Jurnal Legalitas
Volume 19 Issue 2, 2026
P-ISSN: 1979-5955, E-ISSN: 2746-6094
Faculty of Law, Universitas Negeri Gorontalo
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Integrated-Progressive Judicial Control Model: Balancing *Ius Puniendi* and Individual Protection in 2026 Criminal Procedure Code

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Article Info

Article History
Received: Sep 16, 2026;
Reviewed: Sep 30, 2026;
Accepted: Nov 4, 2026.

Keywords:

Criminal Procedure; Judicial Control; Human Rights; Balanced Antinomy; Restorative Justice

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How to cite *[Chicago Manual of Style 18th edition (Notes and Bibliography System]:*
Agung Prayuda Yahya, Lisnawaty W. Badu and Farisandy R. Baeda "Integrated-Progressive Judicial Control Model: Balancing Ius Puniendi and Individual Protection in 2026 Criminal Procedure Code" *Jurnal Legalitas* 19, No. 2 (2026): 236–252.

DOI :
10.33756/jelta.v17i1.41579

Abstract

The enactment of the 2026 Criminal Procedure Code introduces expanded judicial control over coercive measures, yet its compatibility with the International Covenant on Civil and Political Rights and the Convention Against Torture remains contested. This study examines the tension between state authority and individual protection and formulates an Integrated-Progressive Judicial Control Model to reconcile these competing imperatives. Employing a normative juridical method with statutory, conceptual, and comparative approaches, the analysis draws on German and Canadian judicial control models. The study finds that while the new code advances judicial authorization and the exclusionary rule, critical deficiencies persist, including the absence of mandatory presentation of detainees before a judge within forty-eight hours, limited substantive pretrial review, and the failure to regulate derivative evidence. The proposed model integrates judicial oversight across all stages of the criminal process and progressively incorporates substantive fairness and restorative justice. Its five components preventive authorization, mandatory presentation, substantive pretrial review, derivative evidence exclusion, and integrated restorative justice are designed for incremental implementation through a pilot project. The study concludes that full compatibility requires legislative refinement and a judicial culture that takes procedural rights seriously, offering a practical pathway for aligning criminal procedure with international human rights standards while preserving legitimate state authority.

1. Introduction

On 2 January 2026, Indonesia's legal landscape underwent a seismic shift with the entry into force of Law Number 20 of 2025 on the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, hereinafter KUHAP 2026). This statute replaced Law Number 8 of 1981, which had governed Indonesian criminal procedure for more than four decades. The enactment of KUHAP 2026 was synchronized with the new Criminal Code (*Kitab Undang-Undang Hukum Pidana*) under Law Number 1 of 2023, both taking effect on the same date. This legislative overhaul represents the most comprehensive reform of Indonesian criminal procedure since the colonial-era *Herziene Indonesisch Reglement* was superseded. The reform is not merely technical; it embodies a fundamental reorientation of the relationship between the state and the individual in the criminal justice process [1].

The most consequential innovation of KUHAP 2026 is the expansion of coercive measures (*upaya paksa*) from five to nine types: suspect designation, search, seizure, arrest, detention, examination of documents, blocking of accounts, interception, and travel bans. Of these nine measures, seven require prior written authorization from the Chief of the District Court. Only three suspect designation, arrest, and detention may be executed without prior judicial authorization. This statutory design introduces a dual mechanism of judicial oversight: *pre factum* control, where judges assess the necessity and legality of coercive measures before execution (applicable to search, seizure, and blocking), and *post factum* control, where judges evaluate the validity of measures already executed through approval mechanisms or pretrial proceedings. The KUHAP 2026 thus institutionalizes judicial scrutiny over state coercive powers at the pre-adjudication stage, a phase described by the Chief of the Criminal Chamber of the Supreme Court as the moment "where the initial face of justice is tested, even before the case enters substantive examination."[2]

This expansion of judicial control is ostensibly grounded in the principle of due process of law and human rights protection. Deputy Minister of Law Edward Omar Sharif Hiariej has characterized the reform as a strengthening of due process and a safeguard against arbitrary state action. Yet the philosophical foundation of criminal procedure law rests on what Hiariej himself candidly describes as an "antinomy": criminal procedure law is based on the doctrine of *ius puniendi* the state's right to process, prosecute, punish, and execute criminal sanctions while simultaneously being obligated to protect human rights.

This tension is not unique to Indonesia; it reflects the perennial dilemma between what Herbert L. Packer (1964) famously theorized as the "crime control model" and the "due process model" of criminal justice. The crime control model prioritizes the repression of crime and the efficiency of the criminal process, while

[1] Zainal Abidin, "Inkorporasi Hak-Hak Fair Trial dalam Rancangan Undang-Undang Hukum Acara Pidana," *Jurnal Hak Asasi Manusia* 15, no. 1 (July 2022): 44–69, https://doi.org/10.58823/jham.v15i1.117.
[2] Padlah Riyadi, "Restorative Justice Reconstruction with The Indonesian Criminal System After Law No. 1 of 2023," *Protection: Journal Of Land And Environmental Law* 2, no. 3 (March 2024): 86–105, None, https://doi.org/10.38142/pjlel.v2i3.1208.

the due process model emphasizes the protection of individual rights and the reliability of verdicts.[3]

In the Indonesian context, Muladi has argued that Indonesia cannot absolutely adopt the crime control model because it contradicts the principles of a Pancasila-based rule of law state. Yet the practical reality of Indonesian criminal procedure has often tilted toward crime control, particularly in the pre-trial phase where suspects face significant power asymmetry vis-à-vis investigators. The KUHAP 2026 seeks to recalibrate this balance by embedding judicial control into coercive measures, but the fundamental question remains: does strengthened judicial control *de jure* translate into meaningful protection of individual rights *de facto*? This question is not merely academic. It determines whether Indonesia's new criminal procedure code fulfills its constitutional promise of fair legal proceedings and its international obligations under human rights treaties.[4]

The urgency of this question is compounded by Indonesia's binding international law obligations. Indonesia ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005 and the Convention Against Torture (CAT) through Law Number 5 of 1998. As Deputy Minister of Human Rights Mugiyanto has emphasized, these ratifications make ICCPR and CAT "not merely moral guidelines, but international legal obligations that constitutionally bind the state."

The ICCPR mandates, among other things, the right to liberty and security of person (Article 9), the right to be informed of charges, the right to be brought promptly before a judge, and the right to a fair trial (Article 14). The CAT obligates states to prohibit torture in all forms, to provide effective protection, and to ensure that evidence obtained through torture is inadmissible. The compatibility of KUHAP 2026 with these standards is therefore not a matter of policy discretion but of legal obligation.[5]

The KUHAP 2026 ostensibly seeks to harmonize Indonesian criminal procedure with these international standards. The Ministry of Human Rights has proposed ten improvements to align KUHAP with international human rights law, including access to legal assistance from the moment of arrest, compensation for arbitrary detention, and strengthening of the pretrial mechanism. However, Komnas HAM has identified five provisions in the new KUHAP that potentially violate human rights, particularly concerning investigation and prosecution powers, the use of coercive measures, and the limited scope of pretrial examination, which addresses only formal-administrative aspects rather than substantive matters.

A particularly critical issue concerns pretrial detention. Article 9(3) of the ICCPR requires that anyone arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power. Yet neither the previous nor the newly passed KUHAP expressly requires detained suspects to be presented before a judge during pretrial procedures. Research by

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[3] Taufik Pandan Winoto, "A Comparative Study of KUHAP and the Draft KUHAP on the Protection of Human Rights in Criminal Justice Processes," *Jurnal Hukum Dan Keadilan* 2, no. 6 (October 2025): 28–38, https://doi.org/10.61942/jhk.v2i6.453.

[4] Apripari et al., "Restorative justice in victimless crimes under the criminal procedure code: Problematics and solutions.," *Jurnal Hukum Novelty (1412-6834)* 17, no. 1 (January 2026): 144.

[5] Ibid.

Susilo et al. (2026) in *Yustisia Jurnal Hukum* concludes that Indonesia's pretrial detention mechanism remains predominantly administrative and dependent on detainee initiation, failing to fully comply with Article 9(3) of the ICCPR. This deficiency raises profound questions about the effectiveness of judicial oversight over coercive methods and the realization of procedural rights.[6]

Scholarly attention to the harmonization of Indonesian criminal procedure with international human rights standards has been growing, yet significant gaps remain. Zainal Abidin (2022), writing in *Jurnal HAM* published by Komnas HAM, conducted a systematic analysis of the incorporation of fair trial rights into the Draft Criminal Procedure Code. Abidin's study identified that the draft law had not been fully formulated in accordance with the standards and developments of fair trial norms in international human rights law and international criminal law.

However, Abidin's analysis was conducted before the enactment of KUHAP 2026 and thus could not assess the final legislative text. More fundamentally, Abidin's approach remained within a *pasal-to-pasal* compatibility framework, examining whether specific articles aligned with specific treaty provisions, without addressing the deeper paradigmatic tension between *ius puniendi* and individual protection.[7]

Rio Praswahyu, M. Syahrul Borman, and Moh. Taufik (2026), publishing in *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora*, examined the function of legal assistance and protection of suspect rights during the investigation process. While this study offers valuable insights into the practical dimensions of legal aid, it remains limited to technical aspects of legal assistance without proposing a systemic model of judicial control. The study does not engage with the structural question of how judicial oversight mechanisms should be designed to reconcile state interests with individual rights. A more recent contribution by Susilo et al. (2026) in *Yustisia Jurnal Hukum* directly addresses the right to be heard prior to judicial proceedings and identifies fair trial deficiencies in Indonesian pretrial processes.[8]

This study makes an important contribution by demonstrating that neither the previous nor the newly passed KUHAP expressly requires detained suspects to be presented before a judge during pretrial procedures. However, Susilo et al. focus primarily on the right to be heard as a discrete procedural right rather than on the broader architecture of judicial control over coercive measures.

The theoretical literature on the dualism between due process and crime control, originating from Packer's seminal 1964 article in the *University of Pennsylvania Law Review*, has been widely cited in Indonesian legal scholarship. Yet Indonesian adaptations of Packer's framework have tended to treat the two models as mutually exclusive alternatives requiring a choice, rather than as complementary poles capable of productive synthesis.

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[6] Salwa Aulia and Wevy Efticha Sary, "Seizure As A Coercive Measure In A Comparison Of Criminal Procedural Law Between Indonesia And France," *University Of Bengkulu Law Journal* 10, no. 2 (November 2025): 170–90, https://doi.org/10.33369/ubelaj.v10i2.46708.

[7] Andika Wahyudi Gani and Nurul Maghfirah Surianto, "When Restorative Justice Becomes Case Negotiation: Legal Validity and Normative Distortion in Criminal Justice," *Masalah-Masalah Hukum* 55, no. 1 (March 2026): 171–96, https://doi.org/10.14710/mmh.55.1.2026.171-196.

[8] Lisa M. Austin and Andrea Slane, "Digitally Rethinking Hunter v Southam," *Osgoode Hall Law Journal* 60 (2023): 419.

Muladi's argument that Indonesia cannot absolutely adopt the crime control model because it contradicts Pancasila-based rule of law principles represents an important corrective, but it does not offer a constructive model for reconciling the two imperatives.[9] International comparative scholarship on judicial control models offers valuable insights. The German *Ermittlungsrichter* (investigating judge) model, established in 1974, assigns to a specially designated judge the authority to issue orders related to coercive measures and to control the legality of investigative actions by police and prosecutors. The German Constitutional Court has emphasized that the *Richtervorbehalt* (judicial reservation) serves as a central instrument for safeguarding the rights of the accused by preventing unjustified intrusions into fundamental rights.[10]

In Canada, Section 8 of the *Canadian Charter of Rights and Freedoms* protects against unreasonable search and seizure, with the Supreme Court of Canada establishing that warrantless searches are prima facie unconstitutional, and that prior judicial authorization is generally required. These comparative models demonstrate that effective judicial control requires not merely formal authorization requirements but substantive judicial engagement with the legality and proportionality of coercive measures.

Despite the growing body of literature on KUHAP reform and human rights compatibility, a significant research gap persists. Existing studies have predominantly focused on either (a) *pasal-to-pasal* compatibility checks between the old KUHAP and international instruments, or (b) technical aspects of specific procedural rights such as legal assistance or the right to be heard. No study has yet systematically analyzed the paradigmatic tension between *ius puniendi* and individual protection in the newly enacted KUHAP 2026 and proposed a constructive model for managing this tension through integrated and progressive judicial control.[11]

This article addresses this gap by developing an Integrated-Progressive Judicial Control Model that transcends the conventional dichotomy between state authority and individual rights. The term "integrated" signifies that judicial control must operate across all stages of the criminal process from investigation through prosecution to adjudication rather than being confined to isolated procedural checkpoints. The term "progressive" indicates that judicial control must evolve in response to changing circumstances and must incorporate restorative justice principles and substantive fairness considerations, rather than being limited to formal legality review.[12]

The novelty of this study lies in three dimensions. First, it reconceptualizes the relationship between *ius puniendi* and individual protection not as a zero-sum

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[9] M. Rizki Yudha Prawira, "Regulation Act of Torture in Criminal Code: Opportunity and Challenge to Improve Human Rights Situation in Indonesia," *JUSTISI* 11, no. 1 (2025): 17–35, https://doi.org/10.33506/js.v11i1.3653.

[10] John H. Langbein, "The Turn to Confession Bargaining in German Criminal Procedure: Causes and Comparisons with American Plea Bargaining," *The American Journal of Comparative Law* 70, no. 1 (March 2022): 139–61, https://doi.org/10.1093/ajcl/avac025.

[11] Robert B. McKay, "Mapp v. Ohio, the Exclusionary Rule and the Right of Privacy," *Arizona Law Review* 15 (1973): 327.

[12] Herbert L. Packer, "Two Models of the Criminal Process," *University of Pennsylvania Law Review* 113 (1965 1964): 1.

conflict but as a productive antinomy requiring balanced management. Drawing on Packer's theoretical framework but moving beyond its binary logic, the study proposes a paradigm of "balanced antinomy" (*paradigma antinomik berimbang*) that recognizes both state interests and individual rights as legitimate and mutually constitutive. Second, it formulates a concrete model of integrated-progressive judicial control that synthesizes elements from the German *Ermittlungsrichter* model and the Canadian judicial warrant system, adapted to the Indonesian constitutional and institutional context.[13] Third, it develops a framework of substantive procedural justice (*keadilan substantif prosedural*) that links international standards directly to domestic procedural mechanisms, including key questions for judges to employ when evaluating requests for coercive measures.

This study pursues two principal objectives. First, it seeks to analyze the compatibility of KUHAP 2026 with international human rights standards, particularly ICCPR and CAT, with respect to the protection of suspect rights in coercive measures. Second, it aims to formulate an Integrated-Progressive Judicial Control Model that can effectively manage the tension between *ius puniendi* and individual protection within the framework of KUHAP 2026. These objectives are operationalized through two research questions: (1) How does the paradigm of balanced antinomy ensure the compatibility of KUHAP 2026 with ICCPR and CAT standards? (2) How can an Integrated-Progressive Judicial Control Model be formulated to address the tension between *ius puniendi* and individual protection in KUHAP 2026?

The study employs a normative juridical method with a descriptive-analytical specification. The statutory approach examines KUHAP 2026, ICCPR, CAT, and the 1945 Constitution. The conceptual approach draws on Packer's antinomy theory, due process, and fair trial principles. The comparative approach examines judicial control models in Germany and Canada. Data collection is conducted through document study of primary legal materials and secondary legal materials including academic journals, Komnas HAM reports, court decisions, and comparative literature.

The expected contribution of this study is both theoretical and practical. Theoretically, it advances the scholarly discourse on criminal procedure reform by offering a constructive paradigm for managing the foundational antinomy of criminal justice. Practically, it provides a model that can be implemented incrementally through pilot projects in Indonesian district courts, beginning with the Pengadilan Negeri Kota Gorontalo as a partner institution.

The study also produces a policy brief for the Ministry of Law and Human Rights and the House of Representatives, a comparative matrix mapping KUHAP 2026 provisions against ICCPR and CAT standards, and five key questions for judges to employ when examining requests for coercive measures. In doing so, this study contributes to the broader project of strengthening the rule of law and human rights protection in Indonesia's criminal justice system, in alignment with the vision of Universitas Negeri Gorontalo's Faculty of Law to promote social justice and local wisdom in legal reform.

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[13] Rio Praswahyu, M. Syahrul Borman, and Moh Taufik, "Fungsi Bantuan Hukum Dan Perlindungan Hak Tersangka Dalam Proses Penyidikan," *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 5, no. 3 (2026): 6448–56.

2. Method

This study employs a normative juridical method with a descriptive-analytical specification. The statutory approach examines the 2026 Criminal Procedure Code (KUHAP 2026), particularly its provisions on coercive measures and judicial control, alongside the ICCPR and CAT as ratified by Indonesia. The conceptual approach draws on Herbert L. Packer's antinomy theory, due process, fair trial, and human rights protection. The comparative approach contrasts judicial control models in Germany (StPO/*Ermittlungsrichter*) and Canada (Canadian Charter/judicial warrant). Data are collected through documentary study of primary and secondary legal materials, including court decisions, Komnas HAM reports, and legal literature. Analysis employs systematic and teleological legal interpretation and a comparative matrix to map KUHAP 2026's compatibility with international standards. The study also collaborates with the Gorontalo District Court and involves students from the Faculty of Law, Universitas Negeri Gorontalo, as research assistants to enhance practical validity and operational efficiency. The analysis is expected to produce a compatibility map and an applicable integrated-progressive judicial control model.

3. Analysis or Discussion

3.1. The Balanced Antinomy Paradigm and the Compatibility of KUHAP 2026 with ICCPR and CAT

The first research question concerns how the paradigm of balanced antinomy can ensure the compatibility of KUHAP 2026 with international human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). This discussion argues that the relationship between ius puniendi and individual protection is not a zero-sum conflict but a productive antinomy requiring balanced management. It demonstrates that KUHAP 2026 embodies a partial but incomplete realization of this paradigm, and that full compatibility with ICCPR and CAT requires a more coherent integration of international standards into domestic procedural mechanisms.[14]

Herbert L. Packer's seminal 1964 article in the University of Pennsylvania Law Review introduced two ideal-typical models of the criminal process: the crime control model and the due process model. The crime control model prioritizes the repression of criminal conduct, emphasizing efficiency, speed, and a presumption of guilt. The due process model, by contrast, prioritizes the protection of individual rights, emphasizing formal adjudication, equality of arms, and a presumption of innocence. Packer characterized these two models as a normative antinomy at the center of criminal law not a description of empirical reality, but a heuristic device for evaluating criminal justice systems.[15]

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[14] Muh Hajoran Pulungan and Mosgan Situmorang, "Restorative Justice dalam KUHAP Baru: Antara Kepastian Hukum dan Diskresi Aparat Penegak Hukum," *Jurnal Penelitian Hukum De Jure* 26, no. 1 (March 2026): 045–060, https://doi.org/10.30641/dejure.2026.V26.045-060.

[15] Guntur Rambey, "Pretrial After the Enactment of Law Number 20 of 2025 on Criminal Procedure Code (KUHP)," *International Asia Of Law and Money Laundering (IAML)* 5, no. 2 (June 2026): 39–45, https://doi.org/10.59712/iaml.v5i2.162.

In the Indonesian context, Muladi has argued that Indonesia cannot absolutely adopt the crime control model because it contradicts the principles of a Pancasila-based rule of law state. Yet Muladi also cautioned that the due process model, with its emphasis on individual rights, is equally unsuitable for the Indonesian context. What Indonesia requires, Muladi suggested, is a model of balance of interests (*model keseimbangan kepentingan*). This insight anticipates the paradigm of balanced antinomy developed in this article. The antinomy between *ius puniendi* and individual protection is not a problem to be solved by choosing one pole over the other; it is a tension to be managed productively through institutional design.[16]

KUHAP 2026 can be understood as an attempt to institutionalize this balance. Deputy Minister of Law Edward Omar Sharif Hiariej has explicitly characterized criminal procedure law as an antinomy: it is based on *ius puniendi* the state's right to process, prosecute, punish, and execute criminal sanctions while simultaneously being obligated to protect human rights. The expansion of judicial control over coercive measures represents an effort to strengthen the due process pole of this antinomy without abandoning the state's legitimate interest in law enforcement.[17]

The ICCPR, ratified by Indonesia through Law Number 12 of 2005, establishes binding obligations regarding liberty and security of person (Article 9) and the right to a fair trial (Article 14). Article 9(3) requires that anyone arrested or detained on a criminal charge be brought promptly before a judge or other officer authorized by law to exercise judicial power. Article 9(4) guarantees the right to challenge the lawfulness of detention before a court. Article 14(3) enumerates minimum guarantees for criminal proceedings, including the right to be informed of charges, adequate time and facilities for defense, access to counsel, and the examination of witnesses.

The Working Group on Arbitrary Detention, following its country visit to Indonesia, concluded that the length of permissible delay before presenting an accused before a prosecutor or judge represents a violation of Article 9(3) of the ICCPR and that the relevant provisions of the Indonesian Criminal Procedure Code should be modified accordingly. The Working Group also emphasized that the guarantees necessary for the defense of the accused are explicitly protected by Article 14. Research by Susilo et al. (2026) concludes that Indonesia's pretrial detention mechanism remains predominantly administrative and dependent on detainee initiation, failing to fully comply with Article 9(3) of the ICCPR.

Specifically, Indonesia does not consistently ensure immediate physical presentation of detainees before a judicial officer within 48 hours. This deficiency is not merely technical; it reflects a structural orientation toward administrative convenience over judicial oversight. The KUHAP 2026 introduces several innovations that address this deficiency, including expanded judicial authorization requirements for coercive measures. However, as Komnas HAM has observed, the pretrial mechanism under KUHAP 2026 remains limited to formal-administrative

[16] Anita Soboleva, "The Balancing Exercise and the Resolution of Rhetorical Antinomies in Judicial Decision-Making," *Ratio Juris* 37, no. 2 (2024): 161–83, https://doi.org/10.1111/raju.12404.
[17] Konrad Schmauder, *Die Funktionen Des Ermittlungsrichters Im Strafverfahren* (DUNCKER UND HUMBLOT, 2026), 1–342, https://doi.org/10.3790/978-3-428-59873-1.

review rather than substantive examination of the legality and necessity of coercive measures.[18]

The Ministry of Human Rights has proposed ten improvements to align KUHAP with international human rights law. These include ensuring that only independent judges may extend detention periods in accordance with Article 9(3) of the ICCPR, opening access to legal assistance from the moment of arrest, ensuring private communication with effective legal counsel in accordance with Article 14(3) of the ICCPR, and aligning provisions with the Convention Against Torture.[19] These proposals reflect a recognition that formal compatibility with international standards is insufficient; substantive alignment requires institutional and procedural reforms that ensure the practical realization of rights. T

he Convention Against Torture, ratified by Indonesia through Law Number 5 of 1998, imposes an absolute prohibition on torture and cruel, inhuman, or degrading treatment or punishment. Article 15 of the CAT requires States Parties to ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. This provision establishes what is commonly known as the exclusionary rule for evidence obtained through torture.

The KUHAP 1981 did not explicitly regulate the admissibility of evidence obtained through torture. As Komnas HAM has observed, KUHAP did not regulate this explicitly, and consequently, confessions or information obtained through torture could be accepted by courts. The Committee Against Torture expressed deep concern about the numerous, ongoing, credible and consistent allegations of torture and ill-treatment, and about the reliance on confessions as a common form of evidence for prosecution.[20]

The Committee urged Indonesia to guarantee the inadmissibility of confessions obtained under torture and ill-treatment and to increase efforts to adopt legal provisions allowing video and audio taping of interrogations. KUHAP 2026 introduces a significant innovation in this regard through Article 235, which establishes procedural legality as a precondition for the admissibility of evidence. The provision affirms the absolute exclusion of evidence obtained through torture and restores equality of arms. Article 235(5) states that evidence declared by a judge to be inauthentic and/or obtained unlawfully cannot be used as evidence in court proceedings and has no probative value. This provision substantially reflects the adoption of the exclusionary rule, a doctrine requiring the exclusion of evidence obtained unlawfully.[21]

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[18] Erwin Susilo et al., "The Right to Be Heard Prior to Judicial Proceedings: Human Rights and Fair Trial Deficiencies in Indonesian Pre-Trial Processes," *Yustisia* 15, no. 1 (April 2026): 47–68, https://doi.org/10.20961/yustisia.v15i1.102131.

[19] Richard George Saffrey-Mayger, *An Assessment of the United Kingdom's Implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (University of Exeter (United Kingdom), 2014).

[20] Sarah Joseph, *International Covenant on Civil and Political Rights (ICCPR)* (Edward Elgar Publishing, 2022).

[21] Fachrizal Afandi and Ladito Risang Bagaskoro, "Judicial Scrutiny Under Indonesia's KUHAP 2025: Transplantation and Institutional Incoherence," *Brawijaya Law Journal* 13, no. 1 (July 2026): 25–57, https://doi.org/10.21776/ub.blj.2026.013.01.02.

However, as the Garuda study observes, Article 235 has shortcomings, namely the absence of explicit regulation of the fruit of the poisonous tree doctrine, the good-faith exception, standing, and the burden of proof. The fruit of the poisonous tree doctrine, which extends the exclusionary rule to evidence derived from illegally obtained evidence, is not expressly incorporated. This omission creates a risk that derivative evidence obtained through torture or other unlawful means may still be admitted, thereby undermining the effectiveness of the exclusionary rule.[22] The study recommends reinforcement through Supreme Court jurisprudence, implementing regulations, and the transformation of law enforcement working culture.

From the perspective of the balanced antinomy paradigm, the exclusionary rule represents a crucial mechanism for ensuring that the state's ius puniendi is exercised within the boundaries of human rights protection. It operationalizes the principle that the ends of criminal investigation do not justify unlawful means. The compatibility of KUHAP 2026 with the CAT is therefore not merely a matter of formal alignment but of practical enforcement. The exclusionary rule must be accompanied by effective remedies, independent oversight, and a judicial culture that takes the prohibition of torture seriously.[23]

The paradigm of balanced antinomy offers a framework for understanding and evaluating the compatibility of KUHAP 2026 with ICCPR and CAT. Rather than treating international standards as external constraints on state sovereignty, the paradigm recognizes them as constitutive elements of a legitimate criminal justice system. The state's ius puniendi is not unlimited; it is bounded by the obligation to respect human dignity and procedural fairness. Conversely, individual rights are not absolute; they must be reconciled with the state's legitimate interest in investigating and prosecuting crime. The balanced antinomy paradigm is not a static equilibrium but a dynamic process of continuous adjustment. As the Komnas HAM recommendations indicate, the pretrial mechanism under KUHAP 2026 must be reformulated to materially represent the interests of suspects, victims, and society in obtaining justice.[24] The pretrial hearing must be conducted within 14 working days, and the main case cannot be transferred before the pretrial decision is rendered.

These recommendations reflect a recognition that judicial control must be substantive, not merely formal. The Ministry of Human Rights has proposed that KUHAP 2026 should align with international standards by ensuring that detention extensions are authorized only by independent judges, that access to legal assistance is provided from the moment of arrest, and that the exclusionary rule is effectively enforced. These proposals are consistent with the balanced antinomy paradigm, which requires that the state's power to detain and investigate be subject

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[22] Elisabeth Nurhaini Butar-butar, "Antinomi Dalam Penerapan Asas Legalitas Dalam Proses Penemuan Hukum," *Yustisia* 1, no. 1 (January 2012), https://doi.org/10.20961/yustisia.v1i1.10614.
[23] Rustam Efendi Turnip, "Konsep Dasar Terkait Due Process of Law," *JURNAL HUKUM JUSTICE*, February 19, 2026, 221–31.
[24] Tomi Saputra and Aria Zurnetti, "Peranan Bantuan Hukum Sebagai Jaminan Hak Tersangka Dalam (Due Process of Law) Pada Sistem Peradilan Pidana Indonesia," *Lareh Law Review* 3, no. 2 (December 2025): 129–37, https://doi.org/10.25077/llr.3.2.129-137.2025.

to meaningful judicial oversight and that the rights of suspects be protected at every stage of the criminal process.

3.2. The Integrated-Progressive Judicial Control Model

The second research question concerns how an Integrated-Progressive Judicial Control Model can be formulated to address the tension between ius puniendi and individual protection in KUHAP 2026. This discussion develops the model by synthesizing comparative insights from Germany and Canada, adapting them to the Indonesian constitutional and institutional context, and specifying the operational components of integrated and progressive judicial control.

The Integrated-Progressive Judicial Control Model rests on two conceptual pillars: integration and progression. Integration signifies that judicial control must operate across all stages of the criminal process from investigation through prosecution to adjudication rather than being confined to isolated procedural checkpoints. The German model of the *Ermittlungsrichter* (investigating judge) exemplifies integrated judicial control. Established in 1974, the *Ermittlungsrichter* is a specially designated judge with authority to issue orders related to coercive measures and to control the legality of investigative actions by police and prosecutors. The German Constitutional Court has emphasized that the *Richtervorbehalt* (judicial reservation) serves as a central instrument for safeguarding the rights of the accused by preventing unjustified intrusions into fundamental rights. The *Ermittlungsrichter* exercises preventive control before coercive measures are executed, ensuring that judicial authorization is not a mere formality but a substantive assessment of legality and proportionality.

Progression signifies that judicial control must evolve in response to changing circumstances and must incorporate substantive fairness considerations, including restorative justice principles. The Canadian model of judicial warrant under Section 8 of the Canadian Charter of Rights and Freedoms exemplifies progressive judicial control. Section 8 protects against unreasonable search and seizure, and the Supreme Court of Canada has established that warrantless searches are prima facie unconstitutional. Before a search can be conducted, police must provide reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search. The standard requires credibly-based probability rather than mere suspicion. This approach ensures that judicial authorization is based on substantive evidentiary standards, not mere formalism.[25]

The progressive dimension of judicial control also requires attention to the manner in which coercive measures are executed. The Canadian Charter requires that a search be carried out in a reasonable manner and that the law authorizing it be reasonable. This involves considerations of proportionality, necessity, and the minimization of intrusions on privacy. In the Indonesian context, the progressive dimension of judicial control would require judges to consider not only the formal legality of coercive measures but also their impact on the rights and dignity of suspects, particularly vulnerable groups such as indigenous peoples and

[25] Angelika Permata Adam et al., "Penerapan Asas Due Process of Law Dalam Hukum Acara Pidana Di Indonesia," *Jurnal Hukum Bisnis (J-KUMBIS)* 4, no. 1 (January 2026): 16–27, https://doi.org/10.37606/j-kumbis.v4i1.408.

marginalized communities.[26] The German *Noodweer* model offers valuable insights for Indonesia. The *Richtervorbehalt* is not merely a procedural requirement; it is a constitutional safeguard grounded in the principle that deprivations of liberty and intrusions on privacy require prior judicial authorization.

The German Constitutional Court has held that the *Richtervorbehalt* must be practically effective, meaning that judicial authorities must make sufficient organizational arrangements to ensure that investigating judges are accessible and able to exercise meaningful control. The court has also held that the concept of *Gefahr im Verzug* (danger in delay) must be interpreted narrowly and subjected to comprehensive judicial review, not merely reviewed for arbitrariness. The German model also provides for retrospective judicial control. Since long ago, police conduct can be reviewed retrospectively by the *Ermittlungsrichter* for its legality under Section 98(2) of the German Code of Criminal Procedure (StPO). This dual mechanism of preventive and retrospective control ensures that judicial oversight is not limited to the moment of authorization but extends throughout the investigative process. In the Indonesian context, the pretrial mechanism (praperadilan) currently serves a retrospective function, but its scope is limited to formal-administrative review. The Integrated-Progressive Judicial Control Model would strengthen this mechanism by expanding its substantive scope and ensuring that it operates in conjunction with preventive judicial authorization. The German experience also highlights the importance of specialization. The concentration of jurisdiction under Section 162 StPO allows for the specialization of investigating judges, enabling them to develop expertise in assessing the legality and necessity of coercive measures. However, the German experience also reveals challenges: insufficient specialized knowledge among investigating judges and increasing workloads at courts can undermine the effectiveness of judicial control. Indonesia must therefore invest in training and institutional capacity-building to ensure that judges are equipped to exercise meaningful control over coercive measures.[27]

The Canadian model of judicial warrants under Section 8 of the Charter provides a complementary perspective. The Supreme Court of Canada has established that prior judicial authorization is presumptively required for searches and seizures, and that warrantless searches are prima facie unreasonable. The standard for issuing a warrant is reasonable and probable grounds, which requires a credibly-based probability that an offence has been committed and that evidence will be found at the specified place. The reviewing judge does not conduct a de novo hearing but assesses whether there was sufficient credible and reliable evidence to permit the issuing justice to find reasonable and probable grounds. The Canadian model emphasizes the importance of substantive evidentiary standards in judicial authorization.[28] A warrant is not a rubber stamp; it requires the police to present sufficient evidence to justify the intrusion on privacy.

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[26] Naila Meuthia Azza, "Criminal Law Policy and Human Rights Protection: Analyzing the Rationalization of the New Indonesian Criminal Code and Criminal Procedure Code," *Punggawa Law Review* 1, no. 4 (September 2026): 1–5, https://doi.org/10.67707/plr.v1i4.61.

[27] Anang Shophan Tornado, "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian Case Study," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 324–36.

[28] Abidin, "Inkorporasi Hak-Hak Fair Trial dalam Rancangan Undang-Undang Hukum Acara Pidana."

This approach is particularly relevant for Indonesia, where the effectiveness of judicial control depends on the quality of information presented to judges and the rigor with which judges assess that information. The Integrated-Progressive Judicial Control Model would incorporate this emphasis on substantive standards by requiring judges to assess the necessity, proportionality, and evidentiary basis of proposed coercive measures. The Canadian Charter also provides remedies for violations of Section 8. Section 24(2) allows for the exclusion of evidence obtained in violation of the Charter if its admission would bring the administration of justice into disrepute. This remedy complements the exclusionary rule under KUHAP 2026 Article 235 and reinforces the principle that unlawful state action must not be rewarded with probative advantage. The integration of exclusionary remedies into the judicial control framework ensures that rights violations have concrete consequences and that judicial control is not merely symbolic.[29]

The Integrated-Progressive Judicial Control Model comprises five operational components, each designed to address specific deficiencies in the current KUHAP 2026 framework. First, preventive judicial authorization for all coercive measures requiring prior judicial control. KUHAP 2026 requires prior written authorization from the Chief of the District Court for seven of the nine coercive measures: search, seizure, examination of documents, blocking of accounts, interception, and travel bans. However, the Chief of the District Court may delegate this authority to other judges, and the standards for authorization remain formal rather than substantive.

The model would require that authorization be based on a written application containing sufficient evidence to establish reasonable grounds, that the judge conduct a substantive assessment of legality, necessity, and proportionality, and that the authorization specify the scope, duration, and manner of execution of the coercive measure. Second, mandatory presentation of detainees before a judge. Article 9(3) of the ICCPR requires that detainees be brought promptly before a judge. The KUHAP 2026 does not expressly require physical presentation of detainees before a judge during pretrial procedures. The model would require that any person arrested or detained be presented before a judge within 48 hours, at which hearing the judge would assess the legality of the arrest, the necessity of continued detention, and the need for any conditions of release. This mechanism would transform pretrial detention from an administrative matter into a judicial proceeding, thereby ensuring compliance with Article 9(3). Third, substantive pretrial review.[30]

The pretrial mechanism under KUHAP 2026 currently examines only formal-administrative aspects, not substantive matters. The model would expand the scope of pretrial review to include the legality of the arrest and detention, the validity of evidence obtained through coercive measures, and the proportionality of the coercive measures employed. This expansion would align with Komnas HAM's recommendation that the pretrial mechanism be reformulated to materially represent the interests of suspects, victims, and society.

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[29] Riyadi, "Restorative Justice Reconstruction with The Indonesian Criminal System After Law No. 1 of 2023."
[30] Apripari et al., "Restorative justice in victimless crimes under the criminal procedure code."

The model would also require that pretrial hearings be conducted within 14 working days, as recommended by Komnas HAM, and that the main case cannot proceed until the pretrial decision is rendered.[31] Fourth, exclusionary rule with derivative evidence. Article 235 of KUHAP 2026 establishes the exclusionary rule but does not explicitly regulate the fruit of the poisonous tree doctrine. The model would require that evidence derived from unlawfully obtained evidence also be excluded, unless the connection between the unlawful act and the derivative evidence has become so attenuated as to dissipate the taint. This would ensure that the exclusionary rule is not circumvented through indirect means. Fifth, integrated restorative justice.

KUHAP 2026 introduces restorative justice as a distinct paradigm, but its integration with judicial control remains underdeveloped. The model would require that judges consider restorative justice options at every stage of the criminal process, from the authorization of coercive measures through adjudication. This would involve assessing whether the interests of victims and society could be better served through restorative mechanisms rather than through the continued exercise of coercive state power.

The Integrated-Progressive Judicial Control Model is designed for incremental implementation. A pilot project in the Pengadilan Negeri Kota Gorontalo would allow for the testing and refinement of the model before broader rollout. The pilot would focus on the five operational components described above, with data collected on the practical challenges of implementation and the impact on case outcomes. Collaboration with the Pengadilan Negeri Kota Gorontalo and the involvement of Faculty of Law students at Universitas Negeri Gorontalo would provide research capacity and ensure that the model is grounded in local practice. The model also requires institutional capacity-building. Judges must be trained in international human rights standards, particularly ICCPR and CAT, and in the substantive assessment of coercive measures.

The Supreme Court of Indonesia could issue regulations or practice directions to guide judges in applying the model. The Ministry of Law and Human Rights could develop implementing regulations for the exclusionary rule and the pretrial mechanism. These measures would ensure that the model is not merely theoretical but operational. From the perspective of the balanced antinomy paradigm, the Integrated-Progressive Judicial Control Model represents a practical institutionalization of the balance between *ius puniendi* and individual protection. It recognizes that the state has a legitimate interest in investigating and prosecuting crime, but it also recognizes that this interest must be pursued within the boundaries of human rights and procedural fairness.

The model is integrated because it operates across all stages of the criminal process; it is progressive because it evolves with changing circumstances and incorporates substantive fairness considerations. By implementing this model, Indonesia can take a significant step toward aligning its criminal procedure with international human rights standards while preserving the legitimate exercise of state authority.

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[31] Aulia and Sary, "Seizure As A Coercive Measure In A Comparison Of Criminal Procedural Law Between Indonesia And France."

4. Conclusion

This study concludes that KUHAP 2026's compatibility with ICCPR and CAT requires managing the antinomy between ius puniendi and individual protection through a balanced paradigm. While KUHAP 2026 advances judicial control and the exclusionary rule, deficiencies persist: no mandatory presentation of detainees before a judge within 48 hours, limited substantive pretrial review, and no explicit fruit of the poisonous tree doctrine. The Integrated-Progressive Judicial Control Model addresses these gaps by integrating judicial oversight across all criminal process stages and progressively incorporating substantive fairness and restorative justice. Its five components preventive authorization, mandatory presentation, substantive pretrial review, derivative evidence exclusion, and integrated restorative justice are designed for incremental implementation via a pilot project in Gorontalo. This model offers a practical pathway for Indonesia to align criminal procedure with international human rights standards while preserving legitimate state authority, thereby strengthening the rule of law and human rights protection. Full compatibility demands legislative refinement and a judicial culture that takes rights seriously.

References

Abidin, Zainal. "Inkorporasi Hak-Hak Fair Trial dalam Rancangan Undang-Undang Hukum Acara Pidana." *Jurnal Hak Asasi Manusia* 15, no. 1 (July 2022): 44–69. https://doi.org/10.58823/jham.v15i1.117.

Adam, Angelika Permata, Arif Mahfudin Ibrahim, Tri Mega Putri Aruan, Nazwa Tolingguhu, Reza Al' Asfah, Tri Meutia Nur Auliya Palahuwata, Arini Labaka, and Hilal Perdana Maini. "Penerapan Asas Due Process of Law Dalam Hukum Acara Pidana Di Indonesia." *Jurnal Hukum Bisnis (J-KUMBIS)* 4, no. 1 (January 2026): 16–27. https://doi.org/10.37606/j-kumbis.v4i1.408.

Afandi, Fachrizal, and Ladito Risang Bagaskoro. "Judicial Scrutiny Under Indonesia's KUHAP 2025: Transplantation and Institutional Incoherence." *Brawijaya Law Journal* 13, no. 1 (July 2026): 25–57. https://doi.org/10.21776/ub.blj.2026.013.01.02.

Apripari, Dian Ekawaty Ismail, Ahmad, Vivi Oktaviani Pulukadang, and Novendri M. Nggilu. "Restorative justice in victimless crimes under the criminal procedure code: Problematics and solutions." *Jurnal Hukum Novelty (1412-6834)* 17, no. 1 (January 2026): 144.

Aulia, Salwa, and Wevy Efticha Sary. "Seizure As A Coercive Measure In A Comparison Of Criminal Procedural Law Between Indonesia And France." *University Of Bengkulu Law Journal* 10, no. 2 (November 2025): 170–90. https://doi.org/10.33369/ubelaj.v10i2.46708.

Austin, Lisa M., and Andrea Slane. "Digitally Rethinking Hunter v Southam." *Osgoode Hall Law Journal* 60 (2023): 419.

Azza, Naila Meuthia. "Criminal Law Policy and Human Rights Protection: Analyzing the Rationalization of the New Indonesian Criminal Code and Criminal

Procedure Code." *Punggawa Law Review* 1, no. 4 (September 2026): 1–5. https://doi.org/10.67707/plr.v1i4.61.

Butar-butar, Elisabeth Nurhaini. "Antinomi Dalam Penerapan Asas Legalitas Dalam Proses Penemuan Hukum." *Yustisia* 1, no. 1 (January 2012). https://doi.org/10.20961/yustisia.v1i1.10614.

Gani, Andika Wahyudi, and Nurul Maghfirah Surianto. "When Restorative Justice Becomes Case Negotiation: Legal Validity and Normative Distortion in Criminal Justice." *Masalah-Masalah Hukum* 55, no. 1 (March 2026): 171–96. https://doi.org/10.14710/mmh.55.1.2026.171-196.

Joseph, Sarah. *International Covenant on Civil and Political Rights (ICCPR)*. Edward Elgar Publishing, 2022.

Langbein, John H. "The Turn to Confession Bargaining in German Criminal Procedure: Causes and Comparisons with American Plea Bargaining." *The American Journal of Comparative Law* 70, no. 1 (March 2022): 139–61. https://doi.org/10.1093/ajcl/avac025.

McKay, Robert B. "Mapp v. Ohio, the Exclusionary Rule and the Right of Privacy." *Arizona Law Review* 15 (1973): 327.

Packer, Herbert L. "Two Models of the Criminal Process." *University of Pennsylvania Law Review* 113 (1965 1964): 1.

Praswahyu, Rio, M. Syahrul Borman, and Moh Taufik. "Fungsi Bantuan Hukum Dan Perlindungan Hak Tersangka Dalam Proses Penyidikan." *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 5, no. 3 (2026): 6448–56.

Prawira, M. Rizki Yudha. "Regulation Act of Torture in Criminal Code: Opportunity and Challenge to Improve Human Rights Situation in Indonesia." *JUSTISI* 11, no. 1 (2025): 17–35. https://doi.org/10.33506/js.v11i1.3653.

Pulungan, Muh Hajoran, and Mosgan Situmorang. "Restorative Justice dalam KUHAP Baru: Antara Kepastian Hukum dan Diskresi Aparat Penegak Hukum." *Jurnal Penelitian Hukum De Jure* 26, no. 1 (March 2026): 045–060. https://doi.org/10.30641/dejure.2026.V26.045-060.

Rambey, Guntur. "Pretrial After the Enactment of Law Number 20 of 2025 on Criminal Procedure Code (KUHP)." *International Asia Of Law and Money Laundering (IAML)* 5, no. 2 (June 2026): 39–45. https://doi.org/10.59712/iaml.v5i2.162.

Riyadi, Padlah. "Restorative Justice Reconstruction with The Indonesian Criminal System After Law No. 1 of 2023." *Protection: Journal Of Land And Environmental Law* 2, no. 3 (March 2024): 86–105. None. https://doi.org/10.38142/pjlel.v2i3.1208.

Saffrey-Mayger, Richard George. *An Assessment of the United Kingdom's Implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. University of Exeter (United Kingdom), 2014.

Saputra, Tomi, and Aria Zurnetti. "Peranan Bantuan Hukum Sebagai Jaminan Hak Tersangka Dalam (Due Process of Law) Pada Sistem Peradilan Pidana Indonesia." *Lareh Law Review* 3, no. 2 (December 2025): 129–37. https://doi.org/10.25077/llr.3.2.129-137.2025.

Schmauder, Konrad. *Die Funktionen Des Ermittlungsrichters Im Strafverfahren*. DUNCKER UND HUMBLOT, 2026. https://doi.org/10.3790/978-3-428-59873-1.

Soboleva, Anita. "The Balancing Exercise and the Resolution of Rhetorical Antinomies in Judicial Decision-Making." *Ratio Juris* 37, no. 2 (2024): 161–83. https://doi.org/10.1111/raju.12404.

Susilo, Erwin, Mohd Din, Suhaimi Suhaimi, and Teuku Muttaqin Mansur. "The Right to Be Heard Prior to Judicial Proceedings: Human Rights and Fair Trial Deficiencies in Indonesian Pre-Trial Processes." *Yustisia* 15, no. 1 (April 2026): 47–68. https://doi.org/10.20961/yustisia.v15i1.102131.

Tornado, Anang Shophan. "Evaluating the Convergence in International Human Rights and Criminal Procedures Law: An Indonesian Case Study." *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 324–36.

Turnip, Rustam Efendi. "Konsep Dasar Terkait Due Process of Law." *JURNAL HUKUM JUSTICE*, February 19, 2026, 221–31.

Winoto, Taufik Pandan. "A Comparative Study of KUHAP and the Draft KUHAP on the Protection of Human Rights in Criminal Justice Processes." *Jurnal Hukum Dan Keadilan* 2, no. 6 (October 2025): 28–38. https://doi.org/10.61942/jhk.v2i6.453.

Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

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