

# Due Process Paradigm in the Comparison of Old and New Indonesian Criminal Procedure Codes

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## Abstract

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The reform of the Criminal Procedure Code (KUHAP) is a fundamental urgency in dealing with social changes, technological advances, and the dynamics of Indonesian political-legal affairs. The 1981 Criminal Procedure Code, which was once considered a masterpiece, now has limitations in responding to modern crimes, electronic evidence, and increasing demands for human rights protection. Through a normative juridical approach and a comparative analysis between the old Criminal Procedure Code and the Criminal Procedure Bill, this study highlights important changes such as the affirmation of the mechanism of coercion, the strengthening of the rights of suspects and victims, the standardization of wiretapping, and the integration of the criminal justice system. This reform not only adjusts to technological developments and the Constitutional Court decision Number 21/PUU-XII/2014, but also ensures synchronization with the new Criminal Code that takes effect in 2026. In addition, there is a paradigm shift from a retributive model to restorative justice that emphasizes restoration and dialogue. The reform of the Criminal Code is expected to strengthen accountability, judicial efficiency, and legal certainty, while demanding strict supervision so as not to cause power imbalances in its implementation.

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## 1. Introduction

In the midst of the rapid flow of societal change, the face of law enforcement in Indonesia has undergone an inevitable shift. The development of the criminal justice system in the last four decades shows complex dynamics in terms of regulations, practices, and social structures. In this context, the need for criminal procedural law reform is urgent to answer the challenges of the times that are no longer relevant to the old legal apparatus. The Criminal Procedure Code, which was promulgated through Law Number 8 of 1981, was once referred to as the nation's masterpiece because it was able to replace the colonial and inhumane *Herziene Inlandsch Reglement* (HIR) regime.<sup>1</sup> According to Yahya Harahap, the Criminal Code is a masterpiece because it introduces principles that better respect human rights.<sup>2</sup> The Criminal Code only at that time provided procedural guarantees for suspects and defendants and emphasized the protection of human rights. However, after more than forty years, the characteristics of criminal procedural law in the Criminal Procedure Code are no longer considered adequate to face modern social and technological changes. The Academic Text of the Criminal Procedure Law Bill emphasizes that the old Criminal Procedure Code is unable to answer actual problems such as unclear authority, ineffectiveness of coercive efforts, and weak human rights protection, so that it is no longer in accordance with the demands of

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<sup>1</sup> Faturrohman Faturrohman, Anggraeni Marshanda Putri, and Mochamad Basit Alhaetami. "Analisis Pelanggaran Kolonialisme Terhadap Suatu Hak Yang Dimiliki Oleh Setiap Manusia." *Birokerasi: JURNAL ILMU HUKUM DAN TATA NEGARA* 2, no. 2 (2024): 242-251.

<sup>2</sup> Yuni Ginting. "Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas *Ultimum Remedium*." *The Prosecutor Law Review* 2, no. 1 (2024).

the public who want a transparent, accountable, and human rights-oriented legal process.<sup>3</sup>

The classic problem that continues to arise is the mechanism of arrest, detention, wiretapping, and searches that often pose a dilemma because it opens up a wide space of interpretation. For example, the concept of “sufficient preliminary evidence” in Article 17 of the Criminal Code is multi-interpreted and has the potential to be abused. This shows that the structure of the old Criminal Procedure Code norms is no longer in line with the need for transparent and accountable legal certainty. Conditions are increasingly complicated by the presence of cybercrime, electronic crimes, and the dissemination of information online. The old Criminal Code did not regulate digital instruments as evidence, including eavesdropping procedures spread across various sectoral laws without uniform standards.<sup>4</sup> The Academic Paper on Criminal Procedural Law notes that the absence of eavesdropping arrangements creates a legal vacuum and opens up opportunities for violations of citizens’ privacy rights, so procedural law reform is an urgent need to ensure human rights protection and legal certainty.<sup>5</sup>

In addition to technological factors, the change in the paradigm of law enforcement also demands reform of the Criminal Code. If in the past the justice system was more oriented towards a retributive approach and crime control model,

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<sup>3</sup> Supriyono Supriyono. “Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana.” *Fenomena* 17, no. 2 (2023): 194-205.

<sup>4</sup> Muhammad Khoirul Anam. “Eksistensi perundang-undangan terhadap digital forensik dalam sistem pembuktian pidana.” (2022).

<sup>5</sup> Supriyono Supriyono. “Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana.” *Fenomena* 17, no. 2 (2023): 194-205.

now society needs a more humane system and upholds the principles of due process of law. Strengthening restorative justice is a tangible manifestation of this change. The Criminal Code Bill provides space for extrajudicial settlement of cases, especially for minor crimes.<sup>6</sup> This is in accordance with the findings that small cases often burden the authorities and cause overcrowding in correctional institutions. With the reform of the Criminal Code, the courts can focus more on strategic cases, while social conflicts can be resolved through a restorative approach that emphasizes restoration and dialogue.

The renewal of the Criminal Procedure Code is also closely related to the dynamics of national regulations. Since the enactment of the new Criminal Code in 2023 effective January 2, 2026, synchronization between material criminal law and criminal procedural law has become a must. The old Criminal Code, which was based on the colonial Criminal Code, was no longer consistent with the new penal system.<sup>7</sup> Therefore, the Criminal Code Bill must be designed to be able to effectively implement the new Criminal Code.<sup>8</sup> Without synchronization, the criminal justice system will run lame.

From an institutional perspective, the reform of the Criminal Procedure Code is important to clarify coordination between law enforcement officials such as investigators, PPNS, public prosecutors, judges, and correctional institutions. Academic manuscripts record recurring problems such as the back-and-forth of case

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<sup>6</sup> Yuni Ginting. "Penyelesaian Perkara Pidana Di Luar Pengadilan Berdasarkan Asas Ultimum Remedium." *The Prosecutor Law Review* 2, no. 1 (2024).

<sup>7</sup> Muh Al Khaer Zahir. "Politik Hukum Plea Bargaining System dalam Rancangan Undang-Undang Hukum Acara Pidana." PhD diss., Universitas Hasanuddin, 2023.

<sup>8</sup> Phileo Hazelya Motulo. "Upaya Paksa Dalam Proses Peradilan Pidana." *Lex Administratum* 8, no. 4 (2020).

files and overlapping investigators' authority. Through the reforms, it is hoped that an integrated criminal justice system will be created that is efficient and has a strong control mechanism. The reform of the Criminal Code is not just a normative adjustment, but a strategic step to build a new foundation for a modern, democratic, and fair Indonesian criminal judiciary. Thus, the reform of the Criminal Code is an important milestone towards a national criminal law system that is adaptive and responsive to the needs of society in the modern era.

## **2. Method**

This study uses a normative juridical approach with a statute approach.<sup>9</sup> The data used are primary legal materials, namely the text of the old Criminal Procedure Code, the text of the new Criminal Procedure Code/Criminal Procedure Bill and/or related official documents, as well as secondary legal materials in the form of legal literature, scientific journals, doctrines, and expert opinions. The analysis was carried out comparatively by comparing the norms in the old Criminal Code and the norms in the revised/new Criminal Procedure Code, especially those related to the aspects of investigation, prosecution, and guarantee of human rights protection. Furthermore, this study qualitatively describes the differences, similarities, substantive changes, and legal implications of these changes on the criminal justice system in Indonesia.

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<sup>9</sup> Ricky Handriana and Maharani Nurdin. "Analisis Yuridis Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang Cipta Kerja." *JUSTITIA Jurnal Ilmu Hukum Dan Humaniora* 6, no. 1 (2023): 142.

In addition, this research also uses a conceptual approach that departs from the understanding and construction of fundamental legal concepts, such as due process of law, procedural justice, human rights protection, and the principle of the rule of law, as developed in the thinking of legal scholars and modern legal theory. This conceptual approach is used to examine the consistency and coherence of the new Criminal Procedure Code norms with these normative ideas, so that the analysis does not only rely on the legal text alone, but also on the philosophical and theoretical foundations behind it. With a deductive approach, this study draws conclusions about the extent to which the reform of the Criminal Code is able to answer the needs of modern justice and strengthen human rights protection, as well as formulate conceptual and practical recommendations for its implementation in the Indonesian criminal justice system.<sup>10</sup>

### **3. Results and Discussion**

#### **3.1. The Impact of the New Criminal Procedure Code Reform on the Community**

The Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* /KUHAP) is the legal basis for the criminal justice process in Indonesia. Along with the times, the Criminal Code needs to be updated to better suit the needs of justice for suspects, victims, and law enforcement. There are three main reasons for the update. First, as a fulfillment of the principle of the formation of laws and regulations

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<sup>10</sup> Dwi Prasetyo and Ratna Herawati. "Tinjauan sistem peradilan pidana dalam konteks penegakan hukum dan perlindungan hak asasi manusia terhadap tersangka di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 402-417.

that demand harmony between norms and legal needs of the community. Second, adjusting the Criminal Code to the policies of the Supreme Court, such as Perma 4 of 2020 concerning Electronic Criminal Trials which expands the meaning of the courtroom to an electronic courtroom. Third, as a consequence of the Constitutional Court Decision Number 21/PUU-XII/2014 so that the Criminal Procedure Code remains relevant and constitutional.<sup>11</sup> This reform is important because the old Criminal Code, although once called a masterpiece, is no longer able to respond to social and technological developments.<sup>12</sup>

In addition, the new Criminal Code presents a penal system that is oriented towards restorative justice. According to Marshall in Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigm, restorative justice involves all parties to recover the impact of criminal acts more effectively.<sup>13</sup> This approach emphasizes victim recovery, reconciliation between perpetrator and victim, and social rehabilitation of perpetrator. The new Criminal Code also integrates the principles of justice and human rights protection so that every individual receives humane treatment.<sup>14</sup>

The biggest benefit of the Criminal Code reform for the public is the strengthening of human rights protection through the principle of due process of

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<sup>11</sup> Rivo Alfajri Syah Virdan. "Penafsiran Hukum Mahkamah Konstitusi terhadap Ketidadaan Pengaturan Penghentian Penyelidikan dalam Kitab Undang-Undang Hukum Acara Pidana." *JURNAL KLIENDI LAW* 1, no. 1 (2024): 1-28.

<sup>12</sup> Supriyono Supriyono. "Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana." *Fenomena* 17, no. 2 (2023): 194-205.

<sup>13</sup> Muhammad Fatahillah Akbar. "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia." *Masalah-Masalah Hukum* 51, no. 2 (2022): 199-208.

<sup>14</sup> Parningotan Malau. "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023." *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 1 (2023): 837-844.

law, which emphasizes the rights of suspects, defendants, and victims. This overcomes the weaknesses of the old Criminal Code, such as subjective detention, multiple interpretations of preliminary evidence, and irregularities in wiretapping. This update improves judicial efficiency through inter-agency coordination, clarity of case flows, and the use of information technology. In addition, the new Criminal Procedure Code strengthens restorative justice mechanisms that emphasize social recovery and reintegration, reduce the burden of petty cases, and prevent overcrowding in correctional institutions.

However, the revision of the Criminal Code also raises concerns about power inequality. Several new provisions are considered to strengthen the apparatus's dominance without adequate accountability mechanisms. If the Criminal Procedure Code is enforced on January 2, 2026 without a transition period and the readiness of the apparatus, the potential for legal chaos is very large. Therefore, the House of Representatives and the government need to review the RKUHAP (*Rancangan Kitab Undang-Undang Hukum Acara Pidana*) thoroughly by involving the community so that a fair, transparent, and accountable criminal justice system is truly realized.

### **3.2. Whether the New Criminal Code Reform Will Benefit Government Officials**

Concerns that the new Criminal Code is more favorable to law enforcement officials arise due to the expansion of the type of coercive effort. However, the reform of the Criminal Code actually tightens the control mechanism and strengthens the protection of suspects' rights. Provisions such as notification to the family, clear initial evidentiary standards, and measurable elimination criteria indicate



the enforcement of the principle of due process of law.<sup>15</sup> The academic text of the Criminal Procedure Bill emphasizes that the addition of coercive efforts aims to limit the authority of the apparatus, not expand it.<sup>16</sup> In fact, wiretapping is now regulated centrally and uniformly with a clear legal mechanism.

**Table.1** Results of the Comparative Study of the New Criminal Code and the Old Criminal Code

COMPARISON				
NO	ARTICLE	OLD COUP	ARTICLE	NEW COUP
1.	Article 17, Article 18 of the Criminal Code	Based on evidence Enough start.	Article 93 KUHAP	There must be conjecture criminal acts that are clear and testable by the HPP.
2.	Article 21 Paragraph (1) of the Criminal Code	Subjective reasons (fear of running away, etc.)	Article 100 paragraph (5) of the Criminal Code	Must be objective, proportional, and testable.
3.	Article 3 KUHAP	Trial is carried out by law (procedural legality)	Article 2, Article 5, Article 6 of the Criminal Code	The goal of justice, human rights protection, and restorative justice
4.	Article 183 KUHAP:	The judge ruled Based on valid evidence, → affirm the dominance of evidence by the public prosecutor	Article 7 and Article 9 of the Criminal Code	Judge actively digs Material truth and ensuring a balance of the rights of the public

<sup>15</sup> Firdaus Baderi & Mustika Annan. (2025). "RUU KUHAP Tegaskan Azas Partisipatif dan Transparan." Neraca, April 25, 2025. Retrieved in June 12, 2025 from <https://www.neraca.co.id/article/218223/ruu-kuhap-tegaskan-azas-partisipatif-dan-transparan>

<sup>16</sup> Supriyono Supriyono. "Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana." *Fenomena* 17, no. 2 (2023): 194-205.

				prosecutor and the defendant
5.	Article 184 Paragraph (1) of the Criminal Code	Just getting to know witness statements, experts, letters, instructions, and statements of the defendant (excluding CCTV)	Article 175 KUHAP	Expanding the evidence including electronic evidence/electronic recordings
6.	Article 184 Paragraph (1) of the Criminal Code	5 Evidence: Description witnesses, expert testimony, letters, instructions, defendant's testimony	Article 175 KUHAP	7 Evidence: 5 Tools old evidence + evidence and electronic evidence
7.	Article 95 KUHAP	Right to claim reimbursement Losses due to unlawful arrest/detention	Article 134 and Article 135 of the Criminal Code	Changeover settings Losses and financing mechanisms from endowments
8.	Article 69 and Article 115 of the Criminal Code	The Role of the Advocate: Can follow the examination.	Article 89 and Article 92 of the Criminal Code	Advocates can play an active role, audit, and be able to explain the legal position

The provisions of Article 93 arrest and detention under Article 100 paragraph (5) of the RKUHAP triggered public criticism because it was considered to allow arrest without confirmation of criminal acts. However, arrests must still be made after a person is designated as a suspect with at least two pieces of evidence. He emphasized that the detention requirements in Article 100 paragraph (5) are stricter and more objective than the 1981 Criminal Procedure Code, with obvious reasons

such as not fulfilling the summons or trying to escape.<sup>17</sup> The RKUHAP also contains alternative mechanisms such as restorative justice and case settlement agreements, as well as regulating criminal procedures against corporations and the introduction of judicial pardon as a form of new verdict.<sup>18</sup> Thus, the new Criminal Code does not give privileges to officials, but rather strictly limits their authority and strengthens transparency, accountability, and control over law enforcement officials.

### **3.3. The Urgency of New Criminal Procedure Reform**

The urgency of reforming the Criminal Procedure Code is driven by various fundamental factors that cannot be ignored. The old Criminal Code has been in force for more than forty years without a comprehensive revision, while technological developments, socio-political dynamics, and crime patterns have changed drastically. The 1981 Criminal Procedure Code is not designed to deal with the digital era, electronic evidence, or cybercrime. The structure in the old Criminal Code shows weaknesses in the regulation of forced labor, unclear deadlines for examinations, and protracted detention and investigation practices, which have the potential to violate human rights. This emphasizes that the Criminal Code is no longer able to accommodate technological developments and community dynamics.<sup>19</sup> Constitutionally, the renewal is also important because many provisions

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<sup>17</sup> Dedetri Putra and Zaid Alfauza Marpaung. "Prapenuntutan dalam Penegakan Hukum Perkara Tindak Pidana Narkotika." *EduInovasi: Journal of Basic Educational Studies* 4, no. 1 (2024): 649-661.

<sup>18</sup> Hamdan Hamdan. "Reformulasi Proses Peradilan Tindak Pidana Kekerasan Kolektif terhadap Orang Melalui Sarana Nonpenal dalam Perspektif Politik Kriminal." (2020).

<sup>19</sup> Supriyono Supriyono. "Sistem Peradilan Pidana Berdasarkan Rancangan Undang-Undang Hukum Acara Pidana." *Fenomena* 17, no. 2 (2023): 194-205.

of the Criminal Code have been amended through the Constitutional Court's ruling, causing legal fragmentation. In addition, the enactment of the new Criminal Code in 2026 requires harmony so that the criminal law system runs in balance.

The paradigm shift in law enforcement from a retaliatory model to a restorative approach also strengthens the urgency of reform. The old Criminal Code did not provide a sufficient basis for restorative justice, even though this approach emphasized the recovery of victims and the reintegration of perpetrators. By including this mechanism, the criminal justice system will be more adaptive to the value of substantive justice. These reforms not only fix old weaknesses, but also build a transparent, efficient, and democratic judicial system. Legal experts consider that the ratification of the new Criminal Code is not just an administrative formality, but a systemic need to enforce due process of law and human rights protection.<sup>20</sup>

In addition, the Criminal Code must be in line with the spirit of reform brought by the revision of the Criminal Code. A leader of the criminal chamber at the Supreme Court emphasized that the need for a new criminal procedural law could not be postponed because many old provisions were no longer relevant and needed to be reviewed to be in accordance with the new material law.<sup>21</sup> The new Criminal Code must also clarify the division of authority between law enforcement agencies to prevent overlap in reporting, investigation, and prosecution.<sup>22</sup> However,

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<sup>20</sup> M. Zainuddin, Mubarak, Z., & Bachriani, R. (2022). Politik Hukum Restorative Justice Dalam Pembaharuan Hukum Pidana Di Indonesia. *Semarang Law Review (SLR)*, 3(1), 120-129.

<sup>21</sup> Dwi Prasetyo and Ratna Herawati. "Tinjauan sistem peradilan pidana dalam konteks penegakan hukum dan perlindungan hak asasi manusia terhadap tersangka di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 4, no. 3 (2022): 402-417.

<sup>22</sup> Mohammad Nurul Huda. "Restorative Justice dalam Hukum Acara Pidana di Indonesia." *Voice Justisia: Jurnal Hukum Dan Keadilan* 7, no. 1 (2023): 21-35.

a number of human rights observers warn that this revision has the potential to lead to abuse of authority if it is not balanced with strict supervision, especially regarding aggressive investigative methods such as undercover and controlled delivery.<sup>23</sup>

#### **4. Conclusion**

Based on the results of the discussion, it can be concluded that the reform of the Criminal Procedure Code is an urgent need to answer the lag of Indonesia's criminal procedure law from social, technological, and modern crime dynamics. The old Criminal Code, which is more than four decades old, has proven to be inadequate in dealing with contemporary problems, ranging from procedural clarity, human rights protection, to the effectiveness of law enforcement. Through the reform of the Criminal Procedure Code, the state seeks to strengthen the principle of due process of law by providing clearer limits on coercive attempts, clarifying preliminary evidence, and improving the accountability standards of the apparatus. On the other hand, this reform has also changed the paradigm of punishment through strengthening the restorative justice mechanism that aims to recover the losses of victims and help the reintegration of the perpetrators, so that the law is no longer just punishing but also restoring social balance.

Nevertheless, the revision of the Criminal Code still leaves challenges, especially related to the risk of dominance of the authorities' authority if it is not accompanied by independent supervision and the readiness of law enforcement

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<sup>23</sup> Arnott Ferels and Hery Firmansyah. "Analisis Rechtsvacuum dalam Hukum Acara Pidana Indonesia: Penerapan Penghentian Penuntutan Berdasarkan Keadilan Restoratif." *Syntax Literate; Jurnal Ilmiah Indonesia* 8, no. 11 (2023): 6215-6228.

infrastructure. Public concerns about potential abuse of authority suggest that this reform requires gradual implementation, comprehensive training of officials, and broad public involvement so as not to create new inequalities. Overall, the reform of the Criminal Code is not an instrument to strengthen the position of officials, but rather a means to build a criminal justice system that is more transparent, fair, efficient, and in line with human rights principles. Therefore, the success of the implementation of the new Criminal Procedure Code is highly dependent on the state's commitment to ensure that the regulations made are not only good normatively, but also effective, accountable, and in favor of substantive justice for the entire community.

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