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Protecting Citizens' Constitutional Rights in the Revision of the Criminal Procedure Code: A Normative Legal Analysis of Due Process

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Abstract

This study aims to analyze the protection of citizens' constitutional rights in the revision of the Criminal Procedure Code (KUHAP) within the framework of the rule of law, focusing on issues such as the designation of suspects, detention, the right to legal counsel (Article 54 KUHAP), the scope of pretrial mechanisms (Article 77 KUHAP), the absence of the exclusionary rule, surveillance practices, and the lack of clear time limits for investigation. This research employs a normative legal method using statutory, conceptual, and case-based approaches, supported by legal materials analyzed qualitatively through descriptive-analytical and argumentative methods. The findings indicate that although constitutional rights are formally guaranteed, significant deficiencies remain in the normative design, including unclear evidentiary standards, broad discretionary powers, the absence of mandatory legal assistance at the early stages, limited pretrial review, weak regulation of surveillance, and the lack of definite investigative time limits. These conditions reflect the dominance of the crime control model, which undermines procedural safeguards and the protection of individual rights. Theoretically, this study contributes to the development of the concept of constitutional criminal procedure by positioning constitutional rights protection as the foundational principle in the reconstruction of criminal procedural law.

INTRODUCTION

The protection of citizens' constitutional rights constitutes a fundamental element in a democratic constitutional state, in which the constitution functions as a supreme legal norm binding upon all state institutions. In the perspective of modern constitutional law, constitutional rights are not merely declaratory but possess normative force that obligates the state to respect, protect, and fulfill these rights. The 1945 Constitution of the Republic of Indonesia explicitly guarantees such rights, thereby imposing a constitutional duty upon the state to ensure their implementation, including within the criminal justice system.

Within the framework of criminal procedure law, the protection of constitutional rights becomes particularly crucial due to the state's authority to exercise coercive measures, such as arrest, detention, investigation, and prosecution, which directly affect individual liberty. Therefore, the principle of *due process of law* serves as a fundamental safeguard to ensure that all legal actions are conducted lawfully, fairly, and without arbitrariness. This principle is closely linked to the concept of a fair trial and is universally recognized in international legal instruments, including the International Covenant on Civil and Political Rights (ICCPR), making its implementation an essential indicator of the rule of law and human rights protection.

Empirical evidence indicates that the protection of constitutional rights in Indonesia's criminal justice system continues to face serious challenges.[1] Reports from the National Commission on Human Rights (Komnas HAM) in recent years have shown an increase in public complaints regarding violations of constitutional rights, particularly during the investigation and detention phases. Similar findings were also presented in Amnesty International's report (2021–2023), which highlighted the continued existence of torture, arbitrary detention, and limited access to legal aid in Indonesia. Furthermore, a recent study by Komnas HAM (2022) indicates that weak oversight of law enforcement officials is one of the primary factors contributing to these violations.

These issues are not merely practical but also structural in nature. Argue that the ineffective implementation of *due process of law* is influenced by structural constraints and the legal culture of law enforcement officials.[2] Similarly highlight persistent procedural

[1] Nasution., Padeni, R., Milen, S., Ramadhan, K. I., Sitorus, K., & Chandra, A. "The Practice of Due Process of Law in the Indonesian Criminal Justice System as Seen in the Decisions of the Medan District Court (2022–2023)." Journal of Legal Scholars (JBH) 2,(1), (2024). 117–128.

[2] Hasibuan, K., Panjaitan, B. S., & Harahap, A. M. The Criminal Procedure Code Bill: Challenges and harmonization between the due process of law principle and the criminal justice system in Indonesia. Journal of Research in Social Sciences, Politics, and Humanities, 3(2), (2024). 57–72.

violations, particularly in suspect designation and access to legal representation.[3] At a broader level, criticizes the dominance of the *crime control model*, which prioritizes efficiency over the protection of individual rights, thereby marginalizing fundamental principles such as the presumption of innocence.[4] Although the reform of the Criminal Procedure Code (KUHAP) has been widely discussed, existing studies reveal significant limitations. Emphasizes the urgency of KUHAP reform but remains general and policy-oriented, without offering a systematic normative framework.[5] Likewise identify structural weaknesses, such as unclear procedural time limits and weak oversight mechanisms, yet their analysis is limited to problem identification and does not extend to comprehensive normative solutions.[6] As a result, the existing literature remains fragmented and lacks a coherent normative approach to integrating *due process of law* within the structure of criminal procedure law.

Based on this analysis, the *research gap* lies in the absence of a systematic normative model that integrates the protection of constitutional rights with the principle of *due process of law* in the context of KUHAP reform. Previous studies have not adequately addressed how these principles should be structurally embedded within the legal framework, particularly in relation to limiting discretionary powers and strengthening oversight mechanisms.

Accordingly, the novelty of this study lies in the development of a normative reconstruction model of criminal procedure law based on the concept of constitutional criminal procedure. This study not only identifies normative weaknesses within the existing KUHAP but also formulates a systematic framework that includes, strengthening *due process* guarantees at every stage of the criminal process, limiting the discretionary powers of law enforcement authorities, and establishing more effective and accountable oversight mechanisms. Thus, this research aims to contribute both theoretically and practically to the reform of Indonesia's Criminal Procedure Code by

[3] Pohan, M. P. R., Yunara, E., & Siagian, P. R. Application of the due process of law principle to the validity of suspect designation without prior examination (Study of Judgment No. 10/Pid.Pra/2024/PN Bdg). Galuh Justisi Scientific Journal, 14(1), (2026). 195-206.
[4] Sitompul, S. M. From the 1981 Criminal Procedure Code to the 2025 Criminal Procedure Code: Affirming the Advocate as a Pillar of the Balance of Power in a Modern Criminal Justice System. Staatsrecht: Journal of Constitutional Law and Islamic Politics, 6(1), (2026). 70-85.
[5] Triana, I. D. S., Irza, M. Y., & Awaludin, A. Reform of the Criminal Procedure Code in building a fair criminal justice system and protecting human rights. Al-Zayn: Journal of Social Sciences & Law, 3(6), (2025). 8293–8304.
[6] Prasetya, D. A., & Indraswara, D. (2025). Progressive Leaps in the Criminal Procedure Code (KUHAP) as an Effort to Realize a Just Criminal Justice System. Indonesian Perspective on Law and Human Rights (IPMHI), 5(2) (2025). 57

proposing a criminal justice system that is not only effective but also fair, transparent, and oriented toward the protection of citizens' constitutional rights.

METHODS

This study employs a normative legal research method with a juridical-normative approach, focusing on the analysis of legal norms governing the protection of constitutional rights within the framework of Indonesia's Criminal Procedure Code (KUHAP) and its proposed revision. The study applies three main approaches, namely the statutory approach, the conceptual approach, and the case approach, to examine the extent to which the principle of due process of law is reflected in both existing and proposed legal norms.[7]

The statutory approach is used to analyze relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, the existing KUHAP, and the draft revision of the Criminal Procedure Code (RUU KUHAP), particularly provisions related to arrest, detention, investigation, and the rights of suspects. In addition, this study also refers to international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), as a comparative normative standard in assessing the adequacy of due process guarantees. The conceptual approach is employed to examine key legal doctrines, particularly the principle of due process of law, the presumption of innocence, and the concept of constitutional criminal procedure. These concepts are used to construct analytical parameters for evaluating whether the legal framework sufficiently protects constitutional rights. The case approach complements this analysis by reviewing selected court decisions that reflect the application or violation of due process principles in practice.

The legal materials used in this study consist of primary legal materials (legislation and court decisions), secondary legal materials (legal doctrines, academic journals, and research findings), and tertiary legal materials (legal dictionaries and encyclopedias).[8] These materials are collected through systematic library research, involving the identification, classification, and critical review of relevant legal sources.

The analysis of legal materials is conducted qualitatively using a normative analytical framework based on three main stages. First, the study applies methods of legal interpretation, including grammatical, systematic, and teleological interpretation, to understand the meaning and purpose of legal provisions. Second, the study evaluates

[7] Peter Mahmud Marzuki (2021). Legal Research. Jakarta: Kencana
[8] Soerjono Soekanto & Sri Mamudji (2020). Normative Legal Research. Jakarta: Rajawali Pers.

legal norms using due process parameters, which include: (i) legality and clarity of procedures, (ii) protection of the presumption of innocence, (iii) access to legal counsel, (iv) limitations on coercive measures, and (v) the availability of effective oversight mechanisms. Third, the study employs an argumentative approach to identify inconsistencies between normative provisions and due process standards, and to formulate a normative reconstruction of KUHAP that is more aligned with constitutional principles.[9] Through this methodological framework, the study aims not only to assess the adequacy of existing legal norms but also to develop a systematic normative model for reforming Indonesia's Criminal Procedure Code in accordance with the principle of due process of law and the protection of constitutional right.

RESULTS AND DISCUSSION

1. Analysis of the Protection of Constitutional Rights in the Criminal Procedure Code

Based on a normative legal analysis, the protection of citizens' constitutional rights within Indonesia's criminal justice system is formally guaranteed under Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, which affirms the right to recognition, guarantees, protection, and fair legal certainty. From the perspective of the rechtstaat, as argued law functions as an instrument to limit state power and prevent arbitrariness.[10] Therefore, all actions within the criminal justice process must adhere to legal principles that ensure justice and the protection of human rights.

However, when further examined within the framework of due process of law, the mere existence of legal norms is insufficient. The protection of constitutional rights must be concretely reflected in the structure of criminal procedural law, particularly in the regulation of coercive measures and the rights of suspects. In this regard, the Criminal Procedure Code (KUHAP) has incorporated several safeguards, such as the right to legal counsel (Article 54 KUHAP), the prohibition of torture, and the pretrial mechanism (Article 77 KUHAP). Nevertheless, from a normative standpoint, significant weaknesses remain in its regulatory design.

First, concerning the designation of suspects, KUHAP does not explicitly regulate a clear evidentiary standard at the initial stage of investigation. Although Constitutional Court decisions have required the presence of at least two pieces of evidence, this requirement is not firmly codified within KUHAP itself. This normative gap creates broad discretionary power for investigators and increases the risk of violating the

[9] Jimly Asshiddiqie (2020). The Constitution and Constitutionalism in Indonesia. Jakarta: Sinar Grafika.
[10] Jimly Asshiddiqie (2020). The Constitution and Constitutionalism in Indonesia.., 97

presumption of innocence. This finding is consistent with which shows that suspect designation often occurs without sufficient evidentiary basis.[11]

Second, regarding detention, KUHAP grants extensive authority to law enforcement officials without sufficiently strict control mechanisms. The provisions governing subjective and objective requirements for detention are formulated in general and open-ended terms, allowing multiple interpretations. From a due process of law perspective, this condition reflects a weak application of the principle of limitation of power, which is a fundamental element in protecting constitutional rights.

Third, in relation to the right to legal counsel, although Article 54 KUHAP guarantees the right of suspects to be accompanied by a lawyer, its implementation faces both normative and practical challenges. KUHAP does not explicitly mandate the presence of legal counsel from the earliest stage of examination, resulting in frequent interrogations conducted without legal assistance. This situation contradicts the principle of equality of arms within due process of law, as well as the findings of which highlight limited access to legal assistance at the initial stages of investigation.[12]

Fourth, concerning pretrial mechanisms, this institution is intended as a control mechanism over law enforcement actions. However, its scope within KUHAP remains limited and does not comprehensively cover all forms of coercive measures. This limitation reduces its effectiveness as a safeguard against violations of constitutional rights and aligns with the findings of regarding weak oversight mechanisms within the criminal justice system.[13]

Fifth, KUHAP does not explicitly regulate the exclusionary rule, namely the principle that unlawfully obtained evidence must be excluded from judicial proceedings. The absence of this principle potentially legitimizes rights-violating practices, such as coercion or torture in obtaining confessions. This indicates that the protection of constitutional rights within KUHAP has not yet fully aligned with international standards, particularly the fair trial principle under the International Covenant on Civil and Political Rights (ICCPR).[14] In addition, KUHAP does not clearly regulate the time limits for investigation, which creates legal uncertainty and allows the prolonged

[11] Jimly Asshiddiqie (2020). The Constitution and Constitutionalism in Indonesia., 200.
[12] Putri Astana, I. G. A. A. E., & Darmadi, A. A. N. O. Y. The urgency of applying the principle of due process of law in witness examinations prior to the designation of a suspect. Jurnal Media Akademik (JMA), 3(11), (2025).89.
[13] Moonti, W., & Moonti, R. M. The effectiveness of pretrial proceedings in overturning the designation of a suspect. TERANG: Journal of Social, Political, and Legal Studies, 2(2), (2025). 297–311.
[14] Abidin, Z. Incorporation of fair trial rights in the draft Criminal Procedure Code. Human Rights Journal, 15(1), (2022). 44–69.

designation of individuals as suspects without definitive resolution. This normative weakness has also been identified as a potential avenue for abuse of authority.[15]

Overall, this analysis demonstrates that although KUHAP formally provides for the protection of constitutional rights, its normative design still contains significant structural deficiencies. The broad discretionary powers of law enforcement, the lack of clear procedural standards, and weak oversight mechanisms reflect the continued dominance of the crime control model over the due process model.[16] Therefore, the reform of KUHAP is an urgent necessity in order to reconstruct criminal procedural law in a manner that is more oriented toward the protection of constitutional rights. This aligns with who emphasize the importance of reforming KUHAP to balance the interests of law enforcement with the protection of human rights.[17] Such reform should focus on strengthening the principle of due process of law through clearer legal norms, limiting discretionary powers, and establishing more effective and accountable oversight mechanisms.

2. Normative Shortcomings and the Implementation of the Principle of Due Process of Law

A normative analysis reveals that the Criminal Procedure Code (KUHAP) has not yet fully and systematically incorporated the principle of due process of law, both in its regulatory structure and in its practical implementation. The shortcomings are not merely theoretical but are embedded in specific legal provisions that regulate coercive measures and procedural safeguards.

First, in relation to the designation of suspects, KUHAP does not explicitly formulate a clear evidentiary threshold at the investigation stage. While Constitutional Court jurisprudence has introduced the requirement of at least two pieces of evidence, this standard is not codified within KUHAP itself. As a result, the absence of a firm normative standard creates excessive discretionary power for investigators. This gap becomes more problematic when compared to the evolving framework of the Draft Criminal Procedure Code (RUU KUHAP), which, although attempting to refine procedural mechanisms, still does not consistently articulate strict evidentiary safeguards. This condition reflects a

[15] Putri, N. N. F. C., & Maharani, I. G. A. S. R. (2025). Pretrial proceedings as an instrument of accountability in the investigative process within the criminal justice system. Jurnal Kertha Desa, 13(11), 1195–1206.
[16] Sitompul, S. M. (2026). From the 1981 Criminal Procedure Code to the 2025 Criminal Procedure Code: Affirming the Advocate as a Pillar of the Balance of Power in a Modern Criminal Justice System. Staatsrecht: Journal of Constitutional Law and Islamic Politics, 6(1), 70-85.
[17] Noor, M. S., Munawar, A., & Rahmathoni, L. Y. (2024). A New Paradigm of Criminal Procedure Law: Reconstructing the Protection of Suspects' Human Rights in the Judicial Process. Rewang Rencang: Lex Generalis Law Journal, 5(12), 1–22.

structural weakness in embedding the presumption of innocence as a binding procedural norm.[18]

Second, concerning detention, KUHAP regulates both subjective and objective grounds; however, these provisions remain broadly formulated and lack precise limitations. The absence of strict criteria particularly regarding necessity, proportionality, and judicial control allows detention to be applied expansively. In contrast, the principle of due process of law requires that detention be treated as an exceptional measure subject to rigorous legal scrutiny. The persistence of flexible and open-ended norms indicates that the KUHAP framework still prioritizes law enforcement efficiency over individual liberty.

Third, in the context of the right to legal counsel, Article 54 KUHAP guarantees legal assistance but fails to impose a mandatory obligation for legal representation at the earliest stage of investigation. This normative gap enables interrogation practices without legal supervision, thereby undermining the principle of equality of arms. Although the RUU KUHAP introduces broader recognition of defense rights, it has not yet fully resolved the issue of mandatory legal assistance from the outset of the criminal process. This imbalance of procedural power continues to weaken the position of suspects within the criminal justice system.

Fourth, with regard to pretrial mechanisms KUHAP limits its scope to specific procedural actions, such as arrest, detention, and the termination of investigation. However, it does not comprehensively cover other coercive measures, including search, seizure, and surveillance. This limited scope reduces the effectiveness of pretrial review as a mechanism of judicial control. Although developments in judicial practice have expanded its interpretation, the absence of explicit normative reform within KUHAP creates legal uncertainty and inconsistency in its application.[19]

Fifth, KUHAP does not explicitly recognize the exclusionary rule, which requires that unlawfully obtained evidence be excluded from trial. The absence of this principle represents a fundamental normative deficiency, as it allows evidence obtained through coercion or procedural violations to remain admissible. From a due process of law perspective, this omission directly undermines the integrity of the criminal justice process and fails to align with international fair trial standards.

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[18] Tanmadibrata, R. (2026). The Construction of the Right to Legal Aid in the 2025 Criminal Procedure Code and Its Implications for the Criminal Justice System. Journal of Social Technology, 6(2), 565–575.
[19] Suwandi, & Isram. (2025). Issues Regarding the Regulation of Law Enforcement Authorities' Powers in the 2025 Criminal Procedure Code (KUHAP) Examined from the Principle of Due Process of Law. Indonesian Journal of Law and Justice, 2(2), 53-65.

Sixth, concerning surveillance and investigative measures, KUHAP lacks comprehensive regulation on practices such as interception or electronic monitoring, particularly in terms of judicial authorization and procedural safeguards. This normative vacuum creates the potential for unregulated intrusion into individual privacy, which is inconsistent with the principle of legality and proportionality in modern criminal procedure. Seventh, in relation to the time limits for investigation, KUHAP does not provide clear and definitive procedural deadlines. This absence allows prolonged investigative processes and indefinite suspect status, resulting in legal uncertainty and potential violations of individual rights. Although the RUU KUHAP attempts to introduce more structured timelines, the formulation remains insufficiently strict to prevent abuse of authority.[20]

These normative deficiencies are further exacerbated by weaknesses in implementation. Empirical studies show that procedural violations such as improper suspect designation and lack of legal safeguards continue to occur in practice.[21] Moreover, weak oversight mechanisms contribute to the persistence of such violations, indicating that the principle of checks and balances has not been effectively institutionalized within the criminal justice system.[22]

At a systemic level, these issues reflect the continued dominance of the crime control model, which prioritizes efficiency and enforcement outcomes over procedural fairness. This creates an unresolved normative tension between the objectives of law enforcement and the protection of individual rights.[23] The RUU KUHAP, although intended as a reform instrument, has not yet fully resolved this tension, as it still reflects a strong orientation toward enforcement authority rather than rights protection.

Therefore, it can be argued that the weaknesses of due process of law within KUHAP are not solely due to insufficient legal provisions, but also stem from a structural imbalance in the normative design and enforcement paradigm. The persistence of broad discretionary powers, limited judicial oversight, and the absence of key procedural safeguards indicates the need for a more fundamental normative reconstruction.

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[20] Suwandi, & Isram. (2025). Issues Regarding the Regulation of Law Enforcement Authorities' Powers in the 2025 Criminal Procedure Code (KUHAP) Examined from the Principle of Due Process of Law., 31

[21] Suwandi, & Isram. (2025). Issues Regarding the Regulation of Law Enforcement Authorities' Powers in the 2025 Criminal Procedure Code (KUHAP) Examined from the Principle of Due Process of Law., 60

[22] Kurdi, Ardhan, A., & Dadek, T. A. The Transformation of Due Process of Law Enforcement in the Investigation Stage in Indonesia: Between the Protection of Suspects' Rights and the Effectiveness of Law Enforcement. Legal Standing: Journal of Legal Science, 10(1), (2026). 33–45.

[23] Saputra, E. The Criminal Procedure Code Bill: The Dominance of the Crime Control System and the Threat to the Principle of Due Process of Law. JIMU: Multidisciplinary Scientific Journal, 3(3), (2025). 1708–1716.

Accordingly, the reform of KUHAP must move beyond incremental changes and adopt a more progressive approach that places due process of law as the central organizing principle. This includes codifying strict evidentiary standards, limiting coercive powers, expanding judicial oversight mechanisms, and incorporating fundamental doctrines such as the exclusionary rule. Only through such comprehensive reform can the criminal justice system achieve a balance between effective law enforcement and the protection of constitutional rights.

3. **Implications and Directions for the Revision of the Criminal Procedure Code Based on the Principle of Due Process of Law**

The discrepancy between applicable legal norms and law enforcement practices indicates that the protection of citizens' constitutional rights has not yet been optimally implemented. Although Article 28D(1) of the 1945 Constitution of the Republic of Indonesia guarantees the right to fair legal certainty, and the Criminal Procedure Code (KUHAP) formally regulates the rights of suspects and defendants, deficiencies in both normative design and implementation demonstrate that the principle of due process of law has not been systematically internalized within Indonesia's criminal justice system.

These conditions imply the necessity of a more substantive reform of KUHAP, focusing not merely on general normative provisions but on the reconstruction of specific legal norms. In this regard, the direction of KUHAP revision must emphasize the strengthening of procedural safeguards through clearer and more operational legal formulations. First, concerning the designation of suspects, the revised KUHAP must explicitly codify a minimum evidentiary standard, requiring at least two valid pieces of evidence prior to the formal designation of a suspect. This requirement should be incorporated directly into statutory provisions rather than relying solely on Constitutional Court jurisprudence. Additionally, the introduction of a preliminary judicial review mechanism is necessary to assess the legality of suspect designation at an early stage, thereby reinforcing the presumption of innocence and preventing arbitrary actions.

Second, with regard to detention, the revised KUHAP must clearly incorporate the principles of necessity and proportionality. Detention should be explicitly defined as a measure of last resort (ultima ratio), subject to strict judicial authorization and periodic review. Furthermore, precise and enforceable time limits for detention must be established to prevent prolonged deprivation of liberty without sufficient legal justification.

Third, in relation to the right to legal counsel, Article 54 KUHAP must be strengthened by introducing a mandatory requirement for legal representation from the earliest stage

of the investigation process, particularly during the first interrogation. Legal provisions must explicitly prohibit examinations conducted without the presence of legal counsel, especially in cases involving serious criminal charges. This reform is essential to uphold the principle of equality of arms and to prevent coercive interrogation practices, as highlighted.[24]

Fourth, concerning pretrial mechanisms the scope of judicial review must be expanded to include all forms of coercive measures, such as search, seizure, and surveillance. Moreover, judges should be granted authority to examine not only the formal legality but also the substantive justification of law enforcement actions. Strengthening pretrial mechanisms is crucial to ensuring effective judicial control and reinforcing the principle of checks and balances within the criminal justice system.[25]

Fifth, the revised KUHAP must explicitly adopt the exclusionary rule, by stipulating that any evidence obtained through unlawful means shall be inadmissible in court proceedings. This principle is essential to prevent the legitimization of rights violations, such as torture or coercion, and to align national procedural law with international fair trial standards. Sixth, in relation to surveillance and modern investigative techniques, the revised KUHAP must provide comprehensive regulation governing authorization procedures, scope, and oversight. All forms of interception or electronic monitoring must require prior judicial approval and be subject to strict limitations to ensure the protection of privacy rights and prevent abuse of authority.

Seventh, concerning time limits for investigation, the revised KUHAP must establish clear and enforceable deadlines for investigative processes, along with legal consequences for non-compliance. This provision is essential to ensure legal certainty and to prevent indefinite suspect status, which undermines individual rights. As identified the absence of clear procedural time limits constitutes a significant loophole that enables abuse of authority.[26]

In addition to normative reform, the revision of KUHAP must also address institutional aspects, particularly the strengthening of oversight mechanisms over law enforcement authorities. The weakness of existing oversight systems, as identified

[24] Murtadho, A., N. Illegally Obtained Evidence in Indonesia's Draft Criminal Procedure Code (RUU KUHAP): Exclusionary Rules and the Due Process of Law. De Jure Law Research Journal, 25(3), (2025). 291–308.
[25] Jimly Asshiddiqie (2020). The Constitution and Constitutionalism in Indonesia.., 39
[26] Jimly Asshiddiqie (2020). The Constitution and Constitutionalism in Indonesia.., 43

indicates that procedural reform must be accompanied by institutional reform.[27] Therefore, the establishment of independent and accountable supervisory bodies is essential to ensure compliance with due process of law. Furthermore, the revision of KUHAP must ensure harmonization with international legal standards, particularly the fair trial principles under the International Covenant on Civil and Political Rights (ICCPR), which Indonesia has ratified through Law No. 12 of 2005. Such harmonization is a strategic step to enhance both the legitimacy of the criminal justice system and the protection of constitutional rights.

In conclusion, the direction of KUHAP reform must focus on constructing a criminal justice system that balances the effectiveness of law enforcement with the protection of constitutional rights. This requires comprehensive reform through the strengthening of procedural guarantees, the limitation of discretionary powers, the expansion of judicial oversight, and the full integration of the principle of due process of law as the foundational framework. Such an approach is expected not only to enhance the protection of individual rights but also to strengthen public trust in the criminal justice system.

CONCLUSION

Based on the results of this study, it can be concluded that although the Criminal Procedure Code (KUHAP) formally guarantees the protection of citizens' constitutional rights, normatively there remain fundamental deficiencies in the implementation of the principle of *due process of law*. These deficiencies include the absence of a clear evidentiary standard in the designation of suspects, the regulation of detention that is not yet based on the principles of necessity and proportionality, the lack of a mandatory requirement for legal counsel from the earliest stage of examination as stipulated in Article 54 KUHAP, the limited scope of pretrial mechanisms, the absence of an explicit *exclusionary rule*, weak regulation of surveillance measures, and the lack of clear time limits for investigation.

These conditions indicate that KUHAP still reflects the dominance of the *crime control model*, which prioritizes the effectiveness of law enforcement over the protection of individual rights. Therefore, a normative reconstruction of KUHAP is required, oriented toward strengthening the principle of *due process of law*, through the formulation of clear evidentiary standards, limitations on detention powers, mandatory legal assistance from the outset, expansion of pretrial review, adoption of the *exclusionary rule*, regulation of

[27] Manalu, J. O. G., Yuliartini, N. P. R., & Mangku, D. G. S. A review of regulations regarding the time limit for upgrading the status of a police report from an inquiry to an investigation based on the perspective of the Criminal Procedure Code (KUHAP). Al-Zayn: Journal of Social Sciences & Law, 4(1), (2026). 5272–5278.

surveillance based on judicial authorization, and the establishment of definite time limits for investigation.

This study contributes theoretically to the development of the concept of *constitutional criminal procedure*, and practically provides a normative framework for the reform of KUHAP that is more oriented toward the protection of constitutional rights. However, this study is limited by its normative approach; therefore, further empirical research is necessary to examine the implementation of the principle of *due process of law* in practice within Indonesia's criminal justice system.

REFERENCES

Abidin, Z. 2022. "Incorporation of Fair Trial Rights in the Draft Criminal Procedure Code." *Human Rights Journal* 15, no. 1: 44–69. https://doi.org/10.58823/jham.v15i1.117.

Asshiddiqie, Jimly. 2020. *The Constitution and Constitutionalism in Indonesia*. Jakarta: Sinar Grafika.

Hasibuan, K., B. S. Panjaitan, and A. M. Harahap. 2024. "The Criminal Procedure Code Bill: Challenges and Harmonization between the Due Process of Law Principle and the Criminal Justice System in Indonesia." *Journal of Research in Social Sciences, Politics, and Humanities* 3, no. 2: 57–72. https://doi.org/10.55606/jurrish.v3i2.6023.

Kurdi, Ardhan, A., and T. A. Dadek. 2026. "The Transformation of Due Process of Law Enforcement in the Investigation Stage in Indonesia: Between the Protection of Suspects' Rights and the Effectiveness of Law Enforcement." *Legal Standing: Journal of Legal Science* 10, no. 1: 33–45. https://doi.org/10.24269/ls.v10i1.12833.

Manalu, J. O. G., N. P. R. Yuliartini, and D. G. S. Mangku. 2026. "A Review of Regulations Regarding the Time Limit for Upgrading the Status of a Police Report from an Inquiry to an Investigation Based on the Perspective of the Criminal Procedure Code (KUHAP)." *Al-Zayn: Journal of Social Sciences & Law* 4, no. 1: 5272–5278. https://doi.org/10.61104/alz.v4i1.4020.

Marzuki, Peter Mahmud. 2021. *Legal Research*. Jakarta: Kencana.

Moonti, W., and R. M. Moonti. 2025. "The Effectiveness of Pretrial Proceedings in Overturning the Designation of a Suspect." *TERANG: Journal of Social, Political, and Legal Studies* 2, no. 2: 297–311.

Murtadho, A. N. 2025. "Illegally Obtained Evidence in Indonesia's Draft Criminal Procedure Code (RUU KUHAP): Exclusionary Rules and the Due Process of Law." *De Jure Law Research Journal* 25, no. 3: 291–308. https://doi.org/10.30641/dejure.2025.V25.291-308.

Nasution., Padeni, R., Milen, S., Ramadhan, K. I., Sitorus, K., & Chandra, A. 2024. "The Practice of Due Process of Law in the Indonesian Criminal Justice System as Seen

in the Decisions of the Medan District Court (2022–2023)." *Journal of Legal Scholars (JBH)* 2,(1): 117–128.

Noor, M. S., A. Munawar, and L. Y. Rahmathoni. 2024. "A New Paradigm of Criminal Procedure Law: Reconstructing the Protection of Suspects' Human Rights in the Judicial Process." *Rewang Rencang: Lex Generalis Law Journal* 5, no. 12: 1–22.

Pohan, M. P. R., E. Yunara, and P. R. Siagian. 2026. "Application of the Due Process of Law Principle to the Validity of Suspect Designation without Prior Examination (Study of Judgment No. 10/Pid.Pra/2024/PN Bdg)." *Galuh Justisi Scientific Journal* 14, no. 1: 195–206.

Prasetya, D. A., and D. Indraswara. 2025. "Progressive Leaps in the Criminal Procedure Code (KUHAP) as an Effort to Realize a Just Criminal Justice System." *Indonesian Perspective on Law and Human Rights (IPMHI)* 5, no. 2. https://doi.org/10.15294/ipmhi.v5i2.41568.

Putri Astana, I. G. A. A. E., and A. A. N. O. Y. Darmadi. 2025. "The Urgency of Applying the Principle of Due Process of Law in Witness Examinations Prior to the Designation of a Suspect." *Jurnal Media Akademik (JMA)* 3, no. 11.

Putri, N. N. F. C., and I. G. A. S. R. Maharani. 2025. "Pretrial Proceedings as an Instrument of Accountability in the Investigative Process within the Criminal Justice System." *Jurnal Kertha Desa* 13, no. 11: 1195–1206.

Saputra, E. 2025. "The Criminal Procedure Code Bill: The Dominance of the Crime Control System and the Threat to the Principle of Due Process of Law." *JIMU: Multidisciplinary Scientific Journal* 3, no. 3: 1708–1716.

Sitompul, S. M. 2026. "From the 1981 Criminal Procedure Code to the 2025 Criminal Procedure Code: Affirming the Advocate as a Pillar of the Balance of Power in a Modern Criminal Justice System." *Staatsrecht: Journal of Constitutional Law and Islamic Politics* 6, no. 1. https://doi.org/10.14421/.

Soekanto, Soerjono, and Sri Mamudji. 2020. *Normative Legal Research*. Jakarta: Rajawali Pers.

Suwandi, and Isram. 2025. "Issues Regarding the Regulation of Law Enforcement Authorities' Powers in the 2025 Criminal Procedure Code (KUHAP) Examined from the Principle of Due Process of Law." *Indonesian Journal of Law and Justice* 2, no. 2: 53–65. https://doi.org/10.61476/w6vrsn18.

Tanmadibrata, R. 2026. "The Construction of the Right to Legal Aid in the 2025 Criminal Procedure Code and Its Implications for the Criminal Justice System." *Journal of Social Technology* 6, no. 2: 565–575. https://doi.org/10.59188/jurnalsostech.v6i2.32709.

Triana, I. D. S., M. Y. Irza, and A. Awaludin. 2025. "Reform of the Criminal Procedure Code in Building a Fair Criminal Justice System and Protecting Human Rights." *Al-Zayn: Journal of Social Sciences & Law* 3, no. 6: 8293–8304. https://doi.org/10.61104/alz.v3i6.2527.