

No Recording, No Testimony: Comparative Lessons for Regulating Custodial Interrogation in Indonesia

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Abstract

Article 30 of the KUHAP introduces electronic recording of custodial interrogations but does not regulate implementation, creating legal uncertainty regarding recording standards, procedural safeguards, and the legal consequences of non-compliance. Using a normative legal method with a comparative analysis of the legal frameworks of Colorado, Texas and England, the research addresses the regulatory gap in Article 30 of the KUHAP by proposing a conceptual framework for the implementing Government Regulation. Comparative analysis demonstrates that recording mechanisms differ across jurisdictions but consistently regulate recording standards, storage and data security, mandatory application to serious offences, statutory exceptions, and legal consequences for non-compliance. The proposed regulatory model incorporates mandatory electronic recording, secure evidence management, phased implementation, and risk-based application to strengthen due process, protect suspect rights, and enhance law enforcement accountability.

1. Introduction

Over the past decade, Law No. 8 of 1981 regarding Criminal Procedure (KUHP 1981) has generated persistent challenges in law enforcement to fulfill desire of

society.¹ The problems with the KUHP 1981 cannot be resolved solely through sectoral laws and Constitutional Court decisions. Rather, criminal procedure law must be reformed to create a more adaptive criminal justice system that ensures due process of law and synergizes with the objectives of Law No. 1 of 2023 (Criminal Code 2023).

In response to these challenges, Indonesia enacted the Draft Criminal Procedure Code as Law No. 20 of 2025 on 17 December 2025 (KUHP),² which central features of KUHP is the strengthening of procedural rights. Furthermore, KUHP introduces significant reforms to coercive measures by expanding both their scope and procedural mechanisms, including the regulation of determination of suspect and asset blocking, thereby reflecting a more modern and rights-oriented approach to criminal procedure.

Before the formal determination of suspect, an individual alleged to have committed a criminal offence must undergo an examination process. In many jurisdictions, this stage is commonly referred to as interrogation and is primarily aimed at information gathering.³ Article 30 paragraph (1) of the KUHP mandates that examinations of persons suspected of committing a criminal offence be recorded using surveillance cameras (CCTV).⁴ This provision is designed to safeguard the principle of fairness by protecting suspects from intimidation, coercion, or physical and psychological violence during examination.⁵ Audio-visual recordings further function as evidentiary instruments when allegations of abuse of authority or excessive conduct by law enforcement arise, thereby reinforcing due process of law.⁶

Indonesia's criminal justice system carries a dark legacy of wrongful arrests and coerced confessions such as the Sengkon and Karta case, although both defendants consistently denied committing the offense, they later testified that they had been subjected to severe physical torture during police interrogation, resulting in false

¹ Persada Universitas Brawijaya, *Daftar Inventarisasi Masalah Rancangan Undang-Undang Hukum Acara Pidana, Working Paper* (Universitas Brawijaya, 2025), 1-443, diakses 25 Desember 2025, <https://hukum.ub.ac.id/wp-content/uploads/2025/05/DIM-RKUHP-FHUB-PERSADA-UB.pdf>.

² Hanifah Dwi Jayanti, "KUHP Baru Disahkan Presiden, Dirjen PP: Dua Peraturan Pelaksana Telah Selesai Harmonisasi," *hukumonline*, 19 Desember 2025, diakses 24 Desember 2025, <https://www.hukumonline.com/berita/a/kuhap-baru-disahkan-presiden--dirjen-pp--dua-peraturan-pelaksana-telah-selesai-harmonisasi-lt6944e40843f8e/>.

³ Kai Li Chung dkk., "Investigative Interviewing with Suspects: Exploring Current Practices among Malaysian Police," *International Journal of Police Science & Management* 26, no. 1 (2024): 118-28, <https://doi.org/10.1177/14613557231205785>.

⁴ Undang-Undang Nomor 20 Tahun 2025 Kitab Hukum Acara Pidana, Lembaran Negara Republik Indonesia Tahun 2025 Nomor 188 (2025), diakses 20 Desember 2025, <https://berkas.dpr.go.id/akd/dokumen/komisi3-RJ-20251118-081025-6744.pdf>.

⁵ Ady Thea DA, "Kadivkum Polri: Kamera Pengawas Pemeriksaan Tersangka RUU KUHP Sifatnya Tak Wajib," *hukumonline.com*, 6 Februari 2025, diakses 26 Desember 2025, <https://www.hukumonline.com/berita/a/kadivkum-polri--kamera-pengawas-pemeriksaan-tersangka-ruu-kuhap-sifatnya-tak-wajib-lt683d18e9728bc/>.

⁶ Kusnanto Kusnanto, "The Concept of Audio-Visual Evidence In The Criminal Violation According To Criminal Procedural Law," conf. paper presented pada Proceedings from the 1st International Conference on Law and Human Rights, Jakarta, *International Conference on Law and Human Rights*, 28 Oktober 2021, diakses 14 Juli 2026, <https://doi.org/10.4108/eai.14-4-2021.2312445>.

confessions⁷ and history repeats itself with the Cirebon murder case involving severe physical abuse demonstrate the structural vulnerability of suspects during closed examinations.⁸ Empirical data from the Commission for the Disappeared and Victims of Violence (KontraS), 44 wrongful arrest incidents were recorded, resulting in 35 injuries and 8 deaths,⁹ an increase from the previous year's 15 incidents.¹⁰ Such practices also carry the risk of extrajudicial killings, further highlighting the systemic dangers of unrecorded examinations.¹¹

Prior research still focuses to primarily on the evidentiary status of CCTV recordings and the protection of suspects' rights. Febriani (2025) argues that CCTV recordings are not recognised as independent evidence, creating legal uncertainty,¹² while Sirait (2025) highlights the increasing judicial reliance on electronic evidence.¹³ Unlike previous research, this research develops a comprehensive regulatory framework covering recording standards, technical procedures, storage, exceptions, legal consequences, and phased implementation for the future Government Regulation under Article 30 of the KUHAP through a comparative analysis of Colorado, Texas, and England.

The urgency of this research stems from the legal vacuum surrounding the implementation of the obligation to record custodial interrogation under Article 30 of KUHAP,¹⁴ as the technical provisions governing the use and management of surveillance camera recordings remain subject to a Government Regulation mandated by Article 30 paragraph (3). Article 30 of KUHAP does not fully reflect the principles of *lex certa* and *lex stricta* because KUHAP regulates the recording of custodial interrogation in a limited and unclear manner. The provision does not

⁷ Romadhon dan Ahmad Sholikhin Ruslie, "Pertanggungjawaban Penyidik Terhadap Korban Salah Tangkap Tindak Pidana (Studi Kasus Nomor 10/Pid.Pra/2024/PN Bdg)," *Future Academia: The Journal of Multidisciplinary Research on Scientific and Advanced* 3, no. 4 (2025): 1669–92, <https://doi.org/10.61579/future.v3i4.624>; Ruby W. H. Oktolina Samosir dkk., "Merajut Kembali Martabat Yang Terkoyak: Kewajiban Absolut Negara dalam Memulihkan Hak Hidup Korban Miscarriage Of Justice," *Arus Jurnal Sosial dan Humaniora* (Kabupaten Konawe Selatan) 6, no. 1 (2026): 1363–77, <https://doi.org/10.57250/ajsh.v6i1.2618>.

⁸ Haniyah Haniyah, "Legal Reconstruction of Error in Persona Cases: Justice Enforcement Challenges Based on Due Process of Law Principle," *Reformasi Hukum* 28, no. 3 (2024): 168–86, <https://doi.org/10.46257/jrh.v28i3.1039>.

⁹ Javier M. Pandin dkk., *Kertas Kebijakan Hari Bhayangkara 2025*, Non Government Organization (Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS), 2025), ii, diakses 27 Desember 2025, https://drive.google.com/file/d/1jqJIUW58BB7if_vcwt5mySOx69bSKbEv/view.

¹⁰ Singgih Wiryo dan Icha Rastika, "Kontras: Polisi 15 Kali Salah Tangkap dalam Setahun Terakhir, Korbannya 23 Orang," *Newspaper, Kompas*, 1 Juli 2024, diakses 27 Desember 2025, <https://nasional.kompas.com/read/2024/07/01/19001741/kontras-polisi-15-kali-salah-tangkap-dalam-setahun-terakhir-korbannya-23>.

¹¹ Moh Shofi Anan dan Nandang Sambas, "Extrajudicial Killing Oleh Aparat Penegak Hukum Sebagai Pelanggaran Prinsip Due Process Of Law Dalam Perspektif Hak Asasi Manusia," *Collegium Studiosum Journal* 8, no. 1 (2025): 374–82, <https://doi.org/10.56301/csj.v8i1.1647>.

¹² Erdianto Effendi, "Relevansi Pemeriksaan Calon Tersangka Sebelum Penetapan Tersangka," *Undang: Jurnal Hukum (Jambi)* 3, no. 2 (2020): 267–88, <https://doi.org/10.22437/ujh.3.2.267-288>.

¹³ Miswan Pratama Sirait, "Penggunaan Teknologi Forensik Dalam Penegakan Hukum Pidana Tinjauan Terhadap Keandalan Bukti Elektronik (Analisis Kasus Kopi Sianida Putusan Mahkamah Agung Nomor 498 K/PID/2017)" (bachelor Thesis, Universitas Malikussaleh, 2025), diakses 27 Desember 2025, <https://rama.unimal.ac.id/id/eprint/13309/>.

¹⁴ Undang-Undang Nomor 20 Tahun 2025 Kitab Hukum Acara Pidana, Lembaran Negara Republik Indonesia Tahun 2025 Nomor 188, art. 30.

specify the procedures, technical standards, or legal consequences of failing to record an interrogation, creating legal uncertainty and a normative gap.

Resolving this normative gap requires a framework grounded in established principles of criminal procedure. The obligation to record custodial interrogation is grounded in fundamental principles of criminal procedures such as procedural justice, the exclusionary rule, and the Miranda rule together with the privilege against self-incrimination.¹⁵ These principles require that every interrogation be conducted fairly, transparently, and free from coercion, while ensuring that only voluntary confessions obtained through lawful procedures are admissible as evidence. Accordingly, the recording of custodial interrogation is not merely an investigative mechanism but a substantive procedural safeguard that protects suspects' rights, preserves the integrity of evidence, and reinforces the implementation of due process of law within the criminal justice system.

As a result, important questions remain unresolved, including whether an unrecorded interrogation is legally valid, whether the resulting statements may be used as evidence, and what sanctions, if any, apply to law enforcement officers who fail to comply with the recording requirement. Given that KUHAP will enter into force on 2 January 2026 pursuant to Article 369, and that pending cases must apply the new Code under Article 361 letter (b), the absence of implementing regulations may create legal uncertainty and institutional unpreparedness among law enforcement authorities, thereby undermining the effective realization of due process of law.

Based on the foregoing background, this research focuses on the following issues: How are the mechanisms for recording suspect examinations implemented in the Colorado, Texas and England to ensure justice, due process of law, and the accountability of law enforcement authorities? How should an ideal conceptual framework for recording suspect examinations be formulated within the Indonesian criminal procedural law system following the enactment of KUHAP?

2. Method

This research employs a normative legal approach (doctrinal legal research),¹⁶ using statutory, conceptual, and comparative law approaches. The statutory approach examines legislation governing electronic recording of custodial interrogations, while the conceptual approach analyses the principles of judicial scrutiny, the exclusionary rule, the Miranda doctrine, and the privilege against self-incrimination as the normative basis for evaluating recording obligations. The comparative approach identifies regulatory models capable of informing the implementation of Article 30 of the KUHAP.

England is selected because it is among the earliest jurisdictions and comprehensive procedural framework through the Police and Criminal Evidence Act 1984 (PACE) and Codes E and F, regulating recording procedures, recording devices, storage, sealing, and evidentiary safeguards. The U.S. is examined due to

¹⁵ Saul M. Kassin dkk., "Police-induced confessions, 2.0: Risk factors and recommendations," *Law and Human Behavior* (US) 49, no. 1 (2025): 7–53, <https://doi.org/10.1037/lhb0000593>; Brandon L Bang dkk., "Police recording of custodial interrogations," *Sage Journals* (California) Volume 20, Issue 1 (t.t.), diakses 14 Juli 2026, <https://doi.org/https://doi.org/10.1177/1461355717750172>.

¹⁶ Muhaimin, *Metode Penelitian Hukum*, vol. 1st (Mataram University Press, 2020).



the distinctive characteristics of its state-based regulatory diversity, Colorado was selected because establishes mandatory electronic recording for serious custodial interrogations and provides a procedural judicial remedy through cautionary jury instructions for non-compliance. Texas was selected because it adopts a risk-based approach by limiting mandatory recording to specified serious offences while recognizing limited statutory exceptions.

The comparative analysis is conducted using the following indicators: (1) scope of recording obligations; (2) categories of offences; (3) recording devices and technical standards; (4) interrogation procedures; (5) exceptions to recording obligations; (6) storage and data security mechanisms; (7) oversight and judicial review; (8) protection of suspects' rights; and (9) legal consequences of non-compliance. These indicators form the basis for developing a regulatory framework suitable for Indonesia.

With the primary legal materials consisting of statutes, codes of practice, and other binding legal instruments, including KUHP, KUHP 2023, the Police and Criminal Evidence Act 1984 (PACE), PACE Codes E and F, Colorado Revised Statutes 2024 (CO Rev. Stat. 2024), and the Texas Code of Criminal Procedure 2024. Secondary legal materials comprise books, peer-reviewed journal articles, legal commentaries, official reports, and published academic papers relevant to criminal procedure, due process of law, and electronic recording of custodial interrogation. All legal materials were analyzed qualitatively through statutory interpretation and comparative legal analysis to formulate an ideal conceptual framework for regulating the recording of custodial interrogation in Indonesia.

3. Analysis or Discussion

Each country has different mechanisms for recording interrogations as instruments of accountability and ensuring the protection of suspects' rights. The United States, with its state-by-state regulations, has different mechanisms in each state but shares the principle of "no tape, no testimony." meaning that any information obtained from a suspect without recording is not admissible as evidence.¹⁷ The England uses the PEACE model (Preparation and Planning, Engage and Explain, Account, Closure, Evaluation), which is regulated in Article 27 of the National Security Act 2023 and generally regulated in the Police and Criminal Evidence Act 1984.¹⁸

3.1. Recording Custodial Interrogations in United States

The United States treats the recording of custodial interrogations as an integral component of the criminal justice system rather than a procedural formality.¹⁹ One

¹⁷ Luna Filipović, "The Tale of Two Countries: Police Interpreting in the UK vs in the US," *Interpreting* 24, no. 2 (2022): 254–78, <https://doi.org/10.1075/intp.00080.fil>.

¹⁸ Kate Haworth, "Police Interviews as Evidence," dalam *The Routledge Handbook of Forensic Linguistics*, 2nd Edition (Routledge, 2020), https://publications.aston.ac.uk/id/eprint/42440/1/Haworth_2020_RHFL_final.pdf; Vincent Denault dan Victoria Talwar, "From criminal interrogations to investigative interviews: a bibliometric study," *Frontiers in Psychology* 14 (Juni 2023): 1175856, <https://doi.org/10.3389/fpsyg.2023.1175856>.

¹⁹ Colorado Supreme Court, *Model Criminal Jury Instructions Committee of the Colorado Supreme Court*, Colorado Jury Instructions Criminal 2024 (Colorado Supreme Court, 2024), 200, diakses 6



of the most significant reforms in U.S. criminal procedure is marked by *Miranda v. Arizona* (1966), which established four fundamental safeguards.²⁰ Following *Miranda* case, various jurisdictions initiated procedural reforms, including the regulation of legal counsel assistance and the recording of custodial interrogations.²¹

Based on the National Registry of Exonerations Annual Report (2025), official misconduct contributed to 72% of exoneration cases, including misconduct during interrogations, while 20% involved false confessions. Individuals who were later exonerated lost an average of 14.2 years of liberty.²² These findings demonstrate that mandatory audio-visual recording serves not merely as a procedural formality but as an essential safeguard to prevent coercive interrogation practices, verify the voluntariness of confessions, and reduce the risk of wrongful convictions.

The U.S. Department of Justice requires federal law enforcement agencies to record custodial interviews and interrogations.²³ Empirical research demonstrates a substantial increase in police compliance with interrogation recording approximately 78% of law enforcement agencies have adopted mandatory recording policies for custodial interrogation, while nearly three-quarters (approximately 75%) of interrogations are now video-recorded.²⁴ Nevertheless, Brimbal et al. (2024) reported that 26.2% of innocent suspects made at least a partial false confession, despite more than half of custodial interrogation being electronically recorded.²⁵

The "No Tape No Testimony" campaign, emerging in 2016, originated from the Chicago Police Department's 2015 following the Paul O'Neal shooting incident, in which recording was absent.²⁶ Nevertheless, only approximately 25 jurisdictions in

Januari 2026, <https://www.coloradojudicial.gov/sites/default/files/2025-02/COLJI-Crim%202024%20-%20Final.pdf>.

²⁰ Artur Statsenko, "The Role of Miranda Rule in Protecting Rights and Ensuring Fair Justice in the USA: Current Challenges and Future Perspectives," *14th International Scientific and Practical Conference* No. 238 (Juni 2025): 72-78, diakses 29 Desember 2025, <https://papers.ssrn.com/abstract=5341376>.

²¹ Marvin Zalman dkk., "Beyond Police Compliance With Electronic Recording of Interrogation Legislation: Toward Error Reduction," *Criminal Justice Policy Review* 30, no. 4 (2019): 627-55, <https://doi.org/10.1177/0887403417718241>.

²² The National Registry Of Exonerations, *2025 Annual Report*, Annual Report (The National Registry Of Exonerations, 2026), diakses 18 Juli 2026, <https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2025Exonerations.pdf>.

²³ Vanderbilt Law School, "Three Constitutional Arguments for Requiring Taped Interrogations," Education, *Vanderbilt Law School*, 24 Februari 2025, diakses 29 Desember 2025, <https://law.vanderbilt.edu/three-constitutional-arguments-for-requiring-taped-interrogations/>; Jens David Ohlin, *Criminal Law: Doctrine, Application, and Practice*, 4nd (Aspen Publishing, 2024).

²⁴ Laure Brimbal dkk., "Interviewing and Interrogation Practices and Beliefs, 20 Years Later: A National Self-Report Survey of American Police," *Law and Human Behavior* (US) 48, no. 4 (2024): 247-61, <https://doi.org/10.1037/lhb0000570>.

²⁵ Brimbal dkk., "Interviewing and interrogation practices and beliefs, 20 years later."

²⁶ American Civil Liberties Union Foundation of Massachusetts dan University of California, Berkeley School of Law, *No Tape, No Testimony: How Courts Can Ensure the Responsible Use of Body Cameras* (University of California, Berkeley School of Law and American Civil Liberties Union Foundation of Massachusetts, 2016), 27, diakses 29 Desember 2025, https://www.aclum.org/app/uploads/2016/11/ACLU_BodyCameras_11.21_final.pdf.



the U.S mandate audio or video recording of custodial interrogations by statute.²⁷ The “No Tape No Testimony” approach is regarded as instrumental in preventing wrongful convictions, enhancing officer accountability, and improving judicial efficiency in suspect examinations.

3.1.1.State of Colorado

The State of Colorado provides a particularly significant model for examining the legal framework governing the recording of custodial interrogations.²⁸ Mandates the electronic recording of custodial interrogations under the CO Rev. Stat. 2024, Title 16 on Criminal Proceedings, Subsection 6 concerning the recording of custodial interrogations. The statutory structure consists of:²⁹

Combines mandatory electronic recording requirements with clear procedural consequences for non-compliance, as safeguards for procedural fairness and the assessment of voluntariness. The practical is illustrated by wrongful conviction cases such as Lorenzo Montoya,³⁰ whose false confession was obtained after prolonged coercive interrogation and who was later exonerated by DNA evidence, demonstrating the importance of complete recordings in objectively assessing police conduct and the reliability of confessions.³¹ Likewise, the U.S. Supreme Court decision in *Colorado v. Connelly* established that a confession is generally considered involuntary under the due process clause only where police coercion is demonstrated.³²

This standard further reinforces the evidentiary value of recordings as the most objective means of evaluating whether an interrogation involved coercion, threats, or other improper investigative practices.³³

a) Scope and Categories of Mandatory Recording

Colorado requires electronic recording of custodial interrogations involving Class 1 and Class 2 felonies and specified sexual offences under §§ 18-3-402, 18-3-404, 18-3-405, and 18-3-405.5.³⁴ Class 1 felonies include

²⁷ NACDL (National Organizations), “Recording Custodial Interrogations,” Non Government Organization, National Association of Criminal Defense Lawyers, 25 Februari 2019, diakses 3 Januari 2026, <https://www.nacdl.org/Content/NationalOrgsonRecordingCustodialInterrogations>.

²⁸ Andrew Benefiel, “Colorado v. Connelly: Free Will and Rational Intellect No Longer Important Constitutional Considerations,” *Nebraska Law Bulletin* (Lincoln), 27 September 2020, 1–23; Christopher Slobogin, “Manipulation of Suspects and Unrecorded Questioning,” *Boston University Law Review* (Boston), Mei 2017, 1157.

²⁹ Revised Code of Colorado (2024), <https://law.justia.com/codes/colorado/title-16/code-of-criminal-procedure/article-3/part-6/section-16-3-601/>.

³⁰ Philip Gaines, “Presupposition as Investigator Certainty in a Police Interrogation: The Case of Lorenzo Montoya’s False Confession,” *Discourse & Society* (Amsterdam) 29, no. 4 (2018): 399–419, <https://doi.org/10.1177/0957926518754417>.

³¹ University of Colorado Boulder, “Why Do Wrongful Convictions Happen?,” Education, Korey Wise Innocence Project, University of Colorado Boulder, 8 Agustus 2021, diakses 18 Juli 2026, <https://www.colorado.edu/outreach/korey-wise-innocence-project/our-work/why-do-wrongful-convictions-happen>.

³² Benefiel, “Colorado v. Connelly.”

³³ Slobogin, “Manipulation of Suspects and Unrecorded Questioning”; Benefiel, “Colorado v. Connelly.”

³⁴ CO Rev Stat § 16-3-601 (2024).

the most serious offences, such as first-degree murder, treason, first-degree kidnapping, and child abuse resulting in death.³⁵

The offence-based scope reflects a risk-based allocation of procedural safeguards.³⁶ Rather than requiring universal recording, Colorado prioritizes cases involving serious penalties and a greater risk of disputed confessions.

b) Recording Standards and Procedures

The statute requires custodial interrogations within the prescribed scope to be electronically recorded. The requirement is intended to create an objective record of the interaction between investigators and suspects and to enable subsequent assessment of the circumstances in which statements were obtained. However CO Rev. Stat. 2024 not described as PACE for recording standards and procedures.

The significance of complete recording is illustrated by cases involving disputed confessions, including the case of Lorenzo Montoya.³⁷ His false confession, obtained following prolonged interrogation and later disproved through DNA evidence, demonstrates the evidentiary risks associated with interrogation practices that cannot be independently reviewed.

Recording therefore functions as a mechanism of judicial scrutiny by allowing courts to examine whether interrogation practices involved coercion or other improper conduct. The principle is consistent with *Colorado v. Connelly*, in which the U.S. Supreme Court emphasized the significance of police coercion in determining whether a confession is involuntary.³⁸ Whereas *People v. Havens* demonstrates that Colorado courts continue to protect procedural fairness by allowing the prosecution to rebut statutory presumptions instead of automatically excluding evidence.³⁹

c) Exceptions

Colorado recognizes limited exceptions to mandatory recording under § 16-3-601(2), including a suspect's request not to be recorded, equipment failure or unavailability, exigent circumstances involving public safety, and interrogations conducted outside Colorado.⁴⁰

These exceptions accommodate legitimate investigative constraints but do not eliminate the need for accountability. The existence and justification of an exception should remain capable of subsequent judicial review. The

³⁵ Ian P. Farrell, "Abolishing Felony Murder: An Empirical Perspective," *American Criminal: Law Review* Vol. 62:25 (Agustus 2024): 43, <https://doi.org/http://dx.doi.org/10.2139/ssrn.4562486.i>

³⁶ Thomas P. Sullivan dan Andrew W. Vail, "The Consequences of Law Enforcement Officials' Failure to Record Custodial Interviews as Required by Law," *Journal of Criminal Law & Criminology* (Northwestern) 99, no. 1 (2008), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7316&context=jclcr>; David Pyrooz, "Demographics, Trends, and Disparities in Colorado Felony Murder Cases: A Statistical Portrait," SSRN Scholarly Paper no. 4527501 (Social Science Research Network, 1 Agustus 2023), diakses 4 Januari 2026, <https://doi.org/10.2139/ssrn.4527501>.

³⁷ Gaines, "Presupposition as Investigator Certainty in a Police Interrogation."

³⁸ Benefiel, "Colorado v. Connelly."

³⁹ Gaines, "Presupposition as Investigator Certainty in a Police Interrogation."

⁴⁰ CO Rev Stat § 16-3-601 (2024).



Colorado model therefore demonstrates that exceptions should be narrowly defined and linked to objectively verifiable circumstances.

d) Data Management and Institutional Responsibility

Section 16-3-601 also imposes responsibilities on law enforcement agencies concerning the availability of recording equipment and the security of recordings. These requirements recognize that mandatory recording cannot operate effectively without institutional responsibility for recording equipment and the preservation of recorded material.

Compared with the more detailed data-management requirements under the PACE Codes, however, Colorado provides a less comprehensive framework concerning storage, access, transfer, and long-term retention. This limitation is relevant to Indonesia because Article 30 of the KUHAP requires implementing regulations to address not only the recording process but also the subsequent management of recorded material.

e) Oversight and Judicial Scrutiny

The principal safeguard in the Colorado model is the possibility of judicial scrutiny when the statutory recording requirement has not been fulfilled. Recording enables courts to examine the circumstances surrounding a confession rather than relying solely on an investigator's account.

People v. Havens illustrates this approach. The Colorado Supreme Court treated the statutory consequence of non-recording as rebuttable rather than automatic.⁴¹ The prosecution must therefore have an opportunity to explain the circumstances leading to the recording deficiency before the court determines the evidentiary consequences.

This approach distinguishes Colorado from a strict "no recording, no testimony" rule. Non-compliance triggers judicial scrutiny but does not automatically invalidate every unrecorded statement.⁴²

f) Suspect Rights

The recording requirement supports the protection of suspects against coercive interrogation and assists courts in assessing the voluntariness of statements. It also complements constitutional safeguards, including Miranda rights and the privilege against self-incrimination.

The recording mechanism therefore serves a dual function: protecting the suspect from improper interrogation and protecting law enforcement officers from unfounded allegations concerning the manner in which an interrogation was conducted.

g) Legal Consequences of Non-Compliance

Colorado does not adopt an absolute exclusionary rule for every failure to record. Under § 16-3-601(3), an unrecorded statement may remain admissible in specified circumstances, including for rebuttal or impeachment purposes.⁴³ The statutory consequence therefore operates

⁴¹ Justia Law, "People v. Havens," Justia Law, Justia Law, 22 Desember 2025, diakses 19 Juli 2026, <https://law.justia.com/cases/colorado/supreme-court/2025/25sa154.html>.

⁴² Alex Nunn, "Judicial Enforcement of Evidence Law," *Vanderbilt Law Review* (Amsterdam) Vol. 78:5 (Oktober 2025): 1459–519, <https://doi.org/10.2139/ssrn.5141434>.

⁴³ CO Rev Stat § 16-3-601 (2024).



primarily through a rebuttable presumption and judicial assessment of the evidentiary value of the statement.⁴⁴

People v. Havens confirms that the presumption arising from non-compliance is not absolute.⁴⁵ The prosecution may rebut the consequence by demonstrating circumstances that justify the failure to record. Accordingly, the Colorado model places the burden of explaining non-compliance on the prosecution while preserving judicial discretion in determining the evidentiary consequences.

This model is particularly relevant to Indonesia because it provides an alternative to automatic exclusion. Under Article 30 of the KUHAP, failure to record could trigger heightened judicial scrutiny and a presumption against the reliability of the resulting statement, while allowing the prosecution to justify the failure where a statutory exception applies.

3.1.2. State of Texas

Texas generally treats recording as a condition for the admissibility of custodial statements, subject only to limited exceptions.⁴⁶ Regulates the obligation to record custodial interrogations through statutory law under the Texas Code of Criminal Procedure 2024, Title 2 concerning the general duties of law enforcement officers, specifically Article 2.32 on the Electronic Recording of Custodial Interrogations (TX Code Crim. Proc. 2024).

a) Scope of Mandatory Recording and Categories of Offences

TX Code Crim. Proc. 2024 requires electronic recording for custodial interrogations involving specified serious offences, including murder, capital murder, kidnapping, aggravated kidnapping, human trafficking, sexual assault, and aggravated sexual assault.⁴⁷ The Texas model therefore does not require recording for every custodial interrogation but prioritizes offences in which the risks of coercion, false confession, and wrongful conviction are considered particularly significant.⁴⁸

This risk-based approach provides a practical balance between procedural safeguards and institutional resources. For Indonesia, the model demonstrates that the scope of mandatory recording may be determined

⁴⁴ Harshit Sharma dan Reena Kapoor, "Legal Standards for Admissibility of Evidence in Insanity Defense Cases," *Journal of the American Academy of Psychiatry and the Law Online* 52, no. 1 (2024): 101, <https://doi.org/10.29158/JAAPL.230122L4-23>.

⁴⁵ Justia Law, "People v. Havens"; Casemine, "Rebutting the Body-Worn Camera Presumption: People v. Havens and the Limits of Discovery Sanctions in Colorado," Casemine, 26 Desember 2025, diakses 19 Juli 2026, <https://www.casemine.com/commentary/us/-rebutting-the-body%E2%80%91worn-camera-presumption%3A-people-v.-havens-and-the-limits-of-discovery-sanctions-in-colorado-view>.

⁴⁶ Lassiter, G. D dan & Meissner, C. A., "Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations," dalam *Videotaping Custodial Interrogations: Toward a Scientifically Based Policy*, First Edition (American Psychological Association, 2010), diakses 19 Juli 2026, <https://doi.org/https://doi.org/10.1037/12085-000>.

⁴⁷ Richard Bierschbach dan Stephanos Bibas, "Rationing Criminal Justice," *Michigan Law Review* 116, no. 2 (2017): 187–246, <https://doi.org/https://doi.org/10.36644/mlr.116.2.rationing>; Revised Code of Texas (2024), <https://law.justia.com/codes/texas/2023/code-of-criminal-procedure/title-1/chapter-2/article-2-32/>.

⁴⁸ Lassiter, G. D dan & Meissner, C. A., "Police Interrogations and False Confessions: Current Research, Practice, and Policy Recommendations."



not only by the existence of an interrogation but also by the seriousness of the offence and the associated evidentiary risks.

b) Recording Standards and Procedures

TX Code Crim. Proc. 2024 requires the interrogation to be recorded electronically and, where applicable, continuously from the beginning of the custodial interrogation. The recording should capture the relevant stages of the interrogation, including the administration of constitutional warnings and the questioning that follows.⁴⁹ Continuous recording enables courts to assess whether statements were obtained voluntarily and whether investigators complied with procedural safeguards.

The requirement is therefore not merely technological. Recording creates an objective account of the interaction that can support judicial scrutiny of the legality of the interrogation and the reliability of the resulting statement.

c) Exceptions

Texas recognizes limited exceptions to the recording requirement. These include a suspect's refusal to be recorded, spontaneous statements not elicited through interrogation, equipment malfunction, public-safety considerations, and reasonable errors occurring at the initial stage of the investigation.⁵⁰ These exceptions prevent the recording requirement from becoming impracticable while preserving the general obligation to record covered interrogations.

The existence of exceptions, however, does not eliminate the require for accountability. Any departure from the recording requirement should remain documented and capable of subsequent review.

d) Data Management and Confidentiality

TX Code Crim. Proc. 2024 provides protection for recorded custodial interrogations by restricting their public disclosure. This confidentiality serves two functions: protecting the privacy of suspects and preserving the integrity of ongoing criminal investigations. The Texas framework therefore recognizes that recording requirements must be accompanied by rules governing access to and disclosure of recorded material.

However, the framework provides a less detailed data-management model than the England system. For Indonesia, this suggests the need for more explicit regulation concerning storage, access, transfer, retention, and protection against alteration or unauthorized disclosure.

e) Oversight and Judicial Scrutiny

Electronic recording strengthens judicial scrutiny by allowing courts to assess the circumstances in which a confession was obtained rather than relying exclusively on the investigator's written account.⁵¹ The recording

⁴⁹ William Tucker Carrington, "Preface: Georgetown Law Journal Annual Review of Criminal Procedure," SSRN Scholarly Paper no. 4912347 (Social Science Research Network, 1 September 2023), diakses 5 Januari 2026, <https://papers.ssrn.com/abstract=4912347>.

⁵⁰ Revised Code of Texas.

⁵¹ Government United States, "Learn about FOIA | US EPA," Government United States, United State Environment Protection Agency, 31 Juli 2025, diakses 5 Januari 2026, <https://www.epa.gov/foia/learn-about-foia>.



can provide an objective basis for examining compliance with constitutional safeguards, including the protection against compelled self-incrimination. In *State v. Johnson*, the Texas courts emphasized the relationship between custodial interrogation and Miranda protections.⁵² Although, the case did not directly establish the legal consequences of failing to record, this case illustrates the importance of identifying when constitutional safeguards become operative during custodial questioning.

Similarly, *Wilson v. State* demonstrates the broader value of judicial scrutiny of interrogation practices.⁵³ The case concerned deceptive interrogation rather than failure to record and illustrates how judicial review may examine whether investigative techniques undermine the reliability and legality of a confession.

f) Suspect Rights

The recording requirement operates alongside the suspect's constitutional protection against self-incrimination and the Miranda doctrine. Recording provides a means of verifying whether the suspect received the required warnings and whether subsequent statements were obtained voluntarily. The framework therefore protects not only the evidentiary interests of the prosecution but also the procedural rights of suspects by creating an objective record of the interaction between investigators and the person being interrogated.

g) Legal Consequences of Non-Compliance

The Texas model links recording requirements to the evidentiary assessment of custodial statements rather than treating recording solely as an administrative obligation. Failure to comply with the statutory requirement may affect the use and evidentiary assessment of the resulting statement, subject to the applicable statutory exceptions and judicial determination.

This approach is significant for Indonesia because it demonstrates that a recording obligation requires a corresponding legal consequence. Without such a consequence, mandatory recording risks becoming merely a procedural formality. The Indonesian implementing regulation should therefore specify the consequences of non-compliance while distinguishing between justified exceptions, negligent failure, and intentional manipulation or destruction of recordings.

Overall, the regulatory frameworks of Colorado and Texas demonstrate that electronic recording functions primarily as a constitutional safeguard rather than merely a means of documenting interrogations.⁵⁴ However, the two jurisdictions adopt different regulatory approaches. Colorado emphasizes procedural accountability through mandatory recording, rebuttable evidentiary consequences,

⁵² Texas District & County Attorneys Association, *A Tidy Bright-Line Rule on -Miranda from State v. Johnson*, 6 Februari 2025, diakses 19 Juli 2026, <https://www.tdcaa.com/journal/a-tidy-bright-line-rule-on-miranda-from-state-v-johnson/>.

⁵³ Justia Law, "RONALD WILSON v. THE STATE OF TEXAS," Justia Law, California, 3 Maret 2010, diakses 19 Juli 2026, <https://law.justia.com/cases/texas/court-of-criminal-appeals/2010/19356.html>.

⁵⁴ Amos N. Guiora, *Constitutional Limits on Coercive Interrogation*, 1st ed. (Oxford University Press, 2008).

and judicial oversight, whereas Texas places greater emphasis on verifying compliance with Miranda warnings and ensuring that confessions are voluntary. Both models strengthen due process by providing courts with an objective basis to assess police conduct, the voluntariness of statements, and compliance with the Fifth and Sixth Amendments, although Colorado offers stronger procedural sanctions while Texas affords greater investigative flexibility.⁵⁵

3.2. Recording Custodial Interrogations in England

England introduced mandatory recording of police interviews under the Police and Criminal Evidence Act (PACE) 1984 in response to concerns over inaccurate and fabricated interview records reconstructed from officers' notes and memory,⁵⁶ reinforced by the wrongful convictions in the Birmingham Six and Guildford Four cases.⁵⁷ PACE transformed police interviewing from a confession-oriented approach into a regulated investigative process.⁵⁸ Interview recording is governed by sections 60 and 60A PACE through Codes E (audio) and F (video), which establish procedural safeguards to ensure transparency, reliability, and accountability.⁵⁹ Recordings also provide an objective basis for excluding confessions obtained through oppression or unreliable interviewing under section 76 PACE.⁶⁰

3.2.1. Scope and Categories of Mandatory Recording

Under sections 2.2 and 2.3 of PACE Code E, suspect interviews must generally be recorded in full.⁶¹ Unlike the offence-based approaches adopted in Colorado and Texas, the England model applies recording as a general procedural requirement rather than limiting for serious offences. The requirement covers interviews conducted at police stations and, subject to prescribed conditions, at other suitable locations.⁶²

⁵⁵ Andrew Eichen, *Broken Trust: The Pervasive Role of Deceit in American Policing* (Cato Institute, 2024), 20, diakses 4 Januari 2026, <https://www.jstor.org/stable/resrep63147>.

⁵⁶ Emma Richardson dkk., "Understanding the role of transcription in evidential consistency of police interview records in England and Wales," *Cambridge University Press* (Cambridge) Volume 54, no. Issue 1 (2023): 135–66, <https://doi.org/10.1017/S004740452300060X>.

⁵⁷ Kassin dkk., "Police-induced confessions, 2.0"; David T. Johnson, "Japan Needs a Real Right to Silence," *Asia-Pacific Journal: Japan Focus* Volume 23, 2025, e17 (November 2025): 1–7, <https://doi.org/10.1017/apj.2025.10019>.

⁵⁸ Kassin dkk., "Police-induced confessions, 2.0."

⁵⁹ Roxanna Dehaghani dan Chris Bath, "Vulnerability and the Appropriate Adult Safeguard: Examining the Definitional and Threshold Changes within PACE Code C," *Criminal Law Review* 3 (2019): 213–32; College of Policing, "College of Policing Brief Issue," College of Policing, Januari 2024, diakses 13 Januari 2026, <https://assets.college.police.uk/s3fs-public/2024-01/College-of-Policing-Brief-January-2024.pdf?v=1706696900>.

⁶⁰ PACE Code E (2018), art. 1.4, diakses 12 Januari 2026, <https://www.gov.uk/government/publications/pace-codes-e-and-f-2018/pace-code-e-2018-accessible>; Doug Pyper, *The Public Sector Equality Duty and Equality Impact Assessments*, Briefing Paper no. 06591 (House of Commons Library, 2020), 4, diakses 14 Januari 2026, <https://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf>.

⁶¹ Kate Haworth, "Tapes, transcripts and trials: The routine contamination of police interview evidence," *The International Journal of Evidence & Proof* 22, no. 4 (2018): 428–50, <https://doi.org/10.1177/1365712718798656>.

⁶² PACE Code F (2024), diakses 14 Januari 2026, <https://www.gov.uk/government/publications/pace-codes-e-and-f-2018/pace-code-f-2018-accessible>; James Tompkinson dkk., "Perceptual Instability in Police Interview Records: Examining



3.2.2. Recording Standards

PACE Codes E and F establish detailed standards for recording equipment and procedures. Authorized equipment must comply with prescribed technical requirements, including removable physical recording media and secure digital recording network systems. The recording must indicate when the interview begins, while the master recording and its copy must be secured after the interview.⁶³ Any equipment failure, replacement of recording media, or interruption must also be documented. Empirical research demonstrates that evidentiary reliability depends not only on secure recording systems but also on how recordings are subsequently transcribed and presented before the court.⁶⁴

These requirements demonstrate that recording obligations must be supported by technical standards to preserve the authenticity and continuity of evidence.⁶⁵ However, recording does not eliminate all evidentiary risks because subsequent transcription may still alter or omit features of the original interaction. The effectiveness of these safeguards ultimately depends on whether the interview is fully recorded and preserved rather than reconstructed through written summaries,⁶⁶ CCRC referral cases such as Alexander Allan, Derek Bentley, and Robert Brown show that recording alone cannot guarantee procedural fairness.

3.2.3. Exceptions

The recording obligation is subject to limited exceptions, including equipment failure, unavailable facilities, security concerns, and certain justified objections.⁶⁷ For specified minor offences, written records may also be used where a voluntary interview occurs outside a police station and recording equipment is unavailable. These exceptions demonstrate that the PACE framework prioritizes recording while allowing limited flexibility where recording is impracticable.

3.2.4. Data Management

PACE Code E establishes procedures for securing and managing recordings.⁶⁸ Master recordings and copies must be sealed in the presence of the suspect, while digital recordings transferred to secure remote servers remain subject to controlled access and documented transfer procedures. These requirements strengthen the chain of custody and reduce the risk of unauthorized alteration or loss.

3.2.5. Oversight

PACE provides supervisory mechanisms through authorized officers and permits interviews to be monitored remotely or through live streaming under prescribed conditions. Higher-ranking officers may also be consulted where the

the Effect of Pauses and Modality on People's Perceptions of an Interviewee," *International Journal of Speech, Language and the Law* (York), 16 Agustus 2023, 22–51.

⁶³ Haworth, "Police Interviews as Evidence."

⁶⁴ Emma Richardson dkk., "Understanding the role of transcription in evidential consistency of police interview records in England and Wales."

⁶⁵ Eamonn Rea, "What Happened in There? Confessions, Credibility and Automatic Exclusion: The Case of Artt and Confession Admissibility," *Northern Ireland Legal Quarterly* (Belfast) 73, no. AD1 (2022): AD1, <https://doi.org/10.53386/nllq.v73iAD1.869>.

⁶⁶ Criminal Cases Review Commission, "Unreliable Confessions," Government Website, Criminal Cases Review Commission, Criminal Cases Review Commission, 3 Mei 2025, diakses 21 Juli 2026, <https://ccrc.gov.uk/unreliable-confessions/>.

⁶⁷ Criminal Cases Review Commission, "Unreliable Confessions."

⁶⁸ Haworth, "Tapes, transcripts and trials."

suitability of the recording facilities or interview location is uncertain. To protect identity, interviewers may remain outside the camera's view during video-recorded interviews (section 2.7(a) PACE Code F).⁶⁹ But, surprisingly in England, there is currently no national guidance or set of standards relating to how Record of Taped Interview (ROTI) transcripts should be produced, formatted or presented,⁷⁰ so the interview results may differ depends on authorized interviewers. However, recording therefore facilitates subsequent judicial scrutiny while also allowing supervisory review during the investigative process.

3.2.6. Suspect Rights

The recording framework operates alongside safeguards for solicitors, appropriate adults, and vulnerable persons under PACE Code C. Suspects must be informed that the interview is being recorded and of their relevant procedural rights.⁷¹ These safeguards ensure that recording functions not merely as evidence preservation but also as a mechanism for protecting suspects against coercion and other procedural irregularities.

3.2.7. Legal Consequences of Non-Compliance

PACE does not impose an automatic exclusionary rule for every failure to record. However, the absence or unreliability of a recording may affect the assessment of confession evidence. Section 76 PACE permits the exclusion of confessions obtained through oppression or circumstances rendering them unreliable.⁷² The recording therefore provides an objective basis for judicial scrutiny of the voluntariness, reliability, and legality of a suspect's statement.

Cases reviewed by the Criminal Cases Review Commission, including Alexander Allan, Derek Bentley, and Robert Brown, further demonstrate the evidentiary risks associated with disputed or reconstructed interview records.⁷³ These cases illustrate why contemporaneous electronic recordings provide stronger safeguards than records reconstructed from police notes or memory.

3.2.8. Analytical Assessment

The PACE framework demonstrates that effective recording requires more than a statutory obligation to activate a recording device. Its strength lies in integrating mandatory recording with technical standards, limited exceptions, secure data management, supervisory mechanisms, and safeguards for vulnerable suspects. At the same time, the continued evidentiary risks associated with transcription show that recording should not be treated as sufficient by itself.⁷⁴

For Indonesia, the principal lesson from the PACE model is therefore the need for an integrated regulatory framework under Article 30 of the KUHP. Such a framework should connect the recording obligation with technical standards, narrowly defined exceptions, secure data management, supervisory review, suspect

⁶⁹ PACE Code F.

⁷⁰ Tompkinson dkk., "Perceptual Instability in Police Interview Records."

⁷¹ Haworth, "Police Interviews as Evidence."

⁷² David Hughes dan Angela King, "Vulnerability Through a Legal Lens: A Comparative Jurisdictional Analysis of the Law of Confessions and Vulnerable Suspects," *The Journal of Criminal Law* (Amsterdam) Volume 88, no. Issue 3 (2024): 182-210, <https://doi.org/https://doi.org/10.1177/00220183241256739>.

⁷³ Criminal Cases Review Commission, "Unreliable Confessions."

⁷⁴ Sullivan dan Vail, "The Consequences of Law Enforcement Officials' Failure to Record Custodial Interviews as Required by Law."



rights, and clear evidentiary consequences. The England model should serve as a regulatory reference rather than be reproduced mechanically, particularly in adapting the framework to Indonesia's institutional capacity and technological infrastructure.

3.3. Conceptual of an Ideal Mechanism for Recording the Custodial Interrogations in Indonesia

Indonesia currently does not have a detailed mechanism governing the interrogation of witnesses or suspects in criminal investigations.⁷⁵ The comparison of Texas, Colorado, and England demonstrates that electronic recording is regulated through different combinations of mandatory obligations, procedural safeguards, exceptions, and evidentiary consequences, providing distinct regulatory models for developing an appropriate framework for Indonesia.

Tabel 1. Comparative Mechanism

Comparative Aspect	Texas (U.S.)	Colorado (U.S.)	England
Legal Basis	Texas Code of Criminal Procedure 2024	Colorado Revised Statutes 2024	Police and Criminal Evidence Act 1984 (PACE); Codes E and F
Scope of Mandatory Recording	Specified serious offences	Serious custodial interrogations	General rule for suspect interviews, subject to statutory exceptions
Recording Format	Audio or audio-visual	Audio-visual	Audio recording; visual recording under specified conditions
Recording Location	Place of detention	Place of detention	Police station or designated location
Nature of Obligation	Limited mandatory obligation	Mandatory for specified interrogations	General mandatory requirement subject to exceptions
Exceptions	Suspect's refusal, equipment failure, public safety, spontaneous statements, and other statutory circumstances	Equipment failure, exigent circumstances, suspect's request, and other statutory circumstances	Equipment unavailability, exigent circumstances, and other circumstances recognised under Codes E and F
Storage and Data Management	Statutory requirements for preservation and availability of recordings	Recording must be preserved and made available for evidentiary review	Detailed procedures for recording, sealing, handling, storage, and production under Codes E and F
Oversight / Judicial Review	Court may consider non-compliance in assessing the statement	Court may consider non-compliance, including through cautionary jury instructions	Courts may assess compliance and the reliability or admissibility of statements under PACE

⁷⁵ Damos Christian Aritonang dkk., *Penyelidikan Dan Penyidikan Menggunakan Teknik Interogasi Rekaman Audio Visual Dalam Pemberkasan Perkara Tindak Pidana Pada Polrestabes Medan, (Bandung)* Vol. 4 No. 1 (Januari 2022): 1-31, <https://doi.org/https://doi.org/10.34010/rnlj.v4i1.3864>.

Comparative Aspect	Texas (U.S.)	Colorado (U.S.)	England
Legal Consequences of Non-Recording	Does not automatically exclude the statement; may affect evidentiary assessment	Does not automatically render the statement inadmissible; may trigger judicial caution	Non-compliance may affect the admissibility or reliability of confession evidence depending on the circumstances
Primary Normative Objective	Accountability and evidentiary reliability	Protection against unreliable or coerced confessions	Fairness, reliability, transparency, and protection against oppressive interrogation
Regulatory Model	Risk-based approach	Rights-protective approach	Safeguard-based proceduralism

Unlike the England, the Colorado, and Texas, Indonesia has only introduced the principle of audio-visual recording under Article 30 KUHAP without providing detailed implementing mechanisms. Consequently, the effectiveness of recording will depend on the implementing Government Regulation, which should reconcile procedural fairness with Indonesia's institutional capacity. Applying the principles of procedural justice, evidentiary reliability, and proportionality, the proposed framework adopts a phased and risk-based implementation rather than an immediate nationwide mandate. The following is a conceptual framework for recording the examination of suspects resulting from the comparison.

3.3.1. Phased Implementation Strategy

The implementation of mandatory electronic recording should adopt a phased approach rather than requiring immediate nationwide application. Although Article 30 of the KUHAP introduces the obligation to use surveillance cameras during suspect examinations, Indonesia continues to face significant institutional and infrastructural constraints, including a police-to-population ratio of approximately 1:606,⁷⁶ unequal technological capacity across regions, and substantial costs associated with recording equipment, secure storage, and long-term data management.

Accordingly, the first phase should prioritize implementation in provincial police headquarters (Polda) and metropolitan police departments (Polrestabes) or investigating serious offences punishable by death, life imprisonment, or imprisonment exceeding seven years. These offences present the highest risk of coercive interrogation and wrongful conviction, thereby justifying mandatory recording as an essential procedural safeguard.⁷⁷

The second phase should gradually extend the obligation to district police offices (Polres) and other investigative units as recording facilities, digital infrastructure, and institutional capacity improve. Expansion should be accompanied by standardized operating procedures, investigator training, and periodic evaluation to ensure consistent implementation.

⁷⁶ Humas Polri, "Rasio Polisi dengan Penduduk 1:606, Polri Rekrut 6.919 Personel Sepanjang 2025," Media Hub Humas Polri, 30 Desember 2025, diakses 19 Januari 2026, <https://mediahub.polri.go.id/in/polda/sumatera-barat/image/detail/332690-rasio-polisi-dengan-penduduk-1606-polri-rekrut-6919-personel-sepanjang-2025>.

⁷⁷ Dehaghani dan Bath, "Vulnerability and the Appropriate Adult Safeguard: Examining the Definitional and Threshold Changes within PACE Code C."



A differentiated storage model should also be adopted. Regions with reliable digital infrastructure may utilize encrypted cloud-based storage integrated with investigators, prosecutors, and courts, whereas remote areas with limited internet connectivity should retain recordings on sealed removable storage devices under documented chain-of-custody procedures, like the approach adopted under PACE Code E in the England.⁷⁸ This hybrid model balances evidentiary integrity with Indonesia's unequal technological conditions. Such a phased strategy reflects the principle of proportionality by balancing procedural fairness, institutional capacity, and budgetary constraints while progressively strengthening the protection of suspects' constitutional rights during criminal investigations.

3.3.2. Recording Devices

Considering Indonesia's unequal digital infrastructure, a hybrid storage model is more appropriate than a single nationwide system. Police offices located in regions with stable internet connectivity should use encrypted cloud-based storage with automatic audit trails and access logs, with surveillance cameras remain highly limited both in quantity and in recording quality.⁷⁹

In contrast, police offices operating in remote or underdeveloped regions should temporarily store recordings on encrypted removable media or sealed external hard drives, following an approach comparable to the removable recording media required under PACE Code E in the England. The recordings should be sealed immediately after the interrogation in the presence of the suspect and transferred to the prosecutor or the State Storage House for Seized Objects (RUPBASAN) until digital integration becomes available.

The regulation should further specify minimum standards for encryption, authentication, retention periods, and chain-of-custody documentation. Given that criminal judgments may remain subject to ordinary or extraordinary legal remedies, recordings should be preserved at least until all available legal remedies have been exhausted or until the statutory period for executing the sentence has expired. Such a hybrid approach balances evidentiary reliability, procedural fairness, and practical institutional capacity while allowing gradual modernization of Indonesia's criminal justice infrastructure.

3.3.3. Security and Storage of Recordings

The government regulation should establish an integrated storage system connecting investigators, public prosecutors, and courts to ensure that access to recorded interrogations is strictly controlled, traceable, and protected against unauthorized access or manipulation, including through the use of blockchain-based security mechanisms.⁸⁰ It should also regulate the procedures for sealing, storage, unsealing, and documentation of recordings. Following the England approach, recordings should be sealed in the presence of the examined person and

⁷⁸ Haworth, "Tapes, transcripts and trials."

⁷⁹ Gega Ryani Cahya Kurnia B., "Peran Kamera Pengawas Closed-Circuit Television (CCTV) Dalam Kontra Terorisme," *Jurnal Lemhannas RI* (Jakarta) 9, no. 4 (2021): 100-116, <https://doi.org/10.55960/jlri.v9i4.418>.

⁸⁰ Govardhan Reddy Annapureddy, "The Impact of Blockchain on Data Integrity and Security in Distributed Systems," *The Eastasouth Journal of Information System and Computer Science* 2, no. 02 (2024): 150-55, <https://doi.org/10.58812/esiscs.v2i02.486>.



subsequently stored by the State Storage House for Seized Objects (RUPBASAN) until required for judicial proceedings.

In addition, the regulation should specify secure storage media, access controls, and data retention periods by considering the evidentiary value and long-term legal significance of recordings. Such provisions are necessary because final and binding judgments may still be challenged through ordinary or extraordinary legal remedies, requiring recordings to remain available and secure for future judicial review. Ideally, data storage should be in accordance with the legal limitation period for the crime, or deletion can occur when the authority to serve the sentence expires.

3.3.4. Legal Nature and Consequence of the Recording Requirement

The legal consequences of failing to record custodial interrogation remain unclear under KUHAP, as the provision does not expressly establish whether recording is mandatory or voluntary. This ambiguity creates uncertainty regarding the evidentiary status of confessions obtained through unrecorded interrogations and limits judicial oversight of investigative practices. Comparative jurisdictions provide stronger approaches: Colorado treats non-compliance as a violation of state law affecting the evidentiary weight of a defendant's statements,⁸¹ while Texas regards electronic recording as an important mechanism for ensuring compliance with *Miranda* safeguards and protecting the voluntariness of custodial statements.⁸² These approaches demonstrate that recording primarily functions to protect due process rather than merely to document investigative activities.

In Indonesia, where custodial interrogation are generally conducted in closed settings, electronic recording provides an objective basis for verifying whether statements were made voluntarily and without physical or psychological coercion.⁸³ Recording also supports the implementation of Article 78 of KUHAP concerning plea bargaining by enabling courts to determine whether an admission of guilt was given freely and with full awareness of its legal consequences.⁸⁴ Recording reduces evidentiary disputes by preserving an accurate account of the interrogation and preventing inconsistencies between investigation records and testimony presented at trial.

Mandatory recording protects both suspects and law enforcement officers by ensuring that the entire interrogation is objectively documented and subject to judicial review. Where coercion or torture occurs, investigators may incur criminal liability under Articles 529 and 530 of the KUHP 2023, while fabricated interrogation records may constitute obstruction of justice under Article 278

⁸¹ Carol Brook dkk., "A Comparative Examination of Police Interrogation of Criminal Suspects in Australia, Canada, England and Wales, New Zealand, and the United States," *William & Mary Bill of Rights Journal* 29, no. 4 (2021): 909.

⁸² McCriminal Law, "Texas laws on Recording Conversations: What You Need To Know," Lawfirm, 10 April 2025, diakses 6 Januari 2026, <https://mccrimlaw.com/criminal-law-101/texas-laws-on-recording-conversations-what-you-need-to-know/>.

⁸³ Aisyah Nabila Putri, "Analisis Pengaruh Penyiksaan Dalam Interogasi Terhadap Pemenuhan Hak Tersangka Dalam Proses Pidana," *Causa: Jurnal Hukum Dan Kewarganegaraan* (Gresik) 7, no. 9 (2024): 91–100, <https://doi.org/10.3783/causa.v7i9.7064>; Rohmatullah, *Proses Hukum Acara Pidana Modern* (PT Mafy Media Literasi Indonesia, 2023).

⁸⁴ Michael Beenstock dkk., "Plea Bargaining and the Miscarriage of Justice," *Journal of Quantitative Criminology* (Amsterdam) 37, no. 1 (2021): 35–72, <https://doi.org/10.1007/s10940-019-09441-w>.

KUHAP. Furthermore, Article 235(3) of KUHAP requires evidence to be obtained lawfully and its authenticity to be verifiable. Therefore, where an interrogation is not recorded without a lawful exception, courts should give greater scrutiny to the resulting confession because its voluntariness and reliability cannot be objectively verified. Rather than requiring automatic exclusion, the burden should rest on the prosecution to prove that the confession was obtained lawfully and without coercion.

3.3.5. Application of the Recording Obligation to Certain Criminal Offenses

The absence of implementing regulations under KUHAP creates uncertainty as to whether electronic recording applies to all criminal offenses or only specific categories. Drawing from Colorado and Texas, Indonesia should adopt a risk-based approach by limiting mandatory recording to serious offenses punishable by more than seven years' imprisonment, life imprisonment, the death penalty, or fines exceeding Category IV, based on Articles 79 and 136 of the KUHP 2023.⁸⁵ Such recordings would enable courts to assess the voluntariness and reliability of suspects' statements while strengthening procedural fairness.

This limitation is also justified by practical considerations. Indonesia recorded approximately 573,492 criminal cases in 2023–2024,⁸⁶ while the police-to-population ratio remains approximately 1:606.⁸⁷ Requiring recordings in every investigation would impose substantial costs for equipment, storage, data security, and system maintenance. A risk-based framework therefore provides a more realistic balance between due process guarantees and institutional capacity.⁸⁸

3.3.6. Exceptions to the Recording Obligation

Recording obligations should not be absolute and may be subject to exceptions. The first exception concerns non-technical factors such as infrastructural limitations, including unavailability or malfunction of recording equipment or unsuitable interrogation facilities, as recognized in Colorado, and Texas. The second exception relates to the subject being examined, such as requests to refuse recording (Texas and Colorado) or protection of suspect identity (England, Colorado, and Texas) where recording may endanger the safety of suspects, witnesses, or relatives.

The third exception is based on subjective assessments by law enforcement officers, where recording is deemed to hinder the suspect's ability to provide statements or compromise interrogation effectiveness, as well as cases emergencies, or extraterritorial interrogations (Colorado). Government regulations may provide reasonable exceptions, but such exceptions must be authorized

⁸⁵ Albert Aries, *Hukum Pidana Indonesia Menurut KUHP Lama & KUHP Baru*, 1st ed. (PT Rajagrafindo Persada, 2024).

⁸⁶ Badan Pusat Statistik, *Statistik Kriminal 2025*, Statistict Report 04300.25015 (Badan Pusat Statistik, 2025), 10–12, <https://web-api.bps.go.id/download.php?f=xLvmfUWl2SQoNYjR8j1FhaHBIRjNud0w4MjZVcitDSzFIZzE3UklyQ2Z4WlFyZUNtUXc4SHVMQVNYZzc3ckNtYUZRNTFWRnhNZXZwU1JuQTlrci9QNxhRT0s1b1NORUJqK01OUWlXT3MwZ3BQ2t1MXk4c2wyeUE4ZkVhUm54MEl0UmxmS3FRa2F5aXZmaXJQeG9STzVpY3b3oydHZqS01QamFlc1cyVVI4TGZLNEMrOHd6eGJjVUllMlp5Q2FRY3JEYzZkUUh0RjVQMUGxVlZ6dHZiTHVwalpNVFIKRutxdWtnCFNha0UweHgxeUhlakZGdkNUeFj2L1Z5RElIOVloZ2krQmZ4SFHhZUpKN3U=>.

⁸⁷ Humas Polri, "Rasio Polisi dengan Penduduk 1."

⁸⁸ Bierschbach dan Bibas, "Rationing Criminal Justice."



through a court order upon application by the public prosecutor or investigator, either to apply recording below specified penalty thresholds or to waive recording obligations, to ensure a fair trial.

3.3.7. Location of Interrogation

KUHAP does not expressly regulate the location of suspect or witness interrogations. Although interrogations may be conducted at a suspect's or witness's residence where the person resides outside the investigator's jurisdiction (Article 37 KUHAP) or avoids examination (Article 29 KUHAP), they are generally conducted at investigators' offices,⁸⁹ many of which lack dedicated interrogation facilities. In contrast, the England and the U.S. require interrogations to be conducted in specialized rooms equipped with recording facilities to ensure continuous audio-visual recording throughout the examination.⁹⁰ Therefore, implementing regulations should mandate dedicated interrogation rooms with standardized recording equipment, with the number of rooms determined according to institutional level, organizational structure, or regional crime rates. Furthermore, remote interrogations should be permitted, like the approach under paragraphs 2.6 and 2.7 of PACE Code E, if they remain subject to prosecutorial or judicial supervision.

3.3.8. Rights of the Suspect

Recording mechanisms should function as a safeguard for suspects, victims, witnesses, and law enforcement officers by ensuring fair, transparent, and impartial criminal proceedings. For victims, recordings help prevent secondary victimization during questioning, while for suspects they reinforce the principle of *No Tape, No Testimony*, meaning that statements should only be obtained through a fully recorded examination.⁹¹ Consistent with the *Miranda* principle in the United States and Article 142 (e) of the KUHAP, suspects must retain the right to provide or refuse statements concerning the allegations against them.

Recorded interrogations enable courts and prosecutors to assess whether statements were made voluntarily, verify the accuracy of interrogation records, and detect any addition, omission, or manipulation of evidence. Accordingly, government regulations should guarantee the suspect's right to refuse questioning where recording is not conducted continuously from beginning to end and require investigators to notify suspects when recording starts and ends. Any statement obtained without full compliance with recording requirements should be subject to exclusion by the court.

⁸⁹ Jeane Rompas, "Tempat Pemeriksaan Tersangka Menurut Pasal 112 Dan Pasal 113 Kitab Undang-Undang Hukum Acara Pidana," *Lex Administratum* (Manado) 5, no. 6 (2017), diakses 20 Januari 2026, <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/17530>.

⁹⁰ Brook dkk., "A Comparative Examination of Police Interrogation of Criminal Suspects in Australia, Canada, England and Wales, New Zealand, and the United States."

⁹¹ Melanie Sauerland dan Miet Vanderhallen, "Remaining silent during investigative interviews: a perspective of prisoners convicted for a serious crime," *Psychology, Crime & Law* (Routledge), 10 Juli 2024, 1–19, <https://doi.org/10.1080/1068316X.2024.2376242>.

Tabel 2. Mechanism For Recording Custodial Interrogation In Indonesia



Rather than adopting the England or U.S. models in their entirety, Indonesia should adopt a context-sensitive framework that combines mandatory recording for serious offences, phased institutional implementation, hybrid storage technology, and narrowly tailored statutory exceptions. Such a model better reflects Indonesia's fiscal capacity, uneven digital infrastructure, and institutional readiness while remaining consistent with procedural justice, evidentiary reliability, and the due process guarantees embodied in KUHP.

4. Conclusion

The comparative analysis shows that electronic recording of custodial interrogations is a procedural safeguard for due process, suspect rights, and law enforcement accountability. Colorado adopts a rights-protective model, Texas a risk-based model, and England a comprehensive procedural framework. These models demonstrate that recording obligations should be supported by clear procedures, limited exceptions, secure data management, and judicial oversight.

For Indonesia, the Government Regulation under Article 30 of the KUHP should establish electronic recording as mandatory, particularly for serious offences and examinations involving vulnerable suspects. The proposed framework should include standardised recording and data-management procedures, limited and

legally defined exceptions, and clear evidentiary consequences. Where an interrogation is not recorded without a valid exception, the resulting statement should carry substantially reduced evidentiary weight, with the prosecution required to establish legality, voluntariness, and reliability. Implementation should follow a phased approach: regulatory issuance in 2026, pilot implementation in selected Polda in 2027, and broader implementation for serious offences by 2028.

This study contributes a comparative regulatory framework for implementing Article 30 of the KUHAP by integrating mandatory recording, risk- and vulnerability-based application, procedural safeguards, data management, and evidentiary consequences. However, the study is limited by its focus on three comparative jurisdictions and the absence of empirical validation of institutional readiness in Indonesia. Future research should therefore examine institutional capacity, technological infrastructure, data security, and the perspectives of investigators, prosecutors, defence counsel, and judges to assess the feasibility and effectiveness of the proposed framework.

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