

KOALISI MASYARAKAT SIPIL UNTUK PEMBARUAN KUHAP

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THE NEW CRIMINAL PROCEDURE CODE (KUHAP) MAY LEAD INDONESIAN JUSTICE SYSTEM INTO OMNISHAMBLES IN 2026

“CSO COALITION’S STRONG REJECTION TOWARDS THE NEW KUHAP: CALLING OFF THE ENFORCEMENT AND RESTART DRAFTING”

Jakarta, 28 November 2025

Executive Summary

On 18 November 2025, the draft of the new Criminal Procedure Code (KUHAP) was passed by the House of Representatives even though it stirred up civil society because of the problematic content, drafting process, and the projection of implementation. The new KUHAP is scheduled to enter into force on January 2nd, 2026 together with the new KUHP (penal code) which was enacted in 2023.

As a comparison, the mandated implementing regulations under the new penal code have not been completed yet even after the three years of transition period nearly passes. Meanwhile, in this very short transition period of less than a month, the government needs to finalize more technical implementing regulations (covering at least 24 issues mandated by the new KUHAP), socialization to all levels of society including implementing units and officials throughout the nation, and simulation of the implementation of regulations.

Practically speaking, in such situations, it’s hard to ensure smooth implementation of the new KUHAP in January 2026, rather it may turn into an alarming situation. Considering also the substantial parts of the new KUHAP that still require further deliberation, it’s crucial to demand the government to cancel the enforcement and the parliament to restart the drafting process before the justice system becomes an omnishambles.

This brief will breakdown all the problematic aspects in the new KUHAP including the problems in the drafting process, content, and possible implementation. Apart from the concerning human rights issues such as human dignity, fair trial, and privacy of civilians (including foreign nationals), the implementation of the new KUHAP will have significant impacts on the economic and political aspects particularly due to its new arrangements regarding out-of-court settlement for criminal cases targeting both corporate entities and individuals.

1. KUHAP retreats from Universal Human Rights Standards and Mechanisms

On the same day of the passage, several mandates of the UN Special Procedures including Special Rapporteur on Independent Judges and Lawyers, the Special Rapporteur on the rights of persons with disabilities, the Working Group on Enforced or Involuntary Disappearances,

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the Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right to privacy issued a [letter to the Indonesian Government on KUHAP](#).

The letter did not only address concerns over the problematic articles, but also calling out Indonesia's core responsibility as one of the state party of the International Covenant on Civil and Political Rights (ICCPR) to fully implement the right to a fair trial and independence of judiciary, as well as the right to liberty and prohibition of arbitrary detentions.

The rare occurrence of joint communication from multiple mandates reflects a growing international concern over Indonesia's regressing compliance to international human rights commitments. The letter issued also signals that the existing articles of KUHAP are not an isolated technical matter, but part of a broader pattern of weakening safeguards of different human rights sectors. Taken together, along with Indonesia's silent treatment nature to international statements, the communication underscores Indonesia's increasing distance from international human rights mechanisms as it should have been expected more from a state party of ICCPR.

The issue of KUHAP must also be viewed in a broader geopolitical context, as it indicates that Indonesia, once known to the world as a democracy maestro after the 1998 authoritarian era, is now eroded by the current global democracy backsliding and shrinking civic space phenomenon. Regionally, Indonesia's 'layoff' from international human rights standards and norms occurs when ASEAN states are enabling oppressing forms to civic space, which then led to the normalization of restrictive legal regimes. Indonesia's increasing legislative alignment with securitization-oriented approaches as seen in new criminal, cyber, and public order laws which parallels the broader geopolitical trend in which major powers advance narratives of state sovereignty that position human rights oversight as external interference.

2. Manipulation of Meaningful People Participation in the Drafting Process of the Criminal Procedure Code (RKUHAP)

The drafting process of the RKUHAP repeats the pattern of reckless legislation process by the government and representatives (DPR RI). The revision of KUHAP, which will determine the future of the human rights in criminal law enforcement, was drafted in a rush, without transparency, and ignoring the principle of meaningful participation, even though the public had demanded the government to take time and carefully crafted the RKUHAP in order to have a high-quality and non controversial version. Ironically, the document resulting from the RKUHAP discussion has never been made public since the release of the first draft on 17 July 2025. Civil society were asked to provide inputs and were seemingly being heard in the Public Hearing (RDPU), but our inputs were not being considered or explained. Even with the planned ratification, there are no official documents that have been made public and accessible to the people. RKUHAP contradicts the principle of people's sovereignty.

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Furthermore, patterns of manipulation are exacerbated even after the draft passed. The civil society coalition has consistently criticized DPR RI for failing to meaningfully engage in the legislative process as it resulted in provisions to numerous problematic articles. However, the Head of Commission III of DPR RI continue to glorify numbers of public hearings with more than 93 civil society elements, wrongfully framing the organizations for not observing livestream hearings thus diverting public attention from core issues of KUHAP, as well as labelling the coalition to be “lazy” while striving away from the ‘meaningful participation’ point highlighted by the coalition.

Thus, results remain the same, whereas provided articles open doors for expanded surveillance powers, weakened judicial safeguards, and broader discretionary authority for law enforcement, specifically police.

3. Various forms yet inconsistent arrangements on the out-of-court settlement concerning economic crimes, corporate entities, and other cases under the new KUHAP, threatening legal certainty, accountability, hindering economic activities, and increasing business risks

3.1 Restorative Justice. The new KUHAP regulates an out-of-court settlement under “restorative justice” (RJ) mechanism for corporations falling under the authority of police as stated in Article 327(6). This provision opens the door to harmful practices in resolving corporate criminal cases based on several concerns: (a) an unclear prerequisite of the agreement stated in the new KUHAP Article 327(6)(c), namely “other corrective measures determined by investigator”; (b) the settlement could be initiated during the stage of pre-investigation (penyelidikan) when the crime and the victim has not been confirmed yet; (c) no clear reference on the judicial control over the settlement process at the pre-investigation stage for criminal cases involving corporate entities as the defendant. Such arrangements can easily lead to corruption, creating opportunities for illegal transactions and generating legal uncertainty for both victims and corporations.

As for the RJ’s scheme involving individuals, the new KUHAP Article 79-87 sets similar arrangements with that of applicable for corporate entities, including that a settlement agreement between the perpetrator and the victim can be initiated at a pre-investigation stage where a criminal act has not yet been confirmed. This is highly questionable. How can there be a settlement between a perpetrator and a victim when there’s a possibility that a crime even doesn’t exist? Furthermore, unlike the process at the investigation stage (penyidikan), the settlement agreement leading to case termination at the pre-investigation stage has not been explicitly mandated to be reported to any authority for check and balance (Article 84), creating a dark room at the stage of pre-investigation.

The new KUHAP fails to guarantee a substantial mechanism of check and balances by the court under the RJ’s scheme carried out prior to court examination because the court’s role

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will only be considered as a rubber stamp to register the RJ's agreement. There is no mandate for the judge to conduct a substantial examination (judicial scrutiny), providing the judge with an option to reject agreements that do not comply with the provisions, including when there's indication of coercion, extortion, or other abuses by officials. Even the court involvement only occurs at the very end process when the agreement has been completely executed by the parties involved.

Meanwhile, when RJ's scheme has not been conducted at the pre-investigation, investigation, or prosecution stage, the judge may offer RJ's settlement between defendant and victim during court examination, specifically at the first trial (Article 204). The new KUHAP Article 204(7) arranges the prerequisites of RJ's scheme during court examination in a way stricter than that of during pre-adjudication (i.e. cumulative prerequisites and considering power relations between defendant and victim).

3.2 Settlement fine. Out-of-court settlement at the investigation stage (penyidikan) could also occur when the investigators decide to terminate investigation following the payment of maximum criminal fine for minor cases (punishable only by fine up to IDR 10 million, or by a year of imprisonment or fine up to IDR 50 million). On the other hand, at the prosecution stage (penuntutan), prosecutors are also granted the authority to impose an order for payment of criminal fines to terminate a criminal case based on the approval from the Attorney General as provided in Article 65 (i) and Article 66 of the new KUHAP. This provision on settlement fine was referred from the Article 35(1)(k) of Law No. 11 of 2021 amending Law No. 16 of 2004 on the Prosecution Service. This authority will be reserved only for economic crimes such as tax offenses, customs violations, and other economic crimes specified under the law. However, the authority to impose settlement fines specifically at the prosecution stage carries a significant risk of abuse and has substantial economic implications due to lack of control mechanism from an independent judicial authority. Furthermore, unlike the settlement fine at the investigation stage that clearly stipulates the amount of fine under the law, there has been no arrangement on the amount of settlement fine at the prosecution stage. As the arrangement in the new KUHAP considers very broad and limited, further implementing regulation has been mandated to guide the implementation.

3.3 Deferred prosecution. Similar risks may also arise in other discretionary powers, such as the prosecutor's authority to postpone prosecution under a Deferred Prosecution Agreement (DPA). This authority is provided under Article 328 of the new KUHAP, granting prosecutors the power to apply it only to corporate crimes. Yet prosecutors hold broad discretion to decide whether or not to use this authority based on their sole considerations of justice, the interests of the victim, and the defendant's compliance with laws and regulations as stated in the Article 328(4). Prosecutors may also set an unclear prerequisite of the agreement under the Article 328(12)(d), namely "other corrective measures determined by prosecutor". This opens a wide space for subjective assessment and poses risks of doing business due to the absence of legal certainty and potential abuse (possibility of becoming the target of

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extortion). Although there are some procedures specified in the new KUHAP to control the process since the DPA needs to be brought to the judge and the court may supervise the implementation of the agreement, yet no operational regulations could be relied to refer the practices.

4. The Criminal Procedure Code degrades human rights standards, threatening human dignity, fair trial, and privacy of civilians including foreign nationals

4.1 Arrest and Detention without judicial warrant (Article 93-103). There's no requirement to obtain a judicial warrant before conducting arrest. There is no procedure to bring the person who was arrested before the judge to evaluate the arrest and to determine the necessity of detention. The authority to arrest and detain someone at the pre-trial stage mainly falls under the police and prosecutor. Some problematic grounds for detention newly added in the new KUHAP includes impeding examination process, without clear scope of the acts (highly subjective), and providing false information (not based on fact) that may be in conflict with the principle of non self incrimination and the rights to remain silent.

4.2 Coercive measures on objects: search, seizure, interception, and freezing without court warrant based on investigators' subjective assessment of exigency situations (Article 113 (4-5), Article 120 (1-2), Article 136, and Article 140 (7-8)). Some articles concerning coercive measures on objects literally state "situations based on investigators' assessment" as one of the exigency situations, without providing clear limitations. Although following the coercive measures, the investigators indeed must require approval from district court, the current practice shows that it merely serves as formal administrative procedure instead of check and balance scheme as the court will always give their approval. The new KUHAP then tries to legitimise the current ineffective practice of pre factum control mechanisms.

The new KUHAP also gives investigators the authority to conduct interception without judicial warrant based on "Law on Interception" that has not even been formed yet (Article 140). As a result, the state can enter private spaces (personal communications and correspondence) more freely, under the pretext of investigating criminal acts, but it is unclear how the personal data it has obtained will be protected. Finally, loopholes for abuse and even extortion are highly likely to occur due to the problematic construction of the new KUHAP rules from the outset.

4.3 Limited access to pre-trial hearing and unavailable complaint mechanism for violations of fair trial rights (Article 158-164). Pretrial hearing (*praperadilan*) does not include the examination of violation of fair trial rights as guaranteed in the new KUHAP from Article 142-148. The victims of such violations have no access to file a complaint and seek effective remedy. Additionally, the grounds for pretrial hearing indeed have been extended including undue delay and bail either for general or health concerns. However, no

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clear regulation on the burden proof and limited rules on the examination procedure. Meanwhile, serious limitation is also evident in the elucidation of Article 158 (a) stipulating that only coercive measures without judicial warrant may be eligible to be complained under this scheme, except seizures conducted on the objects that are irrelevant with crime. The examination on the main case will not be commenced unless all petitions of pretrial hearing have been addressed.

4.4 Imbalanced in regulating the role of advocates and the limited access to legal aid susceptible for manipulation (Article 154 (4-5), Article 210 (10)). The defendant and their legal counsel are not given the same opportunity as prosecutors to perform their role during court examination. Also, there is no guarantee that access to legal assistance is provided for all people during police examination since people may waive their rights to be assisted by a lawyer without court supervision. This provision is prone to abuse to legitimize the common practice of intimidation by the police and prosecutors so that suspects or defendants do not use legal aid with the promise of a lighter sentence (Article 154). This creates ambiguity and legal uncertainty because, on the one hand, legal aid is provided because it is the state's obligation, but on the other hand, legal aid can be refused or waived. Access to evidence and court documents for the purposes of defense is still limited as no operational articles are available as the legal basis.

4.5 Lack of operational implementation for the rights of victims, witnesses, suspects/defendants, and vulnerable groups (Article 142-148). No clear operational mechanisms outlining how these rights can be accessed and fulfilled (such as right to interpreter and access to consular), including the consequences of violations. Furthermore, it is unclear which parties are responsible for fulfilling these rights. There is also no forum established for raising objections and examining alleged violations of rights.

The articles in the new KUHAP are still ableist because they do not require the provision of adequate accommodation for persons with disabilities who are in conflict with the law, so that legal proceedings have the potential to be unequal and discriminatory. Furthermore, Article 146 opens up the possibility of indefinite imprisonment under the scheme “rehabilitation and treatment” for persons with mental and intellectual disabilities, and implicitly places them as parties without legal capacity. This article has the potential to legitimize deprivation of liberty and arbitrary detention, because the imposition of sanctions is not positioned as a criminal verdict and therefore has no clear standards regarding time limits, monitoring mechanisms, or termination of actions. This situation opens the door to coercive practices under the pretext of law enforcement.

4.6 Room for entrapment and obtaining biological samples by force (Article 16 (1)). During pre-investigation when the criminal act has not been confirmed yet, police may conduct infiltration, undercover buy, and controlled delivery which in practice may lead to

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entrapment and thus create/initiate a criminal act themselves. Also as the current practice, under this stage, the police may ask someone to take a urine test or provide a sample of DNA without warrant. These practices are currently prevalent in drug-related cases. In the elucidation of Article 16 (1) though this power refers to the Narcotics Law, it still mentions that the act can be conducted in the stage of pre investigation, and open to other law.

5. Power struggle among law enforcement institutions under the new KUHAP leaving Polri as a superpower body, anticipating a growing public protest demanding police reform

5.1 Polri becoming a Superpower Body. All special investigators are placed under the coordination and supervision of the national police (Polri), making Polri a superpower institution with enormous control (Articles 7 and 8). Whereas, all this time, it should be the police who are supervised. The police still have many problems, such as human rights violations, maladministration, abuse of authority, and backlog of cases including: the burden of unresolved cases each year and the failure to optimally follow up on reports from the public to investigate criminal acts, criminalization practices, etc. Not to mention the issues of transparency and accountability in the handling of cases by the police, especially the issue of impunity when it concerns suspects of human rights violations who are also members of the police force.

Article 20 of the new KUHAP stipulates that pre-investigators in the performance of their pre-investigative duties shall be coordinated, supervised, and instructed by pre-investigators from Polri. This provision is exempted for pre-investigations conducted by the Attorney General's Office, the Corruption Eradication Commission, and the Indonesian National Navy, but not for Komnas HAM. This clearly contradicts the Human Rights Court Law and seriously threatens the independence of the investigation process.

5.2 The New KUHAP contradicts the people's demands to reform the police, potentially leading to a growing public protest. Torture, wrongful or arbitrary arrest, fabrication of cases, criminalization, excessive use of force, and the abuse of police's authority occur due to the failure of the oversight mechanisms in Law 8 of 1981 on the Criminal Procedure Code (the old KUHAP). The oversight or supervision mechanisms for coercive measures should have been subject to a strict judicial scrutiny, instead, the new KUHAP has only strengthened police authority and increased their discretion, which will open up opportunities for abuse of power. Meanwhile, the supervision or oversight mechanisms under the new KUHAP are lacking, including check and balance from both the prosecutor and judicial authority.

Recently, the issue of police reform has become an intensive public discourse following the establishment of the Committee of Police Reform led by Jimly Asshiddiqie (former Chief Justice of the Indonesian Constitutional Court) under the president's instruction. The discourses on how the new KUHAP seriously hinders the agenda of police reform shall be

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brought to the attention of the committee. It has been anticipated that there would be a growing public protest in the near future, highlighting the problems of police's superpower and lack of control under the justice system due to the enactment of the new KUHAP.

6. Urgent call for action involving diplomatic missions

Based on the written analysis and argumentations on the recent passage of KUHAP, the Civil Society Coalition on KUHAP Reform wishes to kindly urge diplomatic missions to consistently and actively respond to the issues of the new KUHAP and recommend the following:

- 1.) Raise the concerning process and substantial areas of new KUHAP in bilateral and multilateral dialogues with the Indonesian Government and in formal meetings with special rapporteurs from each country by underlining Indonesia's binding commitments and obligations to the International Covenant on Civil and Political Rights (ICCPR) to fully implement the right to a fair trial and independence of judiciary, as well as the right to liberty and prohibition of arbitrary detentions;
- 2.) Raise the concerning process and substantial areas of new KUHAP in bilateral and multilateral dialogues with the Indonesian Government and in formal meetings with special rapporteurs from each country by underlining the economic and business risks, especially the potential misuse of out-of-court settlements, settlement fines, and corporate restorative justice mechanisms that undermine legal certainty and predictability;
- 3.) Issue formal communications to the Indonesian Government seeking clarifications on how safeguards will be ensured to prevent abuse implementation of the new KUHAP, questioning the progress of the new KUHAP implementation, and raising the possibility of the president to immediately issue the Lieu of Law to call off the enforcement of the new KUHAP before January 2nd, 2026 and suggest the parliament to re-open the process of drafting the new KUHAP.
- 4.) Conduct follow-up meetings with the relevant chambers under the diplomatic mission to further discuss and advance this issue in detail, and also involve/invite the CSO coalition in the discussion when necessary.