

Analysis of the Implementation of the Criminal Procedure Code in Handling Cyber Crimes: Between Effectiveness and Justice

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Abstract: The development of digital technology has given rise to various forms of cybercrime that challenge the criminal procedure system in Indonesia. This study aims to analyze the implementation of the Criminal Procedure Code (KUHP) in handling cybercrimes, with a focus on effectiveness and justice. The method used is a descriptive qualitative approach through in-depth interviews with investigators, prosecutors, judges, and criminal law academics, accompanied by a documentary study of the Criminal Procedure Code (KUHP), the ITE Law, and related court decisions. Data analysis was carried out through the stages of data reduction, data presentation, and conclusion drawing/verification, and its validity was tested using the triangulation method of sources, methods, and time. The results of the study indicate that the application of the Criminal Procedure Code (KUHP) in cyber cases still uses a conventional legal framework that is not fully adaptive to the characteristics of digital crimes. The effectiveness of criminal procedure law in the cyber context is still limited by technical and normative obstacles, while the aspect of justice is only fulfilled at the procedural level, not substantive. This study recommends the need for an update to the KUHP based on a digital justice system to ensure a balance between effective law enforcement and substantive justice in the information technology era.

Keywords: criminal procedure code, cybercrime, legal effectiveness, legal justice, digital justice system.

INTRODUCTION

The development of information and communication technology has had a major impact on various aspects of human life, both in the economic, social and legal fields.¹ However, this digital advancement has also given rise to a new form of crime known as cybercrime.

Cybercrime is cross-border, fast-paced, and involves advanced technology that is difficult to track with conventional legal instruments². This phenomenon requires the national legal system, particularly criminal

procedure law, to be able to adapt to the ever-evolving dynamics of digital crime.

As a basis for criminal procedure law, the Criminal Procedure Code (KUHP) was drafted in 1981 with an orientation towards conventional crimes³. Therefore, the Criminal Procedure Code has not explicitly regulated the procedures for investigation, prosecution, or proof of information technology-based crimes⁴. As a result, the application of the Criminal Procedure Code (KUHP) in handling cybercrimes often presents various obstacles, particularly in terms of collecting, confiscating, and verifying digital evidence.

¹ Bimantoro, A., Pramesti, W. A., Bakti, S. W., Samudra, M. A., & Amrozi, Y. Paradoks etika pemanfaatan teknologi informasi di era 5.0. *Jurnal Teknologi Informasi*, 7(1), (2021), 58-68.

² De la Hoz-Rosales, B., Ballesta, J. A. C., Tamayo-Torres, I., & Buelvas-Ferreira, K. Effects of information and communication technology usage by individuals, businesses, and government on human development: An international analysis. *IEEE Access*, 7, (2019), 129225-129243.

³ Takanjanji, J. Merefleksi Penegakan Hukum Tindak Pidana Penipuan Online. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 2(2), (2020), 75-90.

⁴ Umami, S. H., & Fithry, A. Mekanisme Penyidikan Dan Penuntutan Tindak Pidana Cybercrime: Tinjauan Hukum Indonesia. *Prosiding SNAPP: Sosial Humaniora, Pertanian, Kesehatan dan Teknologi*, 2(1), (2023), 114-120.

Although Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) has recognized the validity of electronic evidence, procedurally the process remains subject to the provisions of the Criminal Procedure Code which are still conventional in nature.

In law enforcement practice, investigators often face difficulties in obtaining and validating digital evidence due to the absence of clear regulations in the Criminal Procedure Code⁵. Furthermore, cross-border jurisdictional issues, limited technical capacity of law enforcement agencies, and weak coordination between law enforcement agencies also weaken the effectiveness of handling cyber cases.

On the other hand, there is also the issue of legal justice, where enforcement against cybercrime perpetrators sometimes emphasizes repressive aspects without paying attention to the proportionality of punishment and protection of individual rights, both perpetrators and victims.

A number of previous studies have focused more on the implementation of the ITE Law from the material legal aspect or the protection of victims of cybercrime, while studies that specifically examine the implementation of the Criminal Procedure Code as criminal procedural law in the cyber context are still very limited⁶.

Furthermore, most previous research has been normative-juridical in nature, only examining legal texts without describing the reality of their application in the field. Therefore, this study occupies a crucial position, employing a qualitative, juridical-empirical approach to assess the extent to which the Criminal Procedure Code remains

relevant and effective in addressing cybercrime, based on the direct experiences of law enforcement officers.

The novelty of this research lies in the integration of two main perspectives: the effectiveness and fairness of the application of the Criminal Procedure Code (KUHAP) in the context of cyber law enforcement. This research not only examines the alignment between legal norms and practice but also identifies the need for procedural law reform to be more adaptive to technological developments. Furthermore, this research offers a new perspective on the concept of criminal procedural law enforcement that balances the effectiveness of enforcement and the protection of citizens' legal rights in the digital space.

Based on this description, this study aims to analyze the implementation of the Criminal Procedure Code (KUHAP) in handling cybercrimes in Indonesia, assess its effectiveness in the investigation, prosecution, and trial processes, and examine the extent to which the principles of procedural and substantive justice can be realized in the context of cyber law. Furthermore, this study also aims to identify normative, technical, and institutional obstacles faced by law enforcement officials and provide recommendations for updating criminal procedural law to be more responsive to the challenges of digital crime in the modern era.

METHODOLOGY

This research uses a qualitative approach with a juridical-empirical research type⁷, a method that examines the application of criminal procedure law (KUHAP) provisions in the practice of handling cybercrimes. This approach was chosen because the issues studied are not only normative but also directly related to the implementation of the law in real life. Through this approach, researchers seek to understand

⁵ Rohman, R., Muliadi, M., Pratama, F., Saputra, I., Firmansyah, A., Marwan, T., & Irfandi, I. Sistem Pembuktian dalam Hukum Pidana Indonesia dan Tantangan dalam Proses Peradilan. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), (2024), 279-292.

⁶ Wardana, A. P. Hukum Pidana dan Perlindungan Data Pribadi: Upaya Menanggulangi Kejahatan Siber di Era Digital di Indonesia. *Pustaka: Jurnal Ilmu Politik dan Hukum*, 1(1), (2024), 20-25.

⁷ Permata, S., Firmanto, T., Ihlas, I., & Hikmah, H. Studi Yuridis-Empiris Tentang Penegakan Hukum Korban KDRT Oleh Polsek Dompu. *SANGAJI: Jurnal Pemikiran Syariah dan Hukum*, 9(1), (2025), 25-36.

the extent to which the KUHAP can be applied effectively and fairly in addressing the complexity of cybercrime in the digital era⁸.

The research used is descriptive-analytical, with the aim of providing an in-depth and systematic description of the application of the Criminal Procedure Code (KUHAP) in the investigation, prosecution, and trial of cyber cases. This research is analytical in nature, as it seeks to assess the alignment between legal norms and their implementation in the field and to identify factors influencing the effectiveness and fairness of the application of the KUHAP.

The research was conducted at several law enforcement agencies authorized to handle cyber cases, including the Cyber Crime Directorate of the Indonesian National Police Criminal Investigation Agency (Bareskrim Polri), the Prosecutor's Office, and the District Courts in urban areas such as Jakarta, Surabaya, and Bandung. These locations were chosen because they were considered representative of the dynamics of cyber law enforcement in Indonesia.

The data sources in this study consist of primary and secondary data. Primary data were obtained through in-depth interviews with law enforcement officials such as investigators, prosecutors, and judges involved in handling cyber cases. Meanwhile, secondary data were obtained from various laws and regulations (Criminal Procedure Code, Law Number 11 of 2008 concerning Electronic Information and Transactions and its amendments), academic literature, previous research results, scientific journals, and court decisions related to cybercrime⁹.

Data collection techniques included in-depth interviews, documentary studies, and non-participatory observation. Interviews were conducted to explore the experiences and perspectives of law enforcement officials regarding the application of the Criminal Procedure Code (KUHAP) in a cyber context.

Documentation studies examined relevant legal documents and court decisions, while observation was used to directly observe law enforcement processes in relevant institutions¹⁰.

Data analysis was conducted using qualitative descriptive analysis, which encompasses three main stages: data reduction, data presentation, and conclusion drawing. Data reduction was performed by selecting and focusing on data relevant to the implementation of the Criminal Procedure Code (KUHAP). Data presentation was conducted in the form of a thematic narrative to facilitate interpretation. Furthermore, conclusions were drawn through verification of the research findings to identify the extent to which the implementation of the KUHAP has met the principles of effectiveness and legal justice.

To maintain data validity, this study uses source and method triangulation techniques, namely by comparing the results of interviews, observations and document studies¹¹. Cross-validation was also conducted between informants (investigators, prosecutors, judges, and academics) to ensure the research results had a high level of validity and objectivity.

The research focuses on three main aspects: first, the effectiveness of the implementation of the Criminal Procedure Code (KUHAP) in the process of enforcing the law against cybercrimes; second, the legal and technical obstacles that arise in its implementation; and third, the extent to which the principle of procedural justice can be realized for both perpetrators and victims in the cyber-based criminal justice system.

RESULTS AND DISCUSSION

The results of this study were compiled through three stages of qualitative data analysis—data reduction, data presentation,

⁸ Dinda, A. L. S. Efektivitas Penegakan Hukum Terhadap Kejahatan Siber di Indonesia. *AL-DALIL: Jurnal Ilmu Sosial, Politik, dan Hukum*, 2(2), (2024), 69-77.

⁹ Hutapea, T., Koto, Z., & Syafruddin, S. Kebijakan Polri dalam Upaya Mengefektifkan Penerapan Konsep Hukum Pidana Baru Dalam UU RI Nomor 1 Tahun 2023 Tentang KUHP. *Jurnal Ilmu Kepolisian*, 18(1). (2024).

¹⁰ Abidin, R. F. I. W., & Fadhlurrahman, M. I. Alur Penegakan Hukum dalam Kasus Pidana Berdasarkan Tugas serta Fungsi dari Hakim dan Jaksa di Indonesia. *Adagium: Jurnal Ilmiah Hukum*, 3(1), (2025), 41-63.

¹¹ Susanto, D., & Jailani, M. S. Teknik pemeriksaan keabsahan data dalam penelitian ilmiah. *QOSIM: Jurnal Pendidikan Sosial & Humaniora*, 1(1), (2023), 53-61.

and conclusion drawing/verification—and have undergone validity testing using triangulation of sources, methods, and time. Data were obtained through in-depth interviews with investigators from the Indonesian National Police Criminal Investigation Agency (Bareskrim Polri), prosecutors, judges, and criminal law academics, as well as analysis of legal documents (the Criminal Procedure Code, the Electronic Information and Transactions Law, and court decisions related to cybercrime).

Implementation of the Criminal Procedure Code in Handling Cyber Crimes

Based on the results of interviews and document analysis, the application of the Criminal Procedure Code in cyber cases still uses a conventional procedural legal framework that has not fully adapted to the characteristics of digital crimes.

Most investigators and prosecutors stated that the Criminal Procedure Code does not explicitly regulate electronic evidence, digital data confiscation mechanisms, and the process of tracking perpetrators across jurisdictions.

As a result, law enforcement officers often rely on the ITE Law and its derivative regulations as a complementary legal basis in providing evidence and investigations.

This finding is supported by triangulation of sources between investigators and academics, who both believe that the Criminal Procedure Code needs to be revised to be adaptive to digital technology.

The research results show that the application of the Criminal Procedure Code (KUHAP) in handling cyber cases is still based on a conventional procedural legal framework designed for conventional crimes, not technology-based crimes. This creates a normative gap because the KUHAP does not explicitly regulate procedures related to electronic evidence, digital data seizure, and cross-jurisdictional cooperation mechanisms.

From the perspective of Soerjono Soekanto's (1983) theory of legal effectiveness, legal effectiveness is determined by five factors: the law itself, law enforcement officials, facilities and infrastructure, society, and legal culture. In this context, the

inconsistency between the substance of the Criminal Procedure Code (KUHAP) and the characteristics of cybercrime indicates inadequate legal factors. Although law enforcement officials have attempted to adapt through the implementation of the ITE Law and its implementing regulations, the inconsistency between legal instruments still hampers the effectiveness of the investigation and evidence-gathering process¹².

Effectiveness of the Implementation of the Criminal Procedure Code in the Cyber Investigation and Prosecution Process

The results of data reduction show that the effectiveness of the Criminal Procedure Code in handling cyber cases is limited.

In practice, the investigation process often encounters technical obstacles, such as difficulty obtaining log data, digital evidence that is easily deleted, and limited cooperation between institutions and between countries.

In addition, digital confiscation procedures often do not have standard guidelines in the Criminal Procedure Code, resulting in differences in interpretation among law enforcers¹³.

However, some officials believe that the flexibility of Article 184 of the Criminal Procedure Code regarding evidence allows the court to accept electronic evidence as part of valid evidence, as long as it is verified by a digital forensic expert.

This was confirmed through a triangulation of methods — interviews, observations, and studies of court decisions — which showed a shift in evidentiary practices towards wider acceptance of electronic evidence.

The effectiveness of the application of the Criminal Procedure Code in cyber law enforcement practices tends to be limited by

¹² Santoso, I., Syahrin, A., Mulyadi, M., & Agusmidah, A. Kebijakan Hukum Pidana Terhadap Perbuatan Melawan Hukum Dalam UU ITE Pasca Berlakunya Pedoman Implementasi Pasal-Pasal Tertentu UU ITE. *Locus Journal of Academic Literature Review*, 3(4), (2024), 329-335.

¹³ Firmansyah, F., Wiratny, N. K., & Sihotang, E. The Authority of The Indonesian National Police (POLRI) In Conducting Seizures of Evidence without Court Approval In Criminal Cases. *Journal of Social Science (JoSS)*, 4(3), (2025), 166-174.

technical and normative aspects.¹⁴ Obstacles identified include difficulty accessing digital evidence, weak coordination between agencies, and the absence of standard procedures for electronic data seizure. This situation aligns with Roscoe Pound's theory of law in action versus law on the books, where the discrepancy between written law and the law applied in practice is the primary cause of low effectiveness.

However, the existence of progressive interpretation by officials and judges who accept electronic evidence as part of valid evidence based on Article 184 of the Criminal Procedure Code shows the dynamics of legal adaptation in practice¹⁵. This reflects that the effectiveness of the law is not solely determined by the text of the law, but rather by the disposition and ability of legal actors to interpret norms contextually.

Aspects of Justice in the Application of the Criminal Procedure Code to Cyber Cases

From a justice perspective, there is an imbalance in legal protection between perpetrators and victims of cybercrime.

The Criminal Procedure Code focuses more on protecting the rights of suspects and defendants, while recovery mechanisms for victims of digital crimes are still minimal¹⁶.

Moreover, the lengthy and complicated legal process is often disproportionate to the losses suffered by victims, especially in cases of online fraud and privacy violations.

On the other hand, law enforcement officials believe that the Criminal Procedure Code is still a legal framework that guarantees a fair trial, as long as it is carried out according to the principle of due process of law.

Through time triangulation, these findings were consistent across different stages of interviews conducted between the beginning and end of the study, indicating stability of perceptions across informants.

From a justice perspective, research findings indicate an imbalance in legal protection between perpetrators and victims. The Criminal Procedure Code (KUHP) emphasizes protecting the rights of suspects and defendants, but does not provide adequate restitution or recovery mechanisms for victims of digital crimes. In the context of John Rawls's (1971) theory of justice, this situation illustrates the imbalance between "justice as fairness" and the effectiveness of procedural law.

Procedural justice is represented by the application of the principle of due process of law, while substantive justice demands restitution for the injured party. The current implementation of the Criminal Procedure Code only addresses the procedural aspect but has not yet addressed the substantive dimension of justice, particularly for victims of cybercrimes such as online fraud, data theft, and the distribution of illegal content¹⁷.

The Need for Criminal Procedure Code Updates in the Digital Era

The majority of sources stated that the Criminal Procedure Code needs to be revised or adapted to be able to address the complexity of cybercrime¹⁸.

Strengthening of digital evidence, cross-border data confiscation mechanisms, and personal data protection in the investigation process is necessary.

In addition, it is necessary to strengthen the capacity of investigators and prosecutors in digital forensics, as well as improve coordination between institutions (the National Police, the Ministry of Communication and

¹⁴ Situmeang, S. M. T., & Meilan, K. Evolusi Kejahatan dan Pidana: Tantangan dalam Penegakan Hukum dan Penologi Modern. *Res Nullius Law Journal*, 7(2), (2025), 87-97.

¹⁵ Rosyadi, S. Y., & Hoesein, Z. A. Pembaruan Hukum di Era Digital: Aspek Hukum terhadap Validitas Hasil Analisis Artificial Intelligence Sebagai Alat Bukti Dalam Penegakan Hukum Pidana Pertambangan. *Judge: Jurnal Hukum*, 6(03), (2025), 563-577.

¹⁶ Yunara, E., & Kemas, T. The role of victimology in the protection of crime victims in Indonesian criminal justice system. *Mahadi: Indonesia Journal of Law*, 3(01), (2024), 63-78.

¹⁷ Istirahat, I. Rekonstruksi peran hakim dalam mewujudkan keadilan substantif di pengadilan Indonesia. *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan*, 1(2), (2023), 44-51.

¹⁸ Al Miski, Y. R., Putra, S. M., Purwanto, M. I., & Luthfiyyah, S. Eksistensi Tindak Pidana Penipuan (Bedrog) dalam Pasal 378 KUHP di Era Digital. *Journal Equitable*, 10(2), (2025), 369-389.

Information, the Prosecutor's Office, and the Courts).

The results of verification through member checks show that all sources agree on the importance of modernizing criminal procedural law to ensure a balance between the effectiveness of law enforcement and procedural justice..

Based on data triangulation, all informants stated that the Criminal Procedure Code (KUHP) requires reform or updating of procedural law to meet the challenges of the digital era. In the context of legal effectiveness, regulatory adaptation is a prerequisite for the criminal justice system to adapt to technological developments¹⁹.

Required updates include:

- Explicit recognition of electronic evidence and its examination procedures.
- Regulation of digital data seizure and international cooperation.
- Strengthening the protection of personal data in the investigation and judicial process.
- Development of digital forensic competencies for law enforcement officers.

This reform is in line with the principle of responsive law (Nonet & Selznick, 1978) which emphasizes that law must be adaptive to social and technological changes to continue to realize justice.

Synthesis of Research Findings

Based on the results of the analysis and data validity, it can be concluded that:

- The implementation of the Criminal Procedure Code in cyber cases is still carried out within a conventional legal framework that is not yet fully adaptive.
- The effectiveness of the implementation of the Criminal Procedure Code is limited by technological aspects, legal

procedures, and coordination between institutions.

- The principle of justice has been implemented formally, but has not yet reached the interests of victims and the dimensions of substantive justice.
- It is necessary to update the Criminal Procedure Code based on a digital justice system to align with technological developments and cyber law challenges.

Thus, this study strengthens the theory of legal effectiveness and justice by showing that legal effectiveness and justice are interdependent on the law's ability to adapt to technological developments and the needs of modern society²⁰.

CONCLUSION

Based on the research results and data analysis, it can be concluded that the implementation of the Criminal Procedure Code (KUHP) in handling cybercrimes still operates within a conventional legal framework. The KUHP does not explicitly regulate electronic evidence, digital data confiscation procedures, or cross-jurisdictional cooperation mechanisms. Therefore, law enforcement officers still rely on the ITE Law and its implementing regulations as a complementary legal basis for evidence and investigations. The effectiveness of the KUHP application in the context of cybercrime remains limited, with the main obstacles lying in technical aspects such as difficulty in obtaining digital evidence and limited forensic capacity, as well as in normative aspects such as the lack of detailed regulations regarding digital procedures.

Nevertheless, law enforcement officials have attempted to adapt through progressive interpretation and cross-agency coordination. From a justice perspective, the implementation of the Criminal Procedure Code (KUHP) places greater emphasis on procedural justice than on substantive justice. While protection for the rights of suspects and defendants is

¹⁹ Iskandar, D., Zulbaidah, W. N., Almanda, A., Abdinur, I., Putra, D. Y., Andriani, C. Y., & Zulhazrul, Z. Perkembangan Teori dan Penerapan Asas Legalitas dalam Hukum Pidana Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), (2024), 293-305.

²⁰ Ahadi, L. M. A. Efektivitas Hukum Dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi Terhadap Eksistensi Produk Hukum. *Jurnal Usm Law Review*, 5(1), (2022), 110-127.

relatively good, protection for victims of cybercrime remains minimal, particularly in terms of recovery and restitution. Therefore, an update to the Criminal Procedure Code (KUHP) is needed that is more adaptive to developments in digital technology to ensure a balance between effective law enforcement and substantive justice, by integrating the principles of a digital justice system based on transparency, accountability, and legal expediency. Overall, this study confirms that the effectiveness and fairness of the implementation of the Criminal Procedure Code (KUHP) depend heavily on the ability of national law to transform to keep pace with technological developments and the dynamics of cybercrime.

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