

Borobudur Law and Society Journal
ISSN: 2809-9664
Vol. 5 No. 2 (2026)
pp: 91-109
DOI: https://doi.org/10.31603/18098

UNIMMA PRESS
UNIVERSITAS MUHAMMADIYAH MAGELANG

Harmonising Indonesia's New Code of Criminal Procedure with International Fair Trial Standards: Protecting the Rights of Suspects

Natama Khofifah Wardani[1], Reviana Putri Fadillah[2*], Rahma Alya Purwanto[3], Mirna Nirmala Sari Harahap[4], Budiastuti[5]

[1] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[2] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[3] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[4] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[5] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[*]Corresponding author email: revianaputrif@gmail.com

Abstract

Indonesia has been bound by the International Covenant on Civil and Political Rights since 2005, yet its Code of Criminal Procedure of 1981 was written in a crime-control paradigm and was often criticised for protecting suspects only formally. That Code was repealed by Law No 20 of 2025, which has applied since 2 January 2026. This normative study asks how far the rights of suspects in the repealed and the new Code are harmonised with the fair trial guarantees of articles 9, 10 and 14 of the Covenant, and where harmonisation is still needed. It uses statutory, conceptual and comparative approaches to the Covenant, the General Comments of the Human Rights Committee, the 1981 Code, Law No 20 of 2025 and the secondary literature. The 1981 Code recognised most Covenant rights in form but limited mandatory counsel to serious or indigent cases, left detention to wide discretion and had no exclusionary rule. The 2025 Code narrows several gaps: it sets evidential thresholds for designation, arrest and detention, strengthens advocates and widens pretrial review. It keeps the old thresholds for assigned counsel, has broad detention grounds and gives limited protection against coerced statements. Implementing regulations and judicial practice should close these gaps.

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License

Keywords

Harmonisation; Suspects; Covenant; Counsel; Detention; Evidence

Introduction

A criminal trial is fair only if it is fair from the moment the state first treats a person as a suspect. That is when the state uses its coercive powers of arrest, detention and interrogation against a person who is presumed innocent and who is least able to resist them. Indonesia accepts this principle in its Constitution, which guarantees equality before the law, fair legal certainty and protection against torture and discriminatory treatment,[1] and in its international commitments. It ratified the International Covenant on Civil and Political Rights (ICCPR) by Law No 12 of 2005,[2] and the Covenant's guarantees of liberty and security of person (art 9), humane treatment of detainees (art 10) and a fair and public hearing (art 14) therefore bind it as treaty obligations.[3] Similar guarantees appear in the Universal Declaration of Human Rights and in the regional human rights treaties of Europe, the Americas and Africa.[4][5][6][7]

For forty years the main instrument for turning these guarantees into procedure was Law No 8 of 1981 on Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP). It replaced the colonial *Herziene Inlandsch Reglement* and, in articles 50 to 68, listed the rights of suspects and defendants.[8] Academic and civil society criticism, however, repeatedly pointed to a gap between these rights and practice: questioning without counsel, coercion, detention used as routine and pretrial review that rarely tested the reasons for detention. Many commentators explained the gap by the crime-control orientation of the Code, which values efficient repression of crime above the protection of the individual, in contrast to the due process orientation of the Covenant.[9] The urgency of harmonising the Code with international fair trial standards was therefore a standard theme of Indonesian scholarship.

That theme has now changed its object. Law No 20 of 2025 on Criminal Procedure was enacted in December 2025, repealed the 1981 Code and has applied since 2 January 2026, together with the new Criminal Code (Law No 1 of 2023).[10][11] A study that still treats Law No 8 of 1981 as the law in force describes a text that no longer governs any new investigation. This study began as an analysis of the 1981 Code; it

[1] Constitution of the Republic of Indonesia 1945, arts 27(1), 28D(1), 28G(2), 28I(4).
[2] Law No 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (Indonesia).
[3] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
[4] Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71, arts 9–11.
[5] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221, art 6.
[6] American Convention on Human Rights, 22 November 1969, 1144 UNTS 123, art 8.
[7] African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217, art 7.
[8] Law No 8 of 1981 on Criminal Procedure (Indonesia) [repealed by Law No 20 of 2025], arts 50–68.
[9] Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968).
[10] Law No 20 of 2025 on Criminal Procedure (Indonesia).
[11] Law No 1 of 2023 on the Criminal Code (Indonesia).

re-examines that analysis against the new Code, keeps the parts of the argument that remain correct and corrects the parts that the reform has overtaken. Cases already in investigation or prosecution when the new Code entered into force continue to be handled under transitional rules, so the 1981 Code retains some practical importance.[12]

Earlier research approaches the subject from three directions. Comparative research on nine European jurisdictions asks whether suspects, above all those who cannot pay, have access to a real and effective defence;[13] general work on criminal procedure asks whether procedural rights should give way to public-safety arguments;[14] and Indonesian studies of pretrial proceedings conclude that the mechanism protects suspects only when judges examine the reasons for coercive measures actively.[15] Studies of the 2025 Code have only started to appear, and they concentrate on evidence, investigative powers and the role of advocates.[16][17] What is missing is a systematic comparison of the rights of suspects in both Codes with the text and interpretation of the Covenant. This article offers that comparison and thereby tests whether the reform has done the harmonising work that scholars called for.

The article asks three questions. First, how far do the rights of suspects in the 1981 Code correspond to articles 9, 10 and 14 of the ICCPR? Second, which of the gaps identified has Law No 20 of 2025 closed? Third, which gaps remain, and what should legislators, the Constitutional Court and law enforcement institutions do about them? Its purpose is to give an assessment of the new Code against the Covenant and to identify the points at which harmonisation is still needed.

Method

This is normative (doctrinal) legal research. It uses a statutory approach to the 1945 Constitution, the 1981 Code, Law No 20 of 2025, Law No 48 of 2009 on Judicial Power and the law ratifying the Covenant; a conceptual approach to the notions of fair trial, harmonisation and the crime-control and due process models of criminal

[12] Law No 20 of 2025, *supra* note 10.

[13] Ed Cape et al, eds, *Effective Criminal Defence in Europe* (Antwerp: Intersentia, 2010).

[14] Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure* (London: Sweet & Maxwell, 2002).

[15] SS Aprilia, E Siregar & TI Munandar, "Perlindungan Hukum Terhadap Hak Tersangka Melalui Upaya Praperadilan [Legal Protection of Suspects' Rights through Pretrial Proceedings]" (2023) 4:1 *PAMPAS: Journal of Criminal Law* 16, DOI: <10.22437/pampas.v4i1.24097>.

[16] Simon Butt, "The New KUHAP: Easier to Investigate, Easier to Convict (Part 2 of 2)" (14 May 2026), online: *Indonesia at Melbourne* <https://indonesiaatmelbourne.unimelb.edu.au/the-new-kuhap-easier-to-investigate-easier-to-convict-part-2-of-2/>.

[17] Hanifah Dwi Jayanti, "KUHAP Baru Perkuat Peran Advokat dalam Proses Peradilan Pidana [The New KUHAP Strengthens the Role of Advocates in Criminal Proceedings]" (5 February 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/kuhap-baru-perkuat-peran-advokat-dalam-proses-peradilan-pidana-lt698450c56ffb2/>.

procedure; and a comparative approach in which each right of the suspect is set beside the corresponding article of the ICCPR and the interpretation of the Human Rights Committee. The primary legal materials are those instruments, General Comments Nos 32 and 35 of the Committee and Constitutional Court Decision No 21/PUU-XII/2014. The secondary materials are books and journal articles on criminal procedure and human rights and recent commentary on the new Code. Since Law No 20 of 2025 has applied for less than a year, commentary is used both to locate provisions and to record the points that are already contested; article numbers taken from commentary have been marked in the text and should be confirmed against the enacted text.

The analysis is qualitative. Each right was compared in three steps: the Covenant standard and its interpretation, the rule in the 1981 Code, and the rule in the 2025 Code. A rule counts as harmonised when its content, scope and remedy are at least equal to the Covenant standard. The study did not collect empirical data: it does not analyse court decisions or interview officials, and statements about practice rest on the literature cited. A narcotics case in the North Jakarta District Court that is sometimes cited as an illustration of a failure to provide counsel could not be traced in a public source, so it is not used here.

Results and Discussion

Fair Trial in the Constitution and the Covenant

The Covenant protects the suspect at three levels. Article 9 concerns the liberty of the person: no one may be arrested or detained arbitrarily, an arrested person must be told promptly of the reasons for the arrest and of any charge, must be brought promptly before a judge, may challenge the lawfulness of detention before a court and has an enforceable right to compensation for unlawful arrest or detention.[18] The Human Rights Committee reads 'arbitrary' broadly, as including inappropriateness, injustice, lack of predictability and lack of due process, not only unlawfulness under domestic law, and treats pretrial detention as an exception that must be justified individually as reasonable and necessary.[19] Article 10 requires humane treatment of persons deprived of liberty and, in its second paragraph, separate treatment of accused persons who have not been convicted.[20] Article 7

[18] ICCPR, *supra* note 3, art 9.
[19] UN Human Rights Committee, *General Comment No 35: Article 9: Liberty and Security of Person*, UN Doc CCPR/C/GC/35 (2014).
[20] ICCPR, *supra* note 3, art 10.

prohibits torture and cruel, inhuman or degrading treatment, and Indonesia has also ratified the Convention against Torture by Law No 5 of 1998.[2122]

Article 14 sets out the fair trial. Its first paragraph guarantees equality before courts and a fair and public hearing by a competent, independent and impartial tribunal established by law. The second paragraph guarantees the presumption of innocence. The third paragraph lists the minimum guarantees of a person charged with a criminal offence: prompt information in a language the person understands, adequate time and facilities to prepare a defence and communication with counsel of one's own choosing, trial without undue delay, the right to defend oneself in person or through legal assistance, assigned legal assistance free of charge where the interests of justice so require and the person cannot pay, examination of witnesses, an interpreter and freedom from compulsion to testify against oneself or to confess guilt.[23] The Human Rights Committee stresses that these guarantees apply to the whole of the criminal process, not only to the trial, and that they cannot be suspended in emergencies in a way that undermines the right to a fair trial.[24] Three clarifications follow. The Covenant does not forbid torture in article 9(1): torture is covered by article 7, and article 9(1) concerns arbitrary arrest and detention. The duty to bring an arrested person promptly before a judge comes from article 9(3), and not from article 14(3). And widespread ratification does not make the Covenant as a whole a body of peremptory norms (*jus cogens*); it binds Indonesia as a treaty, and only particular norms, such as the prohibition of torture, are generally regarded as peremptory.

In Indonesian law the Covenant is part of the national legal order through its ratification law, which approved the treaty; it did not amend or restate it.[25] The Constitution adds its own guarantees, which are relevant here: equality before the law, recognition, protection and fair legal certainty, protection against threats and torture, and the state's responsibility to protect and fulfil human rights.[26] Law No 48 of 2009 on Judicial Power adds the principle of open court hearings, replacing the provision of Law No 4 of 2004 that is still sometimes cited.[27] Harmonisation, in this setting, is not uniformity. It is the process of making norms that originate in

[21] *Ibid*, art 7.
[22] Law No 5 of 1998 on the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia).
[23] ICCPR, *supra* note 3, art 14.
[24] UN Human Rights Committee, *General Comment No 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc CCPR/C/GC/32 (2007).
[25] Law No 12 of 2005, *supra* note 2.
[26] 1945 Constitution, *supra* note 1, arts 27(1), 28D(1), 28G, 28I(4).
[27] Law No 48 of 2009 on Judicial Power (Indonesia), art 13(1).

different sources work together without conflict,[28] and for criminal procedure it means that a domestic rule is read and, where necessary, amended so that it provides at least the protection that the treaty requires. The Covenant sets a floor; the Code may protect suspects more but not less.

Three consequences follow for the domestic law of criminal procedure. First, a state may not invoke its internal law to excuse a failure to perform a treaty, a rule that the law of treaties states in general terms,[29] so that a gap between the Code and the Covenant is a matter of Indonesia's international responsibility and not merely of legal drafting. Second, the Constitution's own mandate to protect and fulfil human rights makes the Covenant a legitimate aid to the interpretation of the Code by courts, even where the text of the Code is silent.[30] Third, harmonisation can be done by three techniques that differ in speed and permanence: amendment of the statute; implementing regulations and the practice directions of the Supreme Court; and interpretation by the Constitutional Court and the courts, as in the decision that gave the words 'preliminary evidence' a numerical content.[31] The assessment below distinguishes the three because the recommendations differ with the technique that fits.

The notion of a suspect itself shows how the reform changes the starting point. The 1981 Code defined a suspect (*tersangka*) as a person who, because of conduct or circumstances, is reasonably presumed on the basis of preliminary evidence to be the perpetrator of an offence.[32] The definition is found in the Code of Criminal Procedure and not, as is sometimes cited, in the Criminal Code. The question of what 'preliminary evidence' means was for decades a source of arbitrariness, because the investigator alone decided when the standard was met. Under the 2025 Code the definition is tied to an evidential minimum, so that the moment at which a person acquires the status of suspect, and with it the rights of a suspect, can be identified and reviewed.[33] That matters for harmonisation because the guarantees of article 14(3) of the Covenant attach to a person 'charged with a criminal offence', a phrase that the Human Rights Committee reads as covering a person from the

[28] William Twining, "Normative and Legal Pluralism: A Global Perspective" (2010) 20:3 *Duke Journal of Comparative & International Law* 473.
[29] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), arts 26–27.
[30] 1945 Constitution, *supra* note 1, art 28I(4).
[31] Constitutional Court of the Republic of Indonesia, Decision No 21/PUU-XII/2014 (28 April 2015).
[32] Law No 8 of 1981, *supra* note 8, art 1(14).
[33] Butt, *supra* note 16.

time the state takes steps that substantially affect the person's situation because of a suspicion of guilt, and not only from the formal indictment.[34]

The Rights of Suspects in the 1981 Code Compared with the Covenant

The 1981 Code recognised most of the rights that article 14 lists. Articles 50 to 68 gave the suspect the right to prompt examination and prompt trial (art 50), to be informed in an understandable language of the charge at the start of the examination (art 51), to give information freely to the investigator and the judge (art 52), to an interpreter (art 53), to counsel at every stage (art 54), to choose counsel (art 55), to assigned counsel in serious cases (art 56), to contact counsel, a doctor, family and clergy while detained (arts 57 to 63), to a public trial (art 64), to call witnesses and experts (art 65) and not to bear a burden of proof (art 66).[35] Article 95 provided compensation and rehabilitation for unlawful arrest, detention and prosecution, and article 77 provided pretrial review of the lawfulness of arrest and detention.[36] Table 1 sets these rights beside the corresponding Covenant guarantees and the position under Law No 20 of 2025. The rights of the suspect in the Code are the technical and procedural expression of a principle that the Covenant states in general terms, and the large majority were harmonised in content.

Table 1. Selected rights of suspects: the 1981 Code, the Covenant and the 2025 Code

Right	1981 Code	ICCPR	Law No 20 of 2025 (as reported)
Information on the charge	Art 51: at the start of examination, in an understandable language	Art 9(2) and art 14(3)(a): prompt and in a language the person understands	Designation in writing, notified within one day; otherwise to be confirmed
Counsel	Arts 54, 55: at every stage, of own choosing	Art 14(3)(b), (d): adequate facilities, communication with counsel of own choosing	Advocate may accompany the suspect and object; objections recorded
Assigned counsel	Art 56: death or 15 years or more; or 5 years or more and indigent	Art 14(3)(d): whenever the interests of justice require, free if without means	Arts 154, 155: same two thresholds retained
Freedom from coercion	Art 52: free information; art 117: statements without pressure	Art 7; art 14(3)(g); Convention against Torture, art 15	Evidence obtained unlawfully has no evidential force; torture rules to be checked
Review of detention	Art 77: pretrial review	Art 9(4): review by a court	Pretrial widened (designation, seizure); judge checks existence of evidence
Presumption of innocence	Art 66 and General Explanation	Art 14(2)	To be confirmed against the enacted text
Public hearing	Art 64	Art 14(1)	To be confirmed; see Law No 48 of 2009, art 13
Compensation	Art 95	Art 9(5); art 14(6)	To be confirmed against the enacted text

Source: compiled by the authors from the texts and commentary cited.

[34] Human Rights Committee, *General Comment No 32*, *supra* note 24.
[35] Law No 8 of 1981, *supra* note 8, arts 50–66.
[36] *Ibid*, arts 77, 95.

Two features of the 1981 list deserve comment. First, the list is a catalogue of separate entitlements and not a system. A description of the rights one by one is not enough, because the fair trial depends on how they work together: a right to counsel means little if counsel can only watch the examination, as article 115 of the 1981 Code provided for most offences,[37] and the right to a lawyer is of little use if the examination is already over when the lawyer arrives. Second, several rights stop short of the Covenant. They are the points on which criticism of the 1981 Code usually concentrates, and they are the points against which the new Code is tested below.

Counsel is the clearest example. The 1981 Code gave the suspect the right to counsel at every stage (art 54), to choose counsel (art 55) and, for serious or indigent cases, to be assigned counsel without charge (art 56). It also required the investigator to tell the suspect before the examination of the right to legal assistance, and allowed counsel to contact a detained suspect and to be present at the examination, in most cases only to see and hear it.[38] Measured by article 14(3) of the Covenant, the right to choose counsel, the duty to inform and the right of access were in line with the standard. The weak points were the passive role of counsel during the examination, which does not allow the lawyer to protect the suspect against improper questioning, and the thresholds for assigned counsel, which were fixed by penalty and means and not by the interests of justice. Both points are made in the criticism of the Code, but they are different problems.

Detention shows a similar pattern. The 1981 Code allowed detention only for offences punishable by five years or more (and for listed lesser offences) and only on three grounds: the concern that the suspect will flee, destroy evidence or repeat the offence.[39] These conditions look like the necessity test of the Covenant. The difficulty lay in how they were applied: the concern was assessed by the investigator, usually in a standard form, and the judicial control that article 9(3) and (4) of the Covenant require was available only through pretrial proceedings, which in the version of the 1981 Code were limited to the validity of arrest and detention, the termination of the investigation or prosecution and compensation.[40] Only the Constitutional Court's decision of 2015 widened that scope to the designation of a suspect, searches and seizures.[41] A Code that left the first review of detention to the

[37] *Ibid*, art 115.
[38] *Ibid*, arts 54–56, 69–74, 114–115.
[39] *Ibid*, art 21.
[40] *Ibid*, art 77.
[41] Decision No 21/PUU-XII/2014, *supra* note 31.

officer who ordered it, and the court to examine only its formal validity, could not deliver the prompt and effective judicial control that the Covenant contemplates, whatever the quality of its stated grounds.

The treatment of statements and confessions completes the picture. The 1981 Code protected the freedom of the suspect to give information, required that statements to the investigator be given without pressure and provided that the statement of the defendant alone is not sufficient to prove guilt, and that conviction needs at least two items of valid evidence and the judge's conviction.[42] These rules reduce the weight of a confession but do not exclude one that was obtained by coercion; they leave the judge free to treat the statement as one item of evidence, corroborated by another. Under article 15 of the Convention against Torture, by contrast, the statement must not be invoked at all. The common remark that confessions are 'still often used as the primary means of evidence' is therefore a statement about practice that the rules of the Code did not prevent, and cannot be proved from the text.

What the 2025 Code Changes

Law No 20 of 2025 starts from the same human rights justification as its predecessor but is far more detailed about coercive measures. Five changes matter for harmonisation. The first is the standard for coercive action. The Code requires at least two pieces of valid evidence before a person is designated a suspect, arrested or detained,[43][44] and requires that designation be made in a written decision notified to the person within one day. An arrest is limited to 24 hours and needs a warrant stating the identity of the suspect, the reasons for the arrest, a short description of the case and the place of examination, with a copy to the family within a day.[45] This is a closer match to article 9(2) of the Covenant than the vague 'sufficient preliminary evidence' of the 1981 Code, and it follows the Constitutional Court's earlier decision that designation as a suspect needs at least two pieces of evidence and may be reviewed in pretrial proceedings.[46]

The second change is detention. The 1981 Code allowed detention on three grounds (flight, destruction of evidence and repetition of the offence) for offences carrying five years or more. The new Code regulates detention in articles 99 to 111, retains the five-year threshold, adds a limited list of other offences and lists eight grounds,

[42] Law No 8 of 1981, *supra* note 8, arts 52, 117, 183, 189.
[43] Law No 20 of 2025, *supra* note 10, arts 90(1), 94, 100(5).
[44] Butt, *supra* note 16.
[45] Willa Wahyuni, "Begini Prosedur dan Syarat APH Melakukan Penahanan dalam KUHAP Baru [The Procedure and Conditions for Law Enforcers to Detain under the New KUHAP]" (26 January 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/begini-prosedur-dan-syarat-aph-melakukan-penahanan-dalam-kuhap-baru-lt6977289eebfa8>.
[46] Decision No 21/PUU-XII/2014, *supra* note 31.

which must be assessed concretely, among them ignoring a summons without reason, giving false information, obstructing the examination, attempting to flee, destroying evidence and influencing witnesses.[47][48] The sources reviewed do not describe the time limits of detention, which should be checked against the enacted text. These changes bring detention closer to the Committee's requirement of an individual determination of necessity, but the eight grounds are broad and several are easily asserted.[49]

The third change is the position of counsel. The Code speaks of the *advokat* and not of the 'legal adviser' of the old text, and gives the advocate who accompanies a suspect the right to object when an investigator intimidates the suspect or asks incriminating questions, with the objection entered in the examination record.[50] Witnesses may also be accompanied. In addition, the Code makes counsel a condition of valid guilty plea and admission procedures (arts 78 and 205), as well as of some other mechanisms, such as agreements with crown witnesses.[51] Where the right to counsel was formerly one to observe the examination, it is now a right to take part in it, which is what article 14(3)(b) and (d) require.

The fourth change is pretrial review. The scope of pretrial proceedings is widened to cover the designation of a suspect and further coercive measures, including seizure, and to allow third parties whose property is seized to apply. Where a search, seizure or interception is declared invalid, the evidence obtained from it cannot be used at trial.[52] The fifth change concerns evidence. The Code enlarges the categories of admissible evidence from five to eight, with a residual category for evidence obtained lawfully, and no longer demands a minimum number of items of evidence for conviction, but only that the offence is proved lawfully and convincingly.[53][54] The same Code introduces a plea procedure, open to offenders facing a maximum of five years, which includes a waiver of the right to remain silent. It requires counsel and a judicial check that the plea is voluntary.[55]

Two cautions apply to this account. First, it rests on the enacted statute as reported by early commentary and not on settled interpretation: the Code has applied for

[47] Wahyuni, *supra* note 45.
[48] Law No 20 of 2025, *supra* note 10, arts 100(1), (2), (5).
[49] Human Rights Committee, *General Comment No 35*, *supra* note 19.
[50] Jayanti, *supra* note 17.
[51] Pradikta Andi Alvat, "Transformasi Bantuan Hukum dalam KUHAP [The Transformation of Legal Aid in the KUHAP]" (21 July 2026), online: *Dandapala* <https://dandapala.com/opini/detail/transformasi-bantuan-hukum-dalam-kuhap>.
[52] Law No 20 of 2025, *supra* note 10.
[53] Butt, *supra* note 16.
[54] Law No 20 of 2025, *supra* note 10, arts 235(1), 244.
[55] *Ibid*, arts 78, 205.

less than a year, no body of decisions has yet explained its thresholds, and several provisions are already before the Constitutional Court.[56] Second, the Code operates against a background of transitional rules under which cases already in investigation continued under the 1981 Code, so that the reforms reach suspects unevenly during the first years of operation.[57] Both cautions are reasons to read the Code's safeguards against the Covenant standard, which supplies a stable measure while the domestic interpretation develops.

Each of these changes responds to one of the weaknesses identified in the 1981 Code, and the earlier conclusion that the Code 'still' contains no exclusionary rule and no necessity test for detention is, in this form, no longer accurate. The Code does contain such rules, but in a narrower and less certain form than the Covenant requires, as the next section shows.

Gaps Remaining against the Covenant

The comparison with the Covenant leaves four main gaps. Table 2 summarises them. The first and clearest concerns assigned counsel. Under articles 154 and 155 of the 2025 Code, as under article 56 of the 1981 Code, an official must appoint an advocate for a suspect only where the penalty is death, life imprisonment or fifteen years or more, or where the penalty is five years or more and the suspect cannot pay.[58] Article 14(3)(d) of the Covenant sets a different test: legal assistance must be assigned in every case where the interests of justice require it, which depends on the seriousness of the offence and the severity of the possible sentence but also on the complexity of the case and the vulnerability of the person. A fixed penalty threshold is a convenient approximation but it excludes cases that the interests-of-justice test would include, such as a young or mentally disabled suspect facing a lower penalty. The rule that counsel must also be assigned from the first questioning, and not only after the suspect has been designated, is not stated in the sources reviewed and should be confirmed. A further challenge before the Constitutional Court argues that article 22(1) lets investigators question a person who has not yet been given the status of witness or suspect, so that the person may be examined without counsel at all; the application was at its preliminary hearing in January 2026.[59]

[56] "New KUHAP Alleged to Potentially Allow Arbitrary Arrests" (21 January 2026), online: *Constitutional Court of the Republic of Indonesia* <https://en.mkri.id/news/details/2026-01-21/New_KUHAP_Alleged_to_Potentially_Allow_Arbitrary_Arrests>.
[57] Law No 20 of 2025, *supra* note 10.
[58] Alvat, *supra* note 51.
[59] Constitutional Court, "New KUHAP Alleged to Potentially Allow Arbitrary Arrests", *supra* note 56.

The reason for the gap is partly financial. Legal aid for poor people in Indonesia is provided largely through accredited legal aid providers under Law No 16 of 2011 on Legal Aid, and the new Code recognises legal aid organisations as providers of aid to suspects, victims and witnesses.[6061] A broader assignment rule would therefore increase demand on a system that is already limited. That is a real constraint, but it does not alter the Covenant standard; it is a reason to phase in broader assignment, beginning with the groups for whom the interests of justice most clearly require counsel (children, persons with mental or intellectual disabilities, persons who do not understand Indonesian and suspects held in custody), and to fund the system accordingly.

The second gap is detention. The Covenant requires that detention before trial be the exception, based on an individual assessment of reasonableness and necessity, and reviewed by a court.[62] The 2025 Code's documented, concrete assessment is an improvement. However, the objective threshold still rests on the abstract penalty, and the list of grounds is wider than the 1981 list. Moreover, the pretrial judge, like the judge in a challenge to designation, checks whether two pieces of evidence exist and not how strong they are, so that review remains formal on the very question, the strength of the case, that justifies depriving a person of liberty.[63] The criticism that pretrial review is 'formalistic', supported by the Indonesian pretrial literature,[64] therefore survives the reform in a modified form.

The third gap is the protection against coerced statements. The Convention against Torture, which Indonesia ratified by Law No 5 of 1998, obliges states to ensure that a statement made as a result of torture is not invoked as evidence in any proceedings, and article 14(3)(g) of the Covenant forbids compelling a person to confess.[6566] The 1981 Code protected free statements only by article 52 and the instruction that statements be given without pressure; it had no rule excluding the product of coercion. The 2025 Code addresses unlawfully obtained evidence and the consequence of an invalid search, seizure or interception, but the sources reviewed do not show an express rule that a statement obtained by violence or threat is inadmissible, nor a rule requiring recording of examinations in every case.

---

[60] Law No 16 of 2011 on Legal Aid (Indonesia).
[61] Alvat, *supra* note 51.
[62] Human Rights Committee, *General Comment No 35*, *supra* note 19.
[63] Butt, *supra* note 16.
[64] Aprilia, Siregar & Munandar, *supra* note 15.
[65] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), art 15.
[66] ICCPR, *supra* note 3, art 14(3)(g).

Whether the new residual category of evidence 'lawfully obtained' gives judges the power to exclude a coerced confession depends on how they read it, and the plea procedure, with its waiver of silence, makes a clear exclusionary rule more necessary and not less.[67]

The fourth gap lies outside the text of the statute, in the legal culture of investigation. Packer's two models of the criminal process, the crime-control model, which prizes speed and the repression of crime, and the due process model, which prizes the reliability and fairness of each stage, give a useful account of the problem.[68] The 1981 Code mixed the two. The 2025 Code adds due-process safeguards but also strengthens the investigators' powers: it lists nine kinds of coercive measures, among them detention, interception and the blocking of accounts and electronic information.[69] A critic argues that the Code makes investigation and conviction easier, because it applies strict numerical thresholds to the coercive stage but removes the numerical requirement at conviction.[70] Whether the due-process safeguards prevail over the crime-control powers will depend on the judges who apply them and on the training of investigators, and not on the text alone.

Table 2. Assessment of the 2025 Code against Covenant standards

Safeguard	**Covenant standard**	**Position under Law No 20 of 2025**	**Assessment**
Basis for coercive measures	Art 9(1): no arbitrary arrest or detention	Two pieces of evidence for designation, arrest, detention; written designation; 24-hour arrest	Largely harmonised; strength of evidence not tested
Pretrial detention	Art 9(3), (4); General Comment No 35: exception, individual necessity, review	Arts 99 to 111; eight grounds assessed concretely	Partly harmonised; broad grounds
Counsel during examination	Art 14(3)(b), (d)	Advocate may object; objection recorded	Harmonised in principle
Assigned counsel	Art 14(3)(d): interests of justice	Arts 154, 155: penalty and means thresholds	Not fully harmonised
Statements and evidence	Art 7; art 14(3)(g); Convention against Torture, art 15	Unlawfully obtained evidence unusable; no express rule on coerced statements reported	Partly harmonised; to be clarified
Review by a court	Art 9(4)	Wider pretrial scope; existence-of-evidence test	Partly harmonised

Source: compiled by the authors from the instruments and commentary cited; rows on Law No 20 of 2025 follow the commentary and need confirmation against the enacted text.

Norm and Practice

[67] Butt, *supra* note 16.
[68] Packer, *supra* note 9.
[69] Law No 20 of 2025, *supra* note 10, art 89.
[70] Butt, *supra* note 16.

It is argued that fair trial rights are most often violated at the investigation stage, in arrest, detention and questioning, because it is then that the state uses coercive authority against a person in a weak position, and that the right to counsel is the main casualty. That argument fits the structure of the process and is consistent with comparative research on the importance of publicly funded defence for those without means.[71] That argument, however, is not supported by data on how often suspects are questioned without counsel or on how often confessions are used as the principal evidence, and the case sometimes cited in support could not be verified. The claim can therefore be stated here only as an inference from the design of the rules and from the literature on pretrial review, which finds that passive judges and imprecise implementation limit the protection that pretrial proceedings offer.[72] It is also a reason for empirical work: monitoring of the first months of the 2025 Code would show whether advocates attend examinations, whether their objections are recorded and whether pretrial judges look beyond the existence of evidence.

It is also said that mass arrests occur during demonstrations, without a clear legal basis, without prompt disclosure of the reasons and with limited access to counsel, and that fair trial is sometimes sacrificed to public order. No report was available to the authors, so the claim cannot be assessed here. The normative point stands, however, and is clear. An arrest must rest on an individual suspicion supported by evidence, the reasons must be given at the time of arrest, and the arrested person must be able to contact counsel and family and to be brought before a judge promptly; public order may justify some restrictions on assembly but not the suspension of these safeguards.[73][74] The 2025 Code's requirements of a written designation, a warrant stating the reasons and a copy to the family within a day respond to precisely this problem.[75] Whether they are observed in the large and sudden arrests of public protests is a question for monitoring bodies and for the pretrial courts, and the proposed reporting system would allow it to be answered.

One further point concerns the effect of a violation. It has been argued that a failure to provide counsel should make the evidence or the indictment unusable, as the Covenant principle of equality of arms implies. The sources reviewed do not show that Indonesian courts treat that consequence as settled, and the 2025 Code now

[71] Cape et al, *supra* note 13.
[72] Aprilia, Siregar & Munandar, *supra* note 15.
[73] ICCPR, *supra* note 3, art 9.
[74] Human Rights Committee, *General Comment No 35*, *supra* note 19.
[75] Wahyuni, *supra* note 45.

links invalid coercive measures to the inadmissibility of their product, but only for specified measures. The more general doctrine that a violation of a suspect's right to counsel invalidates the examination should be developed by the Supreme Court and the Constitutional Court, in the way that Constitutional Court Decision No 21/PUU-XII/2014 developed the law of designation.[76]

An Agenda for Harmonisation

The analysis points to an agenda that distinguishes what needs a statute from what can be done by regulation or by the courts. Three matters call for legislative action, if necessary by amendment of Law No 20 of 2025. The first is the assignment of counsel by the interests-of-justice test, with the existing thresholds kept as a minimum and not as a ceiling. The second is an express rule that a statement obtained by torture, violence or other coercion may not be used as evidence, whoever the accused is and whatever the offence. The third is a rule that every examination of a suspect in custody is recorded, so that the objection of counsel and the complaint of coercion can be checked.[77]

Other matters can be handled by implementing regulations and by the courts. Judges deciding on detention and in pretrial proceedings can be required, by the practice directions of the Supreme Court, to examine the reasons given for each ground and the alternatives to custody, and not only the existence of the formal documents and of two items of evidence. The Constitutional Court can resolve the doubt on the examination of persons who have not yet been given the status of witness or suspect, by reading the Code so that the right to counsel attaches as soon as a person is questioned about possible responsibility.[78] Police and prosecution services can issue internal rules and training that treat the advocate's objection as a duty to be recorded and answered. None of these requires waiting for a long legislative process.

Finally, the agenda needs a means of measurement. The central worry, that rights exist on paper and are not applied, cannot be tested without data. A modest system of reporting would give the answer: the share of examinations at which an advocate is present, the number of objections recorded, the use of pretrial review and its results, and the number of detentions released for want of reasons. Legislative and judicial oversight bodies and civil society organisations can use such data to judge

[76] Decision No 21/PUU-XII/2014, *supra* note 31.
[77] Convention against Torture, *supra* note 65, art 15.
[78] Human Rights Committee, *General Comment No 32*, *supra* note 24.

whether the new Code has changed the practice of investigation, which is the final test of harmonisation.

Comparison with Earlier Research

The findings agree with the comparative literature on a main condition of an effective defence: counsel must be funded for those who cannot pay. The Covenant adds that counsel must be available early enough, and with the status to act and not only to watch, for the defence to be effective.[79] The 2025 Code moves toward the Covenant's conditions on the status of counsel but not on funding, since assigned counsel remains tied to thresholds of penalty and means. They also agree with Ashworth's concern that procedural rights should not give way too readily to public-safety arguments,[80] but they qualify its application to Indonesia. Criticism that treats the 1981 Code as lacking most safeguards no longer fits; the 2025 Code supplies many of them, and the criticism must now be directed at their scope and enforcement. The result confirms the study of Aprilia and colleagues on pretrial proceedings insofar as the pretrial judge's review remains formal,[81] and it supports Butt's argument that the new thresholds count items of evidence without testing their weight.[82] The article adds a systematic comparison with articles 7, 9, 10 and 14 of the Covenant and shows where the reform has made harmonisation real.

Conclusion

The 1981 Code recognised most of the fair trial rights of suspects that the Covenant protects, but limited assigned counsel, left detention to wide discretion and lacked a rule excluding unlawfully obtained or coerced evidence. Law No 20 of 2025 has closed part of this gap: it sets evidential thresholds for designation, arrest and detention, gives the advocate a participating role in examinations, widens pretrial review and links invalid coercive measures to inadmissibility of their product. It has not closed all of it. Assigned counsel still depends on fixed thresholds of penalty and means, and not on the interests of justice; the grounds of detention are broad; pretrial review tests the existence and not the strength of evidence; and protection against coerced statements remains unclear. The crime-control orientation that the earlier criticism identified therefore survives in a reduced form. Four steps are recommended. Implementing regulations and, if necessary, an amendment should provide that counsel is assigned whenever the interests of justice so require,

[79] Cape et al, *supra* note 13.
[80] Ashworth, *supra* note 14.
[81] Aprilia, Siregar & Munandar, *supra* note 15.
[82] Butt, *supra* note 16.

including from the first questioning of a person in custody. The Constitutional Court and the Supreme Court should read the grounds of detention narrowly, require reasons that address necessity and alternatives, and have pretrial judges examine the quality of the evidence. An express rule should exclude any statement obtained by torture or other coercion, in line with the Convention against Torture, together with recording of examinations. Finally, the police and prosecution services should train investigators in the new Code and report on how it is used. The study is doctrinal; it relies in part on commentary on a statute that has applied for less than a year, and it does not analyse court decisions, which research should do once decisions applying the 2025 Code are available.

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.

Funding and Conflicts of Interest

The authors declare no conflict of interest. This research received no external funding.

References

Constitution of the Republic of Indonesia 1945.

African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217.

American Convention on Human Rights, 22 November 1969, 1144 UNTS 123.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 UNTS 221.

International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

Law No 8 of 1981 on Criminal Procedure (Indonesia) [repealed by Law No 20 of

2025].

Law No 5 of 1998 on the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia).

Law No 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (Indonesia).

Law No 48 of 2009 on Judicial Power (Indonesia).

Law No 16 of 2011 on Legal Aid (Indonesia).

Law No 1 of 2023 on the Criminal Code (Indonesia).

Law No 20 of 2025 on Criminal Procedure (Indonesia).

Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980).

Constitutional Court of the Republic of Indonesia, Decision No 21/PUU-XII/2014 (28 April 2015).

Alvat, Pradikta Andi. "Transformasi Bantuan Hukum dalam KUHAP [The Transformation of Legal Aid in the KUHAP]" (21 July 2026), online: *Dandapala* <https://dandapala.com/opini/detail/transformasi-bantuan-hukum-dalam-kuhap>.

Aprilia, SS, E Siregar & TI Munandar. "Perlindungan Hukum Terhadap Hak Tersangka Melalui Upaya Praperadilan [Legal Protection of Suspects' Rights through Pretrial Proceedings]" (2023) 4:1 *PAMPAS: Journal of Criminal Law* 16, DOI: <10.22437/pampas.v4i1.24097>.

Ashworth, Andrew. *Human Rights, Serious Crime and Criminal Procedure*. London: Sweet & Maxwell, 2002.

Butt, Simon. "The New KUHAP: Easier to Investigate, Easier to Convict (Part 2 of 2)" (14 May 2026), online: *Indonesia at Melbourne* <https://indonesiaatmelbourne.unimelb.edu.au/the-new-kuhap-easier-to-investigate-easier-to-convict-part-2-of-2/>.

Cape, Ed et al, eds. *Effective Criminal Defence in Europe*. Antwerp: Intersentia, 2010.

UN Human Rights Committee. *General Comment No 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*. UN Doc CCPR/C/GC/32 (2007).

UN Human Rights Committee. *General Comment No 35: Article 9: Liberty and Security of Person*. UN Doc CCPR/C/GC/35 (2014).

Jayanti, Hanifah Dwi. "KUHAP Baru Perkuat Peran Advokat dalam Proses Peradilan Pidana [The New KUHAP Strengthens the Role of Advocates in Criminal Proceedings]" (5 February 2026), online: *Hukumonline*

<https://www.hukumonline.com/berita/a/kuhap-baru-perkuat-peran-advokat-dalam-proses-peradilan-pidana-lt698450c56ffb2/>.

"New KUHAP Alleged to Potentially Allow Arbitrary Arrests" (21 January 2026), online: *Constitutional Court of the Republic of Indonesia* <https://en.mkri.id/news/details/2026-01-21/New_KUHAP_Alleged_to_Potentially_Allow_Arbitrary_Arrests>.

Packer, Herbert L. *The Limits of the Criminal Sanction*. Stanford: Stanford University Press, 1968.

Twining, William. "Normative and Legal Pluralism: A Global Perspective" (2010) 20:3 *Duke Journal of Comparative & International Law* 473.

Wahyuni, Willa. "Begini Prosedur dan Syarat APH Melakukan Penahanan dalam KUHAP Baru [The Procedure and Conditions for Law Enforcers to Detain under the New KUHAP]" (26 January 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/begini-prosedur-dan-syarat-aph-melakukan-penahanan-dalam-kuhap-baru-lt6977289eebfa8>.