



## **Legal Politics in the Draft Criminal Procedure Code (KUHAP) in Indonesia**

**Hudha Bagus Setyadi<sup>1</sup>, Ali Masyhar<sup>2</sup>**  
*Faculty of Law, Universitas Negeri Semarang<sup>1,2</sup>*

Corresponding Author's Email: [hudhabagussetyadis2@students.unnes.ac.id](mailto:hudhabagussetyadis2@students.unnes.ac.id)

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### **ABSTRACT**

*This article examines the legal politics embedded in the draft of the Indonesian Criminal Procedure Code (KUHAP). The current KUHAP, enacted in 1981, is considered inadequate in addressing the challenges posed by technological advancements, changes in the constitutional system, and increasingly complex social and legal dynamics. The new KUHAP draft aims to provide clearer legal certainty, strengthen human rights protection, and align with international conventions ratified by Indonesia. Through literature review and document analysis, this study reveals that the KUHAP draft represents a manifestation of legal politics striving to balance effective law enforcement with human rights protection. The draft emphasizes the principles of legality and presumption of innocence, introduces stricter supervisory mechanisms, and offers special protection for vulnerable groups alongside recognition of electronic evidence. Despite significant progress, the draft faces challenges such as potential abuse of authority, inter-agency conflicts, and resource readiness. Recommendations include harmonizing authorities, strengthening supervision, enhancing human resource capacity, and encouraging public participation in evaluation and refinement. This article contributes significantly to understanding the legal politics shaping criminal procedure reform in Indonesia.*

**Keywords :** Legal Politics, KUHAP, Legal Reform, Human Rights Protection, Criminal Justice System

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## INTRODUCTION

Indonesia, as a state based on law grounded in Pancasila and the 1945 Constitution, holds a fundamental responsibility to uphold human rights and ensure equality before the law. In this context, criminal procedure law plays a central role as an instrument for enforcing the rule of law and justice within the national criminal justice system. The current Indonesian Criminal Procedure Code (KUHAP) is regulated under Law Number 8 of 1981. However, this KUHAP is increasingly viewed as inadequate to accommodate technological developments, changes in the constitutional system, and the complex social and legal dynamics of the modern era (Reza, n.d.; Fachri, n.d.).

The urgency to revise KUHAP is paramount to ensure the criminal justice system can provide better legal certainty, fair law enforcement, and human rights protection for suspects, defendants, witnesses, and victims. The new KUHAP draft is designed to adapt criminal procedure law to contemporary developments while accommodating international conventions ratified by Indonesia. This update is not merely technical but also reflects the state's legal politics that determine the direction and substance of the KUHAP draft (Toshiba, n.d.; Sandro Gatra, 2025).

Legal politics refers to state policies that guide the formation, implementation, and development of laws in accordance with national goals and interests. In the context of KUHAP, legal politics plays a role in determining how criminal procedure law is formulated to address evolving social, political, and technological challenges. Indonesia, as a democratic legal state, faces complex political dynamics where law functions not only as a tool for social control but also as an instrument for protecting human rights and social justice. Therefore, the KUHAP revision must reflect a balance between the need for effective law enforcement and respect for individual rights. The legal politics embedded in the KUHAP draft must also accommodate societal aspirations, legal reform demands, and international standards agreed upon by Indonesia (Endri Susanto Endri Foundation, n.d.).

The KUHAP revision is influenced by changes in the constitutional system and the institutional structure of law enforcement in Indonesia. Bureaucratic reform and transparent, accountable law enforcement are primary demands to ensure the criminal justice system is trusted by the public. In this regard, legal politics serves as a policy framework regulating relationships among law enforcement agencies, supervisory mechanisms, and protection for vulnerable groups during criminal proceedings.

The history of criminal procedure law in Indonesia cannot be separated from the influence of Dutch colonial law, particularly through the *Het Herziene Inlandsch Reglement* (HIR) enacted in 1941. HIR introduced significant changes in the criminal justice system, including the establishment of an independent public prosecutor's office and more modern preliminary examination procedures for its time. After independence, HIR remained in effect under transitional provisions of the 1945 Constitution until it was replaced by KUHAP in 1981. KUHAP 1981 is a codification of criminal procedure law that comprehensively and systematically regulates criminal law enforcement procedures. However, rapid social, political, and technological developments demand KUHAP's renewal to remain relevant and effective in facing contemporary challenges (Marinus Lase, n.d.; PERKEMBANGAN HUKUM ACARA PIDANA INDONESIA, n.d.).

These developments reflect the continuously evolving legal politics, where criminal procedure law must adapt to societal needs and human rights principles that increasingly gain global attention. Therefore, KUHAP reform is part of the modernization efforts of the criminal justice system oriented toward justice and individual rights protection

## METHOD

This study employs a literature review and in-depth document analysis approach to understand the legal politics dynamics in the KUHAP draft. Data were collected from various secondary sources, including legal literature such as books, scientific journals, academic articles, applicable laws and regulations, as well as official documents and academic manuscripts related to the KUHAP draft. This approach enables a comprehensive exploration of the social, political, and legal contexts influencing the formulation and implementation of the KUHAP draft.

Data collection was conducted through literature study and documentation by reading, noting, and organizing information from relevant sources. Data analysis was performed descriptively and critically by categorizing main themes related to legal politics, legal policy, and challenges and opportunities in KUHAP reform. Data validity was maintained through source triangulation, comparing and confirming information from various references to ensure the study's reliability and academic rigor.

## RESULT & DISCUSSION

### Legal Politics in the KUHAP Draft

The KUHAP draft is a tangible manifestation of legal politics that seeks to balance the need for effective law enforcement and human rights protection. The legal politics embedded in this draft asserts that the criminal justice system must operate on principles of justice, transparency, and accountability without neglecting the rights of individuals involved in legal processes. This is reflected in the affirmation of the legality principle as the primary foundation in the formation and implementation of criminal law, as well as the presumption of innocence principle that provides legal protection for suspects and defendants throughout the judicial process (Politik Hukum Dalam Pembaharuan Hukum Pidana Di Indonesia, n.d.).

Furthermore, the KUHAP draft demonstrates efforts to regulate a clearer and more structured division of authority among law enforcement officials, such as investigators, public prosecutors, and judges. Stricter supervisory mechanisms are also introduced, including the role of preliminary examination judges tasked with overseeing the investigation process to prevent abuse of authority. Special protection for vulnerable groups such as women, children, persons with disabilities, as well as witnesses and victims, is a primary concern in this draft, reflecting a commitment to creating an inclusive and just criminal justice system (POLITIK HUKUM PIDANA, n.d.).

### Structural and Substantive Changes in the KUHAP Draft

The KUHAP draft consists of 18 chapters and 286 articles that regulate various aspects of criminal procedure law in detail. One fundamental change is the explicit affirmation of the principles of legality and presumption of innocence, which were not explicitly regulated in the previous KUHAP. This provides stronger legal certainty and protection for suspects and defendants during the judicial process.

Additionally, the draft regulates a more balanced division of authority among investigators, public prosecutors, and judges, aiming to prevent overlapping authority and potential abuse. The rights of suspects and defendants are also expanded, including the right to legal assistance and protection from intimidation during investigation and trial processes. The introduction of the preliminary examination judge mechanism serves as a supervisory form to ensure investigations proceed according to legal procedures.

The draft also adopts the principle of opportunity in prosecution, allowing public prosecutors to conduct selective prosecutions while maintaining justice principles. Efforts to expedite case resolution and reduce overcapacity in correctional institutions are also a primary focus to improve the efficiency of the criminal justice system. Special protection for vulnerable groups such as women, children, persons with disabilities, as well as witnesses and victims, is specifically regulated to ensure justice and human rights protection (ICJR, n.d.).

### Comparison Between the Old KUHAP and the KUHAP Draft

A comparison between the old KUHAP and the KUHAP draft reveals significant changes reflecting efforts to renew Indonesia's criminal justice system. The old KUHAP consists of 286 articles, and the draft maintains the same number of articles but with more comprehensive substantive adjustments. Regarding evidence, the old KUHAP recognizes five types: witnesses, experts, documents, indications, and defendants. Meanwhile, the draft adds two more types: physical evidence, electronic evidence, and judge's observation, reflecting adaptation to technological developments.

The presumption of innocence principle, previously not explicitly regulated in the old KUHAP, is now firmly established in the draft. Protection of suspects' and defendants' rights is also expanded, with clearer regulations on the right to legal assistance and protection from intimidation. The supervisory mechanism, which was inadequate in the old KUHAP, is strengthened in the draft, including the new role of the preliminary examination judge. Furthermore, special protection for vulnerable groups, previously not specifically regulated, is now an essential part of the draft (Albert Aries, n.d.; [mail@fransfp.dev](mailto:mail@fransfp.dev), n.d.).

### Strategic Issues in the KUHAP Draft

The KUHAP draft presents several strategic issues that are central to the criminal procedure law reform. One critical issue is how to regulate law enforcement authorities to prevent abuse while still providing sufficient space for effective law enforcement. Harmonizing authority among the police, prosecutors, and judiciary is a particular challenge to avoid overlapping and conflicts that could hinder judicial processes.

Protection of suspects' and defendants' rights, including the right to legal assistance and protection from intimidation, is a primary focus in the draft. The implementation of the opportunity principle, allowing selective prosecution, also raises debates about its limits and supervisory mechanisms to maintain justice. Adjustments to technological developments, such as recognizing electronic evidence, pose new challenges that must be anticipated to keep the criminal justice system relevant and effective.

Additionally, special protection for vulnerable groups such as women, children, persons with disabilities, as well as witnesses and victims, is a strategic issue demanding serious attention to ensure fair and inclusive criminal proceedings (KANWIL LAMPUNG, n.d.; Progresif News, n.d.).

### Implications for the Criminal Justice System

The implementation of the KUHAP draft is expected to bring significant changes to Indonesia's criminal justice system. With clearer regulations on the rights of suspects and defendants and stricter supervisory mechanisms, judicial processes are expected to become fairer, more transparent, and accountable. However, potential conflicts of authority among law enforcement agencies such as the police and prosecutors must be anticipated to avoid hindering the system's effectiveness.

Harmonization and coordination among law enforcement agencies are crucial aspects of the legal politics in the KUHAP draft to create optimal synergy. Additionally, the readiness of human resources and judicial infrastructure is a key factor in the successful implementation of this draft. Thus, KUHAP reform is not merely regulatory change but also requires cultural transformation and capacity building within criminal justice institutions (Sandro Gatra, 2025).

### **Challenges and Opportunities in Implementing the KUHAP Draft**

The implementation of the KUHAP draft faces various complex challenges. One major challenge is the potential abuse of authority by law enforcement officers if supervisory mechanisms are ineffective. Conflicts of authority among law enforcement agencies can also obstruct judicial processes and reduce public trust in the criminal justice system.

The readiness of human resources and judicial infrastructure is another challenge that must be addressed to ensure smooth KUHAP reform implementation. Resistance to change from various stakeholders is also a barrier that needs to be managed well through participatory approaches and effective communication.

On the other hand, the KUHAP draft opens significant opportunities to enhance public trust in the criminal justice system through fairer and more transparent law enforcement. Strengthened human rights protection in the draft is also a vital step in meeting international standards and enhancing Indonesia's position in the global legal community. Modernizing the criminal justice system to adapt to technological developments and contemporary legal principles is a strategic opportunity to promote sustainable and participatory legal reform (Urgensi Perlunya Pembaharuan Hukum Acara Pidana Nasional di Indonesia, n.d.).

### **CONCLUSION**

The draft of the Indonesian Criminal Procedure Code (KUHAP) marks a significant milestone in the effort to reform criminal procedure law in Indonesia, grounded in legal politics that prioritize justice, human rights protection, and the enforcement of the rule of law. This reform is driven by the need to adapt criminal procedure law to dynamic social, technological, and constitutional developments.

From a legal politics perspective, the KUHAP draft reflects state policies striving to balance effective law enforcement and individual rights protection. Although the draft brings many positive changes, challenges in implementation such as potential abuse of authority and inter-agency conflicts must be carefully anticipated to achieve reform goals optimally.

The success of KUHAP draft implementation heavily depends on harmonization and coordination among law enforcement agencies, strengthening supervisory mechanisms, enhancing human resource capacity, and active involvement of society and academics in evaluation and refinement. Thus, the KUHAP draft is expected to strengthen Indonesia's criminal justice system to become fairer, more transparent, and responsive to contemporary demands.

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