

THE NEW CRIMINAL PROCEDURE CODE AND THE CRISIS OF DUE PROCESS OF LAW IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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Abstract

The ratification of the New Criminal Code on November 18, 2025, which came into effect on January 2, 2026, marks a fundamental change in Indonesia's criminal procedure law system. This update is intended to address the evolution of modern crime and the demands of law enforcement effectiveness. However, the expansion of law enforcement officials' authority in the areas of detention, confiscation, search, and eavesdropping raises serious problems for the principle of due process of law. A number of studies show that weakening the principle of procedural justice can increase the risk of arbitrariness and human rights violations. This research aims to critically analyze the New Criminal Code from the perspective of the state of law and the protection of human rights. The research method used is normative juridical with a statutory and conceptual approach. The results of the study show that strengthening the authority of the apparatus, without balancing it with strengthening judicial control, has the potential to shift the balance between state power and citizens' rights in the criminal justice system.

Keywords: New Criminal Code; Due Process of Law; Suspect Rights; The State of Law.

A. INTRODUCTION

The ratification of the New Criminal Procedure Code on November 18, 2025, is an important milestone in the history of criminal procedure law reform in Indonesia. For more than four decades, Indonesia's criminal justice system has relied on Law Number 8 of 1981 on the Criminal Procedure Code as the main instrument for regulating the criminal justice process. The New Criminal Procedure Code is imbued with the spirit of modernization, adapting the judicial mechanism to the complexity of contemporary crimes, especially organized crime, digital crime, and transnational crime.

However, the transformation of the criminal procedural law system should not be understood solely as an effort to increase enforcement effectiveness. In the state of law, criminal

procedural law has a more basic function: limiting the use of state power to avoid violating human rights. The principle of due process of law is the main instrument that ensures that every law enforcement action is carried out fairly and rationally, and that it can be tested by an independent judicial institution (Tahir, 2024; Wulandari, 2025).

A number of studies show that in Indonesian law enforcement practices, violations of suspects' rights still occur frequently, especially at the arrest and detention stages. Zahrulswendar (2022) shows that the fulfillment of suspects' rights during arrest and detention still faces various structural problems, ranging from limited access to legal aid to the disproportionate use of coercion. This condition shows that the issue of *due process of law* is not only normative but also very real in practice.

The polemic against the New Criminal Code has surfaced, especially regarding the expansion of law enforcement officials' authority over detention, confiscation, searches, and wiretapping. A number of people consider that the direction of updating the Criminal Code is closer to the crime-control model than to the due-process model (Hasibuan, 2024; Saputra, 2025). In the *crime control model*, the effectiveness and speed of enforcement are placed as the primary objectives, while the protection of individual rights tends to be marginalized.

From the perspective of the state of law, this kind of orientation is dangerous. The state of law is not measured by how quickly it punishes, but by how disciplined it limits itself in using its power. Strengthening the authority of the apparatus without strengthening judicial control can give rise to arbitrary legalization, in which actions that are substantially problematic become legitimate because they are cloaked in legal norms (Wulandari, 2025; Sinaga, 2025).

Based on this background, the main issue in this study is whether the regulation of coercive efforts in the New Criminal Code remains in line with the principle of due process of law, or marks a crisis of procedural justice in the Indonesian criminal justice system. This research aims to critically analyze the New Criminal Code from the perspective of the state of law and the protection of human rights.

B. RESEARCH METHODS

This research uses normative juridical research methods, which place law as a norm or rule that applies in society. This approach was chosen because the main object of the study is the New Criminal Code, which was passed on November 18, 2025, and came into effect on January 2, 2026,

as well as its implications for the principle of due process of law in the Indonesian criminal justice system. The approaches used in this study include a statutory approach and a conceptual approach. The legislative approach is used to systematically examine the regulation of coercive measures such as detention, confiscation, search, and eavesdropping under the New Criminal Procedure Code and to compare it with the provisions of the previous criminal procedure law. Meanwhile, a conceptual approach is used to analyze the concepts of the state of law and due process of law, and the relationship between state power and the protection of human rights in the context of criminal procedural law (Tahir, 2024; Hasibuan, 2024; Wulandari, 2025).

The legal materials used in this study include primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 concerning the Criminal Procedure Code, and the New Criminal Procedure Code, which will be ratified in 2025. Secondary legal materials include articles in national scientific journals that discuss due process of law, protection of suspects' rights, and the authority of law enforcement officials. The tertiary legal materials are used as supporting materials, such as legal dictionaries, legal encyclopedias, and official institutions' online resources.

The technique of collecting legal materials is carried out through library research by tracing laws and regulations, scientific journals, and relevant legal documents. All collected legal materials are then analyzed using normative qualitative analysis, namely by studying, connecting, and interpreting applicable legal norms to systematically, logically, and argumentatively address research problems.

C. DISCUSSION

Due Process of Law as the Foundation of the State of Law

The principle of due process of law is at the heart of the modern legal state. It not only regulates the formal procedures for events but also serves as an instrument to limit state power, ensuring that every law enforcement action remains within the corridor of human rights protection. In the doctrine of the state of law, criminal procedural law is not treated as a mere technical tool for punishment, but as a constitutional mechanism to prevent state arbitrariness against citizens. In the Indonesian context, the principle of the rule of law is explicitly affirmed in the 1945 Constitution of the Republic of Indonesia, particularly in Article 1, paragraph (3). Consequently, the entire criminal justice process—from investigation, prosecution, to examination in court—

must be subject to the principle of procedural justice. Tahir (2024) emphasized that *due process of law* not only requires procedures, but also demands fair, rational, proportional procedures that can be tested independently.

Basic rights such as the right to personal liberty, the right to security, the right to defense, and the right not to be treated arbitrarily are direct derivatives of the principle of *due process*. Therefore, any form of coercive effort by the state—whether arrest, detention, confiscation, search, or wiretapping—should be placed as a strictly limited exception, not as a routine procedure in law enforcement.

Wulandari (2025) reminds us that the state's failure to maintain due process will have a double impact: on the one hand, it weakens the protection of human rights, and on the other hand, it damages the legitimacy of the law itself. Laws that lose legitimacy are no longer obeyed out of awareness, but out of fear. It is at this point that the law transforms from an instrument of justice to an instrument of domination.

In practice in Indonesia, the issue of *due process of law* most often arises in the early stages of criminal proceedings, especially at the time of arrest and detention. Zahrulswendar's research (2022) shows that the suspect is in a highly vulnerable position, both psychologically and legally. Limited access to legal counsel, weak external controls, and strong power relations between officers and suspects often create serious inequities in the law enforcement process.

Furthermore, Wulandari (2025) shows that due process violations are not always blatant procedural violations but often take the form of covert deviations, such as expanding the meaning of urgent circumstances, blurring the limits of authority, or using psychological pressure in examinations. Such a pattern is dangerous because it formally appears legitimate, but it substantively violates the principle of human rights protection.

In the theory of the criminal justice system, two major models are known, namely the due process model and the crime control model. Hasibuan (2024) explained that the *due process model* places the protection of individual rights as the primary value, even at the expense of speed and efficiency. In contrast, *the crime control model* makes enforcement effectiveness the dominant goal, even if it requires relaxing procedural protections. The battle between these two models is ideologically coloring the debate on the reform of the Criminal Code.

From a normative perspective, Indonesia has, since its inception, proclaimed itself a country of law with a *due-process character*. This is reflected in Law Number 8 of 1981

concerning the Criminal Procedure Law, which places the court as the center of control over the actions of the authorities. However, in the dynamics of criminal procedure law reform, the direction of legal policy is beginning to shift towards a crime-control *model* (Hasibuan, 2024; Saputra, 2025).

Saputra (2025) emphasized that when the reform of the criminal procedure law focuses too much on accelerating the process and expanding the authority of the apparatus, the *due process of law* risks being reduced to a mere formality. In fact, in a state of law, procedures are not just administrative stages, but the last bastion to protect citizens from coercive power.

It is in this context *that due process of law* must be understood not only as a procedural law doctrine, but as a philosophy of power limitation. It works as a normative fence that regulates how far the state can go into the territory of individual freedom. Without this fence, the effectiveness of law enforcement can actually turn into legitimacy for arbitrariness.

Thus, before assessing whether the New Criminal Procedure Law strengthens or weakens the *due process of law*, it must first be emphasized that this principle is an absolute prerequisite for the existence of a state of law and constitutional democracy. Any form of criminal procedure law reform that ignores this foundation risks the quality of the state of the law itself.

Criminal Procedure Code 1981 as the Foundation of Due Process of Law in the Indonesian Criminal Justice System

The enactment of Law Number 8 of 1981 concerning the Criminal Procedure Law marked the birth of a national criminal procedural law regime, which was consciously intended to break away from the repressive character of the colonial legacy. The 1981 Criminal Procedure Code not only regulates the technical mechanisms of law enforcement but also carries a strong ideological mission: placing the rights of suspects as legal subjects that must be protected from the earliest stages of the criminal process. This is the main entry point of *the principle of due process of law* in Indonesia's post-independence criminal justice system.

Conceptually, the 1981 Criminal Procedure Code is built on the assumption that state power in criminal proceedings contains enormous potential for abuse. Therefore, such power must be limited through strict legal mechanisms, especially through judicial control over coercive efforts. This principle is reflected in the arrangements on detention, search, and seizure that require

permission or can at least be tested through pretrial institutions. With such a construction, the 1981 Criminal Code normatively places the court as the gatekeeper of the state's coercive power.

In the *due process* perspective, detention under the 1981 Criminal Procedure Code is expressly positioned as an exception, not a custom. A person should not be detained solely because he or she is suspected of committing a criminal act, but only on objective and limited grounds, such as fear of fleeing, destroying evidence, or repeating a criminal act. This construction suggests that personal liberty is placed as the norm, while its limitations must be rationally and proportionately proven.

Zahrulswendar's research (2022) shows that normatively, the 1981 Criminal Procedure Code has provided relatively adequate protection of suspects' rights, especially in the aspects of arrest and detention. However, the problem that often arises does not lie in the absence of norms, but in the tension between protection norms and law enforcement practices in the field. This means that, by design, the 1981 Criminal Procedure Code has a *due process* character, but in its implementation, it often faces the reality of the power of the very dominant apparatus.

One of the important pillars of *due process* in the 1981 Criminal Procedure Code is the existence of a pretrial institution. Through this mechanism, the actions of the authorities in the early stages—especially arrests, detentions, searches, and seizures—can be tested quickly by the courts. The presence of pretrial shows that lawmakers at the time recognized the importance of providing judicial emergency brakes to control potential arbitrariness.

Important developments in strengthening *due process* can also be seen from the dynamics of the Constitutional Court's decision. Through the Constitutional Court Decision Number 21/PUU-XII/2014, the scope of pretrial was expanded to include the determination of suspects, searches, and seizures. This ruling affirms that citizens' rights must be protected not only at the trial stage but also from the outset of the investigation. Thus, *due process* is positioned as an inherent constitutional right, not just an ordinary procedural policy.

In addition, the strengthening of *due process* is evident in the recognition of the right to a defense. The 1981 Criminal Procedure Code explicitly guarantees suspects' right to obtain legal assistance from the start of the examination. From the perspective of the state of law, the right to legal counsel is not an additional facility, but a minimum condition for ensuring a fair trial. Without adequate access to defense, the principle of *equality before the law* will lose its substantive meaning.

However, the 1981 Criminal Procedure Code is also not free from criticism. As modern crime develops, the view emerges that the old Criminal Code is considered too procedural, slow, and unresponsive to the complexity of new crimes such as cybercrime, money laundering, and cross-border organized crime. This is where the push to reform the Criminal Code finds its legitimacy. However, the fundamental problem lies not in the need for reform itself, but in the philosophical direction of the reform: whether it remains rooted in *due process*, or moves towards *crime control*.

Hasibuan (2024) emphasized that the greatest challenge in reforming the criminal procedure law is maintaining a balance between enforcement effectiveness and the protection of human rights. When the reform is carried out by emphasizing accelerating and expanding the authority of the apparatus without strengthening appropriate control, what is at risk is the foundation of due process built by the 1981 Criminal Procedure Code.

Thus, the 1981 Criminal Procedure Code can be understood as the initial architecture of *due process of law* in the Indonesian criminal justice system. It becomes a normative benchmark to assess whether the reform under the New Criminal Code is an improvement consistent with the spirit of the rule of law, or an ideological shift towards the dominance of the crime-control *model*. This question will be answered more sharply in the analysis of the New Criminal Code in the next subsection.

Paradigm Shift in the New Criminal Procedure Code: From Due Process to Dominance of the Crime Control Model

The ratification of the New Criminal Procedure Code on November 18, 2025, marks an important turning point in Indonesia's criminal procedure law policy. If the 1981 Criminal Procedure Code is built within the framework of *due process of law that places the protection of suspects' rights as the foundation*, then the New Criminal Procedure Code actually shows a strong tendency towards strengthening the crime-control model paradigm. This shift is evident in the state's redesign of the relationship between law enforcement effectiveness and the protection of citizens' rights.

In the criminal justice system literature, *the crime-control model places enforcement success as the primary goal*. Procedures are seen as technical instruments that can be shortened to improve efficiency. In contrast, the *due process model* views procedures as the primary bulwark

against state arbitrariness. Hasibuan (2024) emphasized that the reform of the Criminal Procedure Code should remain grounded in due process, because the criminal procedure law is not only a tool for the state to punish but also a constitutional mechanism to protect citizens from excessive power.

However, the policy direction of the New Criminal Code shows the opposite symptom. The expansion of authorities' powers in detention, confiscation, searches, and wiretapping shows that the state now prioritizes the speed and flexibility of enforcement over strict limits on power. Saputra (2025) refers to this phenomenon as a form of dominance of *the crime control system* in the reform of the criminal procedure law, which is characterized by the strengthening of the discretion of the apparatus and the weakening of judicial control in the early stages of the criminal process.

This paradigm shift does not take place in a vacuum. The state departs from the assumption that the complexity of modern crimes—particularly information technology crimes, narcotics, and organized crime—cannot be effectively addressed by procedural mechanisms considered too rigid. The problem is that this assumption often leads to the logic of a permanent emergency, in which the threat of crime is used to justify the continuous expansion of the authorities' authority.

In the context of the state of law, this kind of logic is dangerous. Instead, the rule of law is built on the realization that unrestricted power in the name of emergency will easily turn into arbitrary power. When an emergency is invoked as a normative justification in laws and regulations, exceptions gradually become general rules. It is at this point that *due process* begins to lose its substantial meaning.

Furthermore, this change in orientation also affects the construction of the suspect's position in the criminal process. In *the due process model*, the suspect is treated as a legal subject whose rights remain fully intact until a court decision with permanent legal force. Meanwhile, within the framework of crime control, suspects are implicitly treated as objects of action that must be "secured" immediately for the sake of public order. The implications of this shift are very serious, as it shifts the emphasis of protection from the individual to the state.

Wulandari (2025) emphasized that when the criminal procedure law began to relax procedural protection standards for the sake of efficiency, what actually happened was a gradual but systematic reduction in human rights protection. This reduction often does not appear to be a gross violation, but rather a gradual change in the redaction of norms, the expansion of elastic

phrases such as "investigative interest" or "urgent circumstances", and the strengthening of the authorities' discretion without commensurate supervision.

From a constitutional perspective, this kind of policy direction may clash with the principle of the rule of law guaranteed by the 1945 Constitution of the Republic of Indonesia. The state of law is not the fastest to punish, but the most disciplined in limiting its own power. When the restriction is relaxed through the criminal procedure law, what is at stake is not only the rights of the suspect, but also the quality of constitutional democracy.

At this point, the New Criminal Code can no longer be read solely as a technocratic project to speed up the investigation and prosecution process. It must be understood as a product of legal politics that reflects the state's ideological shift in its interpretation of the relationship between security and freedom. The choice to expand the authority of the apparatus at the expense of part of the procedural control mechanism is not a neutral one, but a political choice with direct consequences for the face of the Indonesian legal state.

Thus, the shift from the *due process model* to the dominance of *the crime-control model* in the New Criminal Code is a structural context that helps explain why the regulation of detention, confiscation, search, and wiretapping is becoming increasingly problematic. This paradigm shift will then be tested concretely in the analysis of each form of forced effort in the next subsection.

Critical Analysis of the Authority of Detention, Confiscation, Search, and Wiretapping in the New Criminal Code

Coercive efforts under criminal procedure law constitute a form of direct state intervention in human rights. Because it touches on bodily freedom, property rights, private space, and personal communication, any form of coercive effort in the state of law must be subject to the principles of legality, proportionality, and strict judicial control. Within the framework of *due process of law*, *coercive efforts are not ordinary administrative procedures but exceptional actions that are valid only when truly necessary* and supervised by a judge (Tahir, 2024; Wulandari, 2025).

However, in the New Criminal Code, the regulations on detention, confiscation, search, and eavesdropping show a tendency to relax conditions, expand the authorities' discretion, and shift control from the court to investigators. This is the most critical point of the relationship between state power and the protection of citizens' rights.

Containment: From Process Safeguarding Instruments to Initial Control Tools

In the due process model, detention should be treated as the *ultimum remedium*, not as an automatic initial response. The 1981 Criminal Code establishes the construction that freedom is the norm, while detention is an exception that must be proven through objective and limited reasons. In the New Criminal Code, detention is expanded through flexible phrases such as: "investigation interest", "potential to hinder the examination process", "uncooperative attitude". The juridical problem is not merely the existence of the phrase, but in the absence of objective parameters that can be rigorously tested by the courts. When the reason for detention shifts from a clear factual measure to a psychological and subjective measure of the apparatus, then detention changes from a process safety instrument to an instrument of control over the suspect's body. Zahrulswendar's research (2022) shows that, in law enforcement practice, suspects are in a highly vulnerable position in the early stages of investigation. Limited access to legal aid, psychological pressure, and the dominance of power relations often make detention function as a tool of will-enforcement, not as a safeguard of the judicial process.

Constitutionally, it should be remembered that through the Constitutional Court Decision Number 21/PUU-XII/2014, judicial supervision of the initial actions of investigators was actually expanded through pre-trial. However, if the New Criminal Procedure Code makes it easier to detain without strengthening the realism of judicial control, then what happens is not the strengthening of the rule of law, but a contradiction in the constitutional architecture of criminal justice.

Foreclosure: Normalization of Property Grabbing Without Strong Ex Ante Control

Confiscation is a form of property rights infringement by the state before a court decision. In the *due process of law*, foreclosure must be subject to ex ante judicial control, as losses resulting from foreclosure are not always recoverable, even if the case is ultimately stopped. In the New Criminal Code, reseizure can be carried out on the basis of "urgent circumstances" determined by investigators. This pattern shifts the protection character from preventing violations to mere correction after the violation occurs. From the perspective of the state of law, this kind of logic is

dangerous because it renders property rights permanently vulnerable to the coercive actions of the state.

Pretrial examinations analyzed by the Lex Generalis Law Journal (2025) show that forfeitures that do not meet formal requirements are often only declared invalid after the economic and reputational losses of the victim have occurred. This means that, factually, corrective mechanisms are not sufficient to replace preventive protection. In the context of the digital economy, confiscation also extends to bank accounts, e-wallets, and digital data. If the judge's control mechanism is weakened, confiscation no longer targets objects; it directly interferes with one's economic survival.

Searches: Weakening of Protection Against Private Spaces

Searches are a state intervention in the private space of citizens. Under the law, homes and private spaces are protected as constitutional zones that may be entered only with a court permit. This principle is a direct derivative of the right to a sense of security. Under the New Criminal Code, research can be conducted under the pretext of "urgent circumstances" as determined by the investigator. The main juridical problem lies in the absence of an objective definition of an urgent situation. When exceptions are not strictly limited, they can become the general rule.

Barzah (2023) emphasized that human rights violations in investigative practices often start from disproportionate search designs. When searches are released from the strict control of judges, citizens' private spaces are transformed into areas that are always under threat of state intrusion. In the long run, this condition will give rise to the phenomenon of procedural fear, in which citizens submit not because they believe in the law but because they fear potential actions by the authorities.

Wiretapping: Normalization of State Intervention in Private Communications

Wiretapping is the most invasive form of surveillance because it involves accessing the content of communications, recording social relations, revealing personal preferences, and examining individual economic and political strategies. Therefore, in the *due process model*, wiretapping should be categorized as an ultra-exceptional act that should only be carried out: with the permission of a judge, for a limited period of time, with layered supervision. In the New Criminal Code, there is a tendency to widen access to wiretapping in the context of general investigations. This means that wiretapping is no longer treated as an exceptional measure, but

rather as part of a regular investigative technique. Consequently, the right to privacy is transformed from a fundamental right into a conditional right subject to investigative interests.

The Constitutional Court Decision Number 20/PUU-XIV/2016 emphasizes that electronic evidence is only valid if it is obtained legally and constitutionally. In line with that, Hanafi and Muhammad (2021) and Ariana (2022) emphasized that wiretapping without a strict judicial supervision mechanism can lead to the use of illegal evidence, privacy violations, and procedurally defective evidence-based criminalization.

Accumulation of Forced Effort and the Danger of "Power Without Correction Pause"

The greatest danger of the New Criminal Code does not lie only in a single type of authority, but in the accumulation of forced-effort authority concentrated from the early stages of the investigation. When detention is facilitated, seizures are accelerated, searches are expanded, and wiretapping is normalized, the state forms a regime of coercive power that works without the pause of effective judicial correction. This is theoretically what can be called "power without correction pause", i.e., the condition in which the state can use the entire spectrum of coercive power before the rights protection mechanism actually works. In such a situation, the judiciary no longer serves as a preventive protector but rather as a belated corrector, often unable to fully recover the victim's losses. From the legal state's perspective, this condition is a serious indicator of a procedural justice crisis. The state appears strong in acting, but weak in protecting. Law enforcement is moving fast, but procedural justice is lagging behind.

Juridical, Social, and Democratic Impact of the New Criminal Procedure Code

The paradigm shift in the New Criminal Code, which tends to strengthen the crime-control model, has complex consequences. The impact does not only stop at the technical realm of procedural legal procedures, but also spreads systemically into the structure of legal protection, state-citizen relations, and the quality of constitutional democracy itself. Therefore, the impact of the New Criminal Code must be read in layers: juridical, social, and democratic.

1. **Juridical Impact: Erosion of Legal Certainty and Weakening of Power Control.** Juridically, the relaxation of the requirements for coercive measures under the New Criminal Code may create structural legal uncertainty. Flexible normative phrases—such as "investigative interest" and "urgent circumstances"—move the center of judgment from the objective measure of the law

to the subjectivity of the apparatus. In the theory of the state of law, this condition is dangerous because the law loses its function as an instrument of limiting power and instead becomes an instrument of power legitimization. Strengthening discretion without strengthening balanced judicial control also puts the courts in a reactive, rather than preventive, position. Pretrial and post-action correction mechanisms are not always effective in recovering the suspect's losses, especially if property rights, reputation, and personal freedoms have already been deprived. At this point, legal protection shifts from the principle of preventing infringement to dispute resolution after the infringement has occurred. In the long term, this kind of configuration could encourage greater constitutional testing of the New Criminal Code before the Constitutional Court. The large number of legal tests is not only a reflection of the dynamics of democracy but also an indicator of normative uncertainty in the design of legal protections for citizens' rights.

2. **Social Impact: Normalization of Fear and Vulnerability of Vulnerable Groups.** From a social perspective, the ease of using forced labor has the potential to create a normalization of fear in society. When detention, searches, seizures, and wiretaps can be done relatively easily, citizens no longer feel the law as a protector, but rather as a latent threat that may always be present in their lives. This impact is not evenly distributed. The poor, those with low education, and those who do not have adequate access to legal aid are the most vulnerable. In a situation like this, the weakening of *due process* is not only a legal issue, but also a social justice issue. Sociologically, laws that work in an atmosphere of fear tend to give birth to pseudo-obedience. Citizens obey not because they understand and trust the law, but because they fear being subjected to criminal proceedings. Obedience that grows out of this kind of fear will never give birth to a healthy legal awareness in society.
3. **Democratic Impact: Reduction of Civil Liberties and the "Chilling Effect".** In a democratic country, the criminal procedure law is the main pillar of civil liberties. The weakening of *the due process of law* in the New Criminal Procedure Code has the potential to cause a gradual but systematic reduction in civil liberties. When authorities have greater access to detain, confiscate, and wiretap, citizens will be more careful in expressing themselves, communicating, and participating in public spaces. This phenomenon is known as the chilling effect, a condition in which citizens refrain from expressing opinions, criticizing power, or organizing for fear of stumbling across legal processes. In the long run, *the chilling effect*

weakens the quality of democracy by narrowing the space for public deliberation and reducing public control over state power.

From a constitutional perspective, this condition may directly conflict with the principles of the rule of law and the guarantee of human rights in the 1945 Constitution of the Republic of Indonesia. Democracy does not only live on elections, but also on the freedom of citizens to think, form opinions, and participate without fear. When fear becomes the dominant social condition, democracy loses its ethical substance.

From the overall analysis, it appears that the New Criminal Code has placed the Indonesian legal state at a very decisive test point. On the one hand, the state seeks to answer the challenges of modern crime through strengthening the authority of the authorities. But on the other hand, the strengthening risks eroding the foundation of *the due process of law* which has been the main buffer for the protection of citizens' rights.

From the perspective of a democratic state of law, the effectiveness of enforcement should not be separated from procedural justice. Rapid enforcement of the law, but at the expense of the principle of due process, will only give birth to a pseudo-order, not sustainable justice. It is at this point that the New Criminal Code must continue to be critically monitored by academics, legal practitioners, and civil society so that the reform of the criminal procedure law does not morph into a new legitimacy for the uncontrolled expansion of power.

D. CONCLUSION

The ratification of the New Criminal Procedure Code, which will come into effect on January 2, 2026, marks a new phase in Indonesia's criminal procedure law system. These updates are normatively intended to respond to the development of modern crime and improve the effectiveness of law enforcement. However, the results of the analysis in this study show that the direction of reform of the Criminal Procedure Code actually tends to shift the paradigm from the due process of law to the dominance of the crime-control *model*.

The shift is evident in arrangements regarding detention, seizure, searches, and wiretapping. The expansion of the apparatus's authority through the use of elastic phrases such as "investigative interest" and "urgent circumstances" has shifted the emphasis on the limitation of power from objective judicial control to the subjective discretion of the apparatus. This condition

poses a serious risk to the protection of suspects' rights, especially the right to personal freedom, property rights, security, and privacy.

Juridically, the New Criminal Procedure Code has the potential to create legal uncertainty and weaken the courts' function as gatekeepers of the state's coercive power. Socially, the easing of coercive efforts risks creating a normalization of fear in society, especially for vulnerable groups who do not have adequate access to legal aid. Meanwhile, democratically, this condition can have a chilling effect, inhibiting freedom of expression and citizen participation in public spaces.

Thus, this study concludes that the New Criminal Procedure Code is not fully aligned with the principles of *due process of law* as the foundation of a democratic state of law. Criminal procedure law reform should not only be oriented towards accelerating and improving the effectiveness of prosecution, but should also consistently maintain a balance between state power and human rights protection. Therefore, critical oversight of the implementation of the New Criminal Procedure Code through constitutional testing mechanisms, strict judicial control, and the active participation of civil society is an absolute requirement so that the reform of the criminal procedural law does not transform into a new legitimacy for potentially arbitrary expansion of power.

BIBLIOGRAPHY

LAWS AND REGULATIONS

- Constitution of the Republic of Indonesia in 1945, Statute Book of the Republic of Indonesia Number 75 of 1959.
- Law No. 11 of 2008 concerning Information and Electronic Transactions, Statute Book of the Republic of Indonesia No. 58 of 2008, Supplement to Statute Book of the Republic of Indonesia No. 4843, jo. Law No. 19 of 2016, Statute Book of the Republic of Indonesia No. 251 of 2016, Supplement to Statute Book of the Republic of Indonesia No. 5952.
- Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, Statute Book of the Republic of Indonesia No. 2 of 2002, Supplement to Statute Book of the Republic of Indonesia No. 4168.
- Law No. 39 of 1999 concerning Human Rights, Statute Book of the Republic of Indonesia No. 165 of 1999, Supplement to Statute Book of the Republic of Indonesia No. 3886.
- Law No. 48 of 2009 concerning Judicial Power, Statute Book of the Republic of Indonesia No. 157 of 2009, Supplement to Statute Book of the Republic of Indonesia No. 5076.
- Law No. 8 of 1981 concerning Criminal Procedure Law, Statute Book of the Republic of Indonesia No. 76 of 1981, Supplement to Statute Book of the Republic of Indonesia No. 3209.

The New Criminal Procedure Code, passed on November 18, 2025, comes into effect on January 2, 2026.

DECISION OF THE CONSTITUTIONAL COURT

The Constitutional Court Decision Number 21/PUU-XII/2014 concerning pretrial and determination of suspects was published in the State Gazette of the Republic of Indonesia in 2015. The Constitutional Court Decision Number 20/PUU-XIV/2016 concerning electronic evidence was published in the State Gazette of the Republic of Indonesia in 2017.

Journal Articles

Ariana, I. N. (2022). Juridical review of the position of electronic evidence based on the Constitutional Court Decision Number 20/PUU-XIV/2016. *UNES Law Review*. <https://review-unes.com/index.php/law/article/view/277>

Barzah, E. N. (2023). The problem of investigative authority in searches is reviewed from a human rights perspective. *JIM: Student Scientific Journal*. <https://jim.usk.ac.id/sejarah/article/view/26090>

Hanafî, H., & Muhammad, M. (2021). The juridical implications of the position of electronic evidence in criminal cases after the Constitutional Court Decision Number 20/PUU-XIV/2016. *Scientific Journal of Law*. <https://media.neliti.com/media/publications/366165-none-662e8a0d.pdf>

Hasibuan, K. (2024). Criminal Procedure Bill: Challenges and harmonization between the principles of due process of law and the criminal justice system in Indonesia. *JURRISH*. <https://prin.or.id/index.php/JURRISH/article/view/6023>

Khairunnisa, E. (2020). Arrest, detention, search, confiscation and examination of letters in the Indonesian criminal procedure law system and qanun jinayat. *Al-Qanun*. <https://jurnal.uinsu.ac.id/index.php/alqanun/article/download/6830/3061>

Saputra, E. (2025). Dominance of the crime control system in the reform of the criminal procedure law. *JIMU: Scientific Journal of Merah Putih University Students*. <https://ojs.smkmerahputih.com/index.php/jimu/article/view/923>

Sinaga, I. V. S. (2025). Conflicts of due process of law and pressure of public opinion in the enforcement of criminal law in the era of "No Viral, No Justice". *PDP Journal*. <https://ejournal.uigm.ac.id/index.php/PDP/article/view/6089>

Tahir, H. (2024). The practice of due process of law in the Indonesian criminal justice system. *Journal of Legal Begawan Journal*. <https://journal.unisan.ac.id/index.php/JBH/article/download/89/92/328>

Wulandari, A. (2025). Problems of the application of the principle of due process of law in law enforcement in Indonesia. *Progressive Journal*. <https://journal.lpkd.or.id/index.php/Progres/article/download/1613/2096/8950>

Zahrulswendar, I. H. (2022). Fulfillment of the rights of suspects in the process of arrest and detention. *Indonesian Journal of Criminal Law and Criminology*. <https://journal.umy.ac.id/index.php/ijclc/article/view/17476>

