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Counsel's Procedural Objection Under Indonesia's 2025 Criminal Procedure Code: Safeguarding Suspects and Regulating Unlawfully Obtained Evidence

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ABSTRACT

Indonesia's 2025 Criminal Procedure Code expressly authorizes defence counsel to object when investigators intimidate a suspect or use trapping questions, yet it does not state what follows when the objection is obstructed, ignored, or incompletely recorded. This article examines the legal character, scope, and consequences of that new authority through normative legal research using statutory and conceptual approaches. It argues that Article 32 transforms legal assistance during suspect examination from physical attendance into participatory defence. The objection operates as an immediate corrective intervention and a documentary safeguard, while the investigator bears a correlative duty to record it regardless of agreement with counsel's assessment. Intimidation should be assessed by its effect on the suspect's freedom to provide or refuse information, whereas a trapping question embeds an unaccepted premise and narrows the suspect's answer around it. An ignored objection does not automatically nullify the examination record or the entire investigation. Its evidentiary consequence depends on a demonstrable connection between the procedural violation and evidence later tendered at trial. Under Article 235, only a judicial finding that evidence was unlawfully obtained triggers non-use and the loss of probative force. The article proposes a graduated legal-consequence model that separates obstruction of counsel, defective recording, continued improper questioning, evidentiary exclusion, and personal accountability of investigators.

INTRODUCTION

Suspect examination occupies an unstable position in criminal procedure. It is indispensable to investigation because investigators need a direct account of the alleged offence, yet it also places the state and the person under suspicion in an unequal encounter. The investigator controls the setting, timing, sequence of questions, and official record. A suspect may not understand the legal significance of a formulation that appears ordinary, particularly when the question contains an assumed fact or when pressure is communicated without physical violence. Contemporary interrogation research confirms that the reliability of information depends not only on whether an answer was spoken, but also on how it was elicited. Accusatorial and confrontational methods increase the risk of false admissions, while information-gathering approaches produce more reliable information without sacrificing investigative effectiveness (Catlin et al., 2024; Kassin et al., 2025; Meissner et al., 2014). Criminal procedure therefore cannot treat the manner of questioning as a matter of investigator preference.

Indonesia's former criminal procedure framework recognized legal assistance but left defence counsel with a restricted position during police examination. The enactment of Law Number 20 of 2025 on the Criminal Procedure Code altered that design. Article 32 now states that counsel or a legal aid provider may accompany a suspect during examination. More importantly, counsel may declare an objection when the investigator engages in intimidation or asks a trapping question, and the objection must be entered in the examination record. This formulation is short, but its institutional effect is substantial. It changes the lawyer from a person who is merely present into a procedural participant who may challenge the method by which information is obtained. Scholarship on early criminal defence has similarly observed that assistance becomes effective only when lawyers can act at the investigative stage rather than preserve objections for trial after the damage has occurred (Daly & Conway, 2021; Pivaty et al., 2020).

The reform responds to a problem that is both legal and epistemic. Coercive questioning can violate dignity and autonomy, but it can also damage the accuracy of the resulting account. Research on false confessions identifies coercion, contamination, fatigue, deceptive evidence presentations, minimization, and suspect vulnerability as mutually reinforcing risks (Cleary & Bull, 2021; Gudjonsson, 2021; Kassin et al., 2025). Even a person who knows that an allegation is false may underestimate the psychological force of custody or interpret the setting as one from which departure is impossible (Alceste et al., 2018). Leading and assumptive formulations create another difficulty because they can convert the investigator's hypothesis into the grammatical premise of the suspect's answer. The statutory objection is therefore not designed to shield suspects from difficult questions. Its purpose is to preserve the freedom and integrity of the process through which answers are produced.

Legal assistance at the police station cannot be reduced to pre-interview advice. Counsel must understand the allegation, identify vulnerability, assess the information disclosed by investigators, and respond to impropriety during questioning. Empirical work shows that advice becomes less case-specific when evidence is disclosed only during or after an interview, while active lawyers are better able to protect suspects and build an early defence (Sukumar et al., 2016). Studies involving children also describe counsel as a practical safeguard against intimidation and misunderstanding, although access alone does not guarantee effective participation (Forde & Kilkelly, 2024). These findings matter beyond the jurisdictions in which they were produced. They clarify why Article 32 should not be interpreted as a ceremonial right. A power to object has value only if counsel may identify the questioned conduct, explain the basis of concern, and obtain an official record of the disagreement.

The statutory innovation nevertheless leaves three connected questions unresolved. First, the term authority may imply a power comparable to that held by a public official, although counsel is an independent legal professional rather than an organ of government. Second, neither intimidation nor a trapping question is exhaustively defined for the context of suspect examination. Third, Article 32 imposes a recording duty but does not expressly state whether non-compliance invalidates the examination, weakens the record, excludes resulting evidence, or exposes the investigator to a separate form of responsibility. Treating every breach as automatic nullity would exceed the text. Treating the duty as inconsequential would make the reform ineffective. The central problem is therefore how to connect a procedural objection with the Code's broader rules on suspects' rights and unlawfully obtained evidence.

Existing research has generally examined the right of access to a lawyer, the quality of custodial advice, or the psychology of coercive interviewing. It has not addressed Indonesia's newly codified objection as a distinct procedural act. The novelty of this article lies in constructing that act as a correlative legal relationship. Counsel holds a limited procedural authority, the investigator bears an unconditional recording duty, and the court retains the authority to determine evidentiary legality. This separation prevents the lawyer's objection from being overstated as a veto while ensuring that it is not reduced to an informal protest. The article asks how Article 32 regulates counsel's objection and what legal consequences should follow when investigators obstruct, ignore, or inadequately record it. It argues for a graduated model in which consequences turn on the type of non-compliance, the protected interest, and the connection between the violation and evidence later used in court.

RESEARCH METHODS

This study employs normative legal research because the issues concern the meaning, relationship, and legal effects of provisions governing suspect examination. The statutory approach examines Law Number 20 of 2025, especially Articles 32, 142, 215, and 235, together with Law Number 18 of 2003 on Advocates and Constitutional Court Decision Number 26/PUU-XI/2013. The materials are treated according to their legal function. Statutes and the Constitutional Court decision provide binding or authoritative norms, while peer-reviewed research on police interviewing, legal assistance, false confessions, and evidentiary reliability supplies conceptual and empirical knowledge relevant to interpretation.

The conceptual approach clarifies procedural authority, intimidation, trapping questions, recording duties, and unlawfully obtained evidence. Grammatical interpretation is used to examine the phrases may declare an objection and shall be recorded in the examination record. Systematic interpretation connects Article 32 with the suspect's rights in Article 142 and the judicial power to assess the legality of evidence under Article 235. Article 215 and its official elucidation are used cautiously because they regulate questioning at trial, not suspect examination. They remain relevant to the Code's internal understanding of a trapping question and the principle that statements must be given freely at every stage.

The analysis is qualitative and prescriptive. It does not measure how often intimidation occurs or claim that foreign empirical findings directly describe Indonesian police practice. Those findings are used to explain why specific questioning methods threaten voluntariness and reliability. Legal consequences are assessed through three considerations. The first is the nature of the violated duty. The second is the interest protected by the provision. The third is the causal connection between the violation and material tendered as evidence. This method allows the article to distinguish a defective record from an unlawfully obtained item of evidence and disciplinary responsibility from evidentiary exclusion.

RESULTS AND DISCUSSION

1. From Passive Attendance to Participatory Defence

Article 32 establishes a sequence of related legal positions. Paragraph 1 recognizes accompaniment during examination. Paragraph 2 authorizes an objection when the investigator intimidates the suspect or uses trapping questions. Paragraph 3 commands that the objection be recorded. The sequence matters because physical presence is the condition for observing the interaction, while the power to object supplies a means of intervention. Recording then preserves the intervention for later scrutiny. These are not three unrelated guarantees. Together they create a procedural architecture in which assistance must be capable of influencing the legality of the examination as it occurs. The design resembles the movement in other criminal systems from trial-centred defence toward active representation during investigation (Pivaty et al., 2020).

The term authority in this setting should not be understood as governmental competence. Counsel does not exercise *bestuursbevoegdheid* and cannot issue binding commands to the investigator. The better construction is legally conferred capacity to perform a procedural act in the client's defence. Law Number 18 of 2003 describes advocates as independent law enforcers and protects the performance of professional duties undertaken in good faith. Constitutional Court Decision Number 26/PUU-XI/2013 extended the statutory immunity associated with good-faith professional work beyond the courtroom. That protection supports counsel who raises a genuine procedural concern, but it does not create immunity for deliberate obstruction. Article 32 supplies the specific procedural basis, while the Advocates Law protects responsible professional performance.

Table 1 Normative Architecture of Counsel's Objection under the 2025 Criminal Procedure Code

Provision	Procedural position	Immediate legal effect
Article 32(1)	Counsel may accompany the suspect during examination.	Counsel can observe the questioning process directly.
Article 32(2)	Counsel may object to intimidation or trapping questions.	A contemporaneous corrective intervention becomes available.
Article 32(3)	The investigator must enter the objection in the examination record.	The procedural disagreement is preserved for later scrutiny.
Articles 142 and 235	The suspect must remain free from intimidation; the judge assesses lawful acquisition.	Evidence judicially found to be unlawfully obtained cannot be used and has no probative force.

Source: Author's analysis of Law Number 20 of 2025.

The objection is not an appeal, a judicial remedy, or a decision on illegality. An appeal is submitted to an adjudicative body and seeks review of a decision or measure. The Article 32 objection is made inside the examination to the investigator conducting it. Counsel identifies a method that appears prohibited and requests that the objection be officially recorded. Its immediate function is corrective because the improper method can still be stopped or altered. Its second function is documentary because the examination record can preserve the disagreement if the investigator rejects counsel's assessment. Neither function transfers control of the interview to the lawyer.

This limited authority is nevertheless more than permission to speak. The words may declare an objection would be ineffective if investigators could prevent counsel from explaining what is being challenged. A meaningful exercise requires a reasonable opportunity to identify the conduct or question and state why it falls within Article 32. Counsel need not present complete proof while the examination is ongoing. The event may be unfolding, and the cumulative character of pressure may not yet be clear. The explanation must still be specific enough to distinguish a procedural objection from disagreement with an incriminating answer. A difficult question, an inconsistency challenge, or a request for clarification does not become objectionable merely because it weakens the defence.

Article 32 also produces a correlative duty. Once an objection has been expressed, the investigator must record it. The text does not condition recording on the investigator's agreement. Acceptance and documentation are separate matters. An investigator may believe that the tone was firm but not intimidating, or that a question tested an inconsistency without embedding an unaccepted premise. That disagreement can be stated in the record, but it cannot erase counsel's objection. If documentation depended on official acceptance, the person whose conduct was challenged would possess unilateral control over whether the challenge remained visible.

The record should contain enough information to make the objection intelligible. A notation stating only that counsel objected offers little capacity for review. At minimum, the record should identify the questioned act or formulation and summarize the legal basis advanced by counsel. Article 32 does not prescribe a verbal formula, a written motion, or a separate instrument. Oral objection is the form most consistent with an immediate safeguard. A written statement may supplement the record, particularly when counsel considers the official summary incomplete, but it cannot replace the investigator's statutory duty to record the objection in the examination record itself.

Active participation also depends on professional competence. Studies of police-station lawyering show that early defence requires skills distinct from courtroom advocacy. Counsel must process incomplete disclosure, advise on silence, understand interviewing methods, and intervene without needlessly disrupting information gathering (Daly & Conway, 2021; Pivaty et al., 2020; Sukumar et al., 2016). Article 32 may therefore expose a training gap. A lawyer who treats every adverse question as intimidation weakens the legitimacy of the safeguard. A lawyer who remains silent in the face of coercion reduces the right to physical attendance. The statutory model assumes a proportionate response grounded in good faith and a clear understanding of the distinction between investigative firmness and prohibited pressure.

The institutional benefit is not confined to suspects. Properly used objections can improve the integrity of investigative records and reduce later disputes about what occurred. Information-gathering research consistently associates rapport, open accounts, and evidence-based questioning with accurate information, whereas confrontational methods increase both false and true admissions and therefore have weaker diagnostic value (Bettens et al., 2024; Catlin et al., 2024; Meissner et al., 2014). Counsel's presence can make the examination more transparent and allow investigators to concentrate on lawful questioning. The objection should thus be understood as a quality-control mechanism within the investigation rather than an external attack on investigative authority.

2. Intimidation, Trapping Questions, and the Threshold for Objection

Article 32 confines the objection to intimidation and trapping questions. This limitation is important because counsel has no general power to approve each question. Intimidation should be assessed by its capacity to impair the suspect's freedom to provide or refuse information. Article 142 protects suspects from torture, intimidation, inhuman treatment, and degrading treatment throughout criminal proceedings. The concept therefore extends beyond physical force. Threats, aggressive domination, implied retaliation, prolonged pressure, or manipulation of the suspect's immediate vulnerability may become intimidating when they alter the practical freedom to answer. The classification depends on context and effect, not merely the investigator's stated intention.

Firmness is not a complete defence and discomfort is not sufficient proof. Investigators may confront contradictions, repeat an unanswered question, or explain the seriousness of an allegation. Those actions become problematic when their manner or cumulative use turns the exchange from information gathering into compelled confirmation. Interrogation research helps identify the risk without dictating the legal conclusion. Maximization, false-evidence claims, prolonged confrontation, and minimization that implies leniency can change decision-making and increase false admissions (Gudjonsson, 2021; Kassin et al., 2025; Paton et al., 2018). The legal inquiry remains whether the suspect's ability to formulate an answer was materially impaired in the circumstances.

Vulnerability affects that assessment. Age, intellectual disability, communication difficulty, fatigue, mental distress, and unfamiliarity with legal process can make conduct coercive for one suspect even when another person could resist it. Field research on children in police custody demonstrates that some interviewees do not understand the implications of waiving legal advice and may prioritize leaving the station over protecting their legal position (Forde & Kilkelly, 2024). Perceptions of custody can also be shaped by the environment and by assumptions about whether departure is possible (Alceste et al., 2018). Counsel should therefore assess the person and the interaction together. Article 32 would be underprotective if intimidation were limited to conduct that would overwhelm an abstract, fully informed, and psychologically resilient suspect.

A trapping question operates differently. It embeds a factual or legal premise that the suspect has not accepted and frames the available response as if that premise were already established. A question asking why the suspect used a particular weapon is trapping if the suspect has not admitted using it. The problem is not that the question is closed or incriminating. Closed questions may confirm dates, locations, or details after an open account. An incriminating question may be necessary to test the allegation. The defect arises when the grammar of the question makes an unaccepted fact part of the answer unless the suspect first corrects the premise.

Article 215 supports this construction even though it directly governs trial questioning of witnesses, experts, and defendants. Its elucidation describes a trapping question as one that mentions an offence or fact not admitted or stated but treats it as though it had been accepted. The same elucidation connects the prohibition with the principle that statements must be given freely at every level of examination. Systematic interpretation permits this internal definition to inform Article 32 while respecting the difference between trial and investigation. It would be incoherent for the Code to use the same expression but assign it an entirely unrelated meaning during suspect examination.

Not every assumptive formulation requires immediate exclusion of the answer. An investigator may reformulate a suspect's earlier statement to check understanding. Such a formulation may invite confirmation, correction, or elaboration, but its procedural acceptability depends on whether the suspect can genuinely reject the restatement. Counsel should object when the formulation converts a disputed allegation into an accepted premise or narrows the response so severely that correction becomes practically difficult. The objection should quote or closely identify the question and explain which embedded proposition remains unaccepted.

Timing is connected to purpose. Article 32 does not establish a numerical deadline, yet its location within the ongoing examination indicates that an objection should normally be made when the conduct occurs or becomes recognizable. Immediate objection allows the investigator to reformulate the question and prevents repetition. Delay does not necessarily waive the right. A trapping structure may become apparent only after several questions build a single assumed narrative, while intimidation may emerge through accumulation rather than one dramatic act. Counsel should raise the objection as soon as a reasonable basis is available and ensure that the record identifies the relevant sequence.

Two forms of non-compliance must be kept separate. Obstruction occurs when counsel is denied a reasonable opportunity to object. Ignoring an objection occurs after it has been expressed but is not recorded or is treated as if it had no procedural significance. A third situation arises when the investigator records the objection but continues the disputed method. Recording satisfies the documentary duty but does not cure continued intimidation. These distinctions are necessary because each affects a different protected interest. Obstruction impairs participatory defence. Non-recording destroys the official trace of disagreement. Continued improper questioning threatens the voluntariness and reliability of resulting information.

Ignored objections and the law of evidentiary consequences

Article 32 does not state that non-recording automatically nullifies the examination record. It also does not authorize counsel to terminate the interview or erase an answer. Automatic nullity would therefore require a textual basis that the provision does not provide. The absence of an express sanction, however, cannot make paragraph 3 optional. The recording duty protects traceability. It enables later decision makers to know that the method of obtaining information was disputed at the time, before litigation strategy could reshape the account. A legal consequence must preserve that purpose without inventing a remedy detached from the Code.

The first consequence is recognition of a procedural violation. Preventing a valid objection or refusing to record one breaches the architecture of Article 32 even if no incriminating answer follows. This conclusion does not depend on proof that the investigator committed a separate criminal offence. It concerns compliance with the examination procedure. The violation may justify correction while the investigation continues, internal supervision, or a renewed record that accurately describes the event. These responses address process integrity, but they should not be confused with the later question whether evidence is admissible.

The second consequence concerns the reliability of the examination record. A record bearing the suspect's signature may accurately reproduce the final words attributed to the suspect while omitting the pressure, premise, or objection that shaped them. Formal completion is not conclusive proof of substantive voluntariness. If an objection was omitted, the court or other decision maker should consider available recordings, testimony from persons present, and surrounding circumstances. Electronic recording is especially valuable because it preserves sequence, tone, pauses, reformulations, and interventions that a written summary may not capture. Research on disputed confessions repeatedly identifies complete recording as a core safeguard against coercion and contamination (Gudjonsson, 2021; Kassin et al., 2025).

The examination record must also be distinguished from the categories of evidence in Article 235. A suspect's pre-trial statement is not automatically identical to the defendant's testimony given at trial. Nor should the examination record be treated as self-validating simply because it is an official document. Its legal use depends on the purpose for which it is tendered and the evidentiary category under which it is assessed. This distinction prevents a conceptual shortcut in which every defect in the record becomes exclusion of all evidence, or every signed record becomes immune from scrutiny.

Article 235 provides the stronger consequence. Paragraph 3 requires evidence to be authenticable and obtained lawfully. Paragraph 4 empowers the judge to determine authenticity and legality of acquisition. Paragraph 5 states that evidence judicially declared inauthentic or unlawfully obtained may not be used at trial and has no probative force. This is a statutory exclusion mechanism that is conceptually related to the exclusionary rule, but it should not be assumed to reproduce every doctrine developed in another legal system. The operative source is the Indonesian Code. Exclusion follows a judicial determination directed to the evidence tendered, not the mere fact that counsel previously objected.

A causal connection is therefore indispensable. Counsel's objection may accurately identify intimidation, yet the challenged conduct might produce no evidence or might concern an answer that is never used. Conversely, an unrecorded objection may relate directly to a statement that leads investigators to physical or digital material later presented in court. The judge must determine which evidence was affected and whether the method of acquisition was unlawful. This approach avoids two extremes. It does not invalidate an entire investigation because of an isolated violation unrelated to the proof. It also prevents the state from retaining an evidentiary advantage obtained through a method that the Code prohibits.

The analysis should distinguish direct and derivative effects without presuming that Article 235 adopts a complete fruit-of-the-poisonous-tree doctrine. Direct evidence is the statement or item produced by the disputed questioning. Derivative evidence is discovered because of information obtained through that process. Article 235 focuses on whether the evidence offered was obtained unlawfully, which can support examination of the acquisition chain. The further the evidence lies from the violation, the more careful the inquiry must be into causation, independent sources, and whether the later acquisition was genuinely separate. This is an area in which future judicial interpretation will be necessary.

The burden of preserving the event cannot fall entirely on the suspect. Article 32 assigns the recording duty to the investigator. When the official record contains no objection but counsel provides a specific account supported by a recording or another person present, the omission should not be used as conclusive proof that no objection occurred. At the same time, a bare allegation made much later should not automatically establish intimidation. The proper response is evidentiary inquiry. Specificity, contemporaneity, consistency, recordings, and surrounding material can be assessed together. This treatment respects the statutory duty without converting every later dispute into automatic exclusion.

Investigator responsibility forms a separate track. A refusal to perform the recording duty may engage supervisory, disciplinary, or ethical mechanisms. Intimidation involving violence, threats, or degrading conduct may implicate more serious legal provisions, depending on the elements proved. None of these outcomes should be presumed merely from counsel's objection. Personal responsibility requires its own legal basis and procedure. Equally, evidentiary exclusion need not await personal punishment. A court may find that evidence was unlawfully obtained even when no disciplinary or criminal decision has been made against the investigator.

The resulting model is graduated rather than binary. Obstruction of counsel calls for recognition and immediate restoration of participatory defence. Failure to record requires correction of the official account and later scrutiny of reliability. Continued intimidation or trapping questions require examination of voluntariness and the acquisition chain. Evidence judicially found to have been obtained unlawfully must be excluded under Article 235. Investigator accountability proceeds separately. The model gives paragraph 3 practical force while remaining faithful to the Code's decision to place the final evidentiary judgment with the court.

This interpretation also protects legitimate investigation. Counsel cannot transform Article 32 into a general veto over relevant questioning, and investigators need not accept every characterization offered by the defence. The requirement is narrower. Investigators must allow a good-faith objection, record it adequately, and discontinue methods that violate the suspect's freedom. Courts must then evaluate concrete claims rather than assume that a signed record resolves the issue. Such a division of responsibility supports accurate fact finding because it treats lawful interviewing and defence participation as complementary rather than antagonistic.

CONCLUSION

Article 32 of Indonesia's 2025 Criminal Procedure Code establishes a limited but significant form of participatory defence during suspect examination. Counsel may object when intimidation or trapping questions threaten the suspect's freedom to provide or refuse information. The investigator retains control of relevant questioning but bears an unconditional duty to record the objection. Acceptance of counsel's reasoning is not required for documentation. A trapping question embeds an unaccepted premise, while intimidation is assessed from the practical effect of conduct on the suspect in context. The objection therefore operates as an immediate opportunity for correction and as an official trace for later review.

Obstruction, non-recording, and continued improper questioning should not be treated as one violation with one consequence. None automatically nullifies the entire investigation. Non-compliance first constitutes a procedural breach and may weaken confidence in the examination record. Exclusion arises only when the court connects the violation to evidence tendered at trial and declares that evidence unlawfully obtained under Article 235. Personal responsibility of investigators follows a separate legal route. This graduated model gives counsel's objection meaningful effect without turning it into a unilateral power to terminate examination. Effective implementation will require precise recording practices, complete audiovisual documentation, and professional training that enables lawyers to intervene proportionately while investigators employ information-gathering methods that protect both accuracy and the rights of suspects.

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