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Harmonising Indonesia's New Criminal Code and Code of Criminal Procedure: Rights, Restorative Justice and Institutional Coordination

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Abstract

Indonesia's new Criminal Code (Law No 1 of 2023) and new Code of Criminal Procedure (Law No 20 of 2025) have both applied since 2 January 2026, so harmonisation is no longer a reform proposal but a question of how two codes enacted at different times operate together. This normative study asks how the substantive and procedural codes fit one another, what legal and practical obstacles their joint application creates, and what measures can reduce them. Using statutory, conceptual and analytical approaches, it examines the two codes, the adjustment law of 2026, the Supreme Court's transitional guidance and recent scholarship, and tests the rules against legality, due process, proportionality and accountability. The study finds that the codes are linked mainly through restorative justice, sentencing alternatives, the transitional rule favouring the defendant and the allocation of investigative authority. It identifies four obstacles: thresholds and transitional rules that can be read differently, procedural gaps for new sentencing forms, overlapping investigative roles, and weak judicial control over coercive measures. It recommends implementing regulations, uniform case-handling standards, an integrated case-management system and judicial warrants, and it separates legal inference from empirical claims about implementation.

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Keywords

Harmonisation; Codification; Procedure; Restorative; Investigation; Transition

Introduction

Indonesia has replaced both pillars of its criminal law, and both new codes now apply. The Criminal Code (*Kitab Undang-Undang Hukum Pidana*, KUHP) enacted in

Law No 1 of 2023 takes effect three years after its promulgation, which is 2 January 2026.[1] The new Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) in Law No 20 of 2025 replaces Law No 8 of 1981 and applies from the same date.[2] A further statute, Law No 1 of 2026, adjusts the criminal provisions found in other legislation to the new Criminal Code,[3] and the Supreme Court has issued Circular Letter No 1 of 2026 to guide judges in applying the two Codes, including their transitional rules.[4] The country therefore has a national substantive code and a procedural code written after it.

The two codes were not drafted at the same time. The Criminal Code was enacted in 2023, while the procedural code that must carry it into practice was passed by the legislature only in November 2025, despite objections from civil society.[5] Discussions of harmonisation written before then often treated the 1981 procedural statute as the object to be revised so that it would fit the new substantive code. That premise is now out of date. The relevant question has changed from whether a procedural code should be revised to whether the new procedural code gives the new substantive concepts a workable procedure, and where gaps, overlaps or conflicts remain. The question matters because substantive criminal law, criminal procedure and the law on the execution of sentences operate as one system: a sentence that the Criminal Code allows but no procedure can impose, or a diversion that the procedural code allows but the substantive code does not support, leaves officials without a lawful route and citizens without legal certainty.

Earlier scholarship approaches the two codes mostly one mechanism at a time. Abdullah argued, before either code was enacted, that customary sanctions are living legal values that national criminal law reform should recognise and protect,[6] a theme that the Criminal Code now takes up through its recognition of living law. Pattinasarany compares the pretrial review of 1981 with that of the new procedural code and finds that the reform widens judicial control, while leaving open questions about standing, the relation between prior authorisation and later review, and the effect of unlawful coercive measures.[7] Rahmawati criticises the procedural code for

[1] Law No 1 of 2023 on the Criminal Code (Indonesia), art 624.

[2] Law No 20 of 2025 on the Code of Criminal Procedure (Indonesia).

[3] Law No 1 of 2026 on the Adjustment of Criminal Provisions in Laws and Regulations [Penyesuaian terhadap Ketentuan Pidana dalam Peraturan Perundang-undangan] (Indonesia).

[4] Supreme Court of the Republic of Indonesia, Circular Letter No 1 of 2026 [Surat Edaran Mahkamah Agung Nomor 1 Tahun 2026].

[5] Maidina Rahmawati, "Draconian and Illiberal: Indonesia's New KUHAP Is Worse than the Old One" (10 December 2025), online: *Indonesia at Melbourne* <https://indonesiaatmelbourne.unimelb.edu.au/draconian-and-illiberal-indonesias-new-kuhap-is-worse-than-the-old-one/>.

[6] Rahmat Hi Abdullah, "Urgensi Hukum Adat dalam Pembaharuan Hukum Pidana Nasional [The Urgency of Customary Law in National Criminal Law Reform]" (2015) 9:2 *Fiat Justisia: Jurnal Ilmu Hukum*, DOI: <10.25041/fiatjustisia.v9no2.595>.

[7] Eva Berta Pattinasarany, "Pretrial Review in Indonesia: Judicial Control under the 2025 Criminal Procedure Code" (2026) 3:4 *Journal Customary Law* 1, DOI: <10.47134/jcl.v3i4.6382>.

leaving arrest and detention without prior judicial authorisation and for dropping the preliminary examining judge proposed in earlier drafts.[8] Official and professional commentary describes the new structure of investigation, in which the police are the principal investigator,[9] and the placement of restorative justice in the procedural code itself.[10] What these studies do not do is read the two codes against each other. This article supplies that comparison, and its contribution is a structured account of the points at which the substantive and procedural codes meet, the legal obstacles at each point, and the measures that follow.

The article asks three questions. How are the Criminal Procedure Code and the Criminal Code harmonised in the criminal justice system now in force? What legal and practical obstacles arise in applying them together? What measures would strengthen their joint operation? Its purpose is to answer these questions from the text of the codes and the sources cited, and to give legislators, courts and enforcement agencies a basis for implementing regulations and training.

Research Method

This is normative (doctrinal) legal research. It does not rest on interviews, surveys or observation, and it does not measure how police, prosecutors, courts or correctional institutions have performed since the codes took effect. The primary legal materials are Law No 1 of 2023 on the Criminal Code, Law No 20 of 2025 on the Code of Criminal Procedure, Law No 8 of 1981 (now replaced), Law No 1 of 2026 on the adjustment of criminal provisions and the Supreme Court's Circular Letter No 1 of 2026. Secondary materials are journal articles, an academic commentary published by a university blog, reports by the Judicial Commission (*Komisi Yudisial*) and the Supreme Court, and a legal news service. Article numbers of the procedural code are given only where the cited sources confirm them; elsewhere the provisions are described in general terms. The period covered runs to October 2026.

Three approaches are combined. The statutory approach identifies how the codes refer to one another, which statute governs which question and when each took effect. The conceptual approach uses legality, due process, proportionality, access

[8] Rahmawati, *supra* note 5.

[9] Hukumonline, "Memahami Struktur Penyidikan KUHAP Baru: Koordinasi Polri hingga Kewenangan Penyidik Pembantu [Understanding the Investigation Structure of the New KUHAP: Police Coordination to the Powers of Assistant Investigators]" (19 November 2025), online: *Hukumonline* <https://www.hukumonline.com/berita/a/memahami-struktur-penyidikan-kuhap-baru--koordinasi-polri-hingga-kewenangan-penyidik-pembantu-lt691d21e2d1be0/>.

[10] Komisi Yudisial, "KUHAP Baru Mengakomodir Restorative Justice [The New KUHAP Accommodates Restorative Justice]" (5 March 2026), online: *Komisi Yudisial* <https://www.komisiyudisial.go.id/frontend/news_detail/16273/kuhap-baru-mengakomodir-restorative-justice>.

to justice, institutional accountability and restorative justice as the standards against which the coherence of the rules is judged. The analytical approach then follows four steps: it identifies the legal function of each relevant rule; it tests whether the rules can be read consistently; it isolates ambiguity, overlap or dependence on implementing rules; and it proposes a response that protects rights and preserves accountability. Statements about implementation risk are legal and institutional inferences from this analysis, not empirical findings.

Results and Discussion

The Legal Framework in Force since 2 January 2026

Four instruments now form the framework. The Criminal Code states which acts are offences, how criminal liability and punishment are determined and which sentencing alternatives exist. The procedural code regulates how those rules are enforced, from the receipt of a report to the termination of an investigation or the conduct of the trial. The adjustment law brings offences created outside the Criminal Code into line with its sentencing system.[11] The Supreme Court's circular letter, finally, is internal guidance for judges rather than legislation, but it fills the space between the codes where the statutes are silent, in particular on transitional rules and on the form of judgments for new types of sentence.[12]

The shared effective date does not by itself harmonise the codes, because proceedings that began before 2 January 2026 still have to be resolved. Two transitional rules matter. The Criminal Code provides that, where the law changes after an act was committed, the provision more favourable to the defendant applies.[13] The procedural code has its own transitional chapter, and a Supreme Court commentary reports that cases already under examination at trial before the date continue under the 1981 Code.[14] A prosecution may therefore combine a new substantive provision with an old procedure, or the reverse. Such combinations are lawful, but they place the burden of reconciling the codes on the judge. Clear guidance on which procedure governs a given stage, which the circular letter is intended to give, is thus a condition of legal certainty rather than a technical convenience.

[11] Law No 1 of 2026, *supra* note 3.
[12] Circular Letter No 1 of 2026, *supra* note 4.
[13] Law No 1 of 2023, *supra* note 1, art 3.
[14] Mahkamah Agung, "Transisi Hukum Pidana Baru [The New Criminal Law Transition]" (undated), online: *Marinews Mahkamah Agung* <https://marinews.mahkamahagung.go.id/artikel/transisi-hukum-pidana-baru-0Ng>.

Harmonising Concepts: Where the Substantive Code Needs Procedure

Harmonisation is most demanding where the Criminal Code introduces a concept that has no procedural machinery of its own. Four such points can be identified.

Restorative justice. Restorative justice is often said to be an emphasis of the Criminal Code. The more accurate position is that it is regulated chiefly in the procedural code, which has a chapter on it (arts 79–88),[15] whereas the Criminal Code supplies the sentencing philosophy that makes diversion coherent, namely that punishment aims not only at deterrence but also at resolving conflict and restoring balance. Until the new procedural code, restorative justice rested on regulations of the prosecution service and the police; the Judicial Commission reports that it is now written into statute and can operate before, during and after adjudication.[16] Investigators are given a new function of resolving cases through restorative justice without trial, and restorative settlement is a new ground for terminating an investigation.[17] The same source records the conditions as explained by a procedural-law academic: a maximum penalty of five years or less and an offender who is not excluded as a repeat offender. The point of harmonisation is that these thresholds are defined by the penalties of the substantive code. Because the new Criminal Code and the adjustment law revise penalties, an offence that qualified under the old penalty may no longer qualify, or the reverse. Officials must therefore check eligibility against the penalty as now written, and the implementing guidance should say so expressly. The speaker cited also doubted that restorative justice fits the inquiry stage, since victims and suspects have not yet been identified,[18] which suggests that the procedural code should be read as placing the mechanism at investigation and later stages.

Sentencing alternatives. The Criminal Code adds sentences that did not exist in the former Code, such as supervision and social work as alternatives to imprisonment, and allows a judge to decline to impose a sentence where the offence is trivial. These sentences require procedure: how the court obtains a social report, who supervises compliance, and how the judgment is worded. A Supreme Court commentary reports that the circular letter supplies a template for the operative part of a judgment imposing supervision.[19] That a judicial circular is needed shows the gap: the statutes establish the sentences, and the details of execution are left to lower-

[15] Law No 20 of 2025, *supra* note 2, arts 79–88.
[16] Komisi Yudisial, *supra* note 10.
[17] *Ibid*.
[18] *Ibid*.
[19] Mahkamah Agung, "Pidana Pengawasan dalam KUHP Nasional [Supervision Sentences in the National Criminal Code]" (undated), online: *Marinews Mahkamah Agung* <https://marinews.mahkamahagung.go.id/artikel/pidana-pengawasan-dalam-kuhp-nasional-0bhE>.

level rules. For defendants, this is a legality problem, because the content of a sentence should not depend on the practice of an individual court.

Living law. The Criminal Code recognises law living in society as a basis for criminal liability, subject to limits,[20] which gives practical force to arguments such as Abdullah's that customary sanctions deserve recognition because they restore balance and social harmony.[21] The procedural question is how a court ascertains customary norms: who must prove their content, what evidence is admissible and how the suspect is informed in advance. The procedural code, as far as the sources consulted show, does not answer this in detail, and the principle of legality, which requires that the accused be able to foresee what is prohibited, makes the omission significant.

Corporate liability. The Criminal Code treats corporations as potential perpetrators, which requires procedure for summoning and examining a corporate representative, seizing assets and enforcing corporate penalties. The sources reviewed here do not document how the procedural code handles these steps, so this article identifies corporate procedure only as a point that implementing regulations should address, without stating what the Code provides.

Table 1. Points where the Criminal Code and the Code of Criminal Procedure meet

Concept in the Criminal Code	Procedural counterpart	Harmonisation issue
Sentencing aims and restoration of balance	Restorative justice chapter and investigators' power to settle cases and end investigations	Eligibility depends on maximum penalties, which the new Criminal Code and Law No 1 of 2026 revised
Supervision and social work as sentences	Court procedure and wording of judgments	Left largely to Supreme Court guidance; risk of divergent practice
Favourable-law rule for changed legislation	Transitional chapter of the procedural code	Mixed application of new substantive and old procedural rules
Living law as a ground of liability	Ascertaining and proving customary norms	No detailed procedure identified; foreseeability at stake
Corporations as perpetrators	Examination and enforcement against corporate entities	To be addressed in implementing regulations

Source: analysis of Law No 1 of 2023, Law No 20 of 2025, Law No 1 of 2026 and the secondary sources cited.

Procedural Mechanisms: Investigation, Coercive Measures and Judicial Control

The second area of harmonisation concerns the machinery that applies the substantive rules. The new procedural code defines the investigator as a police investigator, a civil-service investigator or a specific investigator,[22] and commentary

[20] Law No 1 of 2023, *supra* note 1, art 2.
[21] Abdullah, *supra* note 6.
[22] Law No 20 of 2025, *supra* note 2, art 1(1).

describes the police as the principal investigator with authority over all offences, with civil-service and specific investigators within that structure.[23] The code lists fifteen powers and duties of investigators, including receiving reports, collecting evidence, using coercive measures, resolving cases through restorative justice, designating crown witnesses and receiving guilty pleas, and stopping an investigation with notice to the prosecutor.[24] The Judicial Commission lists restorative-justice settlement and the receipt of guilty pleas among the investigator's new functions in art 7.[25] It has been urged that the principle of differentiation of functions be applied so that prosecutors take a more active role in investigations. The enacted code gives a different answer: the investigator remains the police officer, and the prosecutor's role is one of notification and coordination. The harmonisation issue is therefore not whether prosecutors should take over investigation, but how to prevent a gap or duplication where offences under the new Criminal Code, or under legislation adjusted by Law No 1 of 2026, are investigated by agencies with their own statutes.

Coercive measures show the tension between efficiency and rights most clearly. The procedural code lists them in one provision, including the designation of a suspect, arrest, detention, search, seizure, interception, examination of correspondence, blocking of accounts and travel bans.[26] That wide list is the sphere in which the substantive code's promise of legality is put to the test. Rahmawati argues that arrest warrants are issued by the same authority that carries out the arrest, that arrested persons need not be brought before a judge before detention, that detention is permitted on vague grounds such as impeding the examination, and that the duty to obtain a warrant may be waived in emergencies judged by the investigator.[27] These are the critic's readings, and the Code's defenders may read the safeguards differently, but the structure of the objection is plain: the powers have been widened in the same period in which the substantive law has been refined, and the independent check has not kept pace.

Judicial control is offered mainly through pretrial review. According to Pattinasarany, the new procedural code (arts 158–164) extends pretrial review to the legality of coercive measures, the termination of investigation or prosecution, unrelated seizures, unjustified delay and the suspension of detention, and

[23] Hukumonline, *supra* note 9.
[24] *Ibid*.
[25] Komisi Yudisial, *supra* note 10.
[26] Law No 20 of 2025, *supra* note 2, art 89.
[27] Rahmawati, *supra* note 5.

constitutional challenges to arts 158(e) and 163(1)(e) are pending.[28] The same study concludes that expansion alone does not guarantee protection, because it is unclear who has standing to challenge delay, how prior authorisation relates to later review, what follows when a coercive measure was unlawful, and whether pretrial proceedings may suspend the main trial indefinitely.[29] For harmonisation, the lesson is that a rights-based reading of the two codes depends on remedies, not on lists of powers. A substantive code that defines liability narrowly gives little protection if the procedure that enforces it has no timely judicial remedy.

It is sometimes said that the Criminal Code itself contains new rules on electronic evidence. Rules on proof belong to the procedural code, not the substantive one. This study did not locate the procedural code's provisions on admissible evidence in the sources available, and does not describe them. What the sources do confirm is that the procedural code accepts reports and complaints submitted by telecommunication or electronic media,[30] which shows that technology is built into the initial stage. Any statement that the codes have modernised the law of evidence should be checked against the text of the procedural code before it is relied on.

Implementation Challenges

The obstacles can be sorted into legal and practical groups. As stated in the method, they are inferences from the legal framework, not measured outcomes.

Normative conflicts and ambiguity. The clearest risk is a mismatch between the penalty-based thresholds of the procedural code and the penalties as revised by the substantive code and the adjustment law. A Supreme Court commentary on the circular letter also describes a tension between two articles of the procedural code over whether theft with a maximum of five years qualifies for restorative justice,[31] which is the kind of conflict that can only be resolved by guidance or amendment. The mixed transitional regime described above adds a second source of ambiguity, since officers must decide which version of a rule governs each stage.

Gaps. Gaps arise where a new substantive concept lacks procedure: supervision and social-work sentences, living law and corporate liability, as shown in Table 1. Gaps give officials discretion, and discretion without rules is the principal source of arbitrariness in criminal enforcement. Cybercrime is often named as an area without

[28] Pattinasarany, *supra* note 7.
[29] *Ibid*.
[30] Law No 20 of 2025, *supra* note 2, art 5(1)(a).
[31] Mahkamah Agung, "Harmonisasi melalui SEMA Nomor 1 Tahun 2026 [Harmonisation through Circular Letter No 1 of 2026]" (undated), online: *Marinews Mahkamah Agung* <https://marinews.mahkamahagung.go.id/artikel/harmonisasi-melalui-sema-nomor-1-tahun-2026-0Ob>.

adequate procedure, but this study cannot confirm that claim from the sources consulted, and it is better treated as a question for later research than as a finding.

Overlapping authority. The procedural code gives the police primary investigative authority but leaves room for civil-service and specific investigators, within one structure.[32] Overlap becomes a problem when offences adjusted by Law No 1 of 2026 fall within the remit of more than one agency. The remedy is not to centralise everything in one agency, but to specify by regulation which agency leads, how files are transferred and how disputes are resolved.

Resources and infrastructure. New sentences, restorative procedures and wider judicial review all require trained staff, facilities and information systems. It is often asserted that many officers do not yet understand the new provisions and that some resist change. These are empirical assertions for which no data were found, and they are not adopted as findings here. What can be said on legal grounds is that the transition gave agencies little time: the procedural code was enacted in late 2025 and applied within weeks, and the Supreme Court's own guidance followed in 2026. Training, standard operating procedures and shared case systems are therefore foreseeable needs, even if their present state is unknown.

Table 2. Legal obstacles and the corresponding measures

Obstacle	Source in the legal framework	Measure
Different readings of thresholds and transitional rules	Penalty-based eligibility; mixed old and new rules in pending cases	Implementing regulation or circular stating how penalties are read; transitional checklists
Procedural gaps for new sentences, living law and corporations	Substantive concepts without detailed procedure	Standard procedures and judgment templates
Overlapping investigative roles	Police as principal investigator alongside other investigators	Regulation on lead agency, file transfer and dispute resolution
Weak judicial control	Warrants issued by the arresting authority; open pretrial questions	Prior judicial authorisation and clear pretrial remedies
Capacity and infrastructure	Short interval between enactment and application	Training, shared case-management system, evaluation

Source: analysis of the primary and secondary sources cited in this article.

Strategies for Strengthening Joint Application

The first strategy is regulatory. Since the 1981 Code has been replaced, the immediate task is not to revise it but to complete the new code through implementing regulations and guidance. These should set out how maximum penalties are read for restorative eligibility, how courts word judgments for the new sentences, how living law is ascertained and what the procedure is for corporate defendants. Regulations should also coordinate the statutes on the judiciary, the

[32] Hukumonline, *supra* note 9.

prosecution service, the police and corrections with the two codes, in line with the hierarchy of legislation. The Supreme Court's circular letter, which is presented as a guide to harmonising the two codes,[33] is a helpful start, but it binds judges and not other agencies, so a government-level instrument is needed for investigators and prosecutors.

The second strategy is institutional. Investigators, prosecutors, courts and correctional officers need a shared case-management system so that a file, a restorative settlement or a pretrial decision is visible to each agency that must act on it, with access limited by role and with protection of sensitive data. A regular coordination forum can resolve boundary questions before they reach court. Training should be practical and keyed to the new provisions, focusing on restorative procedure, the transitional rules and the limits of coercive powers, and should be backed by performance evaluation that rewards lawful rather than merely quick case handling. Public access to case information is desirable for transparency, provided that the privacy of victims, children and witnesses is protected.

The third strategy is rights-based and addresses the criticism in the literature. If arrest and detention continue to rest on the decision of the arresting authority, the Code's protection will depend on pretrial review operating quickly and effectively. The questions that Pattinasarany identifies, standing, the effect of unlawful measures and the relation between pretrial proceedings and trial, can be settled by amendment, by the Constitutional Court in the pending challenges, or by guidance from the Supreme Court.[34] Independently of how they are settled, a requirement of prior judicial authorisation for the most intrusive measures would align the procedural code with the proportionality that the substantive code purports to apply.

Comparison with Earlier Research

The findings agree with Pattinasarany that the new Code widens judicial control while leaving the protective value of that control unsettled,[35] and with Rahmawati that the absence of prior judicial authorisation is the central weakness for a rights-based reading.[36] They add that this weakness has a substantive dimension: it weakens the legality that the new Criminal Code is meant to strengthen. They

[33] Mahkamah Agung, Harmonisasi, *supra* note 31.
[34] Pattinasarany, *supra* note 7.
[35] *Ibid*.
[36] Rahmawati, *supra* note 5.

extend Abdullah's argument for recognising customary sanctions by showing that recognition, now achieved in the Criminal Code, creates a procedural problem of ascertaining and proving customary norms that the earlier analysis did not address.[37] Compared with the Judicial Commission's account of restorative justice,[38] the study shows that its practical operation depends on penalties fixed in another code, which makes harmonisation of penalties and thresholds a precondition of consistent use. Finally, in contrast with accounts that call for revision of the procedural code, the analysis finds that the major procedural reform has already happened, and that the work now lies in implementation and in correcting specific defects.

Conclusion

The first question concerned how the two codes are harmonised. They are linked through restorative justice, the sentencing alternatives that need procedure, the favourable-law rule, living law and the allocation of investigative authority; the shared effective date of 2 January 2026 puts them in force together but does not make them consistent. The second concerned obstacles. There are four: thresholds and transitional rules that can be read in more than one way, procedural gaps for new sentencing forms and concepts, overlapping investigative roles, and judicial control that is thinner than the new powers require. The third concerned measures. The measures are implementing regulations that fix the readings of thresholds and the procedure for new sentences, a government-level instrument that binds all agencies, an integrated case-management system, targeted training, and clear remedies, preferably prior judicial authorisation, for the most intrusive coercive measures.

Two cautions follow. The procedural code should not be discussed as if the 1981 Code were still in force, and no claim that the Criminal Code regulates evidence should be relied on without checking the text. This study has limits: it is doctrinal; it relies in part on secondary and official commentary for the content of the procedural code, so article numbers and details must be verified against the official text; and it makes no claim about how agencies are performing. Later research should analyse the first decisions applying both codes, the Constitutional Court's rulings on pending challenges and, with proper ethical approval, the experience of officers and defendants.

[37] Abdullah, *supra* note 6.
[38] Komisi Yudisial, *supra* note 10.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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