

Criminal Law Policy And Human Rights Protection: Analyzing The Rationalization Of The New Indonesian Criminal Code And Criminal Procedure Code

Naila Meuthia Azza¹

¹Master of Law Program, Andalas University, Indonesia

Correspondence: meuthiaazza@gmail.com

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ABSTRACT

This article analyzes the intersection of criminal law policy and human rights protection in Indonesia, focusing on the rationalization of the New Criminal Code (Law No. 1 of 2023) and the newly enacted Criminal Procedure Code (Law No. 20 of 2025). Using a normative legal method with statute, conceptual, and case approaches, the study evaluates the shift from a retributive paradigm to restorative and rehabilitative justice. Despite normative progress aimed at preventing degrading punishments, introducing sentencing alternatives, and establishing the Preliminary Examining Judge (*Hakim Pemeriksa Pendahuluan*) to oversee coercive measures, empirical realities reveal persistent anomalies. By examining concrete cases of wrongful arrest and *trial by press*, this paper demonstrates the enduring dominance of a repressive crime control model among law enforcement apparatuses. The research concludes that substantive human rights protection requires not only the implementation of the new legislative frameworks but also a radical cultural transformation within law enforcement agencies.



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INTRODUCTION

Criminal law is inherently a coercive instrument utilized by the state to maintain social order, protect public interests, and ensure a safe society. However, simultaneously, criminal law contains sanctions that inflict suffering, taking the form of deprivation of liberty, restriction of rights, confiscation of property, and social stigma. This repressive character makes criminal law the branch of law most likely to intersect directly with human rights. Therefore, the application of criminal law cannot be carried out arbitrarily; it must be strictly limited and measured through a criminal procedure mechanism that upholds the principles of human rights protection (Winoto, 2025). In a modern constitutional state, criminal procedure law is positioned not merely as an instrument of law enforcement but as a critical mechanism to control state power from slipping into arbitrary practices. The limitation of state authority constitutes the essence of the *due process of law* principle, which mandates that every law enforcement action must be executed based on lawful, proportional procedures that respect human dignity (Amiruddin & Mulyono, 2025). Consequently, the existence of criminal procedure law is inseparable from the design of a country's criminal law policy. When a state places human rights protection as a fundamental value, its penal policy must be directed towards strengthening a criminal justice system that prioritizes substantive justice over mere procedural administration.

Historically, the relationship between criminal law policy and human rights in Indonesia has undergone significant evolution. The old system under Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) was initially welcomed as a protector of human rights, yet empirical practices over the decades exposed its failure to curb investigative abuses (Hadianto, 2025). Recently, the national criminal law reform achieved its ultimate momentum with the ratification of Law Number 1 of 2023 concerning the Criminal Code (New KUHP) and the subsequent enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (New KUHP). The New KUHP brings a

fundamental paradigm shift in sentencing, emphasizing corrective, rehabilitative, and restorative approaches, while the New KUHP structurally overhauls procedural safeguards (Saputri, 2024). Previous literature over the last decade has extensively discussed this paradigm shift. For instance, Triana, Irza, and Awaludin (2025) highlighted the urgency of reforming the procedural system to build an equitable criminal justice framework, while Firmansyah and Yulianto (2024) explored the theoretical limitations of state power through criminal procedure. However, most previous studies tend to analyze the material law and formal law separately or focus solely on normative aspects without confronting them with the empirical realities of modern law enforcement anomalies.

The novelty of this article lies in its holistic and integrative approach, synthesizing the theoretical rationalization of human rights protection in both the enacted New KUHP and the newly enacted New KUHP, and critically testing these normative frameworks against concrete empirical cases of procedural violations—specifically, general criminal cases such as the phenomenon of wrongful arrest and *trial by press*. By bridging the gap between *das sollen* (normative expectations) and *das sein* (empirical realities), this research aims to analyze how criminal law policy constructs human rights protection theoretically, identify the rationalization of human rights articles in the new criminal instruments, and evaluate the reality of these protections in concrete law enforcement practices. The contribution of this research is twofold: academically, it enriches the literature on modern penal policy and human rights discourse; practically, it provides a critical evaluation and strategic recommendations for policymakers and law enforcement institutions to ensure the dual implementation of the New KUHP and New KUHP genuinely safeguards civil liberties.

RESEARCH METHODS

This research employs a normative legal research method combined with a statute approach, conceptual approach, and case approach. The data utilized are secondary data consisting of primary legal materials, including the 1945 Constitution, Law No. 1 of 2023 (New KUHP), and Law No. 20 of 2025 (New KUHP), alongside secondary legal materials such as books, annotations by prominent legal scholars, and reputable journals published within the last decade. The analysis is conducted qualitatively to construct a systematic, descriptive, and prescriptive argumentation regarding the synchronization of penal policy and human rights protection.

RESULTS AND DISCUSSION

1. Discourse on Criminal Law Policy in Guaranteeing Human Rights

Criminal law policy is fundamentally an integral part of broader social policy, directed at achieving social welfare and social defense. In the context of a democratic state, the state's response to crime cannot rely solely on a repressive approach but must integrate preventive measures. The discourse on penal policy occupies a central position because it is the exact point where the state draws the line between the individual liberties that must be respected and the freedoms that must be restricted for the sake of public order. State actions cannot be arbitrary; all forms of criminalization must be grounded in communal justice and human rights values (Firmansyah & Yulianto, 2024). The modernization of criminal law dictates that penal measures should only be utilized as an *ultimum remedium* (the ultimate or last resort). Persistently relying on penal instruments to cure societal ills inevitably leads to overcriminalization, a condition that heavily burdens the judicial system and inherently broadens the scope of state intervention into the private lives of its citizens (Rahmadani & Lestari, 2023).

The theoretical debate surrounding human rights protection in the criminal justice system is frequently framed within the two competing paradigms introduced by Herbert L. Packer: the *Crime Control Model* and the *Due Process Model*. The *Crime Control Model* treats the criminal process as an "assembly line," prioritizing the speed, efficiency, and finality of processing offenders to create a deterrent effect. This model inherently positions the human rights of the accused as secondary elements that can be bypassed to ensure the collective security of the majority (Andriansyah & Purnomo, 2024). Conversely, the *Due Process Model* views the justice system as an "obstacle course." It heavily emphasizes individual rights, the presumption of innocence, and strict procedural compliance, dictating that the legal validity of evidence gathering is an absolute, non-negotiable requirement. A civilized penal policy must firmly anchor itself to this *due process* framework (Alvian & Harahap, 2023).

Furthermore, this theoretical shift is heavily influenced by the growing prominence of restorative justice. Restorative approaches deviate from the traditional focus on inflicting pain upon the

perpetrator, redirecting the legal objective toward repairing the harm suffered by the victim and restoring social harmony (Pranoto & Kamil, 2023). From a human rights perspective, restorative justice is profoundly humane because it circumvents the destructive stigmatization of imprisonment and seeks a more substantive resolution that addresses the root causes of the conflict.

2. Rationalization of Human Rights Protection Articles in the New Criminal Instruments

The ratification of Law Number 1 of 2023 (New KUHP) is a monumental turning point for Indonesia's legal trajectory. One of the most progressive breakthroughs is the explicit formulation of the purpose of sentencing, enshrined in Article 51 of the New KUHP. This article firmly declares that punishment is not intended to degrade human dignity or inflict unnecessary suffering (Raharjo & Siregar, 2024). The rationalization behind this provision is the full adoption of corrective, rehabilitative, and restorative justice concepts. By declaring that punishment aims to rehabilitate the offender and restore societal balance, the state officially abandons the purely retributive paradigm. Additionally, the New KUHP addresses the systemic human rights crisis occurring within Indonesian prisons by introducing the diversification of sentencing. The introduction of alternative penalties, such as social work and probationary supervision, rationalizes the protection of individual liberty and ensures that the deprivation of freedom is reserved only for severe offenses (Kurniawati & Alif, 2023).

Crucially, the ideological triumph of human rights in substantive criminal law has now been operationalized through the formal law via the enactment of Law Number 20 of 2025 (New KUHAP). The previous 1981 KUHAP was inadequate in curbing the arrogance of investigative authorities during the pre-trial phase, primarily because the pretrial mechanism (*praperadilan*) was passive and restricted to administrative formalities. The New KUHAP radically restructures coercive measures oversight through the institutionalization of the Preliminary Examining Judge (*Hakim Pemeriksa Pendahuluan* or HPP) (Syahputra & Raharjo, 2025). The rationalization for the HPP is straightforward: personal liberty is a supreme fundamental right, and any attempt to curtail it, whether through arrest, detention, or wiretapping, must not depend solely on the subjective conviction of the police. It now requires independent verification by a judge from the very beginning of the investigation to assess proportionality and the sufficiency of preliminary evidence.

Furthermore, the rationalization of human rights in the New KUHAP is reflected in the stringent application of exclusionary rules. The new procedural law dictates that evidence obtained through illegal means, such as unauthorized searches or coerced confessions lacks evidentiary value in court. This serves as a harsh institutional sanction against law enforcement officers who violate human rights procedures, guaranteeing that the pursuit of material truth does not justify illegal means.

3. Reality and Anomalies of Law Enforcement: Analysis of Human Rights Violations in Concrete Cases

Theoretical discussions regarding penal policy and human rights risk becoming academic illusions if they are not tested against empirical realities. The enduring gap between normative expectations (*das sollen*) and law enforcement practices (*das sein*) is the most pressing challenge within the Indonesian criminal justice system (Wiratama & Nugraha, 2024). Despite constitutional guarantees and statutory protections, the prevailing legal culture among authorities frequently reduces due process procedures to mere formalities designed to meet institutional targets. One of the darkest phenomena that nakedly exposes the fragility of human rights protection is the recurrent practice of wrongful arrests and the arbitrary designation of suspects.

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The widely publicized case involving the designation of Pegi Setiawan as a suspect in the Vina Cirebon murder case in 2024 serves as a landmark empirical example of procedural failure. In this instance, the police designated an individual as a suspect in a premeditated murder based on mere assumptions, name similarities, and highly premature evidence (Ramadhan & Firmansyah, 2024). The right to the presumption of innocence was instantly hijacked when law enforcement prioritized the speed of appeasing public opinion over meticulous scientific crime investigation. Although the Constitutional Court has strictly mandated a minimum of two valid pieces of evidence for suspect designation (Saputra & Hidayat, 2024), bypassing this standard occurs frequently, inflicting severe sociological and psychological destruction upon the individual's dignity. This case vividly highlighted the chronic weakness of the old pretrial system and justified the absolute necessity of the HPP system now enacted in the New KUHP, which is designed to operate preventively to block such arbitrary detentions before they happen.

Beyond wrongful arrests, human rights are routinely violated through the phenomenon of *trial by press* and the excessive use of pre-trial detention. Investigators frequently utilize detention not as a measure of last resort, but as an instrument of psychological intimidation to extract confessions. Coupled with the public parading of unconvicted suspects before the media, law enforcement actively generates permanent social stigma, entirely disregarding the presumption of innocence (Saputri & Kamil, 2024).

These anomalies empirically confirm that the institutional culture within law enforcement remains deeply entrenched in the repressive *crime control model* (Fadillah & Wicaksono, 2024). Officers often view strict adherence to human rights procedures as technical hurdles that threaten institutional authority. Therefore, the humanistic penal policies enshrined in the new laws will be rendered utterly futile if the enforcing apparatus retains a colonial mentality. Ultimately, substantive justice can never be born from a morally and legally flawed procedure.

CONCLUSION

The theoretical construction of Indonesia's criminal law policy strongly advocates for the protection of human rights by shifting from a retributive framework to a restorative and rehabilitative paradigm. This shift has now been fully rationalized and embedded in positive law through the New KUHP (Law No. 1 of 2023), which rejects degrading punishments and introduces sentencing alternatives, and the New KUHPA (Law No. 20 of 2025), which institutionalizes the Preliminary Examining Judge to prevent arbitrary coercive measures. However, empirical realities reveal glaring anomalies, as evidenced by concrete cases of wrongful arrest and *trial by press*. These practices indicate a persistent adherence to the repressive *crime control model* among law enforcement apparatuses. Consequently, meaningful reform requires more than legislative overhaul; it demands a profound, radical cultural transformation within law enforcement institutions. Ensuring that the new procedural frameworks are flawlessly implemented is the only way to prevent the state's coercive power from remaining an instrument of oppression.

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