Nine Crucial Issues in the 2025 Draft Criminal Procedure Code (RUU KUHAP)

On 20 March 2025, the Chair of Commission III of the Indonesian House of Representatives (DPR RI) stated that the Draft Criminal Procedure Code (RUU KUHAP) contains five elements described as progressive: the installation of CCTV in detention facilities, provisions regarding the rights of vulnerable groups, the strengthening of the role of defence lawyers, improvements to the conditions for detention, and new regulations on restorative justice.

However, in our press release dated 21 March 2025, The Civil Society Coalition for Criminal Procedure Code Reform demonstrated that these claims of progressive content are not entirely accurate.[1] The Civil Society Coalition for Criminal Procedure Code Reform considers the 2025 Draft Criminal Procedure Code published by the DPR (version dated 20 March 2025) to still have many shortcomings and have failed to address the root problems found in the current implementation of the KUHAP (Law No. 8 of 1981), which remains unaccountable, unjust, and unsupportive of citizens' rights.

On the other hand, the DPR appears to be rushing the deliberation of the Draft Criminal Procedure Code According to the Chair of Commission III of the DPR RI, the deliberation is targeted to be completed within no more than two parliamentary sessions. They expect the draft be passed by around October‑November 2025 at the latest.

The 2025 Draft Criminal Procedure Code contains a total of 334 articles, with an inventory of issues comprising 1,570 articles/paragraphs in the main body and 590 articles/paragraphs in the explanatory section. It is therefore unreasonable to expect a thorough and meaningful deliberation to take place within just a few months. If the process is not improved and carried out with due diligence, ensuring meaningful public participation and the involvement of those directly affected, it risks entrenching human rights violations within the criminal justice system.

The Civil Society Coalition for Criminal Procedure Code Reform has identified nine crucial issues that must be addressed in the 2025 Draft Criminal Procedure Code, as follows:

A. First, the 2025 Draft Criminal Procedure Code fails to ensure that the criminal justice system will operate accountably in responding to reports of criminal offences from the public.

A fundamental demand is that the Criminal Procedure Code reform must be progressive by guaranteeing the protection of human rights through the principle of due process and the presence of judicial oversight (judicial scrutiny) over all actions taken by law enforcement officers throughout the criminal justice process. This must be reflected in the ability of judiciary to examine and hold accountable all actions and treatment by law enforcement officials. If authorities fail to follow up on reports or complaints from victims of crime without a clear and justifiable reason, those failures must be subject to accountability.

In addition, all coercive measures must be subject to prior judicial authorisation, and there must always be a mechanism or forum available for objections or complaints to challenge any actions taken by law enforcement officials.

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[1] Koalisi Masyarakat Sipil untuk Pembaruan KUHAP, *Cek Kosong Pembaharuan KUHAP: 5 Alasan RUU KUHAP Masih Belum Menjawab Masalah Sistemik Peradilan Pidana,* 2025, https://icjr.or.id/cek-kosong-pembaharuan-kuhap/

One recurring issue involves police investigators refusing to accept victims' reports of criminal offences. A notable example occurred in 2021, when the Jakarta Metropolitan Police (Polda Metro Jaya) found Aipda Rudi Panjaitan, an officer from the Pulogadung Police Sector, guilty in an ethics hearing for refusing to accept a robbery victim's report. Such refusals are particularly common in cases involving victims of sexual violence, whose reports are often dismissed or not followed up (Infid, ICJR, 2022).[2]

The 2012 Draft RUU KUHAP attempted to address this issue through Article 12, which introduced a system of hierarchical oversight for law enforcement officials. Article 12 stated that if an investigator failed to respond to a report or complaint within 14 days, the complainant could submit the report to the public prosecutor. The public prosecutor would then be required to assess the report, and−if there were sufficient grounds and preliminary evidence of a criminal offence−within 14 days must instruct the investigator to conduct an investigation and specify the suspected offence. If the investigator still failed to act, the complainant could request the public prosecutor to initiate prosecution directly, with the investigator being notified of the examination.

However, the provisions found in Article 12 of the 2012 Draft RUU KUHAP have been omitted from the 2025 Draft. Under Article 23 of the 2025 Draft, if a report or complaint is not responded to, the complainant may report the matter to the investigator's superior or to an official responsible for oversight within the investigative institution. The regulation is thus limited to internal reporting mechanisms within the investigative body itself. There is no guarantee of what follow-up, if any, will take place after such a report is made to a superior. There is also no requirement for investigators to take action within a set time frame or to determine the alleged criminal offence based on the report. In practice, especially in cases involving victims of sexual violence, legal aid or services providers have frequently made such internal reports to investigative institutions, yet the outcomes are often unclear and fail to result in effective case handling. This is due to the fact that internal reporting lacks a structured, tiered oversight mechanism within the criminal justice system.

Furthermore, the 2025 Draft Criminal Procedure Code fails to provide any mechanism for victims to formally object to unreasonable delays in case handling. The only form of judicial oversight included in the draft is pretrial proceedings (*praperadilan*), which are limited in scope. As such, the 2025 Draft Criminal Procedure Code does not ensure meaningful judicial supervision. Victims are left in limbo and continue to struggle for justice.

B. Second, the 2025 Draft Criminal Procedure Code still fails to adequately regulate judicial oversight mechanisms (judicial scrutiny) and to provide a complaint forum for procedural violations committed by law enforcement officers.

To this day, pretrial proceedings (*praperadilan*) is inadequate for victims of procedural rights violations to seek accountability of all the coercive measures conducted by law enforcement officers. The weakness of the current *praperadilan* include: it can only be initiated after a procedural violation has occurred (post factum); it only examines formal or procedural aspects, without addressing the substance the violation of procedural rights; the hearing process is extremely brief, lasting only seven (7) days; and it becomes void if the main case enters trial

[2] ICJR, *Analisis Tantangan Implementasi dan Kebutuhan Operasionalisasi Undang-Undang Tindak Pidana Kekerasan Seksual,* https://icjr.or.id/analisis-tantangan-implementasi-dan-kebutuhan-operasionalisasi-undang-undang-tindak-pidana-kekerasan-seksual-uu-tpks/

before the praperadilan process is completed. The onus of the proof of the *praperadilan* hearing is on the complainant, not the officers who has been accused of procedural violations. It also led to the practice that 96% of *praperadilan* hearings request come from those who has access to defence lawyers (ICJR, 2014).[3] Further, law enforcement officers who are accused in the pretrial examination, frequently fail to appear at the initial hearing. Such absences often result in the proceedings being dismissed by the court, denying the complainant any access to justice. As such, the current mechanism does not provide victims with an effective or meaningful avenue to assert their right to a fair trial or to hold law enforcement accountable for procedural misconduct.

Given these conditions, there is a clear need for mechanisms beyond *praperadilan* to ensure accountability for the use of coercive measures. This is not an unfounded proposal. Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) states that anyone who is arrested−as a form of coercive measure−must be brought promptly before a judge. This provision should be interpreted as a normative basis for judicial oversight to ensure that the use of coercive measures is consistent with human rights principles.

From the perspective of individuals accused of committing a crime, judicial oversight serves as a safeguard against arbitrary actions by the state. The judiciary is tasked with reviewing the conduct of state power within the criminal justice process. At the heart of the habeas corpus principle (bringing a person held by the authorities before the court) lies the requirement that a judge must determine the lawfulness of an arrest and assess the necessity of detention in an impartial hearing open to the public. **This fundamental guarantee, however, is entirely absent from the 2025 Draft Criminal Procedure Code.** The concept of judicial examination through a pretrial judge or examining magistrate (*hakim pemeriksa/hakim komisaris*) has been removed from the draft. This is a significant regression, considering that such a concept was already introduced in the 2012 draft of the RUU KUHAP.

There are no meaningful changes in the 2025 Draft Criminal Procedure Code regarding judicial scrutiny. The only form of judicial oversight over law enforcement actions remains the outdated model of *praperadilan*. In the 2025 Draft Criminal Procedure Code, the provisions on *praperadilan* remain largely unchanged. Not much has changed−its scope is still very limited to determining the legality of coercive measures, the legality of termination of investigation or prosecution, and requests for compensation and/or rehabilitation for someone whose case is dropped at the investigation or prosecution level.

The parties allowed to file a praperadilan are still limited to the suspect, the suspects family, or their legal counsel, when it concerns the legality of coercive measures (Articles 149‑153, RUU KUHAP 20 March 2025). In reality, coercive measures may also affect other interested parties (e.g. the owner of a house or building that is searched), but the draft fails to accommodate such rights. Even worse, Article 149(1)(a) of the Draft undermines the scope of coercive measures that can be reviewed in the *praperadilan* hearing*,* The article says “Coercive measures that have obtained the approval of the head of the district court before its implementation (pre-factum) are not subject to praperadilan complain.” This provision represents a regression, as prior judicial approval of a coercive measure is intended to assess its necessity before it is carried out, whereas a *praperadilan* hearing serves to examine how

[3] ICJR, *Pretrial Hearing In Indonesia: Theory, History, and Practice in Indonesia*, (ICJR, 2014), https://icjr.or.id/wp-content/uploads/2014/02/Pretrial-Hearing-in-Indonesia.pdf

the measure was implemented. These two mechanisms serve distinct purposes and therefore cannot substitute or eliminate one another.

Another regression is the limitation of *praperadilan* for the termination of investigation. While victims or complainants are permitted to file *praperadilan* in cases involving the termination of investigations or prosecutions, the Article 152(2) of the 2025 Draft states that *praperadilan* cannot be filed against the termination of a case if it results from a gelar perkara (case review meeting by initiate by the police in the investigation stage). Therefore, not all termination of investigations are subject to *praperadilan.*

Additionally, the 2025 Draft fails to address the long-standing ambiguity surrounding the procedural rules for *praperadilan* (Article 154). Ideally, it should clearly establish that the burden of proof lies with the investigator or prosecutor, requiring them to demonstrate that their use of coercive measures or procedural actions was lawful and based on sufficient grounds. However, in practice, *praperadilan* proceedings are structured similarly to civil litigation, where the burden of proof often falls on the complainant. The process is limited to a formal review of administrative documents, rather than a substantive examination of facts and material truth. This structural flaw has persisted since at least 2014 (ICJR, 2014),[4] and the 2025 Draft fails to remedy it. There remains no assurance that *praperadilan* will function as a mechanism for uncovering material truth. Moreover, the Draft maintains a restrictive seven-day limit for court hearings, further weakening its effectiveness.

The 2025 Draft Criminal Procedure Code also does not recognize the objects of praperadilan for examining various rights violations that are likely to occur in the criminal justice process. Other objects that should be included are: 1) cases that experience unreasonable delays, 2) evidence or testimony obtained illegally 3) suspects or defendants not being assisted by legal counsel 4) investigations or prosecutions conducted for illegitimate purposes 5) the issuance of a decision to terminate an investigation, prosecution, or case, based on resolutions outside of court (e.g., diversion or practices mistakenly regarded as restorative justice by the DPR and the Government), which should be able to be challenged by the victim or an interested third party, 6) failure to fulfill the agreements or the rights of a Crown Witness as determined in the Crown Witness Agreement by the public prosecutor and 7) other violations of the rights of the suspect/defendant, witness, or victim, or of all parties involved during the stages of investigation, prosecution, trial, or execution of judgment. These seven issues should serve as valid grounds for filing objections during the criminal justice process. In the framework of the 2025 Draft RUU KUHAP, these objects should be part of the guarantee of judicial scrutiny.

C. Third, the 2025 Draft Criminal Procedure Code Fails to Establish Objective and Human Rights-Oriented Standards for Coercive Measures.

Coercive measures refer to any form of restriction on human rights imposed by investigators, prosecutors, or judges under the pretext of gathering evidence or supporting the criminal justice process. Because coercive measures inherently infringe upon human rights, their regulation must meet three essential criteria: 1) The law must impose strict conditions under which coercive measures may be carried out, including a requirement for prior judicial authorization; 2) It must provide clear provisions for exceptional or urgent situations where

[4] ICJR, *Pretrial Hearing In Indonesia: Theory, History, and Practice in Indonesia*, (ICJR, 2014), https://icjr.or.id/wp-content/uploads/2014/02/Pretrial-Hearing-in-Indonesia.pdf; ICJR, *Audit KUHAP,* (ICJR, 2022) https://icjr.or.id/wp-content/uploads/2023/02/AUDIT-KUHAP-2022.pdf

such measures can be applied without prior court approval; and 3) There must be accessible forums to assess the necessity and legality of coercive measures, both pre factum (before the action is taken) and post factum (after the action has been carried out).

The most problematic provision on coercive measures in the 2025 Draft Criminal Procedure Code concerns arrest. First, Article 89 of the Draft, which sets out the conditions for arrest, fails to require prior judicial authorization. This is a critical omission. Arrests should, by default, be carried out only with a court warrant. Exceptions, such as arrests without prior judicial approval, should be strictly limited to situations where the suspect is caught in the act (red-handed). Second, Article 90 paragraph (2) of the 2025 Draft Criminal Procedure Code allows arrests to be carried out without a clear time limit under certain conditions. The article's explanatory note provides an example of such a condition: when the distance between the location of arrest and the nearest investigator's office takes more than one (1) day to travel. However, this vague formulation provides no assurance that such exceptions will remain limited to that example in practice. It opens the door to arbitrary interpretation and potential human rights violations, particularly in the absence of effective oversight mechanisms.

Article 90 paragraph (3) of the 2025 Draft Criminal Procedure Code stipulates a one-day limit for arrests but allows this period to be extended indefinitely, provided that the extension is counted as part of detention time. This is highly problematic, as it conflates arrest and detention, two distinct legal actions with different legal purposes and safeguards. Arrest is meant to be a short-term restriction to allow for initial questioning or procedural steps, while detention is a longer deprivation of liberty that must follow stricter procedural and judicial oversight.

The conflation in Article 90 is further exacerbated by the complete absence of any requirement to bring the arrested individual before a judge following the arrest. Under international human rights standards, **anyone arrested must be presented physically before a judge within 48 hours to assess the lawfulness of the arrest and determine whether detention is necessary. The Draft falls significantly short of this standard.**

Additionally, Article 88 of the 2025 Draft Criminal Procedure Code explains that arrest is carried out based on two pieces of evidence. The Chairperson of Commission III of the DPR claims that this requirement is better than the 1981 Criminal Procedure Code, which only required "sufficient preliminary evidence." We emphasize that the requirement of two pieces of evidence is by no means sufficient, because the assessment of the necessity of arrest is not only based on the number of pieces of evidence, but must be based on "sufficient reason" that the evidence presented indeed justifies the restriction of someone's movement through arrest as being necessary to conduct an examination.

Moreover, the 2025 Draft Criminal Procedure Code is also unclear in regulating the difference between the requirement of two pieces of evidence for naming a suspect in Article 85 paragraph (1), and for arrest in Article 88. Each of these actions must be based on specific evidence, not that the two pieces of evidence used in naming a suspect can automatically be used as the basis for carrying out other actions such as arrest, detention, search, seizure, and so on. Each requirement for coercive measures must be fulfilled based on specific evidence.

In relation to detention, the requirements for detention are regulated in Article 93 paragraph (5), with a longer list of reasons for detention. Previously, the 1981 Criminal Procedure Code only regulated three reasons that could be used to detain someone (risk of flight, evidence-

tempering and risk of reoffending), but the 2025 Draft Criminal Procedure Code regulates nine reasons for detention that appear to be overly broad, including: providing information that is not in accordance with the facts during examination, not cooperating in the examination, and obstructing the examination process.

The reason for detention based on “providing information that is not in accordance with the facts during examination” contradicts human rights, which grants the right to remain silent to suspects or defendants. This cannot be used as a basis for detention, which should be based on objective circumstances, namely, if detention is not carried out, the examination process will be hindered.

The criteria or indicators for fulfilling the grounds for detention in the 2025 Draft Criminal Procedure Code are also not specified. In fact, one of the main problems in the practice of detention decisions so far is the absence of clear standards for carrying out detention (ICJR, 2014, 2025).[5] In addition, detention decisions are currently made solely by law enforcement officers conducting the examination, not by an examining judge who is free from law enforcement interests. Furthermore, there is no obligation to provide an explanation based on factual circumstances that prove the requirements for detention, let alone the requirement to provide risk assessment or social inquiries report from separated body such as probation officers. Thus, 2025 the Draft Criminal Procedure Code not only fails to address the existing problems, but also further obscures the regulation of detention.

Meanwhile, the provision under Article 105 letter (e) of the 2025 Draft Criminal Procedure Code, which regulates the search of electronic information, remains ambiguous. In essence, this type of search is intended to obtain electronic evidence in the form of data or information stored within an electronic device or medium. However, to access and retrieve such evidence, the search must be directed at the device or medium itself, not at the data or information directly. Moreover, any data or information intended to be seized must be supported by a separate seizure warrant. The draft fails to clearly distinguish between the procedures for searching electronic devices and those for seizing electronically stored evidence.

Next, there is the phrase "urgent circumstances" in the provision on search as regulated in Article 106 paragraph (4) of the 2025 Draft Criminal Procedure Code. The term "urgent circumstances" should ideally be elaborated within the article’s normative provision, not only in the explanatory section, to distinguish the meaning of "urgent circumstances" in each type of coercive measure, such as seizure or wiretapping. At the very least, urgent circumstances should include evidence that the case being handled is located in a place that is or can be moved or relocated, or there is a threat to personal safety or danger to oneself or others, there is a concern that someone will destroy the evidence, or the evidence is clearly visible to the naked eye in the place to be searched. The draft fails to outline the specific limitation of “urgent circumstances.”

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[5] ICJR, *Pretrial Hearing In Indonesia: Theory, History, and Practice in Indonesia*, (ICJR, 2014), https://icjr.or.id/wp-content/uploads/2014/02/Pretrial-Hearing-in-Indonesia.pdf; ICJR, Evaluasi terhadap Proses Pengambilan Keputusan dalam Melakukan Penahanan dan Peluang Pengembangan Risk Assessment Tools Penahanan, (ICJR, 2025) https://icjr.or.id/wp-content/uploads/2025/03/Penelitian-tentang-Pengembangan-Risk-Asessment-Tools-untuk-Melakukan-Penahanan.pdf.

The ambiguity surrounding the standard of "urgent circumstances" also appears in the regulation of seizure as stipulated in Article 112 paragraph (2) of the 2025 Draft Criminal Procedure Code. Moreover, this article does not regulate the timeframe within which the court must be notified when a seizure is conducted under urgent circumstances. Ideally, such notification should be made within one day after the seizure is carried out to ensure prompt oversight. This issue is further exacerbated by the absence of provisions regarding the refusal of a seizure warrant from the court, which has implications for items that have already been seized and the mechanism for returning those items.

Furthermore, regarding wiretapping, ideally it can only be used in exceptional circumstances when all possible efforts to collect evidence and facts have been undertaken, yet the criminal investigation cannot be uncovered without conducting wiretapping. Nevertheless, the 2025 Draft Criminal Procedure Code does not regulate the limitation of what criminal offences can be uncovered through wiretapping. The specific criminal offences referred to should be limited to several categories that indicate the seriousness and complexity of the investigation, not for all crimes. Additionally, the regulation of the wiretapping notification mechanism is crucial. The purpose is to ensure that individuals who are the target of unlawful wiretapping actions, whether suspects or third parties, have access to their rights, including the return of data or information, guarantees for the deletion of wiretapped data, and compensation. This kind of provisions are absent from the draft.

Next, another coercive measure is the examination of letters, the 2025 Draft Criminal Procedure Code does not stipulate that the examination of letters must be conducted based on a court order. This creates the potential for arbitrary actions by investigators or prosecutors.

D. Fourth, the 2025 Draft Criminal Procedure Code is imbalanced in regulating the role of advocates and the expansion of legal aid

The Indonesian judicial system positions advocates as holders of a noble profession (*officum nobile*), with a central role in law enforcement. However, in practice, advocates still face several obstacles, such as difficulties accessing evidence and case files, which are fundamental for defence purposes and legal efforts.

The imbalance in the judicial process actually begins at the investigation stage. Article 33 of the 2025 Draft Criminal Procedure Code stipulates that during the suspect's examination in the investigation stage, advocates are only allowed to observe and listen, as well as express objections if the investigator's questions are intimidating or coercive. This weak role of the advocate leads to an imbalance in the construction of facts recorded in the Investigation Report (*Berita Acara Pemeriksaan/* BAP). In practice, the BAP is always used as the basis for examination in court proceedings and appeals. Therefore, the role of advocates should be strengthened, one of which can be done by granting advocates the authority to provide notes or opinions regarding the examination of their client, that must be included or recorded in the BAP and case files.

On the other hand, there are several provisions that are inconsistent with the principle of balance in the presentation of evidence in court, such as Article 197 paragraph (10) of the 2025 Draft Criminal Procedure Code which states, "After the examination of the Defendant, the Prosecutor may call additional Witnesses or Experts to refute the evidence presented by the Advocate during the trial." However, the defendant and their legal counsel are not given the same opportunity to offer further rebuttals. The adversarial system indeed allows the

parties to challenge each other, but in principle, this must remain balanced. Additionally, attention should also be given to the issue of access to evidence for Advocates. Currently, access to evidence and/or exhibits is only granted to the Advocate once the Prosecutor has included them in the Indictment.

The freedom of advocates in carrying out their duties and profession is also restricted in this 2025 Draft Criminal Procedure Code. In Article 142 paragraph (3) letter b, the draft even prohibits advocates from giving opinions outside the court regarding their clients' issues. This provision clearly contradicts various regulations that guarantee the status of advocates as independent. This provision also poses a threat to the role of advocates in carrying out non-litigation roles, including providing legal assistance outside the court. Moreover, this constitutes a limitation on the right to freedom of speech and expression.

Furthermore, the claim of strengthening the role of advocates in the 2025 Draft Criminal Procedure Code is deemed inadequate because it does not align with adequate guarantees regarding the right to legal aid. Instead, it accommodates patterns of violations of the right to legal aid that have occurred so far. The Article 146 paragraphs (4) and (5) of the Draft still allows the absent of legal assistance if suspect or defendant declare the refusal to be assisted, as proven by a record created by the authorized official (investigator or prosecutor).

The formulation of such articles actually legitimizes the modus operandi of violations of the rights of suspects/defendants that have frequently occurred, such as when a suspect/defendant is asked to sign a statement letter and consent letter to be examined without the presence of a lawyer. In practice, suspects/defendants sign these documents for various reasons, including: 1) being forced and/or tortured into signing; 2) being promised that their case will be resolved quickly or that they will be released; and 3) being manipulated into believing that hiring a lawyer will incur significant costs.

The impact of this modus operandi is further exacerbated because the 2025 Draft Criminal Procedure Code does not include legal consequences when the right to legal assistance is not fulfilled. In several cases, based on previous court decisions, there have been many variations in judges' interpretations regarding the consequences of the lack of legal assistance, even at the investigation stage. In the Supreme Court Decision No. 1565K/Pid/1991 and Decision No. 367K/Pid/1998, the panel of judges stated that if the requirements for requesting legal assistance were not met, such as failing to appoint a lawyer for the suspect from the beginning of the investigation, the public prosecutor's indictment should be dismissed. Unfortunately, there is a disparity in the decisions. In other case, the Supreme Court Decision No. 650K/Pid/Sus/2011 stated that the absence of a lawyer does not invalidate the prosecution, citing the lack of the availability of a lawyer in Indonesia. This disparity in rulings indicates a substantial issue in the Criminal Procedure Code regarding the right to legal assistance.

The provision in Article 146 paragraph (4) of the 2025 Draft Criminal Procedure Code also creates a loophole for the absence of legal counsel for suspects/defendants who are facing the death penalty, life imprisonment, a prison sentence of 15 years or more, or those who are facing a sentence of 5 years or more but are unable to afford or do not have their own lawyer, if the suspect/defendant refuses. The Supreme Court, through the General Criminal Chamber Circular No. PIDANA UMUM/B.8/SEMA 7 2012, indeed stated that a defendant who refuses legal counsel from the investigation to the trial does not invalidate the court's decision. However, the provision in the SEMA circular is limited to cases where the charge carries a

sentence of 5 years or more, and should not apply to suspects/defendants facing the death penalty, life imprisonment, or a sentence of 15 years or more. Therefore, it is clear that these articles in 2025 Draft Criminal Procedure Code are problematic and have a high potential for violations in the judicial process, especially in cases with severe penalties such as death penalty.

E. Fifth, the 2025 Draft Criminal Procedure Code does not guarantee the accountability of the implementation of special investigative techniques.

Article 75 of the Law No. 35 of 2009 on Narcotics introduces the authority for the investigator to conduct controlled delivery and undercover buying as the special investigative techniques for drug crimes. However, the law does not clearly specify the limitation of this authority. The police then introduced this authority in Article 6 paragraph (1) of the Indonesian National Police Chief Regulation No. 6 of 2019 on Criminal Investigations (*Perkapolri/Perkap* No. 6 of 2019). This regulation even allows this authority to be exercised at the preliminary investigation stage (*penyelidikan*), when the criminal event has not yet been confirmed. By opening up this authority during the preliminary investigation stage (*penyelidikan*), with no oversight from other institutions, it becomes the legitimation of the entrapment. In many narcotics cases, entrapment through this authority has indeed occurred. Individuals may purchase certain items without knowing that the goods delivered to them are narcotics, and they are then accused of committing a criminal offense.

Unfortunately, Article 16 of the 2025 Draft Criminal Procedure Code adopts the problematic formulation from the Perkap No. 6/2019. It allows controlled delivery and undercover buying to be conducted as the method of preliminary investigation (*penyelidikan*). By regulating this authority as the technique of preliminary investigation (*penyelidikan*), meaning that the criminal offence is allowed to be initiated by the officers that equals to entrapment. The article also does not provide any limitations regarding the types of criminal offenses. It also does not require the court authorization prior to the conduct. Moreover, it does not address the right of individuals to challenge the use of such authority if they are subjected to entrapment.

It is crucial for policymakers to recognize that controlled delivery and undercover buying are investigative techniques not a method of finding crimes in preliminary investigation (*penyelidikan*). These techniques carry a high risk of violating individual rights and can even result in case manipulation. The 2025 Draft Criminal Procedure Code must establish clear limitation and objective standards governing the use of such investigative techniques.

F. Sixth, the 2025 Draft Criminal Procedure Code (RUU KUHAP) still fails to resolve the issue of unclear standards of proof, does not emphasize the relevance and quality of evidence, and lacks procedures for evidence management.

One persistent issue in the draft is the compartmentalization of the forms and types of evidentiary sources, namely between *barang bukti* (physical evidence) and *alat bukti* (means of evidence), even though Article 222 paragraph (1) of the draft stipulates that physical evidence is included within the means of evidence. In essence, what matters is identifying what can be considered reliable and accurate sources for revealing facts. The criminal procedural code reform should clearly define what is meant by evidence, namely information or objects, whether movable or immovable, tangible or intangible, that are relevant to the examination of a criminal case.

An important point to note in defining evidence is the inclusion of the element of “relevance,” which is derived from the “relevancy test” used in the law of evidence in several developed legal systems. This relevancy test essentially serves as a standard to assess whether a piece of evidence has a tendency to make a fact more or less probable than it would be without the evidence (probativeness), and whether that fact is of consequence in determining the case (materiality). The application of the relevancy test is expected to enhance the accuracy of judicial decision-making, as decisions would be based on evidence that genuinely holds probative value. However, the 2025 Draft Criminal Procedure Code still fails to guarantee the application of this relevance standard in the assessment of evidence.

The standard of proof currently recognised under the current criminal procedural code lacks a clear definition and identifiable indicators. In essence, a standard of proof is a specific “bar” that must be met by the party bearing the burden of proof in order for their claims to be considered proven. The 2025 Draft Criminal Procedure Code adopts at least two standards of proof: (1) “valid and convincing” (*sah dan meyakinkan*), which reflects the principle of *beyond reasonable doubt*, applied for the imposition of criminal penalties; and (2) “sufficient evidence” (*bukti yang cukup*), which is derived from the standard of *probable cause*, and is used to justify certain coercive procedural actions, such as the suspect naming, arrest, and pre-trial detention.

The 2025 Draft Criminal Procedure Code defines “sufficient evidence” purely in quantitative terms, namely, a minimum of two pieces of evidence, without emphasizing their relevance or probative value. This approach risks perpetuating long-standing issues in legal practice, such as inaccurate decision-making and inconsistent application of standards across similar cases. In fact, the threshold of “sufficient evidence” should be defined contextually, depending on the specific legal action being considered. For example, the evidentiary threshold required to determine whether a person can be named a suspect is different from the threshold needed to justify their detention. Therefore, the criminal procedural code reform should explicitly formulate evidentiary standards based on the intrusiveness of the legal action/coercive measure and incorporate considerations of both the relevance and weight of the evidence, rather than relying solely on quantity or numbers of evidence.

The burden of proof in the 2025 Draft Criminal Procedure Code is currently limited to the prosecution’s responsibility to prove the occurrence of a criminal act and the guilt of the defendant. However, other crucial legal issues, such as the use of coercive measures and claims of torture, remain unregulated in terms of evidentiary standards and who bears the burden of proof. The 2025 Draft Criminal Procedure Code should explicitly establish that in cases of torture allegations, the burden must shift to the authorities conducting the examination to prove that no torture occurred. Moreover, the methods of proving such claims must be regulated in a meaningful way. Current courtroom practices, which typically rely solely on the testimony of the investigating officer (verbalisan), who is often not the perpetrator and predictably denies any abuse, are insufficient and undermine justice.

The 2025 Draft Criminal Procedure Code also fails to comprehensively regulate the management treatment of evidence, from the acquisition of evidence to the generation of reliable information. As a result, many pieces of evidence are not optimally processed, leading to misleading information, loss of critical data, or failure to extract valuable insights. For example, when an object or tool is suspected to have been used in a criminal act, there are no clear guidelines mandating immediate forensic examination. Additionally, the The 2025

Draft Criminal Procedure Code does not provide sufficient regulation on how information stored in electronic systems or devices under the control of investigators or prosecutors should be properly managed, raising concerns about data integrity and accountability.

The regulation concerning the preservation and management of evidence after a case has reached a final and binding judgment is also not adequately addressed in the 2025 Draft Criminal Procedure Code (RUU KUHAP). The current provisions merely stipulate that evidence will either be confiscated for the state, destroyed, or returned to its rightful owner. However, certain types of evidence, particularly those containing substantial biological information such as sperm, blood, hair, and others, may hold critical value that cannot yet be accessed or analyzed at the time of trial due to limitations in resources, access, or technology. Without proper regulation on the preservation of such evidence, the justice system risks losing crucial information that could be pivotal in future proceedings.

G. Seventh, the 2025 Draft Criminal Procedure Code (RUU KUHAP) does not clearly regulate the limitations and guidelines regarding electronic or online hearings, nor does it provide a guarantee that all hearings must be open to the public

The 2025 Draft Criminal Procedure Code does not regulate the requirements, mechanisms, and accountability for the implementation of electronic/online trials. Some provisions in the 2025 Draft Criminal Procedure Code that allow for the possibility of electronic hearings are included in Article 138 paragraph (2) letter d, Article 191 paragraph (2), and Article 223 paragraphs (2) and (3). However, these provisions lack the necessary details and regulations to ensure their proper and accountable execution.

During the Covid-19 pandemic, the Supreme Court issued a regulation on electronic hearing of criminal case namely the Supreme Court Regulation Number 4 of 2020 as amended by Number 8 of 2022 concerning the Administration and Hearing of Criminal Cases in Court Electronically. Article 191 paragraph (2) of the 2025 Draft Criminal Procedure Code contains the same material as the provision in Article 2 paragraph (2) of Supreme Court Regulation 4 of 2020 regarding the allowance of electronic hearings under “certain circumstances”. However, the 2025 Draft Criminal Procedure Code does not define what is meant by “certain circumstances”.

The authority of judges in determining that a trial be conducted electronically must be clear and limited. The interpretation of “certain circumstances” must not be used as a tool by parties attempting to obstruct the pursuit of material truth. This argument is based on problematic practices in the implementation of Supreme Court Regulation No. 8 of 2022, such as issues with the limited availability of audio-visual facilities, weak internet connections, and the absence of legal consequences for verdicts based on examinations conducted under poor network conditions or inadequate audio-visual facilities. This has the potential to result in verdicts that violate the right to a fair trial and harm the parties involved in the proceedings.

Another issue is the principle of open court hearings, which has not been properly implemented throughout the conduct of electronic hearings. Article 18 of Supreme Court Regulation No. 4 of 2020 only states that public can have access to electronic hearings, but without a clear regulation on the operationalization. The electronic hearing process should not be used as a reason to limit public access, especially for the families of victims and defendants, to be present on the audio-visual communication platform to observe the trial proceedings. In addition, currently, there is still no system that provides the public with information about

access to observe the online trial. The 2025 Draft Criminal Procedure Code must clearly regulate the entire mechanism and accountability of electronic hearings.

In addition, the 2025 draft also raises concerns about ensuring that all hearings are declared open to the public, unless determined otherwise. Under Article 153 paragraph (3) of the current criminal procedural code, the judge is obliged to open the hearing and declare it open to the public, except in cases involving sexual indecency or child defendants. However, this provision is not included in Article 189 of the 2025 Draft Criminal Procedure Code. This article only states that the judge opens the hearing, without the obligation to declare the hearing open to the public. This raises serious concerns about the potential misuse of closed hearings without clear limitations.

H. Eighth, the 2025 Draft Criminal Procedure Code includes provisions for out-of-court settlement under the name of restorative justice (RJ), but with very minimal oversight.

The concept of restorative justice (RJ) as regulated in the draft is misguided. RJ is an approach to addressing criminal cases that aims to restore the victim, for example, through compensation for physical and psychological injuries, and by involving the victim in penal mediation to express their losses and recovery needs.[6] However, Articles 78–83 of the 2025 Draft Criminal Procedure Code still mistakenly treat RJ as a form of case dismissal outside of court (diversion). In fact, RJ and diversion are two entirely different things.

In drafting the articles on diversion, the 2025 Draft Criminal Procedure Code also misinterprets the concept of out-of-court case dismissal or settlement (diversion). Under proper legal standards, a public prosecutor may suspend prosecution in minor cases if the suspect agrees to fulfill certain obligations, such as paying compensation to the victim. However, Articles 74–83 of the draft assign the implementation of restorative justice (RJ) to police investigators, despite the fact that the authority to suspend prosecution through diversion clearly lies with the public prosecutor, not the police.

Even worse, under the 2025 Draft Criminal Procedure Code, case dismissal is allowed at the preliminary investigation stage (*penyelidikan*), when it is not even certain whether a criminal offense has occurred. The preliminary investigation stage is absent from any oversight from other institutions such as from prosecutor or judge. This is highly problematic and lacks accountability. Without clear accountability, the process risks becoming a tool to ignore justice or even room for extortion. As has often happened in practice, the police have instead intimidated victims into accepting settlements.

Even if what is meant by the regulation on restorative justice (RJ) in the 2025 Draft Criminal Procedure Code is penal mediation, in line with the fundamental principles of RJ, such mediation must be facilitated by independent mediators, not law enforcement officers. Additionally, there should be a clear explanation of the principles that must be considered, such as the potential power imbalance between the victim and the perpetrator, which could lead to an unfair mediation process and outcome. Even the mediation occurred in the investigation stage, the process should include procedures for notifying the prosecutors about

[6] ICJR, *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia,* (ICJR, 2022), https://icjr.or.id/wp-content/uploads/2022/10/221014-Ebook_Peluang-Penerapan-RJ-dalam-SPP-di-Indonesia.pdf

the results of penal mediation, as well as ensuring the legitimacy of the mediation outcomes through court rulings to guarantee the accountability.

I. Ninth: The 2025 Draft Criminal Procedure Code lacks of clear operational implementation for the rights of victims, witnesses, suspects/Defendants, and vulnerable groups

The guarantee of the rights of victims, witnesses, suspects/defendants is regulated in Articles 134-136 of the 2025 Draft Criminal Procedure Code. However, unfortunately, the strengthening of these rights through their mention is not accompanied by clarity on who is responsible for ensuring these rights are fulfilled. The 2025 Draft Criminal Procedure Code should address these issues more concretely and directly state who is responsible for upholding these rights. This is crucial to prevent the shifting of responsibility between investigators, public prosecutors, and even the Witness and Victim Protection Agency (LPSK) in ensuring the restoration of the rights of victims, witnesses, or suspects/defendants.

The issue of restitution remains unresolved in the 2025 Draft Criminal Procedure Code. Article 175, paragraph (7) states that if the convicted person's seized assets are insufficient to cover restitution costs, the convicted person will face a substitute prison sentence. However, when the convicted person is given a substitute prison sentence, the victim remains in a position where their suffering is not compensated through restitution. This means that the solution does not address the primary issue of restitution, which is the restoration of the victim's losses. In contrast, Articles 168 and 169 of the 2025 Draft Criminal Procedure Code establish an endowment fund for the payment of compensation, rehabilitation, and restitution. However, the regulation on this endowment fund does not provide a legal procedural mechanism for how restitution payments for victims can be initially covered by the endowment fund. It is supposed to be that the prosecutor then collect the restitution from the offender to be paid to the endowment fund, ensuring that the victim is not dependent on the offender’s ability to pay.

The rights of vulnerable groups are also mentioned in Articles 137-139 of the 2025 Draft Criminal Procedure Code, but without clear operational mechanisms outlining how these rights can be accessed and fulfilled. Furthermore, it is unclear which parties are responsible for fulfilling these rights. There is also no forum established for raising objections to alleged violations of rights or for addressing the consequences of violations of rights. The availability of complain forum and procedural mechanism is fundamental to ensure that these rights can be effectively accessed and enjoyed. Without concrete measures, the inclusion of these rights will remain an empty symbol.