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Contemporary Human Rights Safeguards in Islamic Law Justice: A Comparative Study in Indonesia, Saudi Arabia, and Egypt

Abstract: This study examines the protection of human rights in the context of arrest, detention, and judicial remedies from the perspectives of Islamic law and contemporary legal systems through a comparative analysis of Indonesia, Saudi Arabia, and Egypt. Employing a normative legal research method, the study draws upon authoritative legal sources, including international human rights instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights, as well as relevant national legislation in the three jurisdictions. The findings reveal distinct models in the integration of Islamic legal principles within state legal frameworks. Indonesia represents a constitutional democratic model with a relatively high degree of justiciability, reflected in robust judicial review mechanisms and stronger guarantees of due process. In contrast, Saudi Arabia embodies a centralized monarchical system, where judicial independence and oversight of administrative detention remain comparatively limited. Egypt, meanwhile, exhibits a hybrid model that combines civil law traditions with Islamic legal influences, resulting in a moderate level of judicial independence. Importantly, the study demonstrates that the alignment between core Islamic legal principles—such as justice (*‘adl*), the presumption of innocence, the prohibition of arbitrary detention, and access to legal remedies—and contemporary human rights standards is not merely normative; rather, it is operationalized through three key mechanisms: the contextual reinterpretation of fiqh, the codification of norms into national legislation, and the strengthening of judicial practices through rulings that uphold due process of law. This research contributes to the scholarly discourse by offering a comparative framework that bridges Islamic jurisprudence and modern human rights law, while also proposing practical pathways for legal harmonization. It recommends the systematic integration of Islamic legal values into contemporary human rights protection through adaptive reinterpretation, legislative reform, and the

strengthening of judicial independence and institutional capacity.

Keywords: Comparative Study; Contemporary Human Rights; Egypt; Islamic Law Justice; Saudi Arabia.

INTRODUCTION

Criminal procedure law is a body of rules governing how the state enforces criminal law, covering processes from investigation and arrest to Prosecution, trial, and execution of judgments.¹ As formal criminal law, it differs from substantive criminal law, which defines offences and penalties by focusing on procedures, including safeguards for the rights of suspects, defendants, and other parties in the criminal justice system.² Van Bemmelen states that criminal procedure law is a collection of legal provisions that govern the state's response to alleged criminal offences, aiming to ascertain the truth through its instruments, which are examined in court and decided by a judge.³ The main functions of criminal procedure law include ensuring fairness in the criminal justice process, protecting human rights, regulating procedures for enforcing criminal law, and achieving legal certainty in the handling of criminal cases.⁴

The relationship between criminal procedure law and human rights is close, as criminal procedure law serves as an instrument to guarantee the protection of human rights in the enforcement of criminal law.⁵ The relevance of criminal procedure law to human rights lies in its regulation of law enforcement procedures, ensuring the protection of the rights of suspects, defendants, and related parties throughout the

¹ M. Zen Abdullah, 'Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional di Indonesia Yang Lebih Responsif', *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 1 (2020): 281.

² Kei Hannah Brodersen, Nadja Capus, and Damian Rosset, 'The Politics of Informality in Criminal Procedures', *International Journal of Law, Crime and Justice* 74, no. 1 (September 2023): 100612, <https://doi.org/10.1016/j.ijlcj.2023.100612>.

³ Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, 'Criminal Sanctions' Reformulation in the Reclamation of the Mining Community', *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 1 (2022): 11-30, <https://doi.org/10.25041/fiatjustisia.v16no1.2222>.

⁴ Moh Alvian Zul Khaizar, 'Analisis Pembaharuan Hukum Pidana Dan Hukum Acara Pidana Dalam Undang- Undang Tindak Pidana Kekerasan Seksual', *Diktum* 10, no. 1 (2022): 103-117, <https://doi.org/10.24905/diktum.v10i1.204>.

⁵ Steven Malby, 'Beyond Sword and Shield: The UN Human Rights System and Criminal Law', *The International Journal of Human Rights* 1, no. 1 (November 2024): 1-24, <https://doi.org/10.1080/13642987.2024.2432953>.

criminal justice process.⁶ The core of human rights protection in criminal procedure law generally covers the rights to recognition, humane treatment, the presumption of innocence, the right to a fair trial, and the prohibition of cruel, inhuman, or degrading treatment.⁷

In criminal proceedings, suspects and defendants must be treated in accordance with humanitarian values and human dignity.⁸ Criminal procedure law provides safeguards against torture, coercion of confessions, unlawful detention, and other arbitrary actions by law enforcement officials.⁹ Criminal law not only protects human rights by regulating fair and humane procedures, but also serves as a tool to prosecute human rights violations.¹⁰ Therefore, formal criminal law (criminal procedure) and substantive criminal law complement each other in protecting and upholding human rights.¹¹

Principles such as the presumption of innocence, the right to legal counsel, the right to know the charges, and the right to an open and fair trial are integral to criminal procedure.¹² This ensures that law enforcement officers' power is not abused and that individual rights are respected throughout the judicial process. Criminal procedure is a legal framework that governs the enforcement of criminal law fairly and humanely, while

⁶ Sidra Kanwel, Muhammad Imran Khan, and Usman Asghar, 'In the Shadow of Justice: Human Rights Implications of Criminal Acts', *Journal of Asian Development Studies* 13, no. 1 (February 2024): 578-585, <https://doi.org/10.62345/jads.2024.13.1.48>.

⁷ Corsei Andreea Catan Anastasia, Antoci Albert, Lîsîi Cătălin, Popescu Petru, 'The Role of the European Court of Human Rights in the Formation of the Procedures of Criminal Prosecution in Moldova', *Pakistan Journal of Criminology* 16, no. 3 (May 2024): 805-820, <https://doi.org/10.62271/pjc.16.3.805.820>.

⁸ Robyn L. Holder and Albin Dearing, 'Human Dignity, Rights and Victim Participation in Criminal Justice', *International Criminology* 4, no. 1 (March 2024): 108-119, <https://doi.org/10.1007/s43576-024-00119-3>.

⁹ Jacinto Nelson de Miranda Coutinho and Bruno Cunha Souza, 'Judicial Independence and Impartiality in Contemporary Brazilian Criminal Procedure', *Beijing Law Review* 16, no. 01 (2025): 468-500, <https://doi.org/10.4236/blr.2025.161024>.

¹⁰ Silvana Tapia Tapia, 'Human Rights Penalty and Violence Against Women: The Coloniality of Disembodied Justice', *Law and Critique* 36, no. 1 (April 2024): 41-65, <https://doi.org/10.1007/s10978-023-09355-4>.

¹¹ Natalia Opolska et al., 'Development of Legislation on the Protection of Human Rights in the Field of Occupational Safety and Health', *Nusantara: Journal of Law Studies* 5, no. 1 (March 2026): 123-146, <https://doi.org/10.5281/zenodo.18821048>.

¹² Andrew Cornford, 'The Aims and Functions of Criminal Law', *The Modern Law Review* 87, no. 2 (October 2023): 398-429, <https://doi.org/10.1111/1468-2230.12846>.

safeguarding the rights of suspects, defendants, and all parties involved in the criminal justice system. Thus, criminal procedure and human rights are interconnected and mutually supportive in the Indonesian legal approach to realising justice and protecting human rights.

Research on the dynamics of criminal law and Islamic law has been conducted primarily by previous studies, including Tariq et al. (2025), who analysed significant differences between criminal law and Islamic law, particularly regarding human rights in Afghanistan.¹³ The next study was conducted by Kilwakit et al. (2026), which discussed female circumcision as part of Islamic law provisions, as interpreted or understood in several African countries, in conflict with criminal law.¹⁴ Further research by Bhuiyan et al. (2026) focused on the disharmony between criminal law norms and Islamic law in Bangladesh.¹⁵ In general, the three studies above emphasise the position of Islamic law, which often contradicts the substance of criminal law. This research offers a distinct contribution to the three previous studies and reinforces that Islamic law is fundamentally relevant and aligns with the values of criminal law.

This research focuses on analysing the regulations and practices regarding arrest, detention, and pretrial legal remedies through a comparative legal study in Indonesia, Saudi Arabia, and Egypt, and their relation to human rights. The legal issues to be answered are: (i) the relevance of criminal procedure regulations and their relation to human rights in Indonesia, Saudi Arabia, and Egypt, and (ii) a comparative legal study of the regulations on arrest, detention, and pretrial legal remedies in Indonesia, Saudi Arabia, and Egypt.

¹³ Muhammad Tariq and Saad Gul, 'The Issue Of Human Rights In Afghanistan: An Appraisal', *Pakistan Journal of Social Sciences Review* 4, no. 6 (2025): 85-93.

¹⁴ Marifat Kilwakit, Siti Isnaini, and JM Muslimin, 'Female Circumcision: Cultural Practices, Islamic Law and Implications for SDGs', *Towards Resilient Societies: The Synergy of Religion, Education, Health, Science, and Technology* 5, no. 1 (2025): 91-96, <https://doi.org/10.1201/9781003645542-15>.

¹⁵ Mohammad Ishaque Husain Muhammad Kamrul Islam Bhuiyan, Hussein Ali Abdullah Al-Thulaia, Musa Hussien, 'Human Rights in Bangladesh in Light of The Five Objectives of Islamic Law: A Critical Analytical Study', *International Journal of Research and Innovation in Social Science (IJRISS)* X, no. 1 (2026): 39995-4006, <https://doi.org/10.47772/IJRISS>.

METHOD

This research, with its focus on analysing the regulations and practices regarding arrest, detention, and pretrial legal remedies through a comparative legal study in Indonesia, Saudi Arabia, and Egypt, and their relation to human rights, is normative legal research employing a comparative legal approach as its primary method. This study adopts a normative-comparative legal research design to examine and compare the legal frameworks governing arrest, detention, and pretrial remedies in Indonesia, Saudi Arabia, and Egypt, with a focus on human rights protection. The selection of these three countries is based on a clear comparative rationale: they represent distinct legal system models, namely a constitutional-democratic civil law system (Indonesia), a Sharia-based monarchical system (Saudi Arabia), and a mixed civil-Islamic legal system (Egypt). These variations enable a structured analysis of how differing institutional designs, degrees of codification of Islamic law, and oversight mechanisms influence the protection of human rights.

The unit of analysis in this research consists of concrete legal instruments, including constitutional provisions, criminal procedure codes, statutory regulations, judicial decisions, and relevant policy or institutional frameworks governing arrest, detention, and pretrial processes. Primary legal materials include these binding legal sources from each jurisdiction, while secondary materials comprise scholarly literature, journal articles, human rights reports, and prior research relevant to the topic. Data analysis is conducted using a comparative legal reasoning method combined with a functional approach, focusing on how each legal system addresses similar legal issues in practice. The analytical framework is grounded in human rights principles and supported by normative Islamic legal values, particularly *‘adl* (justice) and *maqāṣid al-syarī‘ah*, to assess both formal norms and their implementation. The approaches applied in this study include: (1) a statutory approach to examine the relevant legal provisions; (2) a conceptual approach to analyse underlying legal doctrines and human rights principles; and (3) a comparative approach to identify similarities, differences, and determining factors affecting the effectiveness of legal protections. Each approach is applied systematically to

ensure that the analysis moves beyond description toward a structured and critical evaluation of legal systems and their capacity to safeguard human rights.

RESULTS AND DISCUSSION

The Relevance of Criminal Procedure Regulations and Their Relationship to Human Rights in Indonesia, Saudi Arabia, and Egypt

Criminal law is generally divided into two main parts: substantive criminal law and procedural criminal law (also known as formal criminal law).¹⁶ That is a good summary. Substantive criminal law (*hukum pidana materil*) defines what constitutes a crime, who can be prosecuted for it, and the types and conditions of punishment.¹⁷ In other words, substantive criminal law contains rules governing offences (*delik*) and the penalties that may be imposed for them.¹⁸ Procedural criminal law is the set of rules that govern the implementation of substantive criminal law.¹⁹ This includes the procedures by which the state, through law enforcement agencies, conducts investigations, inquiries, prosecutions, trials, and the execution of criminal judgments.²⁰ The goal is to ensure that the criminal justice process is fair, protects human rights, and provides legal certainty in the handling of criminal cases.²¹

¹⁶ Abdul Malik Mufty and Nurul Chaerani Nur, 'Discourse on the Discovery and Renewal of the Principle of Legality in Criminal Law', *Jurnal Meta-Yuridis* 7, no. 2 (September 2024): 12-24, <https://doi.org/10.26877/m-y.v7i2.19873>.

¹⁷ Yogi Yasa Wedha and Edy Nurcahyo, 'Criminal Law Reform Toward Deprivation of Property Resulting from Corruption Criminal Acts', *Prizren Social Science Journal* 5, no. 1 (2021): 97-103, <https://doi.org/10.32936/pssj.v5i1.207>.

¹⁸ Islamul Haq et al., 'Legal Harmony: Integration of Customary, National, and Islamic Criminal Law in the Toraja Ma'rambu Langi', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (December 2025): 559-587, <https://doi.org/10.19105/al-lhkam.v20i2.17680>.

¹⁹ Zulkifly Muda, Nizaita Omar, and Nehaluddin Ahmed, 'Comparison Between Islamic Criminal Law and Man-Made Law', *International Journal of Academic Research in Business and Social Sciences* 14, no. 2 (February 2024): 972-980, <https://doi.org/10.6007/IJARBS/v14-i2/20718>.

²⁰ Yuhelson and Nur Hakim, 'Legal Protection of Secured Creditors in Contemporary Bankruptcy: A Comparative Study of Positive Law and Islamic Law', *MILRev: Metro Islamic Law Review* 4, no. 2 (September 2025): 1189-214, <https://doi.org/10.32332/milrev.v4i2.11518>.

²¹ Bakhrul Amal, 'Nolle Prosequi Sebagai Inovasi Baru Di Bidang Hukum Acara Pidana', *Al-Jinayah* 8, no. 2 (2022): 106.

Simply put, substantive criminal law defines the crimes and their punishments, while procedural criminal law dictates how those laws are enforced.²² This fundamental division ensures an effective and just criminal justice system, with procedural law upholding and implementing substantive law.²³ Substantive criminal law outlines the conditions for an act to be punishable, specifies who can be punished, and details the punishments themselves. Procedural criminal law, on the other hand, dictates how the state, through its agencies, prosecutes and sentences offenders. Therefore, procedural law acts as both the framework and the mechanism for implementing substantive criminal law.

Key functions of procedural criminal law include ensuring a fair criminal justice process that adheres to principles of justice and protects the rights of suspects, defendants, and all involved parties.²⁴ Procedural criminal law also serves to uphold human rights within the judicial process, including the rights to a fair trial, legal representation, the presumption of innocence, and humane treatment. It establishes the procedures and mechanisms for law enforcement, encompassing investigation, arrest, detention, inquiry, trial, and sentencing. Generally, the process involves investigation, arrest, inquiry, trial, and execution of the sentence.

Globally, the relationship between procedural criminal law and human rights has evolved alongside increased international awareness of fundamental human rights, particularly after World War II.²⁵ The concept of human rights protection within procedural criminal law gained serious attention after the atrocities of World War II, particularly the Holocaust and other war crimes. These crimes highlighted the need for international legal mechanisms to prosecute perpetrators of serious human rights

²² Iwan Setiajie Anugrah et al., 'Legal Pluralism and Rural Welfare: Harmonizing Customary Law and Islamic Principles in Indonesia's Village Fund Allocation', *ElMashlahah* 15, no. 2 (December 2025): 303-324, <https://doi.org/10.23971/el-mashlahah.v15i2.10429>.

²³ Eddy O. S. Hiariej, *Hukum Acara Pidana* (Tangerang Selatan: Universitas Terbuka, 2015).

²⁴ Nabilla Callosa Husin and Naylla Shabilla Callistha Husin, 'Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code', *Ius Poenale* 5, no. 1 (September 2024): 31-42, <https://doi.org/10.25041/ip.v5i1.3486>.

²⁵ Terence Etherton, 'Religion, the Rule of Law and Discrimination', *Ecclesiastical Law Journal* 16, no. 3 (September 2014): 265-282, <https://doi.org/10.1017/S0956618X14000490>.

violations and international crimes such as genocide and crimes against humanity.²⁶ The history of international criminal law began with the establishment of the first two ad hoc international criminal tribunals: the Nuremberg Trials and the Tokyo Trials, which prosecuted perpetrators of war crimes and crimes against humanity following World War II.²⁷ These tribunals were the precursors to the integration of human rights principles into international criminal procedure.

Following the establishment of the United Nations in 1945, various international legal instruments governing human rights began to be formulated, such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights (both 1966).²⁸ These instruments established human rights protection standards that must be respected in criminal proceedings, including the right to a fair trial, protection from torture, and the right to legal counsel. In 1998, the Rome Diplomatic Conference produced the Rome Statute, establishing the International Criminal Court (ICC), a permanent institution with jurisdiction to prosecute genocide, war crimes, and crimes against humanity internationally.²⁹ The ICC represents a breakthrough in integrating human rights protection into international criminal procedure by providing an independent and permanent enforcement mechanism. Despite the existence of international instruments and institutions, implementing human rights-respecting criminal procedure remains challenging, particularly due to international politics and national sovereignty, which sometimes hinder the enforcement of international law. However, this development marks significant progress in ensuring that criminal justice

²⁶ Dhana Laxmi Hamal, 'Formal Inclusion, Informal Exclusion: Implementation of Women's Quota System and Political Participation in Post-Civil War Nepal', *Journal of Genocide Research*, May 2023, 1-11, <https://doi.org/10.1080/14623528.2023.2212516>.

²⁷ Stephan Sonnenberg and Patricia Goedde, 'Accountability for Human Rights Crimes in North Korea: Jurisdictional Dilemmas in South Korea', *Asian Perspective* 47, no. 3 (June 2023): 513-541, <https://doi.org/10.1353/apr.2023.a905236>.

²⁸ Nehaluddin Ahmad, Aqilah Walin Ali, and Mohammad Hilmy Baihaqy bin Yussof, 'The Challenges of Human Rights in the Era of Artificial Intelligence', *UUM Journal of Legal Studies* 16, no. 1 (January 2025): 150-69, <https://doi.org/10.32890/uumjls2025.16.1.9>.

²⁹ Yordan Gunawan and Vensky Ghaniyyu Putri Permana, 'Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction', *Jurnal Suara Hukum* 6, no. 1 (June 2024): 31-47, <https://doi.org/10.26740/jsh.v6n1.p31-47>.

processes not only uphold substantive criminal law but also respect and protect the human rights of suspects, defendants, and victims.

Further developing this, the international human rights document that most explicitly prohibits arbitrary arrest, detention, or exile is the Universal Declaration of Human Rights (1948). This is clearly stated in Article 9 of the UDHR, which asserts that “No one shall be subjected to arbitrary arrest, detention or exile.”³⁰ Another crucial instrument addressing this is the International Covenant on Civil and Political Rights (ICCPR), which also affirms the right to liberty and security of a person and prohibits arbitrary detention. This prohibition stipulates that detention must be based on clear legal provisions, with legitimate grounds, and must not be arbitrary, unfair, or disproportionate. Detention failing to meet these criteria constitutes a human rights violation. Therefore, the Universal Declaration of Human Rights and related international instruments serve as the foundation of international law protecting individuals from arbitrary arrest and detention.³¹

The evolution of international human rights instruments highlights the crucial link between criminal procedure and human rights protection.³² In Indonesia, the primary legal framework for criminal procedure is Law Number 8 of 1981, the Criminal Procedure Code (KUHAP). The KUHAP governs the entire process of criminal law enforcement, from initial investigation and inquiry through Prosecution, trial, and the execution of judgments.³³ In addition to the KUHAP, specific regulations for serious human rights violations are provided in Law Number 26 of 2000 concerning the Human

³⁰ Aliyth Prakarsa and Rena Yulia, ‘Examining Victim Precipitation in Determining a Suspect (A Case Study of Marital Rape That Ended in Death)’, *Lambung Mangkurat Law Journal* 7, no. 1 (2022): 59–73, <https://doi.org/10.32801/lamlaj.v7i1.307>.

³¹ Matthew Marcellinno Gunawan, Pujiyono Suwadi, and Muhammad Rustamaji, ‘Comparison of Restorative Justice Implementation in Indonesia, Usa, Germany, Poland and Switzerland’, *Revista de Gestao Social e Ambiental* 18, no. 1 (2024): 1–15, <https://doi.org/10.24857/rgsa.v18n1-055>.

³² Putri Rahmah Nur Hakim et al., ‘Contesting Sharia and Human Rights in the Digital Sphere: Media Representations of the Caning Controversy under the Qanun Jinayat in Aceh’, *Journal of Islamic Law* 6, no. 2 (July 2025): 206–35, <https://doi.org/10.24260/jil.v6i2.3600>.

³³ Muhammad Arif Agus and Ari Susanto, ‘The Optimization of the Role of Correctional Centers in the Indonesian Criminal Justice System’, *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 369, <https://doi.org/10.30641/dejure.2021.v21.369-384>.

Rights Court, which establishes special procedures for handling such violations while still referencing the general principles of the KUHAP.

Reform of the criminal procedure system is also underway through the draft Criminal Procedure Code (RKUHAP), aiming to adapt to societal and technological advancements, and to strengthen human rights protection in line with international standards and the Indonesian Constitution.

Some key principles in Indonesian criminal procedure law directly related to human rights protection include:³⁴

- a. Presumption of Innocence: Every person suspected, arrested, detained, prosecuted, or tried is presumed innocent until a court judgment declares their guilt legally and convincingly.
- b. Right to Legal Counsel: Suspects or defendants have the right to legal assistance from a lawyer at every stage of the proceedings.
- c. Right to a Fair and Speedy Trial: Suspects have the right to prompt examination by investigators and to be brought before a court without unnecessary delay.
- d. Right to Notification of Charges: Suspects or defendants have the right to be clearly informed, in a language they understand, of the charges against them.
- e. Right to Free Testimony: Suspects or defendants have the right to give testimony freely, without pressure or coercion.
- f. Right to an Interpreter: If a suspect or defendant does not understand Indonesian, they have the right to an interpreter.
- g. Right to Protection from Violence and Intimidation: Suspects or defendants must be protected from violence, threats, or intimidation throughout the legal process.

Indonesian criminal procedure law is intrinsically linked to human rights protection. The KUHAP and related regulations are designed to ensure that law enforcement processes do not violate fundamental individual rights, such as the rights to liberty, equality before the law, and fair treatment. Human rights protection in criminal procedure includes the guarantee of equality before the law, under which every citizen is

³⁴ Suyanto, *Hukum Acara Pidana* (Sidoarjo: Zifatama Jawara, 2018).

entitled to equal treatment without discrimination.³⁵ Further guarantees include fair legal certainty, where legal processes must be just, transparent, and non-discriminatory. Oversight systems and complaint mechanisms are necessary to prevent abuse of power by law enforcement officials.

Regulations on arrest, detention, and pretrial legal remedies in Indonesia are clearly set out in Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP). Arrest is the initial action taken by law enforcement to detain someone strongly suspected of committing a crime. An arrest must be based on sufficient initial evidence and conducted in accordance with strict procedures, including notifying the suspect of the arrest warrant, except in cases of apprehension in the act (*flagrante delicto*), where arrest can be made without a warrant. The arrest period is limited to a maximum of one day; any time beyond that is counted as detention.

Detention is the act of holding a suspect or defendant in a designated location during the legal process. Detention can only be carried out if there are strong reasons, such as concerns that the suspect may flee, destroy evidence, or reoffend. Furthermore, detention only applies to crimes with specific criminal threats, primarily those with a sentence of five years or more. Detention can be ordered by investigators, prosecutors, or judges, in accordance with applicable law.

As a form of legal protection for suspects or defendants, the Indonesian legal system also provides a pretrial mechanism. Pretrial proceedings are legal actions filed with the district court to test the legality of actions such as arrests, detentions, or the termination of investigations or prosecutions carried out by law enforcement. Through pretrial proceedings, the suspect, family, or legal counsel can petition the court to examine and decide whether these actions comply with applicable procedure and law.³⁶ The pretrial ruling is binding and can order the release of a suspect if the arrest or detention is deemed unlawful, or order the resumption of legal proceedings if the

³⁵ Yusrianto Kadir, Leni Dwi Nurmala, and Nurwita Ismail, 'The Relevance of Legal Protection to Human Rights Related to Euthanasia Law in Indonesia', *Jambura Law Review* 3, no. 2 (2021): 319-335, <https://doi.org/10.33756/jlr.v3i2.7111>.

³⁶ Galuh Praharafi Rizqia dan Dimas Sutawijaya, 'Penyelesaian Perkara Pidana Persetubuhan Dengan Pelaku Anak Pada Masyarakat Hukum Adat Dayak Lundayeh Di Kabupaten Malinau', *Jurnal de Jure* 13, no. 1 (2021): 114-129.

termination of the investigation or Prosecution is deemed unlawful.³⁷ Therefore, the regulations concerning arrest, detention, and pretrial proceedings in Indonesia are designed to guarantee a fair legal process and protect human rights, while ensuring that law enforcement is effective and in accordance with the principles of justice.

Like Indonesia, Saudi Arabia, with its Islamic legal system, also has provisions governing arrest and detention within its criminal procedure law, granting security forces the authority to detain individuals suspected of criminal activity. However, the practice of arrest and detention in Saudi Arabia often comes under scrutiny due to numerous instances of arbitrary detention without clear due process.³⁸ Under the law, an individual can be detained without charge for up to 5 days, and this detention can be extended for up to 6 months by order of the Bureau of Investigation and Prosecution. After six months, the law requires that the detainee be brought before a competent court or released. However, data indicate that thousands of individuals are held in pretrial detention for months or even years without being brought before a court, raising serious concerns about human rights violations.

A pretrial mechanism, as known in several other countries, does not appear to be effective in Saudi Arabia, as detainees are often not promptly brought before a judge to review the legality of their detention. This contradicts international standards that require anyone arrested or detained to be promptly tried within a reasonable time or released. Prolonged detention without trial is considered arbitrary and violates the principle of the right to a fair trial. Furthermore, cases of arrest involving foreign nationals, including Indonesian citizens, are frequent, particularly concerning immigration violations and illegal activities such as Hajj fraud. Suspects are usually detained, and their cases transferred to the Prosecution for further legal proceedings; however, consular access and legal protection for them are often limited.

Overall, while the formal regulations on arrest and detention in Saudi Arabia provide a certain legal framework, their implementation faces sharp criticism due to the

³⁷ Anang Shophan Tornado, *Reformasi Praperadilan di Indonesia (Tinjauan Teori, Praktek, Dan Perkembangan Pemikiran)*, 1st edn (Bandung: Nusamedia, 2019).

³⁸ Risky Fany Ardhiansyah Tedy Nopriandi, 'Paradigm of Death Penalty (Comparative Study In Indonesia, Saudi Arabia And China)', *Lajil* 2, no. 1 (2020): 62.

practice of arbitrary detention and the lack of adequate legal protection for suspects and detainees.³⁹ This highlights the need for legal reform and stronger enforcement of human rights principles within the Saudi Arabian criminal justice system.

In Egypt, regulations concerning arrest, detention, and pretrial legal remedies are governed by the criminal justice system, based on the Egyptian Criminal Code and Code of Criminal Procedure.⁴⁰ An arrest in Egypt can only be carried out by police officers or authorised authorities based on a strong suspicion that a person has committed a crime. The arrest procedure must comply with legal provisions requiring notification of the reasons for the arrest to the suspect and official recording of the action. Detention in Egypt is implemented to ensure that the suspect does not flee, destroy evidence, or interfere with the investigation and judicial process.⁴¹ While the initial period of temporary detention is usually limited to 15 days and can be extended by a court if necessary, the practice of detention in Egypt is often criticised for prolonged pretrial detention and a lack of transparency in the legal process, potentially violating the human rights of the accused.⁴²

Regarding pretrial legal remedies, Egypt has a judicial review mechanism allowing suspects or their lawyers to petition a court to examine the legality of their arrest and detention.⁴³ While Egyptian courts have the authority to review the legality of arrests and detentions and order release if violations are found, access to this mechanism remains limited and often ineffective at preventing arbitrary detention. In short, despite Egypt's legal framework for arrest, detention, and pretrial remedies, serious challenges remain in protecting human rights. Prolonged detention without a fair and transparent judicial

³⁹ Mona Omran, 'Constitutional Underpinnings of Substantive Criminal Law: A Comparative Analysis of Egypt and Saudi Arabia', *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024): 8543-8546, <https://doi.org/10.57239/PJLSS-2024-22.2.00644>.

⁴⁰ Ibrahim Munib, Muhammad Hasyied Abdurrasyied, and Isniyatin Faizah, 'The Urgency of Expert Witnesses in Settlement of Cases in The Egyptian Judicial Legal System', *The Indonesian Journal of Islamic Law and Civil Law* 5, no. 1 (April 2024): 1-20, <https://doi.org/10.51675/jaksya.v5i1.749>.

⁴¹ Kazuaki Takemura, 'Squandering Marital Movables: On Family and Criminal Law in Egypt', *Islamic Law and Society* 31, no. 4 (May 2024): 431-463, <https://doi.org/10.1163/15685195-bja10055>.

⁴² Takemura.

⁴³ MennattAllah Hassan Attia and Nancy M. Zaghoul, 'Selfie Accidents and Crimes in Egypt: A Comprehensive Discussion of the Medico-Legal Implications', *Medicine, Science and the Law* 65, no. 2 (April 2025): 113-119, <https://doi.org/10.1177/00258024241257100>.

process is a major concern highlighted by various international human rights organisations. Legal reform and enhanced legal protections for suspects are therefore crucial to ensuring justice and legal certainty in Egypt.

The regulations concerning arrest, detention, and pretrial legal remedies in Indonesia, Saudi Arabia, and Egypt nominally reflect recognition of human rights principles such as protection of individual liberty, the right to a fair trial, and oversight of law enforcement actions. While differences exist in legal approaches and implementation challenges, particularly regarding arbitrary detention and limited access to pretrial mechanisms in Saudi Arabia and Egypt, the three legal systems provide a substantial basis for accommodating human rights protection within the criminal justice process.

Comparative Law: Arrest, Detention, and Pretrial Legal Remedies in Indonesia, Saudi Arabia, and Egypt

The history of regulations governing arrest, detention, and pretrial legal remedies in Indonesia has a long trajectory, dating back to the Dutch colonial era. At that time, criminal procedure law was based on the colonial legal system, such as the Dutch East Indies Code of Criminal Procedure (HIR) and the Reglement op de Strafvordering (Rv). These regulations technically addressed arrest, detention, and search, but offered limited protection for suspects' rights.⁴⁴ During that period, temporary detention could be ordered by an assistant resident or the chairman of the Landraad (a colonial court). Detention periods were relatively long, and judicial oversight was minimal, leading to frequent instances of arbitrary detention without effective mechanisms for suspects to challenge such actions.⁴⁵

Following Indonesian independence in 1945, the prevailing criminal procedure law largely adopted the old regulations based on the principle of *konkordansi*, which stipulated those existing laws remained in force until replaced by new legislation.⁴⁶ Efforts

⁴⁴ Ishaq, *Pengantar Hukum Indonesia*, 5th edn (Jakarta: Raja Grafindo Persada, 2018).

⁴⁵ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2013).

⁴⁶ Simon Butt, 'Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?', *Griffith Law Review* 32, no. 2 (2023): 190-214, <https://doi.org/10.1080/10383441.2023.2243772>.

to modernise criminal procedure law began in 1974 with the introduction of a draft Criminal Procedure Code (RKUHAP). This draft introduced the concept of stricter oversight of arrests and detentions through the role of an examining judge (hakim komisaris), aiming better to protect the human rights of suspects and defendants.

This modernisation culminated in the enactment of Law Number 8 of 1981 on Criminal Procedure (KUHAP), which came into effect in 1983. This law explicitly regulates the rights of suspects and defendants in the criminal justice process, including provisions on arrest and detention. These provisions require sufficient initial evidence and clear, time-limited procedures. The KUHAP also introduced a pretrial mechanism allowing suspects or their legal counsel to challenge the legality of arrests, detentions, the termination of investigations, or the termination of prosecutions, thus providing legal protection and oversight of law enforcement actions.⁴⁷

However, in practice, judicial oversight of detention and the implementation of pretrial proceedings still face various challenges. These include a lack of transparency and limited access for suspects to file pretrial motions, resulting in prolonged detention without legal certainty. Therefore, the history of these regulations demonstrates the dynamic tension between the need for effective law enforcement and the protection of human rights, a continuous focus of criminal procedure reform in Indonesia.

The principles underlying the regulations governing arrest, detention, and pretrial legal remedies in Indonesia are rooted in the rule of law, the upholding of human rights, and the pursuit of justice. Some of the main principles include⁴⁸:

- a. **Presumption of Innocence:** Anyone suspected, arrested, detained, prosecuted, or brought before a court is presumed innocent until a final and binding court judgment proves otherwise. This principle is reflected in every stage of the criminal process, including arrest and detention procedures, where the burden of proof rests entirely on the Prosecution.

⁴⁷ Desi Ratnasari, Sahuri Lasmadi, and Elly Sudarti, 'Kedudukan Hukum Deponeering Dalam Sistem Peradilan Pidana', *Pampas: Journal of Criminal Law: Journal of Criminal Law* 2, no. 1 (2021): 17-29, <https://doi.org/10.22437/pampas.v2i1.12053>.

⁴⁸ Suyanto, *Hukum Acara Pidana*.

- b. Legality Principle (*Nullum delictum nulla poena sine praevia lege poenali*): No act can be criminalised unless it is explicitly defined as such in a pre-existing law. This ensures legal certainty and prevents arbitrary actions in criminal law enforcement.
- c. Equality Before the Law: Everyone is equal before the law and entitled to equal treatment without discrimination, including in arrest and detention procedures.
- d. Due Process of Law: All law enforcement actions must adhere to legally mandated procedures, ensuring the protection of suspects' or defendants' rights. In the context of arrest and detention, this requires a valid warrant, notification of the reason for arrest, and time limits on detention.
- e. Accusatorial Principle: This principle positions the suspect/defendant as a subject, not an object, in all investigative actions.
- f. Principle of Speedy, Simple, and Low-Cost Justice: Criminal proceedings must be efficient, effective, and affordable, including pretrial remedies.
- g. Right to Legal Counsel: Every suspect or defendant has the right to legal counsel from the initial investigation through court proceedings, ensuring an effective defence and the protection of their rights.
- h. These principles underpin the KUHAP's norms governing arrest, detention, and pretrial proceedings. They guide law enforcement in upholding the law and justice while respecting human rights.

The KUHAP (Law Number 8 of 1981) comprehensively regulates arrest, detention, and pretrial remedies in Indonesia and serves as the basis for criminal proceedings in general courts. An arrest is the initial act by investigators or authorised officials to detain someone strongly suspected of a crime based on sufficient initial evidence. Arrests must be lawful and accompanied by a warrant, except in cases of *tangkap tangan* (caught in the act), where a warrant is not required. Arrests must respect suspects' rights, including notification of the reason for arrest and the right to contact legal counsel. The arrest period is limited to a maximum of one day; any longer period is considered detention.

Detention involves holding a suspect or defendant in a designated location during the investigation, Prosecution, or court proceedings. Detention is permitted only for strong reasons, such as preventing escape, destroying evidence, or preventing the commission of the crime. It applies only to crimes with specific penalties, typically those with sentences of five years or more.⁴⁹ Detention may be ordered by investigators, prosecutors, or judges in accordance with applicable law, while always respecting the suspect's rights, including the right to humane treatment and the right to legal counsel.

To protect suspects and defendants, Indonesian law also provides a pretrial legal remedy mechanism. Suspects, their families, or legal counsel can petition a district court to review the legality of arrests, detentions, or the termination of investigations or prosecutions by law enforcement. The pretrial court can determine whether these actions complied with legal procedure and can order the release of a suspect if the arrest or detention is deemed unlawful or order the continuation of legal proceedings if the termination of an investigation or Prosecution is deemed unlawful. This pretrial mechanism is crucial for protecting human rights in criminal proceedings, ensuring that law enforcement is fair, transparent, and consistent with the rule of law, and upholding human dignity. Therefore, the KUHAP's regulations on arrest, detention, and pretrial remedies balance effective law enforcement with the protection of suspects' and defendants' rights, ensuring fair, speedy criminal proceedings and legal certainty in accordance with Pancasila and the 1945 Constitution.⁵⁰

In Saudi Arabia, the history of arrest, detention, and pretrial legal remedies is intertwined with the kingdom's legal and governmental development, which is based on Islamic Sharia as the primary source of law. Officially established in 1932 after King Abdul Aziz Ibn Saud unified Najd and Hijaz, Saudi Arabia adopted Islamic law based on the Quran and Sunnah as the foundation for governance, including criminal law and its

⁴⁹ Andiani Oktavia Safitri, 'Pertanggung Jawaban Penyidik Kepolisian Terhadap Kasus Salah Tangkap', *Dewantara : Jurnal Pendidikan Sosial Humaniora* 3, no. 1 (2024): 246-255, <https://doi.org/10.30640/dewantara.v3i1.2232>.

⁵⁰ Vivi Ariyanti and Supani, 'Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective', *Al-Manahij: Jurnal Kajian Hukum Islam* 18, no. 1 (2024): 37-58, <https://doi.org/10.24090/mnh.v18i1.8280>.

enforcement procedures.⁵¹ Saudi Arabia's legal system adheres to the Hanbali school of Islamic jurisprudence as its official madhhab (school of thought). All judicial processes and law enforcement are conducted by judges applying only Islamic Sharia law. There is no separation of powers (legislative, executive, and judicial) as seen in many other countries.⁵²

Regarding arrest and detention, Saudi Arabian law grants broad authority to security forces to apprehend individuals suspected of legal violations. Islamic Sharia principles and royal decrees heavily influence procedures. However, detention in Saudi Arabia often occurs without the effective pretrial mechanisms found in other legal systems. This can result in prolonged detention without transparent judicial processes or adequate access to legal representation. This is linked to the absolute monarchy's structure, in which the King's power is dominant, and legal policy depends heavily on royal decisions and consensus, with the principle that no law or regulation may contradict Islamic Sharia.

Over time, particularly since the establishment of the Ministry of Justice in 1962 and the appointment of a Minister of Justice in 1970, Saudi Arabia has developed a more structured judicial system, including general courts, criminal courts, and family courts, all operating under Islamic law.⁵³ However, legal reforms have maintained Sharia as the primary foundation and have not adopted formal pretrial mechanisms to protect suspects' rights regarding the legality of arrest and detention. Therefore, the history of arrest, detention, and pretrial remedies in Saudi Arabia reflects a blend of a strong Islamic legal tradition and an absolute monarchy in which the King holds ultimate power in legal decision-making. This results in a unique legal system distinct from modern systems in other countries.

⁵¹ Relli Shechter, 'Abd Al-'Azīz Āl Sa'ūd's Other Campaign: Propaganda in the Making of the Modern Saudi State, 1918-1932', *Journal of Arabian Studies* 12, no. 1 (January 2022): 45-63, <https://doi.org/10.1080/21534764.2022.2207711>.

⁵² Dian Yudhantara Syahputra and Syaifuddin Zuhdi, 'Comparison of the Legal Construction of Hadhanah Rights in Saudi Arabia, Turkey and Indonesia', *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 9, no. 1 (June 2024): 131-148, <https://doi.org/10.25217/jm.v9i1.4753>.

⁵³ Nadia Nadir, 'Sistem Pemeritahan dan Kebijakan Luar Negeri Arab Saudi', *Qaumiyah: Jurnal Hukum Tata Negara* 1, no. 2 (August 2021): 161-75, <https://doi.org/10.24239/qaumiyah.v1i2.11>.

Regulations governing arrest, detention, and pretrial remedies in Saudi Arabia are based on a unique legal system: Sharia law, the primary source of all legal rules, interpreted according to the Hanbali school of thought. Unlike many other countries, Saudi Arabia lacks a clear separation of powers, so legal decisions are heavily influenced by royal authority and interpretations of religious scholars. Security forces have broad authority to detain individuals suspected of legal violations. Criminal procedure allows detention without charges for up to five days, extendable to six months by order of the Bureau of Investigation and Prosecution. After this period, detainees must be brought before a competent court or released. However, arbitrary and prolonged detention without transparent judicial processes remains a problem.

The underlying principles are heavily influenced by Islamic Sharia, including justice based on the Quran and Sunnah, and the absolute authority of the King and religious institutions to determine and implement the law.⁵⁴ Although the Arab Charter on Human Rights, ratified by Saudi Arabia in 2009, guarantees the right of anyone arrested or detained to be promptly brought before a judge and tried within a reasonable time, formal pretrial mechanisms protecting the legality of arrest and detention remain limited and ineffective.⁵⁵ This has drawn criticism from various international human rights organisations, which view the practice of detention without a clear judicial process as a violation of human rights standards.

The history of Saudi Arabia's legal system began with the establishment of the kingdom in 1932, when it adopted Islamic law as the sole source of law, without developing a separate secular legal system or codified criminal procedure.⁵⁶ Over time, the establishment of judicial institutions and the Ministry of Justice in the 1960s and 1970s led to a more organised judicial structure, but it remained firmly rooted in Sharia

⁵⁴ Dicky Eko Prasetyo Disantara, Fradhana Putra, Briggs Samuel, and Mawunyo Nutakor, 'The Problematics of the Legal Standing of Deoxyribonucleic Acid (DNA) Test Results Concerning Civil Relationships of Illegitimate Children : A Legal Pluralism Perspective', *Mizani* 11, no. 02 (2024): 435-448.

⁵⁵ Ahmed Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights', *Human Rights Law Review* 21, no. 3 (July 2021): 506-532, <https://doi.org/10.1093/hrlr/ngab008>.

⁵⁶ Shechter, 'Abd Al-'Azīz Āl Sa'ūd's Other Campaign: Propaganda in the Making of the Modern Saudi State, 1918-1932'.

principles and absolute monarchical authority.⁵⁷ The principles governing arrest, detention, and pretrial procedures in Saudi Arabia differ significantly from those in other legal systems. Law enforcement emphasises religious interpretation and royal authority, resulting in significant limitations and challenges in protecting suspects' and defendants' rights during criminal proceedings.

Saudi Arabia's regulations on arrest, detention, and pretrial remedies stem from a legal system rooted in Islamic Sharia as the primary source of law, which has been formally implemented since the kingdom's 1932 founding. There is no clear separation of powers; judges apply Sharia principles based on the Hanbali school of thought, with royal authority central to legal decision-making. In practice, Saudi security forces have broad powers to detain individuals suspected of legal violations. Criminal procedure allows detention without charges for up to five days, extendable to six months by order of the Bureau of Investigation and Prosecution. After this, detainees must be brought before a court or released.

However, Human Rights Watch reports indicate widespread arbitrary and prolonged detention without transparent judicial processes.⁵⁸ Thousands remain detained for months or years without trial, raising serious human rights concerns.⁵⁹ Formal pretrial mechanisms to challenge the legality of arrests and detentions are virtually nonexistent or severely limited in Saudi Arabia, leaving suspects and detainees with inadequate legal protection during criminal proceedings. While the Arab Charter on Human Rights, ratified by Saudi Arabia in 2009, guarantees the right of anyone arrested or detained to be promptly brought before a judge and tried within a reasonable time, implementation remains suboptimal.

Despite the country's development, the Ministry of Justice, established in 1962, and a more structured judicial system still operate under Islamic law and absolute monarchical authority. Saudi Arabia also imposes strict rules regarding the deportation

⁵⁷ Nadir, 'Sistem Pemeritahan dan Kebijakan Luar Negeri Arab Saudi'.

⁵⁸ Miftahus Sholehudin et al., 'Cancellation of Marriage Due to Apostasy in Islamic Law and Human Rights: A Comparative Analysis of Indonesia and Malaysia', *De Jure: Jurnal Hukum Dan Syar'iah* 17, no. 1 (April 2025): 33-51, <https://doi.org/10.18860/j-fsh.v17i1.31465>.

⁵⁹ Joseph A. Kéchichian, 'Challenges to Legal Reforms in Saudi Arabia', *Contemporary Review of the Middle East* 12, no. 2 (June 2025): 123-140, <https://doi.org/10.1177/23477989251326312>.

and blocklisting of foreigners, including Indonesian citizens, who violate residency permits or commit certain crimes. These procedures are often opaque and lack official notification. Therefore, Saudi Arabia's regulations on arrest, detention, and pretrial remedies reflect a legal system heavily influenced by Sharia principles and monarchical power, facing significant challenges in ensuring human rights protection and procedural justice.

In Egypt, the history of arrest, detention, and pretrial remedies is inseparable from the long evolution of the Egyptian legal system, rooted in Islamic legal tradition and undergoing significant reforms since the 19th century.⁶⁰ Initially, Egyptian law was heavily influenced by traditionally applied Islamic law. Judicial and legal matters were handled by scholars and jurists who administered law based on the Maliki school of thought, later replaced by the Hanafi school under the Tulunid dynasty.⁶¹ However, the 19th century, particularly during the Tanzimat era in the Ottoman Empire (which significantly influenced Egypt), saw major reforms incorporating secular Western legal elements. This included codifying criminal and commercial law based on French and other Western legal systems, while retaining Sharia provisions such as qisas and diyat.

These reforms also established specialised courts, such as the Nizamiyah courts, that handled non-Muslim cases under secular law, while Sharia courts continued to handle Islamic legal matters.⁶² This created a dual legal system, partially unified under the Divan-i Ahkam-i Adliye in 1868, which served as the highest court.⁶³ Furthermore, the establishment of the public prosecutor's office significantly altered the judicial system by introducing state-sponsored Prosecution, unlike the previous private prosecution system in Sharia courts.

Regarding arrest and detention, Egypt adopted rules combining Islamic and Western legal principles. Provisions mandate lawful grounds and time limits for detention, along

⁶⁰ Takemura, 'Squandering Marital Movables: On Family and Criminal Law in Egypt'.

⁶¹ Takemura.

⁶² Mohammad Subli et al., 'Green Investment in Contemporary Islamic Perspective: A Maqasid al-Syari'ah Analysis of the Mining Industry in Morowali', *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 156-183, <https://doi.org/10.32332/milrev.v4i1.10269>.

⁶³ Abdul Holel Rea Rufaidah Al Anshariyah, Lailatul Mubarakah, 'Social Changes Towards Women's Progress In Egypt', *Mosaic: Islamic Studies Jurnal* 2, no. 2 (2023): 22-28.

with judicial oversight to prevent arbitrary detention. Pretrial legal remedies include judicial review, which allows suspects or their lawyers to challenge the legality of arrests and detentions. However, challenges remain in optimally protecting human rights in practice.

Following Egypt's independence and the establishment of the republic in the early 20th century, legal reforms continued, codifying family, criminal, and civil law. These increasingly integrated modern values and legal nationalism, while retaining Sharia elements as a primary foundation.⁶⁴ Therefore, the history of arrest, detention, and pretrial legal remedies in Egypt reflects a blend of Islamic legal tradition and evolving Western legal influences, aiming to create a more structured, just, and modern legal system.

The principles underpinning the regulation of arrest, detention, and pretrial remedies in Egypt are a combination of Islamic law and secular law adopted from Western legal systems. Some important relevant principles include⁶⁵:

- a. Principle of Legality: No act can be criminalised unless it is based on pre-existing legal provisions. This principle guarantees legal certainty and prevents arbitrary actions.
- b. Presumption of Innocence: A person is presumed innocent until proven guilty by a final and binding court judgment.
- c. Equality Before the Law: Everyone is equal before the law and has the right to be treated equally without discrimination.
- d. Due Process of Law: Every law enforcement action must be carried out in accordance with legally established procedures and must guarantee the protection of the rights of suspects or defendants.
- e. Right to Legal Counsel: Suspects or defendants have the right to legal assistance from a legal advisor.

⁶⁴ Lev Weitz, 'Islamic Law on the Provincial Margins: Christian Patrons and Muslim Notaries in Upper Egypt, 2nd-5th/8th-11th Centuries', *Islamic Law and Society* 27, nos 1-2 (2020): 5-52, <https://doi.org/10.1163/15685195-00260A07>.

⁶⁵ Omran, 'Constitutional Underpinnings of Substantive Criminal Law: A Comparative Analysis of Egypt and Saudi Arabia'.

- f. Prompt Examination: An arrested suspect must be promptly examined. Judicial Police officers must hand over the suspect to the Prosecution within 24 hours of arrest. The Prosecution then interrogates to determine if the arrest was lawful.
- g. Prosecution Oversight: The Prosecution has the authority to oversee the arrest and detention process, including visiting prisons to ensure no illegal detentions occur. The public can also report unlawful arrests to the Prosecution.
- h. Pretrial Legal Remedies: The party entitled to file a pretrial motion regarding seizure is the Prosecution, not the Judicial Police officers; the motion is then passed on to the court.

These principles form the basis for the legal norms governing arrest, detention, and pretrial procedures.

In Egypt, the regulation of arrest, detention, and pretrial legal remedies is based on the Egyptian Criminal Code No. 150 of 1950 and its amendment No. 189 of 2020.⁶⁶ The law enforcement process begins with the reporting of a criminal event, followed by proving guilt and other legal steps. Investigators, known as Judicial Police Officers, are responsible for investigating crimes and perpetrators and collecting evidence for prosecution. The investigation of criminal cases is the full authority of the Public Prosecutor's Office. Judicial Police Officers are required to visit the crime scene, examine physical evidence, secure the crime scene and any individuals, and hear witness statements.

Judicial Police Officers can make arrests if the crime is punishable by imprisonment of more than three months and there is sufficient evidence. Arrests can also be made if the suspect fails to appear for questioning. For cases of theft, fraud, serious assault, and violent resistance against public officials, Judicial Police Officers can make arrests by requesting an arrest warrant from the prosecutor's office. Arrests must be accompanied by questioning by the Judicial Police Officer and, within 24 hours, handed over to the Public Prosecutor's Office. The Public Prosecutor's Office conducts

⁶⁶ Amy Shlosberg et al., 'Death Row Exonerations: A Scoping Review', in *The Elgar Companion to Capital Punishment and Society* (Edward Elgar Publishing, 2024), 200-216, <https://doi.org/10.4337/9781803929156.00022>.

interrogations to determine whether the arrest was properly conducted and whether the suspect remains in custody or is released within 24 hours. Anyone aware of an unlawful arrest is obligated to notify the prosecutor's office.

The Public Prosecutor's Office, together with a deputy head of court, is authorised to visit prisons to ensure that no illegal detainees are present. Inmates can report to the prison head if there is any indication of illegal detention, which the Public Prosecutor must investigate. In pretrial litigation regarding seizures, the party entitled to file is the Public Prosecutor's Office, not the Judicial Police Officer, and the case is then forwarded to the court. However, it should be noted that there are reports of arrests or detentions of individuals without a clear legal basis, as well as cases of enforced disappearance.⁶⁷ In addition, violations of local laws and regulations can result in deportation, arrest, or detention by local authorities.

The regulations regarding arrest, detention, and pretrial legal proceedings in Indonesia, Saudi Arabia, and Egypt reflect the diversity of legal approaches, influenced by history, the legal systems adopted, and the social and religious values prevalent in each society. Despite their different backgrounds, these three countries demonstrate a commitment to protecting human rights, though to varying degrees and in different forms.

Indonesia, as a legal state with a civil law tradition, mixed with customary law and influenced by Dutch colonialism, has undergone a long journey in building a modern, more humane criminal procedure system.⁶⁸ From the colonial era to the post-independence period, Indonesia has continuously reformed the rules regarding arrest and detention to strengthen the protection of suspects' rights. The culmination was the birth of the Criminal Procedure Code (Law Number 8 of 1981), which not only regulates arrest and detention procedures in detail but also introduces the pretrial institution as a legal mechanism to test the legality of law enforcement officers' actions. This mechanism is a

⁶⁷ Muhammad Sibawaihi, Devika Rosa Guspita, and Badriyah Badriyah, 'Islamic Legal Strategies in Indonesian Contexts to Combat Cybercrime and the Spread of Illegal Data Dissemination', *Justicia Islamica* 21, no. 2 (November 2024): 357-376, <https://doi.org/10.21154/justicia.v21i2.9587>.

⁶⁸ Dita Perwitasari Dicky Eko Prasetyo, Fradhana Putra Disantara, Nadia Husna Azzahra, 'The Legal Pluralism Strategy of Sendi Traditional Court in the Era of Modernization Law', *Rechtsidee* 8, no. 1 (2021): 4.

concrete manifestation of the principles of the rule of law, such as the presumption of innocence, due process of law, legality, and equality before the law.

On the other hand, Saudi Arabia applies a legal system based on Islamic law with the Hanbali school of thought as the main reference and does not recognise the codification of secular criminal procedure law. In this context, arrests and detentions are carried out based on interpretations of Sharia and royal policy, with security forces exercising broad authority but limited judicial oversight.⁶⁹ The pretrial mechanism, as known in the Indonesian legal system, is not found in the Saudi Arabian legal system. Although there are normative provisions requiring legal settlement within a certain time limit, in practice this is often unclear and raises concerns about the potential for arbitrary detention. This highlights a major challenge in ensuring accountability and protecting human rights, especially in the context of criminal justice.

Meanwhile, Egypt displays a unique legal character, namely a combination of Islamic law and Western legal systems (especially the French legal tradition). This influence is evident in the codification of criminal law and formal justice in the Egyptian Penal Code, which still maintains elements of Sharia in its legal system. Arrests and detentions in Egypt must be carried out based on legitimate legal grounds and within a limited time frame and are under the supervision of the Public Prosecutor's Office. Suspects must be brought before the prosecutor's office within 24 hours to test the legality of their arrest. Egypt also recognises a form of judicial review like the pretrial mechanism, although its implementation faces various obstacles, especially regarding procedural violations and reports of detention without a clear legal basis.

In terms of similarities, the three countries normatively recognise the importance of protecting the rights of suspects in the criminal law enforcement process. All three also state basic principles, such as the principles of legality and justice, and the state's obligation to prevent arbitrary detention. However, the main differences lie in the institutional structure, the oversight mechanisms for law enforcement actions, and the

⁶⁹ Agnes Harvelian et al., 'Interpretation of the Constitution on the Arrangement of State-Owned Enterprises in the National Economic System Based on the Decision of the Constitutional Court', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 23, no. 1 (June 2023): 171-188, <https://doi.org/10.19109/nurani.v23i1.17109>.

guarantees of access to justice. Indonesia provides an independent pretrial mechanism that suspects, or their legal counsel can access. Egypt provides oversight through the Public Prosecutor's Office, which plays a significant role in testing the legality of detention. Meanwhile, in Saudi Arabia, formal oversight mechanisms are almost non-existent, and legal decision-making is heavily dependent on royal authority and religious institutions. Thus, the regulations regarding arrest, detention, and pretrial legal efforts in the three countries reflect different paradigms and legal systems, but also show efforts—albeit to varying degrees—to integrate human rights principles into the criminal justice process. This comparison shows the importance of ongoing legal reform to ensure that the legal system is not only formally valid but also fair and effective in practice.

CONCLUSION

This study demonstrates that the legal frameworks governing arrest, detention, and pretrial remedies in Indonesia, Saudi Arabia, and Egypt normatively reflect the recognition of fundamental human rights principles, including due process, protection of individual liberty, and access to justice. However, the comparative analysis reveals significant disparities in their practical implementation. Indonesia exhibits a relatively stronger protection system through its Criminal Procedure Code (KUHAP), supported by accessible pretrial mechanisms and a more robust structure of judicial oversight. Egypt, while formally providing a legal framework with prosecutorial supervision, continues to face constraints at the level of implementation. In contrast, Saudi Arabia's Sharia-based system, characterized by limited judicial oversight and the absence of independent pretrial review, presents greater vulnerability to arbitrary detention practices. These differences underline that the effectiveness of human rights protection is shaped less by normative legal principles and more by the strength of institutional design, judicial independence, and legal culture.

Accordingly, this study affirms that core Islamic legal principles—such as *'adl* (justice) and *maqāṣid al-syarī'ah*—are inherently compatible with contemporary human rights standards. The primary challenge lies in their consistent institutionalisation within

legal systems and enforcement practices. Therefore, this research recommends strengthening judicial independence, enhancing oversight mechanisms over law enforcement, and expanding access to effective legal remedies as essential steps toward bridging the gap between law in books and law in action. For future research, it is suggested to adopt empirical and socio-legal approaches to examine the lived experiences of detainees and the actual performance of judicial institutions, as well as to explore the role of political structures, legal culture, and transnational human rights influences in shaping the implementation of criminal justice systems in Muslim-majority countries.

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CONFLICT OF INTEREST

The authors declare that they have no conflict of interest regarding the publication of this article. All authors—Sahat Maruli Tua Situmeang, Athari Farhani,

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AI USAGE STATEMENT

The authors declare that artificial intelligence (AI) tools, including ChatGPT, were used solely to assist with language refinement, grammar checking, and improving the clarity of the manuscript. All substantive aspects of the research, including conceptualization, methodology, data analysis, and interpretation of findings, were conducted independently by the authors. The authors take full responsibility for the content and integrity of this article.

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