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A Comparative Study of KUHAP and the Draft KUHAP on the Protection of Human Rights in Criminal Justice Processes

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Abstract: This study aims to analyze and compare the Indonesian Criminal Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) in the context of human rights protection within criminal justice processes in Indonesia. The research employs a qualitative approach using library research methods, focusing on statutory analysis, legal documents, and relevant academic literature. The findings reveal that KUHAP still shows significant limitations in ensuring comprehensive human rights protection, particularly regarding the right to legal counsel from the early stage of investigation, prohibition of torture, and protection of crime victims. In contrast, RKUHAP introduces substantial normative reforms by reinforcing the principles of due process of law and fair trial, aligning with international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR). The study concludes that RKUHAP represents a crucial step toward a more just, humane, and human rights-oriented criminal justice system. However, its practical effectiveness largely depends on the readiness of law enforcement institutions and the broader legal culture within Indonesian society.

Keywords: criminal procedure code, draft criminal procedure code, human rights, criminal justice, legal reform.

INTRODUCTION

The Criminal Procedure Code (Law Number 8 of 1981) is the main foundation of the criminal justice system in Indonesia which has been in effect for more than four decades¹. As a result of post-independence legal reforms, the Criminal Procedure Code (KUHAP) was created to replace the colonial legacy of the *Herziene Inlandsch Reglement* (HIR) and became a symbol of national legal independence.

It is hoped that this regulation will be able to create a criminal justice system that is fair, civilized, and upholds the principles of the rule of law². However, over time, various challenges have emerged in the implementation of the Criminal Procedure

Code, particularly in balancing the state's interest in law enforcement with the protection of individual rights.

Rapid social change, advances in information technology, and increasing public awareness of human rights have given rise to an urgent need to update criminal procedural law³. The dynamics of modern society demand a justice system that is oriented not only toward legal certainty but also toward substantive justice and humanity. The digitalization of law enforcement systems, the development of electronic evidence, and the increasing complexity of transnational crimes require criminal procedural rules that are more adaptive and responsive to the current context⁴. In this case, the Draft Criminal

¹ Prasetyo, D., & Herawati, R. Tinjauan sistem peradilan pidana dalam konteks penegakan hukum dan perlindungan hak asasi manusia terhadap tersangka di Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 4(3), (2022), 402-417.

² Purwono, U. H. Rekonstruksi Paradigma Penidikan Dalam Sistem Negara Hukum Pancasila untuk Mewujudkan Keadilan Berdasarkan Pancasila. *Binamulia Hukum*, 13(2), (2024), 483-499.

³ Land, M. K., & Aronson, J. D. Human rights and technology: new challenges for justice and accountability. *Annual Review of Law and Social Science*, 16(1), (2020), 223-240.

⁴ Cahyono, S. T., Erni, W., & Hidayat, T. Rekonstruksi Hukum Pidana terhadap Kejahatan Siber (Cyber Crime) dalam Sistem Peradilan Pidana Indonesia: Rekonstruksi Hukum Pidana terhadap Kejahatan Siber (Cyber Crime)

Procedure Code (RKUHAP) represents the state's efforts to adapt the criminal procedure law framework to international standards and the needs of contemporary society.

However, the reality on the ground shows that human rights violations still frequently occur in the criminal justice process.⁵The practice of torture against suspects, arbitrary detention, intimidation during investigations, and limited access to legal aid for the poor remain fundamental problems.

This condition indicates a gap between ideal legal norms and actual law enforcement practices⁶. Therefore, criminal procedural law reform is not sufficient merely with normative updates, but also requires a paradigm shift, increased integrity of law enforcement officers, and a strengthened oversight system to ensure that human rights protection is truly realized at every stage of the criminal justice process.

The Criminal Procedure Code (KUHAP) was drafted during Indonesia's post-independence legal transition period, when the paradigm of law enforcement was still oriented toward state interests and public order stability. At that time, human rights principles had not yet become the primary foundation for establishing criminal procedural norms⁷.

As a result, many provisions in the Criminal Procedure Code are procedural and administrative in nature, without explicitly placing the protection of individual rights as a

priority⁸. This reflects that the spirit of the formation of the Criminal Procedure Code was more focused on the efficiency of law enforcement than on guaranteeing substantive justice for every citizen.

Several important provisions relating to human rights protection in the Criminal Procedure Code remain limited and lacking in comprehensiveness. For example, the right of suspects to receive legal representation from the outset of an investigation is not explicitly regulated and is often ignored in practice.

Similarly, victims' rights to justice, reparation, and protection from intimidation have not received adequate attention. This normative vacuum results in the criminal justice system tending to favor the interests of law enforcement, rather than protecting the rights of individuals in conflict with the law⁹. In many cases, suspects remain vulnerable to torture and criminalization due to weak oversight and accountability mechanisms within the authorities.

This condition creates a fairly sharp gap between the idealism of justice as mandated by the constitution and the reality of implementing the law in the field¹⁰. Although formally² the Criminal Procedure Code contains the principle of due process of law, its implementation does not fully reflect respect for human dignity.

Therefore, evaluation of the Criminal Procedure Code has become an unavoidable urgency.¹¹Revisions and updates to criminal procedural law must be carried out by

dalam Sistem Peradilan Pidana Indonesia. *Dame Journal of Law*, 1(1), (2025), 1-23.

⁵ Yunara, A. Y. Efektivitas Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia Dalam Penuntasan Pelanggaran Hak Asasi Manusia (HAM) di Indonesia (Studi Pengadilan HAM Makassar). *Jurnal Al-Dustur*, 2(2), (2019), 1-21.

⁶ Putri, N. A., & Lewoleba, K. K. Peranan Kode Etik Jaksa Pada Pengawasan dan Pertanggungjawaban Dalam Menjaga Integritas Penegakan Hukum di Indonesia. *Media Hukum Indonesia (MHI)*, 3(3), (2025).

⁷ Simbolon, A. L., & Wiraguna, S. A. Analisis Hukum Acara Mahkamah Konstitusi: Implikasi Putusan terhadap Penegakan Hak Asasi Manusia. *RISOMA: Jurnal Riset Sosial Humaniora Dan Pendidikan*, 3(3), (2025), 204-215.

⁸ Setyadi, H. B., & Masyhar, A.. Legal Politics in the Draft Criminal Procedure Code (KUHAP) in Indonesia. *Journal of Literature Review*, 1(1), (2025), 257-262.

⁹ Roychan, W., & Shuman, T. Reformulasi pengaturan restoratif justice dalam sistem peradilan pidana di Indonesia. *Dekrit (Jurnal Magister Ilmu Hukum)*, 13(2), (2023), 45-67.

¹⁰ Tyaningsih, S., & Yurna, Y. Hukum Islam antara idealisme dan realitas. *Jurnal Manajemen Dan Pendidikan Agama Islam*, 2(2), (2024), 136-156.

¹¹ Suwamo, S., & Wahyuningsih, S. E. Urgency of Suspect Determining In the Investigation Process on Human Rights Perspective. *Law Development Journal*, 2(2), (2020), 241-248.

explicitly and operationally integrating human rights principles, so that the criminal justice system in Indonesia is truly capable of guaranteeing justice that balances the interests of the state and the basic rights of individuals.

The Draft Criminal Procedure Code (RKUHAP) is presented as a response to various weaknesses in the Criminal Procedure Code and as a strategic step towards a more modern and just national criminal law system.

The Criminal Procedure Code (RKUHAP) not only aims to update the provisions of criminal procedure law to reflect social dynamics and global developments, but also introduces a new paradigm that places the protection of human rights as the primary foundation of every law enforcement process. This approach marks a shift in orientation from a system that has previously focused on state interests to one that prioritizes the rights and dignity of humans as legal subjects¹².

One important aspect of the revised Criminal Procedure Code (RKUHAP) is strengthening the principle of checks and balances between law enforcement agencies through a judicial oversight mechanism for detention. This mechanism is intended to prevent abuse of authority and arbitrary detention, which frequently occur under the Criminal Procedure Code.

In addition, the Criminal Procedure Code explicitly includes a prohibition on torture in the investigation and examination process, and guarantees the right to legal assistance from the investigation stage¹³. This provision provides greater protection to suspects from becoming victims of procedural injustice and ensures that every individual has access to adequate legal representation.

Beyond focusing solely on the rights of suspects and defendants, the Criminal Procedure Code (RKUHAP) also pays special attention to the rights of victims of crime. This recognition of victims' rights includes the right to information, protection from threats, and adequate reparation.

This reflects a paradigm shift from state-oriented justice to human rights-based justice, where justice is viewed not only from the perspective of the perpetrator, but also from the perspective of the victim and society at large. Thus, the introduction of the Criminal Procedure Code (RKUHAP) represents a significant milestone in the transformation of Indonesian criminal procedure law toward a more accountable, transparent system grounded in respect for universal human values.

Indonesia as a country of law that upholds humanitarian values has demonstrated its commitment to the protection of human rights through the ratification of the International Covenant on Civil and Political Rights (ICCPR) in 2005 through Law Number 12 of 2005¹⁴.

This ratification marks Indonesia's willingness to align its legal system with universal human rights principles, such as the right to freedom, fair treatment, and guarantees of due process of law¹⁵.

With this step, Indonesia is expected to be able to internalize international human rights norms into national legislation, including in criminal procedural law, as a form of concrete implementation of the state's obligations to the international community¹⁶.

¹² Putra, P. S., Siagian, F. S., Ritonga, B., Firouzfard, S., & Kumiawan, D. Legal Politics of Investigation Authority in Criminal Offences Under the Draft Criminal Procedure Code (RKUHAP). *JUSTISI*, 11(3), (2025), 686-701.

¹³ Sulistiono, E. Perlindungan Hukum Atas Hak-Hak Tersangka Pada Proses Penyidikan Perkara Pidana Dalam Perspektif Hak Asasi Manusia. *Mizan: Jurnal Ilmu Hukum*, 8(2), (2019), 96-103.

¹⁴ Arifin, R., & Lestari, L. E. Penegakan dan Perlindungan Hak Asasi manusia di Indonesia dalam konteks implementasi sila kemanusiaan yang adil dan beradab. *Jurnal Komunikasi Hukum (JKH)*, 5(2), (2019), 12-25.

¹⁵ Maranay, R. A. R., & Marsal, I. Pengaruh sistem hukum dunia terhadap pembentukan peraturan perundang-undangan di Indonesia. *Birokrasi: Jurnal Ilmu Hukum dan Tata Negara*, 2(4), (2024), 245-251

¹⁶ Yunazwardi, M. I., & Nabila, A. Implementasi Norma Internasional Mengenai Kebebasan Beragama Dan Berkeyakinan Di Indonesia. *Indonesian Perspective*, 6(1), (2021), 1-21 ..

However, in practice, the principles contained in the ICCPR have not been fully integrated into the Criminal Procedure Code (KUHAP) as a national criminal procedure law instrument. Several important provisions, such as the right not to be tortured, the right to legal assistance from the outset of the investigation, and the victim's right to justice and reparation, have not been comprehensively and operationally regulated¹⁷.

As a result, a gap exists between internationally recognized normative standards and national legal practices, which remain formalistic. This situation demonstrates that although Indonesia has legally committed to the law through ratification, its implementation in the criminal justice system still faces various structural, cultural, and institutional obstacles¹⁸.

Therefore, a comparative analysis between the Criminal Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) is crucial for assessing the extent to which the reforms to Indonesian criminal procedure law align with international human rights standards. This comparison can identify the extent to which the RKUHAP successfully adopts ICCPR principles, such as fair trial, presumption of innocence, and prohibition of torture.

In addition, the analysis also serves to measure the effectiveness of efforts to harmonize national law with international instruments, while ensuring that criminal law reform in Indonesia is truly oriented towards respecting, protecting, and fulfilling human rights comprehensively¹⁹.

¹⁷ Rozi, A. F. Penindakan Oleh Penyidik Hak-Hak Tersangka dan Terdakwa dalam KUHAP Bantuan Hukum. *Lex Mercatoria*, 2(1), (2025), 31-41.

¹⁸ Sutrisno, A. Penerapan Hukum Internasional dalam Sistem Hukum Nasional Indonesia: Tantangan Teoritis dan Praktis. *Iblam Law Review*, 5(2), (2025), 78-90.

¹⁹ Banola, A. J. P., Imut, B. R., Klau, C. L., Totnay, C. C., Mas'ud, F., & Wunu, M. A. W. Efektivitas Harmonisasi Peraturan Perundang-Undangan Dalam Menghindari Tumpang Tindih Regulasi di Indonesia. *CONSTITUO: Journal of State and Political Law Research*, 4(1), (2025), 68-79.

This research stems from several research gaps identified in previous studies. From a normative perspective, most previous studies have only discussed the Criminal Procedure Code (KUHAP) descriptively without directly comparing it with the Draft Law on Human Rights (RKUHAP). Furthermore, few have examined the integration of the principles of fair trial and due process of law in both legal instruments.

From a conceptual perspective, many legal studies focus more on the procedural or technical aspects of law enforcement, rather than on the human rights dimension which should be the basis for the formation of criminal procedural law norms²⁰.

This study attempts to fill this gap by analyzing the substance of the norms and origination of humanitarian values contained in the Criminal Procedure Code (RKUHAP). Meanwhile, from a practical and implementative perspective, there is still limited research that highlights the readiness of Indonesian law enforcement agencies and legal culture to implement the human rights principles as outlined in the RKUHAP. Therefore, the analysis in this study is expected to provide an empirical and reflective overview of the challenges and opportunities for implementing human rights protection in the Indonesian criminal justice system in the future.

The novelty of this research lies in its analytical approach, which comprehensively compares the Criminal Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) from the perspective of human rights protection. This research not only conducts a normative review of the content and structure of the two legal instruments but also integrates a conceptual approach by examining their relationship to international standards such as the International Covenant on Civil and Political

²⁰ Bahri, S. Hukum Pidana sebagai Instrumen Penegakan Keadilan dan Upaya Meminimalisir Pelanggaran Hukum dalam Masyarakat. *Ameena Journal*, 2(4), (2024), 425-436.

Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

Through this analysis, this research offers a new interpretive framework for understanding the direction of criminal procedural law reform oriented toward human rights-oriented justice. Furthermore, this research also makes a practical contribution by formulating strategic recommendations for the effective implementation of the Criminal Procedure Code (RKUHAP) to protect fundamental individual rights and strengthen Indonesia's criminal justice system, making it more humane, accountable, and in line with the principles of universal justice.

The purpose of this study is to analyze in depth the normative comparison between the Criminal Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) in the context of human rights (HAM) protection, with a focus on the extent to which the two legal instruments reflect universal principles of justice such as fair trial and due process of law.

This research also aims to identify the strengths and weaknesses of each legal instrument, particularly in guaranteeing the rights of suspects, defendants, and victims of crime. Furthermore, this research is expected to provide constructive legal policy recommendations to strengthen the application of human rights principles in the process of reforming national criminal procedural law, thereby creating a criminal justice system that is fairer, more humane, and aligned with international standards.

METHODOLOGY

Research Approaches and Types

This research uses a qualitative approach with a comparative method that is normative juridical in nature²¹. This approach was chosen because the research aims to deeply understand the differences and similarities between the current Criminal

Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) in the context of protecting human rights (HAM) in the criminal justice process.

Using a qualitative approach, this research focuses on exploring the meaning, principles, and legal values contained in these two legal instruments, rather than on quantitative or statistical measurements. A normative juridical approach was chosen because this research is based on a study of positive law and legal norms applicable in the Indonesian legal system²².

Nature of Research

This research is descriptive-analytical in nature. The descriptive nature is used to describe in detail the legal provisions and norms contained in the Criminal Procedure Code and the Draft Criminal Procedure Code, particularly those related to human rights protection²³. Meanwhile, the analytical nature is used to interpret and analyze these provisions in depth to find their relevance and implications for criminal law enforcement practices that uphold the principles of justice and human rights protection.

Data Types and Sources

The data sources used in this study consist of:

1. **Primary Data**, namely the main legal material which is the object of research, including:
 - KUHAP (Law Number 8 of 1981 concerning Criminal Procedure Law).
 - Draft Criminal Procedure Code (RKUHAP) as a legal document for reform.
2. **Secondary Data**, namely legal materials that provide explanations of primary legal materials, including:
 - Criminal law and human rights textbooks.
 - Scientific articles, legal journals, and previous research results.

²¹ Negara, T. A. S. Normative legal research in Indonesia: Its origins and approaches. *Audito Comparative Law Journal (ACLJ)*, 4(1), (2023), 1-9.

²² Mitchell, M. Analyzing the law qualitatively. *Qualitative research journal*, 23(1), (2023), 102-113.

²³ Wijaksana, M. M. S. Implementation of Criminal Case Trials Through a Teleconference by Prosecutors with a Progressive Legal Approach. *Journal of Morality and Legal Culture*, 1(2), (2020), 66-72.

- Official documents from national and international human rights institutions.
 - Court decisions or cases relevant to the research topic.
3. **Tertiary Data**, namely supporting materials that help explain legal terms or concepts, such as legal dictionaries, encyclopedias, and legal indexes.

Data collection technique

Data collection techniques were carried out through library research and document analysis.

Literature studies are conducted by tracing relevant literature, laws and regulations, and research results to obtain conceptual and legal understanding.

Document analysis is used to examine the contents of the Criminal Procedure Code and the Criminal Procedure Code Draft Bill in depth, focusing on articles relating to the protection of the rights of suspects, defendants, victims, and the principles of due process of law.

In addition, to strengthen the findings, this research can also be supplemented with in-depth interviews with criminal law experts, academics, or legal practitioners to obtain an empirical perspective on the effectiveness of human rights protection in the two legal instruments.

Data Analysis Techniques

The data obtained were analyzed using qualitative-comparative analysis. The analysis steps were as follows:

- Identify Relevant Legal Aspects

Determining aspects of criminal procedural law that are directly related to the protection of human rights, such as the rights of suspects, the rights of defendants, the principle of presumption of innocence, the right to legal aid, the right to a fair trial, and the prohibition of torture.

- Content Analysis (Content Analysis)

Examining the substance of the articles in the Criminal Procedure Code and the Criminal Procedure Code Draft Bill that regulate aspects of human rights protection, then assessing the extent to which these norms reflect the principles of justice and due process of law.

- Substantive Comparison (Comparative Analysis)

Comparing the structure, wording of articles, and mechanisms for protecting human rights in the two legal instruments to find similarities, differences, and shifts in the legal paradigm.

- Normative Interpretation

Interpreting legal provisions based on human rights principles as stipulated in the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and international instruments such as the ICCPR (International Covenant on Civil and Political Rights).

- Comparative Conclusion Drawing

Summarize the comparative results and provide recommendations for updating criminal procedural law to better guarantee the protection of human rights.

Framework

The conceptual framework in this research is based on the conceptual relationship between the criminal procedure system and the principles of human rights protection. The current Criminal Procedure Code (KUHP) serves as the foundation of the national criminal justice system, but its development has been deemed to have failed to fully accommodate human rights principles. Therefore, the Draft Criminal Procedure Code (DKUHAP) was prepared to strengthen the principles of due process of law, fair trial, and human dignity.

This research is based on legal and human rights theories, including:

- Human Rights Protection Theory, which emphasizes the importance of respecting and guaranteeing individual rights in every stage of the legal process.
- Justice Theory, especially John Rawls' idea of justice as fairness.
- Theory of the Rule of Law (Rechtsstaat), which states that all law enforcement actions must be based on law and guarantee the protection of citizens' rights.

Through this framework, the research seeks to explain how the norms in the Criminal Procedure Code and the Draft Criminal Procedure Code implement human rights

principles, and to assess the extent to which the Draft Criminal Procedure Code provides substantive updates to the Indonesian criminal procedure law system.

Data Validity

To ensure the validity of the research results, source triangulation techniques were used, comparing data from various legal references, academic literature, official documents, and expert opinions. This triangulation aims to ensure the accuracy, consistency, and credibility of the analysis results, so that the conclusions drawn can be scientifically justified.

Location and Time of Research

This research is not tied to a specific location, as it is library research. Data was obtained from law libraries, scientific journals, government agency websites, and other reliable academic sources. The research is planned to last three to six months, depending on the academic schedule and data analysis stages.

RESULTS AND DISCUSSION

General Overview of the Criminal Procedure Code and the Draft Criminal Procedure Code

The Criminal Procedure Code (KUHAP), enacted through Law Number 8 of 1981, is a legal instrument that replaced the colonial legacy of the Indonesian Criminal Procedure Code (HIR). The KUHAP introduced the principle of due process of law into the Indonesian legal system, providing a basis for protecting the rights of suspects and defendants, and affirming the role of the judiciary in ensuring justice²⁴.

However, after more than four decades of implementation, various weaknesses have been found in its implementation, including the imbalance in position between law enforcement officers and suspects, the lengthy judicial process, and limited mechanisms for protecting victims' rights.

As a form of reform, the government has drafted a draft Criminal Procedure Code

(RKUHAP) that seeks to strengthen human rights protections at all stages of the criminal process. The RKUHAP introduces several new concepts, such as the right to legal representation from the beginning of the investigation, supervision of detention, and a broader pretrial mechanism²⁵. The Criminal Procedure Code (RKUHAP) is also oriented towards the principles of fair trials and an accountable justice system to ensure a balance between state interests and individual rights.

Aspects of Human Rights Protection in the Criminal Procedure Code and the Draft Criminal Procedure Code

The following is a comparative analysis of the main aspects of human rights protection regulated in the Criminal Procedure Code and the Criminal Procedure Code Draft.

Table 1. Right to Legal Aid

Aspect	Criminal Procedure Code (Law No. 8 of 1981)	Draft Criminal Procedure Code
Arrangement	Legal aid is regulated in Articles 54–56. The suspect has the right to obtain legal counsel during the examination stage in court.	Affirming the right to assistance from the investigation stage (the beginning of the legal process).
Basic Principles	The right to legal aid is limited and conditional (for criminal threats of ≥ 5 years).	Universal in nature, applicable to all suspects regardless of the criminal threat.

²⁴ Hasibuan, K., Panjaitan, B. S., & Harahap, A. M. RUU KUHAP: Tantangan dan Harmonisasi antara Asas Due Process of Law dan Criminal Justice System di Indonesia. *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, 3(2), (2024), 57-72.

²⁵ Sofian, A. Penguatan Kapasitas Jaksa Melalui Koordinasi dalam Proses Penyidikan dan Penuntutan dalam RUU KUHAP: Studi Perbandingan Amerika Serikat, Belanda dan Indonesia. *PAMPAS: Journal of Criminal Law*, 6(2), (2025), 183-217.

Human Rights Implications	<p>Protection of the rights of suspects is not yet fully guaranteed.</p>	<p>Improving access to justice accordance with the principle of due process of law.</p>	Prohibition of Torture	<p>It is not stated explicitly, only implied through the provisions regarding the validity of evidence.</p>	<p>It clearly states the prohibition of torture and any form of physical or psychological violence during the examination.</p>
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The Criminal Procedure Code (RKUHAP) is more progressive in guaranteeing the rights of suspects through legal assistance from the outset of the process. This aligns with international standards stipulated in Article 14 of the ICCPR on the right to a fair trial.

Detention

The monitoring mechanism for detention is not regulated in detail.

Establish a detention oversight body and judicial control mechanisms to prevent abuse of power.

Table 2. Right to the Presumption of Innocence

Aspect	Criminal Procedure Code	Draft Criminal Procedure Code
Legal Formulation	Not stated explicitly in the article, but reflected in the principles of criminal justice.	It is expressly stated that every person is considered innocent until there is a court decision that has permanent legal force.
Implementation	There are still many violations in practice, such as criminalization and reporting that corners suspects.	Affirming the prohibition of publications that judge suspects and strengthening judicial control over the actions of law enforcement officials.

Minimal regulation, focus on the rights of suspects and defendants.

Introduces the concept of victims' rights, including the right to information and compensation.

Implications of Comparison Results

From the analysis above, it can be concluded that the Draft Criminal Procedure Code (RKUHAP) introduces a new paradigm to the Indonesian criminal procedural law system. While the Criminal Procedure Code (KUHP) remains oriented toward formal legal certainty, the RKUHAP seeks to balance legal certainty, justice, and humanity. The reforms proposed by the RKUHAP demonstrate a shift in the criminal law paradigm toward a more human rights-oriented criminal justice system²⁶.

The Criminal Procedure Code (RKUHAP) provides more explicit protection for the principle of presumption of innocence, in line with the principles of fair trial and human dignity which are universal human rights standards.

The RKUHAP also demonstrates Indonesia's efforts to align national laws with international standards as stated in the ICCPR and the principles of the Universal Declaration of Human Rights (UDHR).²⁷ However, the implementation of the RKUHAP will still

Table 3. Right to Fair and Humane Treatment

Aspect	Criminal Procedure Code	Draft Criminal Procedure Code
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²⁶ Nadianti, E., & Kusumo, B. A. Politik Hukum Pidana dalam Pembaharuan Hukum Pidana Nasional: Analisis terhadap KUHP Baru Indonesia. *Indonesian Journal of Law and Justice*, 2(4), (2025), 10-10.
²⁷ Nurcahyani, D. Hak Asasi Manusia Dalam Perspektif Hukum Internasional Dan Nasional. *Jurnal Ilmu Pendidikan Pancasila, Kewarganegaraan, dan Hukum*, 1(1), (2024), 7-13.

require institutional readiness, increased capacity of law enforcement officers, and support from derivative regulations so that these human rights principles can be effectively realized in practice.

Theoretical Discussion

Based on the theory of human rights protection, the current Criminal Procedure Code (KUHAP) remains state-oriented, placing state interests above individual rights. The RKUHAP attempts to shift this orientation to a rights-oriented one, placing humans as the primary legal subjects who must be protected by the legal system.

Within the context of Rawls's theory of justice, the RKUHAP seeks to establish procedural justice that guarantees equality before the law. Meanwhile, from the perspective of the theory of the rule of law (Rechtsstaat), the RKUHAP emphasizes the principle of the rule of law by placing state power under the supremacy of law, which guarantees the rights of citizens.

Research Findings

The Criminal Procedure Code still has weaknesses in regulating human rights protection, especially in the investigation and detention stages²⁸.

The RKUHAP strengthens human rights principles through firmer norms and more transparent oversight mechanisms.

The paradigm shift from legal certainty to substantive justice is reflected in the structure and spirit of the RKUHAP²⁹.

However, the effectiveness of the RKUHAP is highly dependent on the implementation and integrity of law enforcement officers.

CONCLUSION

Based on the results of research and discussion on the comparison between the

Criminal Procedure Code (KUHAP) and the Draft Criminal Procedure Code (RKUHAP) in the context of human rights protection, it can be concluded that the KUHAP still has a number of weaknesses in guaranteeing comprehensive human rights protection. Despite being a milestone in criminal procedural law reform since 1981, the KUHAP still focuses on formal protection for suspects and defendants without explicitly regulating human rights principles such as the prohibition of torture and the right to legal assistance from the beginning of the investigation. In contrast, the RKUHAP shows significant progress by strengthening the rights of suspects, defendants, and victims through guarantees of legal assistance, a mechanism for judicial oversight, and a prohibition on torture. Normatively, the RKUHAP is also more in line with the principles of due process of law and fair trial as stipulated in the ICCPR and UDHR, signaling a shift from a state-oriented justice system to a human rights-oriented system.

In line with these conclusions, it is recommended that the government and the House of Representatives expedite the ratification of the Criminal Procedure Code (RKUHAP) while still paying attention to harmonizing human rights norms in accordance with the constitution and international agreements. Reforms to criminal procedure law must also be accompanied by increased capacity and integrity of law enforcement officials so that the implementation of the RKUHAP is truly effective in protecting individual rights. Furthermore, independent oversight institutions and access to legal aid for the underprivileged need to be strengthened to realize the principle of equality before the law. Public legal awareness must also be increased through legal education and outreach. Ultimately, the application of the principle of human dignity as the spirit of the criminal justice system must be the foundation of every legal reform so that justice is measured not only by legal certainty but also by respect for human dignity.

²⁸ Salsabila, K. A., & Sumardiana, B. Analisis Terhadap Efektivitas Batas Waktu Penyidikan Dalam KUHAP Kepada Perlindungan HAM Tersangka. *Jurnal Analisis Hukum*, 8(1), (2025), 11-24.

²⁹ Yusnani, I. Arah Reformasi Peradilan di Indonesia: Menimbang Antara Keadilan, Kepastian, dan Kemanfaatan. *Hukum. YUDHISTRATRA: Jurnal Yurisprudensi, Hukum dan Peradilan*, 1(3), (2023), 75-82.

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