and complainants possess *locus standi* to challenge an Inquiry termination. While KUHAP 2025 already recognises victims, their families, and complainants as eligible parties for specific pre-trial applications, it must explicitly extend this recognition to the particular context of Inquiry terminations. Clarifying standing within the text of Article 158 (and related procedural provisions) is essential to prevent divergent interpretations in the courts and to ensure victims have unambiguous procedural standing.¹⁰²

2) Filing Deadline (*Limitation Period*)

To secure legal certainty, victims and complainants should be required to file a pre-trial application within a fixed limitation period (for example, thirty days) from receipt of written notice of the Inquiry termination. This provision would mirror the structure already used to govern review of Investigation and Prosecution terminations, ensuring that judicial oversight is triggered promptly. A strict deadline is necessary to prevent “stale” or strategic filings and to promote finality and legal certainty for all parties involved.¹⁰³

¹⁰⁰ DPR RI, *Draft Law on the Criminal Procedure Code (KUHAP 2025)* (approved November 18, 2025); Amelia Devina Putri, “Menjawab Tantangan dalam Hukum Acara Pidana Baru” [Answering Challenges in the New Criminal Procedure Law], *Dandapala*, November 20, 2025, accessed November 24, 2025, <https://dandapala.com/opini/detail/menjawab-tantangan-dalam-hukum-acara-pidana-baru>.

¹⁰¹ “DPR Sahkan KUHAP Baru dalam Rapat Paripurna ke-8” [DPR Ratifies New Criminal Procedure Code in 8th Plenary Session], *Dandapala News*, November 18, 2025, accessed November 24, 2025, <https://dandapala.com/berita/detail/dpr-sahkan-kuhap-baru-dalam-rapat-paripurna-ke-8>

¹⁰² *Rancangan Undang-Undang tentang Hukum Acara Pidana (RUU KUHAP) [Draft Law on Criminal Procedure], Draft of March 20, 2025, accessed April 5, 2025, <https://icjr.or.id/wp-content/uploads/2025/03/RUU-KUHAP-20-Maret-2025.pdf>; “Praperadilan sebagai Upaya untuk Penegakan Hukum” [Pretrial as an Effort for Law Enforcement], *IBLAM School of Law*, August 4, 2025, accessed August 20, 2025, <https://iblam.ac.id/2025/08/04/praperadilan-sebagai-upaya-untuk-penegakan-hukum/>.*

¹⁰³ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure (KUHAP)*, arts. 79–80; “Mekanisme Praperadilan dan Upaya Hukumnya” [Pretrial Mechanism and Its Legal Remedies], *SIP Law Firm*, August 30, 2024, accessed April 10, 2025, <https://siplawfirm.id/mekanisme-praperadilan>.

3) Legal Effect (*Legal Consequence*)

The statute must clearly define the legal consequences of a successful pre-trial challenge. Suppose the Court finds the termination of the Inquiry unlawful or arbitrary. In that case, the Court's ruling must be binding, compelling the investigators to nullify the termination order and proceed to the formal Investigation stage. Codifying this authority ensures the remedy is adequate rather than merely declaratory.¹⁰⁴

In essence, securing this specific amendment within the KUHAP framework offers a definitive, long-term solution. Unlike sporadic judicial interpretations, codified norms would precisely delineate pre-trial jurisdiction, thereby reducing dependence on case-by-case discretion. A robust statutory framework inherently guarantees greater legal certainty than a patchwork of divergent precedents. Ultimately, legislative reform is the only reliable path to effectively fill the current normative vacuum and realign pre-trial review with the constitutional mandates of equality before the law, due process, and effective access to justice. In this way, the trajectory of pre-trial proceedings would evolve from serving as an exclusive shield for suspects to functioning as an inclusive instrument of substantive justice for victims as well.¹⁰⁵

b. Judicial Strategy: Constitutional Court Reinterpretation

While legislative amendment must inevitably navigate a protracted political process, a judicial strategy via the MK offers a potentially more expeditious remedy. MK possesses the constitutional prerogative to reinterpret statutory norms that impinge upon citizens' constitutional rights. Petitioners could seek a ruling declaring that the phrase "termination of Investigation or Prosecution" in Article 77 of the KUHAP 1981 encompasses "termination of Inquiry."¹⁰⁶ This approach is grounded in established precedent. In the landmark Decision No. 21/PUU-XII/2014, MK expanded the objects of pre-trial review to cover suspect designation, searches, and seizures—none of which were expressly enumerated in KUHAP 1981—on the basis that such acts substantially affect human rights and must therefore be subject to judicial scrutiny.¹⁰⁷ The same logic applies *mutatis mutandis* to Inquiry terminations, which, although impacting victims rather than suspects, directly affect the constitutional right to justice. The principle of equality before the law demands that victims enjoy an equal opportunity to obtain judicial review.¹⁰⁸

Crucially, the recent approval of KUHAP 2025 does not diminish the relevance of this judicial strategy. The new Code essentially replicates the existing formulation by

¹⁰⁴ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), art. 82(3)(b)–(c); "Mekanisme Praperadilan dan Upaya Hukumnya," *SIP Law Firm*.

¹⁰⁵ *The 1945 Constitution of the Republic of Indonesia*, arts. 27(1), 28D(1); *UN Human Rights Committee, General Comment No. 31 [80], para. 15*.

¹⁰⁶ Republic of Indonesia, *Law No. 8 of 1981 on Criminal Procedure* (KUHAP), art. 77.

¹⁰⁷ Constitutional Court of the Republic of Indonesia, *Decision No. 21/PUU-XII/2014*.

¹⁰⁸ *The 1945 Constitution of the Republic of Indonesia*, arts. 27(1), 28D(1).

empowering pre-trial judges, in Article 158(b), to review “the legality of the termination of Investigation or Prosecution” while remaining conspicuously silent on Inquiry terminations. In substance, KUHAP 2025 inherits the normative defect of Article 77 KUHAP 1981 and carries it forward into the new procedural regime.¹⁰⁹ A constitutional challenge directed at the current provisions would therefore set an essential interpretive precedent for how courts should interpret the corresponding clause in KUHAP 2025.

Such a challenge could persuasively argue that excluding Inquiry termination from pre-trial review contravenes Article 27(1) (equality before the law) and Article 28D(1) (fair legal certainty) of the 1945 Constitution. A ruling of “conditional constitutionality” (*konstitusional bersyarat*)—declaring Article 77 KUHAP 1981 (and, by extension, Article 158(b) KUHAP 2025) valid only if interpreted to encompass Inquiry terminations—would effectively close the protection gap without requiring a textual revision of the statute. This pathway accords with MK’s role as guardian of the Constitution. It offers a relatively swift corrective mechanism that can operate alongside, rather than in place of, legislative reform.¹¹⁰

Admittedly, MK has recently adopted a more restrictive textualism. Decisions No. 9/PUU-XVII/2019 and No. 53/PUU-XIX/2021 refused to extend pre-trial jurisdiction to Inquiry terminations on the basis that the Inquiry stage is not yet *pro justitia* and involves no coercive acts against suspects.¹¹¹ Nevertheless, critics rightly contend that the premature closure of an Inquiry can decisively extinguish victims’ prospects of redress, as starkly illustrated by the East Luwu case. A progressive reinterpretation, consistent with the rationale of Decision No. 21/PUU-XII/2014, would restore constitutional balance by ensuring that pre-trial oversight protects both suspects and victims. Such a ruling is essential to prevent the law from “limping behind the facts” and to avert KUHAP 2025 from entrenching precisely the asymmetry that this article identifies as constitutionally problematic.¹¹²

c. Institutional Strategy: Establishing a Preliminary Examining Judge

The third, and most structural, reform avenue is the establishment of a Preliminary Examining Judge (HPP), a judicial officer tasked with supervising law-enforcement activities from the outset. Modelled on the *rechter-commissaris* of the Dutch civil-law system and the *giudice per le indagini preliminari* in Italy, the HPP would be stationed within each district court to monitor police Inquiries and adjudicate, *inter alia*, the lawfulness of Inquiry

¹⁰⁹ DPR RI, *Draft Law on the Criminal Procedure Code* (KUHAP 2025), art. 158(b) (approved November 18, 2025).

¹¹⁰ Constitutional Court of the Republic of Indonesia, *Decision No. 45/PUU-VII/2009*, https://www.mkri.id/public/content/persidangan/putusan/45_PUU-VII_2009.pdf; Enny Nurbaningsih, “Conditional Unconstitutionality and Conditional Constitutionality in the Practice of the Constitutional Court,” in *Ten Years of the Indonesian Constitutional Court* (Jakarta: MKRI, 2013).

¹¹¹ Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 9/PUU-XVII/2019*; Constitutional Court of the Republic of Indonesia, *Synopsis: Decision No. 53/PUU-XIX/2021*.

¹¹² National Commission on Violence Against Women (Komnas Perempuan), “Pernyataan Sikap...” [Statement on Alleged Sexual Violence...], October 18, 2021; Hardiogo et al., “Law and Digitalization,” 317–20.

terminations.¹¹³ Under the proposed mechanism, before investigators issue a termination order, they must notify both the HPP and the complainant. The HPP then convenes a summary adversarial hearing at which investigators present their rationale for closure. At the same time, victims may raise objections or present additional evidence. The judge subsequently determines whether the termination is legally well-founded and, if not, orders the case to proceed to a formal Investigation.

Embedding the HPP in this way offers proactive, real-time oversight. Unlike the reactive model of existing pre-trial proceedings, this mechanism engages judicial scrutiny before the case file is administratively closed, thereby pre-empting arbitrary dismissals and guaranteeing victims' participatory rights. From a legislative perspective, the HPP requires a dedicated chapter in KUHAP 2025 that delineates the appointment, powers, and procedures. Institutionally, courts must assign judges with specific investigative acumen, supported by transparent record-keeping that permits limited appeals and guards against judicial overreach. Comparative European models indicate that such early-stage judicial supervision—whether exercised by investigating or examining judges—significantly strengthens accountability and adherence to due process.¹¹⁴

Although establishing an HPP would demand considerable legal and logistical adjustment, the institutional benefit is a structurally robust system that protects individual rights and curbs discretionary abuses from the outset. When combined with statutory amendment and constitutional reinterpretation, the HPP would ensure that no police decision—whether arrest, detention, search, or Inquiry termination—escapes independent judicial scrutiny. This design fulfils the broader objective of balanced legal protection for suspects and victims alike and accords with Indonesian reform scholarship that regards the HPP as an

¹¹³ Fachrizal Afandi, "Perbandingan Praktik Praperadilan dan Pembentukan Hakim Pemeriksa Pendahuluan dalam Peradilan Pidana Indonesia" [Comparison of Pretrial Practices and the Establishment of the Preliminary Examining Judge in Indonesian Criminal Justice], *Mimbar Hukum* 28, no. 1 (2016): 93–106, <https://jurnal.ugm.ac.id/jmh/article/view/15868/10477>; National Academic Draft of the Criminal Procedure Code (NA KUHAP), *Naskah Akademik RUU KUHAP* (Jakarta: Asperhupiki, 2025), 12.

¹¹⁴ Lovina and Dirga, *Judicial Scrutiny melalui Hakim Pemeriksa Pendahuluan dalam RKUHAP* [Judicial Scrutiny through the Preliminary Examining Judge in the Draft Criminal Procedure Code] (Jakarta: Institute for Criminal Justice Reform, 2022), <https://icjr.or.id/wp-content/uploads/2022/10/Judicial-Scrutiny-melalui-Hakim-Pemeriksa-Pendahuluan-dalam-RKUHAP.pdf>; Joep Lindeman, Pauline Jacobs, and Miranda Boone, "Pre-trial Detention in the Netherlands: Legal Principles versus Practical Reality," in *European Perspectives on Pre-Trial Detention: A Means of Last Resort?* (Cambridge: Intersentia, 2024), 143–49, https://dspace.library.uu.nl/bitstream/handle/1874/436549/Lindeman_Jacobs_Boone_PTD_in_Netherlands.pdf.

essential modernisation of pre-trial oversight.¹¹⁵ In essence, the HPP concept reinvigorates the original spirit of pre-trial review by embedding judicial control at every decisive juncture of the criminal process.

This institutional design resonates deeply with the foundational ideal of pre-trial proceedings as a constitutional check on state power—an acknowledgement that unchecked authority inevitably tends toward abuse. Pre-trial review is therefore more than a procedural tool; it is a safeguard that distinguishes legitimate authority from illegitimate power and embodies judicial independence.¹¹⁶ Expanding this authority—whether through MK reinterpretation, statutory revision of KUHAP 2025, or the proactive HPP model—completes the circle of legal protection. It shifts pre-trial review beyond a suspect-centred shield into a forum that vindicates victims’ rights, thereby restoring the ethical balance the criminal justice system must preserve.

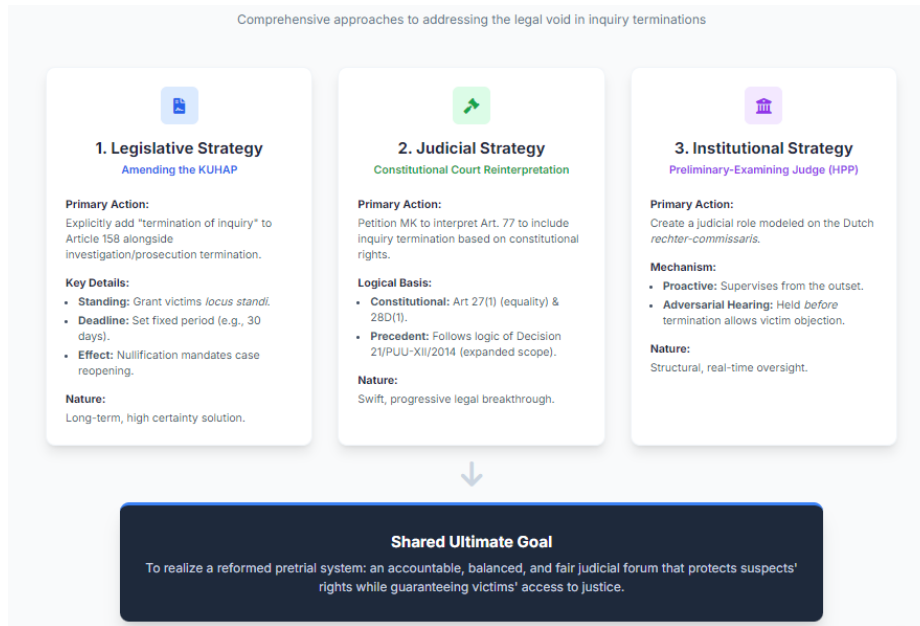
Ultimately, granting the judiciary the competence to scrutinise Inquiry terminations goes beyond a technical extension of jurisdiction. It constitutes a fundamental reaffirmation that justice must be inclusive—shielding suspects from unlawful coercion while simultaneously vindicating victims’ right to equal protection. This paradigm underscores that the essence of pre-trial proceedings lies inextricably at the heart of the broader legal ideal of striking a just equilibrium between state power and fairness. Consequently, pre-trial review must be re-envisioned not as a mere procedural formality, but as a mechanism for restoring substantive justice, ensuring that every exercise of state authority conforms rigorously to fundamental normative principles.

While they travel along distinct trajectories, the three proposed strategies—legislative amendment, judicial reinterpretation, and institutional reform—are not mutually exclusive. Instead, they represent complementary and synergistic approaches. Each offers a solution with a different temporal horizon and scope. However, all converge on a single constitutional objective: closing the injustice gap by building an integrated system of judicial control that protects both suspects and victims.

¹¹⁵ Ardiansyah Iksaniyah Putra, “Hakim Pemeriksa Pendahuluan dalam Pembaruan Hukum Pidana” [The Preliminary Examining Judge in Criminal Law Reform], *MariNews* (Supreme Court of Indonesia), September 29, 2025, accessed November 21, 2025, <https://marinews.mahkamahagung.go.id/artikel/hakim-pemeriksa-pendahuluan-dalam-pembaruan-hukum-pidana-028>; Suli Hasugian, “Pengaturan Hukum Praperadilan dan Pembentukan Hakim Pemeriksa Pendahuluan” [Legal Regulation of Pretrial and the Establishment of the Preliminary Examining Judge] (Master’s thesis, Universitas Jambi, 2025), <https://repository.unja.ac.id/76647/>.

¹¹⁶ Institute for Criminal Justice Reform (ICJR), *Pretrial Hearing in Indonesia: Pretrial Detention in Theory and Practice* (Jakarta: ICJR, 2014), <https://icjr.or.id/wp-content/uploads/2014/02/Pretrial-Hearing-in-Indonesia.pdf>.

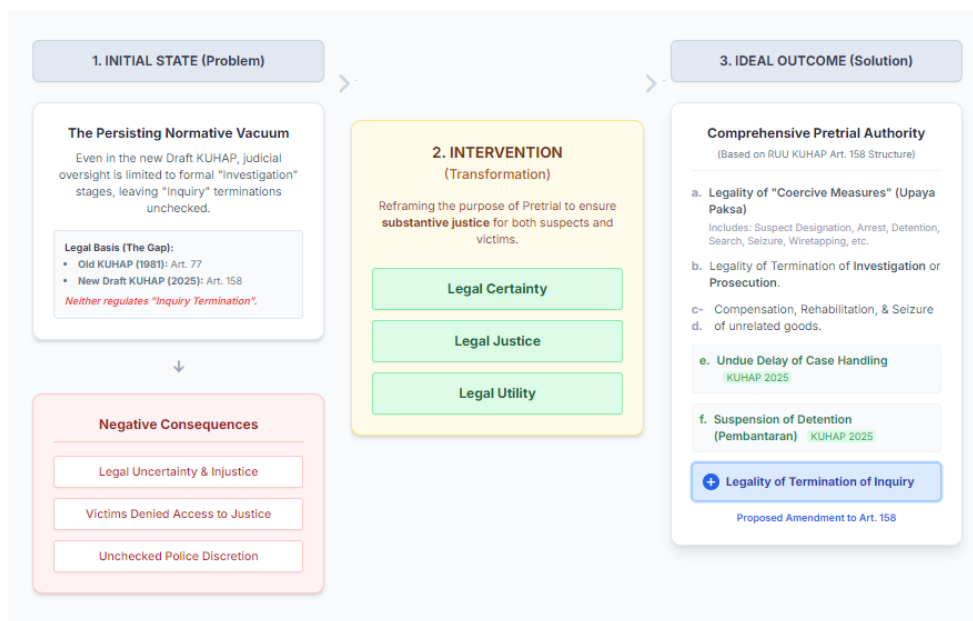
Figure 2.
Three Strategic Pathways for Pre-trial Reform



Source: Processed by Author, 2025

To translate these conceptual insights into an operational roadmap, Figure 3 sets out the ideal reformulation of pre-trial objectives. Anchored in the triad of justice, legal certainty, and utility, this framework serves as a strategic corrective to the chronic uncertainty and ineffectiveness that have long burdened the classical model.

Figure 2.
Three Strategic Pathways for Pre-trial Reform



Source: Processed by Author (2025)

Moving beyond specific reform strategies, a critical interpretation suggests that the redefinition of pre-trial review is not merely a matter of jurisdictional expansion, but a fundamental repositioning of the judiciary as the fulcrum of checks and balances. In its ideal form, pre-trial proceedings must function as a rigorous forum for legal dialectics. Every coercive measure taken by the State—whether arrest, detention, seizure, or the termination of an Inquiry—must be subjected to strict scrutiny, assessed not only against procedural compliance standards but also against principles of substantive justice.¹¹⁷

Under this normative framework, pre-trial review evolves from a shield exclusively for suspects into a shared safeguard for all citizens, including victims who lose all access to justice when an Inquiry is closed. The mechanism thus operates simultaneously as a procedural corrective and as a channel through which victims can vindicate their rights. By situating the judiciary at the intersection of state power and individual liberties, a reformed pre-trial system would embody the true Rule of Law: a regime in which no authority remains unchecked, and every coercive measure must answer to an independent judge. In this sense, the forum becomes a space where litigants publicly contest competing claims of justice and truth, ensuring that the criminal process adheres to its ultimate purpose—the realisation of justice for all parties.¹¹⁸

Regrettably, the legislative reform embodied in KUHAP 2025 does not rectify this asymmetry. Article 158 KUHAP 2025 retains the structural legacy of KUHAP 1981 by explicitly listing the termination of an Investigation or a Prosecution as objects of pre-trial review, while remaining conspicuously silent on the termination of an Inquiry. This omission risks recodifying the existing protection gap for future generations. Unlike KUHAP 1981, which originated in an era less attuned to victimology, the failure of KUHAP 2025 to incorporate a victim review mechanism stands in stark contrast to the global trend toward participatory justice. It is therefore imperative that Article 158 be amended during the ratification process to expressly designate the “termination of Inquiry” as a subject of judicial scrutiny, thereby aligning the new Code with the doctrinal principle of the Victim’s Right to Review.¹¹⁹

C. CONCLUSIONS

The absence of pre-trial authority to review the termination of an Inquiry under both KUHAP 1981 and KUHAP 2025 creates a fundamental void of constitutional injustice. This void results in the denial of access to justice for victims and a stark asymmetry in legal

¹¹⁷ Tom Bingham, *The Rule of Law* (London: Allen Lane, 2010), ch. 3–4.

¹¹⁸ Waldron, “The Rule of Law,” *Stanford Encyclopedia of Philosophy*.

¹¹⁹ DPR RI, *Draft Law on the Criminal Procedure Code* (KUHAP 2025), art. 158(b) (approved November 18, 2025); Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, art. 11, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029>.

protection relative to suspects. Furthermore, this normative vacuum perpetuates legal uncertainty. It leaves unchecked police discretion, thereby contravening the principle of equality before the law. Consequently, a reformulation of pre-trial proceedings is imperative to transform the institution from a suspect-centred mechanism into a balanced forum of judicial oversight for both victims and suspects. Achieving this jurisdictional expansion requires a synergistic strategy encompassing legislative amendments to KUHAP 2025, judicial reinterpretation by the Constitutional Court, and the establishment of the Preliminary Examining Judge.

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