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Reconstructing the Protection of Suspects' Rights during Pre-Detention Examination under the Due Process of Law Principle in Law Number 20 of 2025 on the Criminal Procedure Code

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ABSTRACT

Law Number 20 of 2025 on the Criminal Procedure Code (the 2025 CPC), in force since 2 January 2026, strengthens the protection of suspects' rights during examination. At the same time, it lists among the grounds for detention certain behaviours of the suspect during examination, namely providing information inconsistent with the facts and obstructing the examination (Article 100 paragraph (5) letters b and c). This article analyses the regulation of suspects' rights before detention, assesses it against the principle of due process of law, and proposes a reconstruction of legal protection. It employs normative legal research using statutory, conceptual, case, and comparative approaches, with prescriptive analysis of legal materials collected up to 30 September 2026. The findings are threefold. First, the 2025 CPC builds preventive layers of protection: notification of rights, access to counsel, a prohibition of intimidation, accurate recording of statements, and the right to give or refuse a statement. Second, the wording of letters b and c leaves interpretive space that may reach the exercise of the right of defence, creating potential tension with Article 142 and with the principles of legality, proportionality, and necessity. Third, a five-dimensional reconstruction (normative, procedural, evidentiary, institutional, and remedial) is needed, comprising objective interpretive parameters, audio-visual recording, effective legal assistance, concrete factual reasoning in detention orders, and review of the legal consequences of violations.

Kata Kunci:

hak tersangka; pemeriksaan; penahanan; *due process of law*; KUHAP 2025

ABSTRAK

Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP 2025), yang berlaku sejak 2 Januari 2026, memperkuat jaminan hak tersangka pada tahap pemeriksaan. Pada saat yang sama, undang-undang ini memuat alasan penahanan yang dikaitkan dengan perilaku tersangka selama pemeriksaan, yaitu memberikan informasi tidak sesuai fakta dan menghambat proses pemeriksaan (Pasal 100 ayat (5) huruf b dan c). Artikel ini bertujuan menganalisis pengaturan hak tersangka pada pemeriksaan sebelum penahanan, menguji kesesuaiannya dengan prinsip *due process of law*, dan merumuskan rekonstruksi perlindungan hukum. Penelitian yuridis normatif ini menggunakan pendekatan perundang-undangan, konseptual, kasus, dan komparatif dengan analisis preskriptif terhadap bahan hukum yang dikumpulkan sampai 30 September 2026. Hasil penelitian menunjukkan tiga hal. Pertama, KUHAP 2025 membangun lapisan perlindungan preventif berupa pemberitahuan hak, pendampingan advokat, larangan intimidasi, pencatatan keterangan, dan jaminan hak memberikan atau menolak keterangan. Kedua, rumusan huruf b dan c mengandung

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risiko tafsir yang dapat menyentuh pelaksanaan hak membela diri sehingga berpotensi berbenturan dengan Pasal 142 serta prinsip legalitas, proporsionalitas, dan *necessity*. Ketiga, diperlukan rekonstruksi lima dimensi (normatif, prosedural, evidensial, kelembagaan, dan remedial) yang mencakup parameter tafsir objektif, dokumentasi audio-visual, pendampingan yang efektif, uraian fakta konkret dalam penetapan penahanan, dan pengujian akibat hukum atas pelanggaran.

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A. Introduction

Indonesia asserts itself as a state based on the rule of law (*negara hukum*) (Article 1 paragraph (3) of the 1945 Constitution). Consequently, the exercise of state power, including criminal enforcement power, must rest on law, be accountable, and respect human rights. In the rule of law tradition, limitations on state authorities are an essential element, not an add-on.[1] Criminal procedure law is the arena where those limitations are tested most concretely, as it is here that the state's interest in enforcing the law directly confronts the individual's interest to be protected from excessive state actions.[2]

At the investigation stage, investigators possess the authority to summon, examine, designate a person as a suspect, and under certain circumstances perform coercive measures (*upaya paksa*) that directly impact a person's liberty, honor, and sense of security. Therefore, the criminal justice system demands effective boundaries, procedures, and oversight from the initial stage, because decisions and evidence produced at this stage influence the entire subsequent process.[3]

Law Number 20 of 2025 on the Criminal Procedure Code (hereinafter 2025 CPC) came into force on 2 January 2026, replacing Law Number 8 of 1981 (1981 CPC). This reform includes, among other things, strengthening suspects' rights,

[1]Dicey, A. V. (1959). *Introduction to the study of the law of the constitution* (10th ed.). Macmillan.
[2]Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.
[3]Reksodiputro, M. (1994). *Sistem peradilan pidana Indonesia: Melihat kepada kejahatan dan penegakan hukum dalam batas-batas toleransi*. Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia; Muladi. (2002). *Hak asasi manusia, politik dan sistem peradilan pidana*. Badan Penerbit Universitas Diponegoro; Atmasasmita, R. (2010). *Sistem peradilan pidana kontemporer*. Kencana.

restructuring coercive measures, strengthening pretrial mechanisms (*praperadilan*), strengthening the position of advocates, and establishing recovery mechanisms.[4] Academic discourse since the draft stage has highlighted the challenge of harmonizing due process of law principles with a criminal justice system model oriented toward law enforcement effectiveness.[5] This framework aligns with Packer's (1968) classic distinction between the crime control model and the due process model, namely that procedures and individual safeguards function as protection against error and abuse of power.

The issue becomes sharper during the timeframe between suspect examination and the decision to detain. The examination aims to obtain information for investigative purposes, but it takes place within an unequal power relationship because the suspect faces law enforcement officials equipped with coercive powers. This imbalance gives rise to potential pressure, both direct and indirect. Sound legal policy therefore needs to provide preventive protections to avert violations and repressive protections to correct them.[6]

Indonesian literature has extensively discussed suspects' rights at the investigation stage, particularly the right to legal assistance.[7] Studies on the 2025 CPC have begun to point out internal normative tensions, such as between the right to give or refuse statements under Article 142 and the recognition of defendant statements as evidence under Article 235.[8] Those studies focus primarily on the evidentiary stage.

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[4]Saputra, R., Lufsiana, L., & Negara, D. S. (2025). *Reformasi hukum acara pidana: Menyongsong KUHAP baru*. Langgam Pustaka; Tanmadibrata, R. (2026). Konstruksi hak bantuan hukum dalam KUHAP 2025 dan implikasinya terhadap sistem peradilan pidana. *Jurnal Sosial Teknologi, 6*(2).

[5]Hasibuan, K., Panjaitan, B. S., & Harahap, A. M. (2024). 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), 57–72. https://doi.org/10.55606/jurrish.v3i2.6023

[6]Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.

[7]Gunawan, F., Sudarmanto, K., Sukarna, K., & Soegianto, S. (2024). Peran bantuan hukum terhadap tersangka dalam proses penyidikan. *Jurnal USM Law Review, 7*(3), 2042–2053; Hasibuan, M. N. P., & Prasetyo, M. H. (2022). Kedudukan advokat dalam sistem peradilan pidana di Indonesia. *Jurnal Ius Constituendum, 7*(1), 159–176. https://doi.org/10.26623/jic.v7i1.4629

[8]Kania, D., Ludiana, T., & Hidayat, A. A. (2026). The right to remain silent vs. defendant statements: Examining Indonesia's new Criminal Procedure Code. *Jurnal Dinamika Hukum, 26*(2), 200–219. https://doi.org/10.20884/1.jdh.2026.26.2.17777

This article examines another critical intersection: the coercive measures stage. Article 100 paragraph (5) of the 2025 CPC details the grounds for detention and requires a minimum of two valid pieces of evidence (*alat bukti yang sah*) regarding the alleged criminal act. Listed among the specified grounds is the suspect's behaviour during examination: providing information inconsistent with the facts (letter b) and obstructing the examination process (letter c).[9] This wording replaces the orientation of Article 21 paragraph (1) of the 1981 CPC, which relied on investigator "fears" or "concerns" (*kekhawatiran*).[10] Thus, it can be read as an effort to objectify the grounds for detention. However, precisely because those grounds are linked to conduct during examination, questions arise as to whether denials, refusals to answer, or presenting a different factual version from the investigator's theory can be classified as grounds for detention, given that Article 142 guarantees the right to give or refuse to give statements.

Similar concerns were raised in Petition Number 285/PUU-XXIV/2026, which challenged Article 100 paragraph (5) letters b and c against Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution. The petitioner, an advocate, argued that the norm opens an interpretive space that turns self-defense, denials, and the use of the right to remain silent into grounds for detention.[11] Legal counsel for the House of Representatives (DPR) explained that the norm is directed at active acts or bad faith that potentially derail legal proceedings, and that the right to deny (*hak ingkar*) remains guaranteed.[12] As of the time of writing (30 September 2026), the author found no final decision on the petition.

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[9]Hukumonline. (2026). *Dari kekhawatiran ke kepastian: Wajah baru penahanan dalam KUHAP baru*. Diakses 30 September 2026, dari https://www.hukumonline.com/berita/a/dari-kekhawatiran-ke-kepastian--wajah-baru-penahanan-dalam-kuhap-baru-lt6992db5ee22a9/

[10]*Ibid.*

[11]Mahkamah Konstitusi Republik Indonesia. (2026a, 4 Agustus). *Risalah sidang Permohonan Nomor 285/PUU-XXIV/2026*. https://s.mkri.id/public/content/persidangan/risalah/14752_Risalah-pdf_PERMOHONAN%20NOMOR%20285.PUU-XXIV.2026%20tgl.%204%20Agustus%202026.pdf

[12]ANTARA. (2026). *DPR jelaskan argumentasi penahanan dalam KUHAP baru di sidang MK*. Diakses 30 September 2026, dari https://www.antaranews.com/berita/5736100/dpr-jelaskan-argumentasi-penahanan-dalam-kuhap-baru-di-sidang-mk

To the author's knowledge through literature search, existing studies have not yet used the functional relationship between suspect behavior during examination and detention grounds as a primary unit of analysis, nor have they formulated operational parameters for interpretation. The novelty of this article lies in three aspects: (1) using the examination–detention relationship as the unit of analysis; (2) formulating five due process parameters as an evaluation tool for Article 100 paragraph (5) letters b and c; and (3) proposing a five-dimensional reconstruction complete with draft interpretation clauses for implementing regulations. The research questions addressed are:

1. How does the 2025 CPC regulate the protection of suspects' rights in pre-detention examinations?
2. How does the principle of due process of law test the compliance of these regulations, particularly Article 100 paragraph (5) letters b and c?
3. What is the appropriate reconstruction for protecting suspects' rights during pre-detention examinations in accordance with due process of law principles?

This article is not intended to preempt the constitutional evaluation currently underway in the Constitutional Court. Its focus is on a conceptual framework for interpretation and reconstruction that can be utilized by drafters of implementing regulations, heads of law enforcement agencies, advocates, and pretrial judges. Its theoretical benefit lies in enriching criminal procedure literature regarding the interaction between examination and detention, while its practical benefit is serving as evaluative material for the application of the 2025 CPC.

B. Research Method

This study is a normative (doctrinal) legal research of a prescriptive-analytical nature, as its primary object consists of legal norms concerning suspects' rights, examination, detention, legal assistance, and oversight of official actions. Four approaches are employed.

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First, a statutory approach, which examines the 1945 Constitution, the 2025 CPC, the 1981 CPC as a historical baseline, Law Number 39 of 1999 on Human Rights, Law Number 12 of 2005 (ratification of ICCPR), Law Number 5 of 1998 (ratification of the Convention Against Torture), Law Number 16 of 2011 on Legal Aid, and Law Number 18 of 2003 on Advocates. Second, a conceptual approach, detailing due process of law, preventive and repressive legal protections, the right against self-incrimination, proportionality, and legal reconstruction. Third, a case approach, applied selectively to Constitutional Court Decision Number 21/PUU-XII/2014 and the ongoing proceedings of Petition Number 285/PUU-XXIV/2026. Because that petition has not been decided, its proceedings are treated as an active development rather than precedent. Fourth, a comparative approach that is selective and illustrative, referencing the ICCPR and the UN Human Rights Committee's General Comments, European Court of Human Rights jurisprudence, European Union directives, *Miranda v. Arizona*, and Dutch legal experience. This selection is based on four considerations: Indonesia is a state party to the ICCPR; European jurisprudence is the most elaborated regarding access to legal counsel and the right to silence; *Miranda* is a standard reference in Indonesian literature; and Indonesian procedural law carries a historical Dutch legacy.

Primary legal materials consist of legislation, court decisions, and Constitutional Court hearing transcripts. Secondary legal materials comprise books and journal articles. News reports from official institutions (DPR, Supreme Court) and media outlets were used solely to track hearing developments and were cross-checked against official transcripts where available. Materials were collected through library research and online tracking on the websites of the Constitutional Court, DPR, JDIH, and academic journal databases. Analysis was conducted qualitatively using grammatical, systematic, and teleological interpretations, followed by testing norms against five due process parameters (Table 1) to produce prescriptive recommendations. The cutoff date for material collection was 30 September 2026. This study does not involve primary human data and therefore did not require institutional ethics approval; all sources are cited according to standard legal citation rules.

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C. Results and Discussion

1. Analytical Framework: Five Parameters of Due Process

The principle of due process of law requires criminal proceedings to be not only formally lawful but also procedurally fair. Any limitation on rights must have a legal basis, be executed by competent authorities, follow proper procedure, be proportional, be subject to oversight, and be accompanied by an effective opportunity for defense.[13] Synthesizing these principles from literature and international standards, the author formulated the five analytical parameters shown in Table 1. These five parameters represent an analytical construct synthesized by the author, rather than a single standardized formula from a single authority.

Table 1. Five due process parameters as an evaluation tool

Parameter	Conceptual and normative references	Evaluation question for Article 100 paragraph (5) letters b and c
1. Legality and normative clarity	Rule of Law (Dicey, 1959); Article 1 para (3) & 28D para (1) 1945 Constitution; Article 9 para (1) ICCPR	Are the elements "information inconsistent with facts" and "obstructing" clear enough to be predictable and distinguishable from exercising defense rights?
2. Effective access to defense	Article 14 para (3) ICCPR; *Salduz v. Turkey*; Articles 31, 32, and 142 of 2025 CPC	Does the suspect know their rights, can they consult counsel, and are they accompanied when their behavior is assessed?
3. Examination integrity and accountability	Article 34 of 2025 CPC; General Comment No. 32 paragraph 41	Are suspect statements and conduct documented so they can be reviewed later?

[13]Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.

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Parameter	Conceptual and normative references	Evaluation question for Article 100 paragraph (5) letters b and c
4. Proporsionalitas and necessity	Article 28J para (2) 1945 Constitution; General Comment No. 35 paragraph 38	Is there a real connection between the behavior and the risk to proceedings, and are less restrictive alternatives available?
5. Judicial control and remedies	Article 9 paras (3)–(4) ICCPR; Hadjon (1987); Pretrial proceedings (*praperadilan*)	Can the detention decision be substantively reviewed, and are remedies available for procedural violations?

Source: author's analysis.

2. Regulation of Suspects' Rights during Pre-Detention Examination

The 2025 CPC establishes safeguards before examination even begins. Article 31 requires investigators to notify suspects of their right to legal assistance or accompaniment by an Advocate or Legal Aid Provider prior to examination. Article 32 regulates assistance during examination and grants legal assistants the right to raise objections if intimidation or trick/misleading questions occur, which must be recorded in the official record (*berita acara*). Article 34 mandates notification of rights when a suspect provides statements, accurate recording of statements verbatim as stated, provision of an interpreter, and accommodations for persons with disabilities. Article 142 then details a catalog of suspect or defendant rights, including the right to choose and be accompanied by an Advocate during every examination, the right to be clearly informed of charges and rights, the right to give or refuse to give statements, the right to an interpreter, the right to submit mitigating witnesses or experts, and the right to be free from torture, intimidation, and degrading treatment.

An accurate reading requires distinguishing between existing obligations and new developments. The investigator's obligation to notify suspects of the right to legal counsel prior to examination was already present in Article 114 of the 1981

CPC. The key innovation of the 2025 CPC lies in linking rights notification, continuous legal presence during examination, recordable objections, and precise statement recording. In other words, protection no longer stops at initial notification, but extends to the actual conduct of the examination.

Rights notification is a substantive component of due process, not a mere administrative formality, because rights that are unknown cannot be effectively exercised. Empirical findings under the 1981 CPC reinforce this concern. Research shows that at the district police level, the main obstacle to legal assistance stemmed from low public legal awareness and ineffective dissemination. Meanwhile.[14] other studies indicate that while advocates are formally recognized as law enforcers within the criminal justice subsystem, that status has not been fully realized in practice. Both studies serve as a warning that strengthening statutory norms in the 2025 CPC must be accompanied by mechanisms ensuring those rights can actually be exercised. As a side note, Articles 31 and 32 paragraph (1) of the 2025 CPC are also objects of Petition Number 31/PUU-XXIV/2026, but public reports indicate those arguments concern the role of correctional probation officers (*pembimbing kemasyarakatan*), which falls outside the scope of this article.

These provisions can be viewed as a preventive layer of protection through notification, assistance, anti-intimidation rules, and documentation.[15] The repressive layer consists of formal objections, pretrial review, and remedy mechanisms. The effectiveness of both layers depends on whether they function at the exact moment a suspect's conduct is being evaluated as a basis for coercive action, as discussed in the following subsection.

3. Pre-Detention Examination as a Critical Phase

Conceptually, examination and detention are distinct legal actions, but in practice they directly influence one another. Examination results form the initial case theory, support suspect designation, and serve as assessment material

[14]Hasibuan, M. N. P., & Prasetyo, M. H. (2022). Kedudukan advokat dalam sistem peradilan pidana di Indonesia. *Jurnal Ius Constituendum, 7*(1), 159–176. https://doi.org/10.26623/jic.v7i1.4629
[15]Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.

regarding the necessity of detention. The European Court of Human Rights in *Salduz v. Turkey* emphasized that the initial police interrogation is decisive because evidence gathered during that phase can set the frame for the entire defense strategy, making access to legal counsel mandatory from the very first interrogation unless compelling reasons justify restrictions.[16]

From a due process perspective, examination results must not be obtained at the expense of suspect rights. An examination should serve to test allegations, including the possibility that allegations are unfounded; it is not merely an instrument to confirm the investigator's hypothesis, but a verification tool that surfaces exculpatory facts. This position is tied directly to the presumption of innocence. Suspects must be treated as legal subjects possessing rights, not as mere objects of investigation.[17] Consequently, questioning tactics and documentation methods must stay within legal boundaries, and any adverse consequences attached to suspect conduct must be reviewed with rigor commensurate with the severity of those consequences.

4. Article 100 Paragraph (5) Letters b and c: Point of Intersection with Defense Rights

The 2025 CPC categorizes suspect designation and detention under coercive measures. Suspect status does not automatically lead to detention. Article 100 paragraph (5), as referenced in available materials, requires a minimum of two valid pieces of evidence (*alat bukti yang sah*) regarding the alleged offense and lists several alternative grounds, including ignoring two consecutive legal summonses without valid reason, providing information inconsistent with facts during examination, and obstructing the examination process.[18] The two-evidence

[16]*Salduz v. Turkey* [GC], No. 36391/02 (European Court of Human Rights, 2008); *Ibrahim and Others v. the United Kingdom* [GC], Nos. 50541/08, 50571/08, 50573/08 and 40351/09 (European Court of Human Rights, 2016).
[17]Ashworth, A. (2006). Four threats to the presumption of innocence. *The International Journal of Evidence & Proof, 10*(4), 241–279.
[18]Hukumonline. (2026). *Dari kekhawatiran ke kepastian: Wajah baru penahanan dalam KUHAP baru*. Diakses 30 September 2026, dari https://www.hukumonline.com/berita/a/dari-kekhawatiran-ke-kepastian--wajah-baru-penahanan-dalam-kuhap-baru-lt6992db5ee22a9/; MariNews. (2026). *Wajah baru aturan penahanan dalam KUHAP 2025: Apa saja yang berubah?* Diakses 30

requirement aligns with the direction of Constitutional Court Decision Number 21/PUU-XII/2014, which established that suspect designation must rest on sufficient preliminary evidence and be subject to pretrial challenge.

The author's analysis reveals three sources of interpretation risk in letters b and c.

First, an epistemic problem in the phrase "information inconsistent with facts." Facts in a criminal case are ultimately established through trial proof; during the investigation stage, only investigator hypotheses exist. Every denial by a suspect is definitionally "inconsistent" with the investigator's theory. If the phrase is interpreted as inconsistency with that theory, mere denial transforms into grounds for detention.

Second, the open-ended nature of the phrase "obstructing the examination process." Without clear parameters, this phrase can encompass legitimate defense actions, such as requesting reasonable time to consult counsel, raising objections against trick questions, or choosing not to answer specific questions. Third, chilling effects and coercive leverage. In jurisprudence that is relatively permissive toward drawing adverse inferences from silence, such as *John Murray v. the United Kingdom* (1996), the Court emphasized that such inferences are strictly limited and can never form the sole or primary basis for conviction. Yet the right to silence and non-self-incrimination lie at the heart of a fair trial.[19] Under Article 100 paragraph (5), the consequence tied to examination conduct is not merely an evidentiary inference, but pre-trial deprivation of liberty. The applicable standard should certainly be no less stringent.

There is also a structural gap. Based on the statutory formulation available to the author, the "minimum two pieces of evidence" requirement attaches to the

September 2026, dari https://marinews.mahkamahagung.go.id/artikel/wajah-baru-aturan-penahanan-dalam-kuhap-2025-0MN

[19]*Saunders v. the United Kingdom* [GC], No. 19187/91 (European Court of Human Rights, 1996); Daly, Y., Pivaty, A., Marchesi, D., & ter Vrugt, P. (2021). Human rights protections in drawing inferences from criminal suspects' silence. *Human Rights Law Review, 21*(3), 696–723. https://doi.org/10.1093/hrlr/ngab006

underlying criminal allegation, whereas the specific grounds in letters b and c carry no independent evidentiary standard of their own. This means that even if the criminal charge meets the two-evidence threshold, the assessment that a suspect "obstructed" or "provided inconsistent information" could rest entirely on the subjective internal evaluation of investigators. This gap contradicts the reform objective of objectifying detention grounds.

Opposing arguments deserve fair weight. Pre-trial detention can be legitimate if aimed at preventing interference with proceedings, such as evidence tampering, provided it is based on reasonable, necessary, and individualized assessment (UN Human Rights Committee, 2014, para. 38). DPR representatives clarified that the provision is not intended to punish suspects, but to prevent acts that derail investigations, emphasizing that detention remains a last resort (*ultimum remedium*) and that pretrial review is available.[20] That objective is legitimate. The issue is not the objective, but the binding nature of the interpretation. Explanations by the DPR during court hearings clarify legislative intent, but do not automatically bind field investigators. Therefore, limitations specifying "active acts," "bad faith," and distinguishing these from the right to deny must be incorporated into subordinate regulations or binding guidelines, rather than remaining mere statements made during court proceedings.

Table 2. Proposed classification of examination conduct

Examination conduct	Proposed classification	Legal basis
Denying allegations or presenting a factual version differing from investigator theory	Exercise of defense rights; cannot constitute grounds for detention	Article 142 of 2025 CPC; Article 14 para (3)(g) ICCPR

[20]ANTARA. (2026). *DPR jelaskan argumentasi penahanan dalam KUHAP baru di sidang MK*. Diakses 30 September 2026, dari https://www.antaranews.com/berita/5736100/dpr-jelaskan-argumentasi-penahanan-dalam-kuhap-baru-di-sidang-mk; DPR RI. (2026, 10 September). *KUHAP 2025 perkuat kepastian hukum penahanan dan cegah kesewenang-wenangan aparat*. Diakses 30 September 2026, dari https://emedia.dpr.go.id/news/2026/09/10/kuhap-2025-perkuat-kepastian-hukum-penahanan-dan-cegah-kesewenang-wenangan-aparat

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Examination conduct	Proposed classification	Legal basis
Refusing to answer specific questions or choosing to remain silent	Exercise of rights; cannot constitute grounds for detention	Article 142 of 2025 CPC; *Saunders v. United Kingdom*
Requesting reasonable time to consult counsel or objecting to trick/misleading questions	Exercise of right to legal assistance	Articles 31 and 32 of 2025 CPC
Intentionally giving false statements regarding material facts that can be objectively proven and demonstrably obstruct investigation	May be evaluated under letter b, subject to concrete, documented proof	Parameters 1, 3, and 4 (Table 1)
Destroying or concealing evidence, intimidating witnesses, falsifying documents, or fleeing	Active unlawful acts; may be evaluated under letter c or other grounds, with proof	UN Human Rights Committee (2014, para. 38); Parameter 4

Source: author's analysis.

5. Developments in Constitutional Court Judicial Review

Since the 2025 CPC came into force, several review petitions have been filed, showing that these new norms remain an active area of constitutional and academic debate. Key developments relevant to this article are summarized in Table 3.

Table 3. Developments in Petition Number 285/PUU-XXIV/2026

Date	Event	Source
4 August 2026	Preliminary hearing. Petitioner (advocate) challenged Article 100 para (5) letters b and c against Articles 28D(1) and 28G(1) of the 1945 Constitution, arguing the norm allows defense actions to be turned into grounds for detention.	Constitutional Court (2026a); ANTARA (2026)
10 September 2026	Court heard testimony from DPR legal counsel: detention is preventive, requires active acts or bad faith, and the right to deny remains guaranteed.	ANTARA (2026); DPR RI (2026)
22 September 2026 and thereafter	Subsequent hearing reported adjourned and rescheduled for 1 October 2026. [Author note: verify against official Constitutional Court records prior to final submission.]	

Source: court transcripts and reports as cited in the last column.

Methodological rigor is required here. Normative analysis must distinguish between existing positive law, party arguments, and binding judicial rulings. Because the petition remains pending, petitioner arguments and DPR statements are treated as arguments evaluated under the parameters of Table 1, rather than as settled law. Should the Court issue a ruling in the future, the proposed reconstruction in subsection 3.10 must be re-calibrated against its ratio decidendi and order.

6. Article 100 Paragraph (5) Tested against Four Due Process Principles

Principle of legality. Grounds for detention must rest on clear norms and cannot be expanded through interpretations that transform the exercise of rights into grounds for detention. Where a norm permits multiple interpretations, the reading that best protects fundamental rights must prevail, provided it remains consistent with statutory purpose. This principle demands a systematic reading: Article 142

must not be neutralized by Article 100, nor should Article 100 be read in a way that nullifies Article 142.

Principle of proportionality. Detention is a severe restriction on personal liberty. Limitations on rights must be prescribed by law and serve legitimate aims in a democratic society (Article 28J paragraph (2) of the 1945 Constitution). Not every inconsistency in statements warrants detention. Officials must demonstrate a tangible connection between the suspect's conduct and actual risk to legal proceedings.

Principle of necessity. Detention should not be used if the goals of examination can be achieved through less restrictive means. Indonesian law recognizes multiple forms of detention (state penitentiary detention, house arrest, and city/district arrest), so necessity evaluations must consider these alternatives alongside the reality of the alleged risk. International standards require individual assessment of reasonableness and necessity (UN Human Rights Committee, 2014, para. 38), and Article 9 paragraph (3) of the ICCPR establishes that pre-trial detention should not be the general rule.

Judicial control. Measures restricting liberty must be subject to effective oversight. Pretrial review (*praperadilan*) and objection mechanisms against detention extensions form vital components of this control ecosystem.[21] Scholars emphasize the importance of an effective pretrial model to safeguard suspects' defense rights in Indonesia. For judicial control to be meaningful regarding letters b and c, pretrial judges need reviewable materials namely, concrete factual descriptions and complete examination records (subsection 8) rather than boilerplate legal boilerplate in detention orders. Without this, decisions restricting liberty remain dependent on internal administrative discretion.

[21]Susilo, E., Din, M., Suhaimi, & Mansur, T. M. (2025). Access to justice: An effective pretrial model to guarantee the right to defense for suspects in Indonesia. *Jurnal Hukum dan Peradilan, 14*(2), 317–350. https://doi.org/10.25216/jhp.14.2.2025.317-350

7. Comparative and International Standards

Indonesia is a state party to the ICCPR via Law Number 12 of 2005 and the Convention Against Torture via Law Number 5 of 1998. Consequently, international standards are not merely persuasive references; they represent legal obligations that must be reflected in domestic legal interpretation.[22] Table 4 summarizes the most relevant standards. This comparison is selective and illustrative, intended to extract principles rather than transplant models directly.

Table 4. Comparative standards and implications for Article 100 paragraph (5)

Source	Core standard	Implications for interpreting Article 100 para (5) letters b & c
ICCPR & General Comment No. 32 (para. 41)	Suspects cannot be compelled to testify or confess guilt; protection against direct or indirect pressure during interrogation	Threats of detention risk becoming indirect compulsion if exercising rights is equated with misconduct
General Comment No. 35 (para. 38)	Pre-trial detention must be based on individualized, reasonable, and necessary assessment for legitimate goals (e.g., preventing flight, evidence tampering, reoffending)	Legitimate goal of "preventing evidence tampering" differs from exercising defense rights; individualization is required
Saunders v. United Kingdom (1996)	Right to silence and non-self-incrimination lie at the heart of fair procedure	Denials and silence are legally protected

[22]Nowak, M. (2005). *U.N. Covenant on Civil and Political Rights: CCPR commentary* (2nd rev. ed.). N. P. Engel; Joseph, S., & Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases, materials, and commentary* (3rd ed.). Oxford University Press.

Source	Core standard	Implications for interpreting Article 100 para (5) letters b & c
John Murray v. United Kingdom (1996)	Adverse inferences from silence are strictly limited and cannot form sole or primary basis for conviction	Detention consequences are more severe than evidentiary inferences, demanding even stricter standards
Salduz v. Turkey (2008); *Ibrahim and Others v. UK* (2016)	Access to counsel from first interrogation; restrictions allowed only for compelling reasons; overall fairness assessed	Legal assistance must be present before suspect conduct is evaluated
Directive (EU) 2016/343 (Art. 7) & Directive 2013/48/EU	Right to silence and non-self-incrimination must not be used against suspects or viewed as evidence of guilt; right to counsel	Supports prohibition against turning rights exercise into adverse measures
Miranda v. Arizona (1966)	Rights warnings and counsel access as procedural safeguards linked to consequences for violations	Inspiration for remedial dimension: procedural safeguards must carry legal consequences
Netherlands (ter Vrugt, 2021)	Pragmatic approach to right to silence	Protection of silence built through practice, not text alone

Source: synthesized by author from cited documents and cases.

These comparative findings highlight a common thread: systems that permit adverse consequences for conduct during examination consistently limit those

consequences through individualization requirements, procedural safeguards, and independent oversight. The formulations of letters b and c, lacking such explicit safeguards, require supplementary rules at the level of interpretation or implementing regulations. The Indonesian context also presents unique challenges: legal literature notes that the 2025 CPC's silence protections still retain internal inconsistencies with the recognition of defendant statements as evidence.[23] Thus, aligning these norms forms part of a broader reform agenda beyond Article 100 alone.

8. Legal Assistance and Documentation as Prerequisites for Effectiveness

In a due process model, defense counsel acts as a vital counterweight to state power. Legal assistance should not be viewed as an obstacle to investigation, but as a mechanism ensuring information is gathered lawfully and reliably. Counsel helps suspects understand charges, the right to give or withhold statements, the legal consequences of actions, and the right to present mitigating evidence or witnesses. However, effectiveness is not measured by physical presence alone. Assistance must offer meaningful opportunity for consultation, raising objections, and monitoring rights compliance; if counsel is present without the ability to exercise oversight, the right becomes a mere formality. Under the 1981 CPC, Article 115 restricted legal counsel to merely observing and listening, making the 2025 CPC's inclusion of recordable objections (Article 32) a notable step forward.

Documentation serves as an accountability mechanism enabling subsequent review of proceedings.[24] Article 32 requires recording counsel objections, and Article 34 mandates precise recording of statements. In detention legality disputes, documentation helps determine whether a suspect actually engaged in obstructive acts or merely exercised defense rights. To strengthen this principle, the author

[23]Kania, D., Ludiana, T., & Hidayat, A. A. (2026). The right to remain silent vs. defendant statements: Examining Indonesia's new Criminal Procedure Code. *Jurnal Dinamika Hukum, 26*(2), 200–219. https://doi.org/10.20884/1.jdh.2026.26.2.17777

[24] Edi Saputra Hasibuan and Adi Nur Rohman, "Scientific Crime Investigation and Police Reform in Indonesia: Integrating Technology, Law, and Islamic Ethics for Institutional Transformation," *Legal Transformation in Muslim Societies* 2, no. 3 (2025): 18–36, https://repository.ubharajaya.ac.id/37477/1/17.%20LTIMS%20Vol%202%20Iss%203%20Art%202.pdf.

proposes audio-visual recording of examinations as a consistent, secure, and auditable standard. This proposal is *de lege ferenda*; the author found no explicit statutory mandate requiring video recording in the 2025 CPC text. Audio-visual documentation protects both suspects from abuse and investigators from unfounded allegations, while enhancing evidentiary quality. Access to recordings should be regulated balancing investigative needs, privacy, and defense rights.

9. Comparison of 1981 CPC and 2025 CPC Norms

The comparison in Table 5 illustrates the direction of normative evolution, without suggesting that all practical problems of the 1981 CPC have disappeared.

Table 5. Comparison of selected norms

Aspect	1981 CPC	2025 CPC
Rights notification	Article 114: mandatory pre-examination notification of legal aid rights; Article 56 (mandatory counsel appointment in specific cases)	Article 31: notification prior to examination; Article 34: notification when providing statements
Assistance during examination	Articles 54 & 115: counsel may observe and listen (with exceptions for state security crimes)	Article 32: assistance during examination and right to object to intimidation/trick questions, recorded in official record
Freedom of statement	Articles 52 & 117(1): statements given freely without pressure	Article 142: right to give or refuse statements; Article 34: accurate recording
Grounds for detention	Article 21(1): investigator fears of flight, evidence destruction/tampering, or reoffending	Article 100(5): specific detailed grounds (including b and c) requiring minimum two pieces of evidence for the offense

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Aspect	1981 CPC	2025 CPC
Suspect designation	Not categorized as a coercive measure; brought under pretrial review via MK Decision 21/PUU-XII/2014	Explicitly categorized as a coercive measure (*upaya paksa*) (Article 89)
Judicial oversight	Pretrial review (*praperadilan*) (Article 77 et seq.)	Pretrial review expanded (Article 158) with formal objection mechanisms for detention extensions
Role of advocate	Legal counsel (*penasihat hukum*) (Articles 54–56, 69–70, 115)	Advocate recognized as law enforcer with right to assist at all examination stages (Articles 30–32)

Source: 1981 CPC; 2025 CPC; compiled by author. Article numbers of 2025 CPC

These changes demonstrate that the 2025 CPC normatively moves toward a more rights-oriented system. However, the success of legal reform is determined not by the number of listed rights, but by how effectively those rights can be exercised and protected when confronted with coercive state authority.[25]

10. Reconstructing Suspect Rights Protections

Reconstruction in this article does not mean repealing existing law. It refers to reordering normative relationships so protection goals are achieved consistently whether through norm refinement, interpretive parameters, procedural enhancements, or stronger oversight mechanisms.[26] An integral approach is needed so substantive legal updates are matched by developments in legal structure and

[25] Muhammad Hendra Setyawan, Lina Sinaulan, Edi Saputra Hasibuan, and Diana Fitriana, "The Effectiveness of Chemical Castration Sanctions for Perpetrators of Sexual Violence against Children from a Human Rights Perspective: A Study of Sexual Violence Cases in Indonesia," *Jurnal Axioma Lexprima* 1, no. 3 (2026): 272–290, https://doi.org/10.0805/eb57z897.
[26]Arief, B. N. (2008). *Bunga rampai kebijakan hukum pidana: Perkembangan penyusunan KUHP baru*. Kencana.

legal culture.[27] Based on the analysis, reconstruction is framed across five dimensions (Table 6).

Table 6. Five-dimensional reconstruction framework

Dimension	Issue addressed	Proposed reconstruction	Instrument
Normative	Broad wording in letters b & c overlaps with defense rights	Explicit confirmation that exercising Article 142 rights cannot equal letters b & c; operational definitions of "inconsistent information" and "obstructing"	Statutory elucidation, implementing regulations, or conditional interpretation by Constitutional Court
Procedural	Rights known but difficult to exercise	Understandable rights notifications, real opportunity for attorney consultation before/during examination, mandatory follow-up on objections	Law enforcement interrogation guidelines
Evidentiary	Suspect conduct assessed without reviewable record	Audio-visual examination documentation; objective proof required to demonstrate factual inconsistency	Standard Operating Procedures (SOP); implementing regulations

[27] Muhammad Abdul Azis and Pujiyono, "Causative-Victim Tracing for Integrative Criminal Policy on AI Deepfake Face and Voice Crimes in Indonesia," *KRTHA BHAYANGKARA* 20, no. 2 (2026): 518–537, https://doi.org/10.31599/krtha.v20i2.5666; Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.

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Dimension	Issue addressed	Proposed reconstruction	Instrument
Institutional	Assessment relies entirely on investigator discretion	Internal oversight of interrogation; detention orders must contain concrete facts, causal links to risk, and alternatives considered; substantive judicial control	Internal oversight; expanded pretrial review; officer training
Remedial	Procedural violations lack clear legal consequences	Mechanisms to review legal impacts of intimidation, torture, or procedural violations on evidence admissibility; compensation and rehabilitation	Pretrial court; trial judge; statutory compensation mechanisms

Source: author's analysis.

To offer concrete material for drafters of implementing regulations, the author submits the following draft model provisions. These provisions are proposed *de lege ferenda* and represent academic recommendations rather than positive law:

1. The exercise of rights set forth in Article 142, including denials, refusals to answer, requests to consult an Advocate, and presenting factual statements differing from investigator theories, shall not constitute grounds for detention under Article 100 paragraph (5) letters b and c.
2. "Providing information inconsistent with facts" is established only when investigators demonstrate through objective evidence that the suspect intentionally provided false information regarding material facts that demonstrably obstructs investigation.
3. "Obstructing the examination process" is strictly limited to active, unlawful acts, such as destroying or concealing physical evidence, intimidating witnesses, or falsifying documents.

4. Any detention order issued pursuant to letters b or c must contain concrete factual details, supporting evidence, a causal link showing risk to legal proceedings, and explicit consideration of less restrictive alternatives.
5. Objections raised by Advocates and complete examination recordings shall form an integral part of the case file and are subject to judicial review in pretrial proceedings.

The ideal model produced by this reconstruction can be summarized as follows: clear prior notification of rights; real opportunity to receive assistance; prohibition against using denials, silence, or attorney consultation as grounds for detention; normative distinction between exercising rights and active unlawful obstruction; accurate written and audio-visual recording; detention assessments grounded in objective criteria, necessity, and proportionality; substantive judicial oversight over initial detention and extensions; effective remedial mechanisms; and officer training placing due process as a core competence of interrogation practice.

11. Limitations of the Study

This study has three primary limitations. First, as the 2025 CPC only entered into force on 2 January 2026, sufficient empirical data on its practical implementation is not yet available; this article claims no empirical findings regarding how Article 100 paragraph (5) is applied in daily police practice. Second, Petition Number 285/PUU-XXIV/2026 remains pending in the Constitutional Court, making conclusions regarding constitutional validity preliminary. Third, the comparative law analysis is selective and illustrative. Further empirical research such as systematic reviews of detention orders and pretrial decisions will be necessary to evaluate whether the proposed reconstruction effectively addresses operational realities.

D. Conclusion

First, the 2025 CPC strengthens suspect rights protections during pre-detention examinations through mandatory pre-examination rights notifications, legal assistance by Advocates or Legal Aid Providers, the right to record objections against intimidation or trick questioning, accurate statement recording, the right to give or refuse statements, and guarantees against torture and degrading treatment. Its main innovation lies not in the basic notification requirement which existed under the 1981 CPC but in binding notification directly to continuous legal assistance, recordable objections, and verbatim recording during examinations.

Second, evaluated against five due process parameters (legality, defense access, examination accountability, proportionality/necessity, and judicial control), Article 100 paragraph (5) letters b and c present interpretation risks because the terms "information inconsistent with facts" and "obstructing the examination process" lack objective statutory parameters and independent evidentiary standards. This creates a risk where exercising fundamental defense rights can be turned into grounds for pre-trial detention, conflicting with Article 142 and international human rights standards. While preventing interference with investigations is a legitimate state aim, grounds for detention must be strictly confined to active, unlawful acts.

Third, reconstructing suspect rights protections requires an integrated approach across five dimensions: normative, procedural, evidentiary, institutional, and remedial. This reconstruction enables law enforcement to execute statutory powers effectively without eroding suspects' fundamental rights. Because relevant proceedings in the Constitutional Court remain ongoing, these conclusions are preliminary and subject to calibration against future judicial rulings.

Recommendations:

- **Legislators and Regulatory Drafters:** Establish explicit objective parameters defining "information inconsistent with facts" and "obstructing the examination process" in implementing regulations to prevent these grounds from encompassing legitimate defense rights.

- **Law Enforcement Agencies:** Embed rights notifications, active legal assistance, objection logging, and audio-visual documentation as substantive procedural requirements, while strengthening internal oversight and evaluation of interrogation objections.
- **Pretrial Judges (*Hakim Praperadilan*):** Conduct substantive reviews of detention legality, evaluating explicit legal grounds, concrete factual evidence, necessity, and proportionality rather than accepting administrative boilerplate.
- **Advocates:** Actively assert an effective counterweight role during interrogations, ensuring client protections are preserved in written records.
- **Future Researchers:** Conduct empirical follow-up studies once the 2025 CPC has been in force longer to assess practical consistency between normative guarantees and field implementation.

References

ANTARA. (2026). *DPR jelaskan argumentasi penahanan dalam KUHAP baru di sidang MK*. Diakses 30 September 2026, dari https://www.antaranews.com/berita/5736100/dpr-jelaskan-argumentasi-penahanan-dalam-kuhap-baru-di-sidang-mk

Arief, B. N. (2008). *Bunga rampai kebijakan hukum pidana: Perkembangan penyusunan KUHP baru*. Kencana.

Ashworth, A. (2006). Four threats to the presumption of innocence. *The International Journal of Evidence & Proof, 10*(4), 241–279.

Ashworth, A., & Redmayne, M. (2010). *The criminal process* (4th ed.). Oxford University Press.

Atmasasmita, R. (2010). *Sistem peradilan pidana kontemporer*. Kencana.

Azis, Muhammad Abdul, and Pujiyono. "Causative-Victim Tracing for Integrative Criminal Policy on AI Deepfake Face and Voice Crimes in Indonesia." *KRTHA BHAYANGKARA* 20, no. 2 (2026): 518–537. https://doi.org/10.31599/krtha.v20i2.5666.

Daly, Y., Pivaty, A., Marchesi, D., & ter Vrugt, P. (2021). Human rights protections in drawing inferences from criminal suspects' silence. *Human Rights Law Review, 21*(3), 696–723. https://doi.org/10.1093/hrlr/ngab006

Dicey, A. V. (1959). *Introduction to the study of the law of the constitution* (10th ed.). Macmillan.

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. *Official Journal of the European Union, L 65*.

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings. *Official Journal of the European Union, L 294*.

DPR RI. (2026, 10 September). *KUHAP 2025 perkuat kepastian hukum penahanan dan cegah kesewenang-wenangan aparat*. Diakses 30 September 2026, dari https://emedia.dpr.go.id/news/2026/09/10/kuhap-2025-perkuat-kepastian-hukum-penahanan-dan-cegah-kesewenang-wenangan-aparat

Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.

Gunawan, F., Sudarmanto, K., Sukarna, K., & Soegianto, S. (2024). Peran bantuan hukum terhadap tersangka dalam proses penyidikan. *Jurnal USM Law Review, 7*(3), 2042–2053.

Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.

Harahap, M. Y. (2016). *Pembahasan permasalahan dan penerapan KUHAP: Penyidikan dan penuntutan*. Sinar Grafika.

Hasibuan, Edi Saputra, and Adi Nur Rohman. "Scientific Crime Investigation and Police Reform in Indonesia: Integrating Technology, Law, and Islamic Ethics for Institutional Transformation." *Legal Transformation in Muslim Societies* 2, no. 3 (2025): 18–36. https://repository.ubharajaya.ac.id/37477/1/17.%20LTIMS%20Vol%202%20Iss%203%20Art%202.pdf.

Hasibuan, K., Panjaitan, B. S., & Harahap, A. M. (2024). 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), 57–72. https://doi.org/10.55606/jurrish.v3i2.6023

Hasibuan, M. N. P., & Prasetyo, M. H. (2022). Kedudukan advokat dalam sistem peradilan pidana di Indonesia. *Jurnal Ius Constituendum, 7*(1), 159–176. https://doi.org/10.26623/jic.v7i1.4629

Hukumonline. (2026). *Dari kekhawatiran ke kepastian: Wajah baru penahanan dalam KUHAP baru*. Diakses 30 September 2026, dari https://www.hukumonline.com/berita/a/dari-kekhawatiran-ke-kepastian--wajah-baru-penahanan-dalam-kuhap-baru-lt6992db5ee22a9/

Human Rights Committee. (2014). *General comment No. 35: Article 9 (Liberty and security of person) (CCPR/C/GC/35)*. United Nations.

Human Rights Committee. (2007). *General comment No. 32: Article 14, Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32)*. United Nations.

Ibrahim and Others v. the United Kingdom [GC], Nos. 50541/08, 50571/08, 50573/08 and 40351/09 (European Court of Human Rights, 2016).

International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171.

Jackson, J. D., & Summers, S. J. (2012). Silence and the privilege against self-incrimination. In *The internationalisation of criminal evidence: Beyond the common law and civil law traditions* (pp. 241–284). Cambridge University Press. https://doi.org/10.1017/CBO9781139093606.012

John Murray v. the United Kingdom [GC], No. 18731/91 (European Court of Human Rights, 1996).

Joseph, S., & Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases, materials, and commentary* (3rd ed.). Oxford University Press.

Kania, D., Ludiana, T., & Hidayat, A. A. (2026). The right to remain silent vs. defendant statements: Examining Indonesia's new Criminal Procedure Code. *Jurnal Dinamika Hukum, 26*(2), 200–219. https://doi.org/10.20884/1.jdh.2026.26.2.17777

Karianga, I., & Hutapea, P. K. (2020). Prinsip Miranda rules "the right to remain silent" dalam perspektif perbandingan hukum. *Media Iuris, 2*(3). https://doi.org/10.20473/mi.v2i3.17375

Mahkamah Konstitusi Republik Indonesia. (2026a, 4 Agustus). *Risalah sidang Permohonan Nomor 285/PUU-XXIV/2026*. https://s.mkri.id/public/content/persidangan/risalah/14752_Risalah-pdf_PERMOHONAN%20NOMOR%20285.PUU-XXIV.2026%20tgl.%204%20Agustus%202026.pdf

Mahkamah Konstitusi Republik Indonesia. (2026b, 13 Maret). *DPR dan Pemerintah minta penundaan sidang uji KUHAP*. https://www.mkri.id/berita/dpr-dan-pemerintah-minta-penundaan-sidang-uji-kuhap-24767

MariNews. (2026). *Wajah baru aturan penahanan dalam KUHAP 2025: Apa saja yang berubah?* Diakses 30 September 2026, dari https://marinews.mahkamahagung.go.id/artikel/wajah-baru-aturan-penahanan-dalam-kuhap-2025-0MN

Marzuki, P. M. (2017). *Penelitian hukum* (Edisi revisi). Kencana.

Miranda v. Arizona, 384 U.S. 436 (1966).

Muammar, & Baharuddin, W. (2022). Prinsip Miranda rule sebagai hak asasi tersangka dalam sistem peradilan pidana Indonesia. *PATTIMURA Legal Journal, 1*(3), 201–211. https://doi.org/10.47268/pela.v1i3.7504

Muladi. (2002). *Hak asasi manusia, politik dan sistem peradilan pidana*. Badan Penerbit Universitas Diponegoro.

Nowak, M. (2005). *U.N. Covenant on Civil and Political Rights: CCPR commentary (2nd rev. ed.). N. P*. Engel.

Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.

Putusan Mahkamah Konstitusi Nomor 21/PUU-XII/2014.

Reksodiputro, M. (1994). *Sistem peradilan pidana Indonesia: Melihat kepada kejahatan dan penegakan hukum dalam batas-batas toleransi*. Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia.

Salduz v. Turkey [GC], No. 36391/02 (European Court of Human Rights, 2008).

Saputra, R., Lufsiana, L., & Negara, D. S. (2025). *Reformasi hukum acara pidana: Menyongsong KUHAP baru*. Langgam Pustaka.

Saunders v. the United Kingdom [GC], No. 19187/91 (European Court of Human Rights, 1996).

Setyawan, Muhammad Hendra, Lina Sinaulan, Edi Saputra Hasibuan, and Diana Fitriana. "The Effectiveness of Chemical Castration Sanctions for Perpetrators of Sexual Violence against Children from a Human Rights Perspective: A Study of Sexual Violence Cases in Indonesia." *Jurnal Axioma Lexprima* 1, no. 3 (2026): 272–290. https://doi.org/10.0805/eb57z897.

Soekanto, S., & Mamudji, S. (2015). *Penelitian hukum normatif: Suatu tinjauan singkat*. Rajawali Pers.

Susilo, E., Din, M., Suhaimi, & Mansur, T. M. (2025). Access to justice: An effective pretrial model to guarantee the right to defense for suspects in Indonesia. *Jurnal Hukum dan Peradilan, 14*(2), 317–350. https://doi.org/10.25216/jhp.14.2.2025.317-350

Tanmadibrata, R. (2026). Konstruksi hak bantuan hukum dalam KUHAP 2025 dan implikasinya terhadap sistem peradilan pidana. *Jurnal Sosial Teknologi, 6*(2).

ter Vrugt, P. (2021). A pragmatic attitude: The right to silence in the Netherlands. *New Journal of European Criminal Law, 12*(3), 389–407. https://doi.org/10.1177/20322844211028312

Trechsel, S. (2005). *Human rights in criminal proceedings*. Oxford University Press.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights.

Undang-Undang Nomor 16 Tahun 2011 tentang Bantuan Hukum.

Undang-Undang Nomor 18 Tahun 2003 tentang Advokat.

Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

Undang-Undang Nomor 5 Tahun 1998 tentang Pengesahan Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

Wiguna, A. A. P. S., Sepud, I. M., & Sujana, I. N. (2020). Hak-hak tersangka (Miranda rule) pada tahap penyidikan dalam Kitab Undang-Undang Hukum Acara Pidana. *Jurnal Konstruksi Hukum, 1*(1), 51–56. https://doi.org/10.22225/jkh.1.1.2128.51-56