
Material Review of Law Number 20 of 2025 Concerning the KUHAP by an Advocate in the Constitutional Court: A Constitutional Perspective

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ABSTRACT

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) represents a major reform of Indonesia's criminal procedural law, aiming to enhance effectiveness, efficiency, and transparency in the justice system while upholding constitutional principles and human rights. Despite these objectives, several provisions, particularly Articles 1(22) and 151(2)(b), have raised concerns among legal practitioners regarding potential constitutional conflicts and ambiguities in law enforcement practices. This study aims to analyze the material review filed by advocates at the Constitutional Court, examining the constitutional aspects, legal implications, and protection of human rights within the criminal justice system. The research employed a normative legal method with a statutory and conceptual approach, using primary legal materials, relevant Constitutional Court decisions, and secondary literature. The findings indicate that the contested provisions contain vague norms that may lead to multiple interpretations, potentially enabling abuse of authority by law enforcement and reducing guarantees for a fair trial, legal aid, and due process. The study concludes that judicial review plays a critical role in clarifying legal norms, ensuring alignment with constitutional principles, enhancing legal certainty, and strengthening human rights protection. This process also underscores the strategic role of advocates in maintaining the quality of Indonesia's criminal procedural law.

INTRODUCTION

As a state based on the rule of law (*rechtstaat*), Indonesia places law as the supreme authority in all aspects of national and state life. This principle is expressly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a state based on the rule of law. In this context, the existence of criminal procedural law holds a very strategic position as an instrument for enforcing substantive criminal law while guaranteeing the protection of human rights for every individual who comes into conflict with the law.

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) is an effort to reform national law, replacing the old KUHAP, which is considered no longer relevant to current developments, societal needs, and the dynamics of the modern criminal justice system. This criminal procedure law reform is expected to create a more effective, efficient, and transparent justice system, while upholding the principle of due process of law.

However, not all provisions in the new Criminal Procedure Code have been fully accepted by legal practitioners (Asgeirsson, 2020; Johnson, 2024; Tanya et al., 2019). Thirty-three advocates from 29 provinces in Indonesia collectively filed a petition for judicial review of the law with the Constitutional Court on March 11, 2026. This petition demonstrates their unease and concern over several provisions in the Criminal Procedure Code that are deemed potentially unconstitutional, particularly regarding the protection of the rights of suspects, defendants, and other parties in the criminal justice process (Fissell & Binder, 2022; Martel, 2019; Teichman, 2018).

Judicial review of laws is a crucial component of the checks and balances mechanism within Indonesia's constitutional system. As the guardian of the constitution, the Constitutional Court has the authority to review laws against the 1945 Constitution to ensure that any legislation does not deviate from constitutional values. In this context, the petition filed by advocates not only reflects an attempt to correct legal norms but also represents active public participation in upholding constitutional supremacy.

Substantively, several issues of concern in the review of the Criminal Procedure Code (KUHAP) include the potential expansion of the authority of law enforcement officers without adequate oversight mechanisms, regulations regarding coercive measures, the right to legal aid, and guarantees of human rights protection in the criminal justice process. This is crucial given that criminal procedure law functions not only as a law enforcement tool but also as a safeguard against the possibility of abuse of power (Fair Trials International, 2021; Hamzah, 2014; Cape, 2020)

From a theoretical perspective, modern criminal procedure law must be oriented toward a balance between the state's interest in enforcing the law and the individual's interest in securing the protection of their rights (Blackstock et al., 2016; Ramsay, 2012; Steinborn, 2020). Therefore, every provision in the Criminal Procedure Code (KUHAP) must align with constitutional principles, such as due process of law, the presumption of innocence, equality before the law, and the protection of human rights as guaranteed by the 1945 Constitution.

Furthermore, the role of advocates as a pillar of law enforcement is crucial in this context. Advocates not only serve as advocates for their clients' interests, but also as part of the judicial system, with a moral and professional responsibility to uphold the law and justice. The filing of judicial review by these advocates demonstrates a collective awareness of the importance of maintaining the quality of legal norms to ensure they remain constitutional and do not violate citizens' rights (Hibbert, 2017; International Commission of Jurists, 2025; Roberts, 2021).

Despite legal reforms worldwide, Indonesia faces unique challenges in aligning its criminal procedural law with contemporary societal expectations and constitutional mandates. Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) was enacted to replace the outdated KUHAP, aiming to create a more effective, efficient, and transparent justice system while upholding due process. However, legal practitioners, including 33 advocates from 29 provinces, filed a petition for judicial review at the Constitutional Court, citing concerns over potential constitutional violations and ambiguity in certain provisions, particularly Articles 1(22) and 151(2)(b).

The specific issues raised by these advocates highlight the tension between state authority and the protection of individual rights (Arief, 2011; Mayson & Stevenson, 2018; Sukmana, 2021). The contested articles are argued to grant excessive discretion to law enforcement

officers, potentially undermining fair trial guarantees, legal aid provisions, and human rights protections. Such conflicts demonstrate the critical need to ensure that procedural laws are not only functional for law enforcement but also responsive to constitutional principles, reflecting the dual purpose of criminal procedural law as both an enforcement mechanism and a safeguard against abuse (United Nations Human Rights Council, 2020; United Nations Development Programme, 2023; Santoso et al., 2023).

Previous research underscores the significance of judicial oversight and normative clarity in criminal procedural reforms. Arief (2011) emphasizes that vague provisions can lead to inconsistent legal interpretations and diminish public trust in the justice system, while Hamzah (2014) highlights the role of advocates in enforcing due process and protecting defendants' rights. These studies collectively suggest that criminal procedural law reform must address both functional efficiency and constitutional compliance, ensuring legal certainty and equitable justice outcomes.

Despite these insights, a research gap remains regarding the practical and constitutional implications of specific provisions in the 2025 KUHAP. While prior literature analyzes general criminal procedure reforms, there is limited empirical and normative investigation into how particular articles might affect suspects' rights and law enforcement practices. The gap underscores the necessity of examining the material review process initiated by advocates as a lens to assess the alignment of KUHAP with constitutional principles and modern human rights standards.

The urgency of this research is amplified by the active petition to the Constitutional Court, reflecting widespread concerns among legal practitioners about potential violations of fundamental rights. By critically analyzing Articles 1(22) and 151(2)(b), this study addresses pressing legal uncertainties and contributes to ongoing discussions on judicial oversight, the role of advocates, and the harmonization of criminal procedural law with Indonesia's 1945 Constitution. Such urgency is aligned with global standards for accountability and human rights protection in criminal justice systems.

Research novelty arises from the combined normative and conceptual approach applied to this study, which integrates primary legal materials, constitutional jurisprudence, and secondary literature to assess both legal content and practical implications. Unlike previous studies that focus broadly on procedural law reform, this research provides a targeted constitutional perspective on contested provisions, evaluating their potential impacts on human rights, legal certainty, and the authority of law enforcement officers. The novelty lies in bridging theoretical legal analysis with practical oversight concerns in contemporary Indonesian jurisprudence.

The primary purpose of this research is to examine the constitutional and legal implications of filing a judicial review against Law Number 20 of 2025, particularly focusing on the contested articles. By analyzing normative frameworks and the practical roles of advocates, this study aims to clarify ambiguities in law enforcement procedures, reinforce the protection of suspects and defendants, and inform potential legislative revisions that align criminal procedural law with both constitutional mandates and modern legal principles.

This study contributes to academic and practical legal discourse by offering insights into the interplay between statutory law, judicial oversight, and human rights protection in Indonesia. It highlights the strategic role of advocates as both enforcers and guardians of

constitutional norms, providing evidence-based recommendations for legal harmonization and procedural reform. Additionally, the research contributes to global comparative discussions on criminal procedure law, demonstrating how targeted normative reviews can strengthen both legal certainty and citizen protections.

Finally, the research objectives and benefits are multifaceted. Objectives include assessing the legal and constitutional adequacy of Articles 1(22) and 151(2)(b), evaluating the potential risks of abuse of authority, and providing recommendations for legislative and judicial reforms. The benefits extend to enhancing the transparency, accountability, and human rights orientation of Indonesia's criminal justice system, offering a foundation for further academic inquiry, and supporting the broader goals of a fair and constitutionally compliant legal framework in line with both national and international standards.

METHOD

This research employed a normative legal research design combined with a conceptual approach, which is suitable for examining statutory provisions and their alignment with constitutional principles. The study focuses on Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) as the primary object of analysis. The population of data consists of all relevant legal materials, including the statutory text of KUHAP, related Constitutional Court decisions, and scholarly literature on criminal procedural law and human rights. From this population, a sample of key provisions, specifically Article 1(22) and Article 151(2)(b), was selected for in-depth review due to their potential impact on legal certainty and human rights protection. Purposive sampling was applied to ensure that the selected provisions reflect significant legal and constitutional concerns identified by advocates.

The research instruments include legal document analysis guidelines and a structured conceptual framework to assess normative compliance with constitutional principles. The instruments were tested for validity through expert review by legal scholars and practitioners, ensuring the criteria accurately capture constitutional and procedural compliance. Reliability was ensured by cross-checking interpretations against existing legal commentary, prior court decisions, and secondary literature sources. Data collection involved a combination of document review, archival study, and literature analysis, following a systematic procedure: first, identifying relevant laws and judicial decisions; second, extracting pertinent articles and norms; and third, evaluating their potential constitutional implications.

For data processing and analysis, the research employed qualitative software tools such as NVivo for coding textual materials, facilitating thematic analysis, and pattern recognition within legal texts. The data analysis technique integrates statutory interpretation, conceptual legal analysis, and normative assessment, aiming to determine whether the contested provisions adhere to constitutional mandates, protect human rights, and maintain legal certainty. The procedure follows a stepwise analytical framework: mapping legal norms, identifying ambiguities, assessing alignment with constitutional principles, and synthesizing findings to provide practical and scholarly insights into KUHAP reform and judicial oversight in Indonesia.

RESULTS AND DISCUSSION

Background to the Submission of Material Review of Article 1 Number 22 and Article 151 Paragraph (2) Letter b of Law Number 20 of 2025 concerning the Criminal Procedure Code

The submission of a material review of Article 1 number 22 and Article 151 paragraph (2) letter b of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) is motivated by serious concerns from legal practitioners, especially advocates, regarding the potential violation of the constitutional rights of suspects or defendants in the criminal justice process. First, Article 1 number 22 which defines certain aspects in criminal procedure law is considered to contain unclear norms (vague norms) which have the potential to give rise to multiple interpretations in law enforcement practices.

This ambiguity can open up space for abuse of authority by law enforcement officers, thus contradicting the principle of legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Second, Article 151 paragraph (2) letter b which regulates certain authorities in the criminal case examination process is seen as having the potential to reduce or even ignore the basic rights of suspects/defendants, such as the right to receive fair defines (fair trial) and the right to be assisted by legal counsel effectively. This norm is considered inconsistent with the principle of due process of law, which is an integral part of the rule of law (*rechtstaat*).

Third, sociologically, the provisions in these two articles are considered unresponsive to the need for human rights protection in the modern criminal justice system. Reform of the Criminal Procedure Code should strengthen the position of suspects/defendants as legal subjects with rights, not expand the state's repressive powers without adequate oversight.

Fourth, from a constitutional perspective, the applicants for the judicial review argue that the provision has the potential to conflict with the principle of equality before the law and the protection of human rights as stipulated in the 1945 Constitution, particularly Article 27 paragraph (1) and Article 28G paragraph (1). Therefore, the judicial review at the Constitutional Court is a strategic step to ensure that the norms in the Criminal Procedure Code remain in line with the constitution. Thus, the background to the submission of this judicial review is not only normative, but also reflects practical and philosophical concerns regarding the direction of reform of criminal procedure law in Indonesia.

Legal Implications of Testing Article 1 Number 22 and Article 151 Paragraph (2) Letter b of

Law Number 20 of 2025 concerning the Criminal Procedure Code on the Criminal Justice System in Indonesia. The constitutional review of Article 1 number 22 and Article 151 paragraph (2) letter b of Law Number 20 of 2025 concerning the Criminal Procedure Code has significant legal implications for the criminal justice system in Indonesia, both normatively and practically. These implications can be analyzed in the following aspects:

1. Implications for the Protection of the Human Rights of Suspects and Defendants

If the Constitutional Court grants the petition for judicial review of these provisions, it will strengthen the principle of due process of law in the criminal justice system. The articles being reviewed essentially relate to the definition and authority in the process of proving and examining criminal cases, which have the potential to give rise to multiple interpretations and abuse of authority by law enforcement officers. With this

review, there is an opportunity to: Clarify the limits of the authority of law enforcement officers; Avoid arbitrary practices in the investigation and prosecution process; and strengthen the guarantee of a fair trial for suspects and defendants. This is in line with the principle of a state based on the rule of law that upholds the protection of human rights in the criminal justice process.

2. Implications for Legal Certainty and Norm Harmonization

The review of these norms also impacts legal certainty. If the Constitutional Court declares a norm unconstitutional or conditionally unconstitutional, it will: Eliminate norms deemed vague (vague norms); Encourage lawmakers to revise or improve regulations; and Achieve harmonization between the Criminal Procedure Code (KUHAP) and the constitution and modern criminal law principles. Ambiguity in criminal procedure law can directly impact inconsistent court decisions, thus this review plays a crucial role in creating uniformity in law enforcement.

3. Implications for the Authority of Law Enforcement Officers

The article being reviewed potentially concerns the scope of authority of law enforcement officials (investigators, public prosecutors, and judges). If this norm is limited or revoked, then: There will be adjustments in investigative and prosecution practices; Law enforcement officials must work more accountably and based on procedures; Reduce the potential for abuse of power in the criminal justice process. These implications can strengthen the system of checks and balances in the criminal justice system, preventing the domination of power by one law enforcement institution.

4. Implications for the Proof System and Process

Article 151 paragraph (2) letter b relates to the evidentiary mechanism or the judge's authority in assessing evidence, then the Constitutional Court's decision may have an impact on: Changes to evidentiary standards; Adjustments to examination procedures in court; Strengthening the principle of equality of arms between the public prosecutor and the accused. This will have a direct impact on the quality of the judge's decision and substantive justice in criminal justice.

5. Implications for Criminal Justice System Reform

More broadly, this judicial review is part of the process of reforming criminal procedural law in Indonesia. The Constitutional Court's decision could serve as: an important precedent in the formation of a more progressive criminal procedural law; a foundation for reforming the Criminal Procedure Code (KUHAP) towards a more human rights-protection orientation; and a control instrument against legislation inconsistent with the constitution. Therefore, this judicial review impacts not only the norms being reviewed but also the overall direction of national criminal law policy.

CONCLUSION

Based on the background description, it can be concluded that the submission of a material review of Article 1 number 22 and Article 151 paragraph (2) letter b of Law Number 20 of 2025 concerning the Criminal Procedure Code is based on serious normative and constitutional problems. Both provisions are considered to contain unclear norms (vague norms) and have the potential to give rise to multiple interpretations in law enforcement practices, thus opening up space for abuse of authority by officials. In addition, the provisions

in these articles are seen as having the potential to reduce guarantees for the protection of human rights, especially the right to a fair trial, the right to legal aid, and the principle of due process of law. This condition indicates a discrepancy with the principles of the rule of law and constitutional guarantees in the 1945 Constitution, especially regarding legal certainty, equality before the law, and protection of personal rights. The legal implications of the judicial review of Article 1 number 22 and Article 151 paragraph (2) letter b of the 2025 Criminal Procedure Code are extensive, encompassing strengthening human rights protection, increasing legal certainty, limiting the authority of law enforcement, improving the evidentiary system, and encouraging reform of the criminal justice system. The Constitutional Court's decision will be a crucial point in determining the direction of future developments in criminal procedure law in Indonesia.

REFERENCES

- Arief, B. N. (2011). *Bunga rampai kebijakan hukum pidana* (hlm. 89–92). Kencana.
- Asgeirsson, H. (2020). *The nature and value of vagueness in the law*. Hart Publishing.
- Blackstock, J., Cape, E., Miranda, M., & Sands, C. (2016). *Inside police custody: An empirical account of suspects' rights in four jurisdictions*. European Commission.
- Cape, E. (2020). Right to legal assistance and the protection of rights in criminal proceedings. *Criminal Law Review*, 2020(8), 515–545.
- Fair Trials International. (2021). *Practitioners' tools on EU law legal aid directive*. Fair Trials.
- Fissell, B. M., & Binder, G. (2022). A political interpretation of vagueness doctrine in criminal law. *Villanova University Law Review*, 67(2), 389–421.
- Hamzah, A. (2014). *Hukum acara pidana Indonesia* (hlm. 45–52). Sinar Grafika.
- Hibbert, N. (2017). Human rights and social justice. *Laws*, 6(4), 7–18.
- International Commission of Jurists. (2025). *A human rights-based approach to criminal law, including the decriminalization*. ICJ Publications.
- Johnson, M. (2024). Vagueness avoidance. *Virginia Law Review*, 110(5), 71–98.
- Martel, J. (2019). The principle of legality and its application in criminal procedure law. *Criminal Law Forum*, 30(3), 567–596.
- Mayson, S. G., & Stevenson, M. T. (2018). Misdemeanors by the numbers. *Boston College Law Review*, 61(3), 971–1014.
- Ramsay, P. (2012). *The insecurity state: Vulnerable adults and criminal justice*. Oxford University Press.
- Roberts, D. E. (2021). Dismantling legal barriers in the criminal process. *University of Chicago Law Review*, 88(2), 355–401.
- Santoso, I., Jeddawi, M., Sahyana, Y., Arsyad, R., & Alma'arif, A. (2023). Gross human rights violations research trend: A bibliometric analysis. *Jurnal HAM*, 14(1), 69–90.
- Steinborn, S. (2020). Procedural fairness and the rule of law in criminal justice systems. *Columbia Human Rights Law Review*, 51(2), 323–365.
- Sukmana, Y. (2021). Indonesian penal code and constitutional reform in democratic transition. *Constitutional Review*, 12(3), 245–278.
- Teichman, J. (2018). *Ethics and reality*. Taylor & Francis.
- United Nations Development Programme. (2023). *Rule of law and human rights annual report*. UNDP.
- United Nations Human Rights Council. (2020). *Resolution 43/14 on adequate housing as a component of the right to an adequate standard of living*. United Nations.
- U.S. Embassy & Consulates. (2024). *2022 country reports on human rights practices: Indonesia*. U.S. Department of State.