

Legal Certainty of Suspension of Detention with Guarantee under Article 110 of the Indonesian Criminal Procedure Code

Rakhmat Makhmudin^{1*)}, Alip Rahman², Siska Karina³

^{1,2,3}Faculty of Law, Universitas Swadaya Gunung Jati, Cirebon, Indonesia

^{*)}Corresponding Author: makhmudinrakhmat@gmail.com

DOI: <https://doi.org/10.55299/jsh.v5i2.2013>

Article history: Received July 05, 2026: Revised July 25, 2026: Accepted August 06, 2026

ABSTRACT

The enactment of Law Number 20 of 2025 concerning the Indonesian Criminal Procedure Code (KUHAP) introduces significant reforms to criminal procedural law, including the regulation of suspension of detention with guarantee under Article 110. Although the provision seeks to strengthen procedural safeguards and the protection of suspects' rights, questions remain regarding its ability to ensure legal certainty in practical implementation. This study aims to analyze the normative regulation of suspension of detention with guarantee under Article 110 and evaluate whether the provision provides adequate legal certainty within Indonesia's criminal justice system. This research employs normative legal research using statutory, conceptual, and comparative approaches. Primary legal materials consist of Law Number 20 of 2025 and related legislation, while secondary legal materials include recent scholarly publications on criminal procedure, detention, due process of law, legal certainty, and human rights. The collected legal materials were analyzed qualitatively through descriptive, interpretative, and evaluative legal analysis. The findings reveal that Article 110 establishes a more comprehensive legal framework than the previous Criminal Procedure Code by reaffirming the authority to grant suspension of detention, recognizing monetary and personal guarantees, and strengthening procedural safeguards. However, the provision has not yet achieved complete legal certainty because it lacks objective statutory criteria governing the approval of applications, proportional guarantee standards, and measurable parameters for the exercise of official discretion. Consequently, inconsistent interpretation and unequal application remain potential challenges in practice. The novelty of this study lies in its normative evaluation of Article 110 from the perspective of legal certainty following the enactment of the new Criminal Procedure Code. The study recommends the adoption of implementing regulations or judicial guidelines establishing objective procedural standards to ensure consistent application while strengthening due process of law and the protection of suspects' rights.

Keywords: Criminal Procedure Code, Detention Suspension, Due Process of Law, Legal Certainty, Suspension with Guarantee.

INTRODUCTION

Pre-trial detention constitutes one of the most coercive instruments in criminal procedure because it restricts personal liberty before a suspect or defendant is declared guilty by a final and binding court decision. In a legal state, such restrictions must not be understood merely as an administrative necessity for investigation, prosecution, or adjudication but as a serious legal intervention that must be justified by clear legal standards, proportional reasoning, and effective safeguards against arbitrariness. The problem becomes more complex when detention is applied broadly, while the mechanism for suspending detention remains dependent on the discretionary decisions of law enforcement authorities. In this context, the suspension of detention with a guarantee is not merely a procedural privilege but a legal mechanism that should balance the interests of criminal law enforcement and the protection of individual liberty.

Indonesian criminal procedures have long recognized the possibility of suspending detention. Under the previous Criminal Procedure Code, Article 31 provided that investigators, public prosecutors, or judges could suspend detention at the request of the suspect or defendant, with or without a monetary or personal guarantee, subject to certain conditions. However, previous studies have shown that this regulation has left several unresolved problems. Winata et al. (2021) found that Article 31 KUHAP did not clearly regulate the detailed procedure for suspension of detention, particularly the determination of the amount of monetary guarantee and the practical standards used by competent authorities. Gurusi (2022) similarly emphasized that although the mechanism had been implemented procedurally, Article 31 KUHAP did not provide clear guidance regarding the nominal amount of bail required from suspects. Supianto (2020) further argued that the lack of clear standards in granting the suspension of detention made the process heavily dependent on the subjective considerations of law enforcement officers.

The reform of the Indonesian criminal procedure through Law Number 20 of 2025 concerning the Criminal Procedure Code offers important momentum to reassess the legal certainty of detention suspension (Indonesia, 2025). Article 110 of the new KUHAP is particularly relevant because it is expected to correct the normative weaknesses of the previous arrangement and strengthen the protection of suspects' rights. However, legal reform does not guarantee legal certainty. A provision may appear progressive at the normative level but still create uncertainty if it fails to define clear criteria for approval, rejection, guarantee requirements, revocation, or supervision. Alfath and Tornado (2025) underline that the regulation of detention suspension in the new KUHAP still faces challenges, particularly the broad discretion of law enforcement officers, unclear standards for granting suspension, and potential inequality caused by guarantee requirements. This indicates that the reform of detention suspension must be examined not only from the perspective of textual change but also from its capacity to provide predictable, equal, and accountable legal standards.

The issue of legal certainty is inseparable from the broader principle of due process. Coercive measures in criminal procedures must be exercised through fair, rational, and non-arbitrary procedures. Ahwan and Rahmania (2025) explain that coercive measures in the Draft KUHAP became a central area of debate because such measures are vulnerable to abuse of authority and may directly affect the rights of suspects and defendants. Their analysis also shows that the formulation of coercive measures reflects a tension between the crime control model, which prioritizes efficiency, and the due process model, which emphasizes procedural safeguards and the protection of individual rights. Therefore, detention suspension must be located within this tension: the state needs effective instruments to ensure criminal proceedings, but those instruments must not override the constitutional and procedural rights of persons who are presumed innocent.

From a human rights perspective, pre-conviction detention must be treated as an exceptional measure. Jeffries and Owen (2025) argue that although pre-trial detention is intended to be a measure of last resort, it is applied excessively in many jurisdictions and may undermine the presumption of innocence. Huennekens (2022) also highlights that prolonged pre-trial detention threatens due process because it deprives individuals of their liberty before conviction and may produce serious social, economic, and procedural consequences. In the Indonesian context, Noor et al. (2024) similarly argue that the criminal justice system faces serious challenges in balancing legal certainty and the protection of suspects' human rights, particularly because pre-trial detention is often vulnerable to misuse as a form of pressure against suspects. These studies show that detention suspension should not be treated as a marginal procedural issue but as a central mechanism for preventing excessive and disproportionate deprivation of liberty.

Recent legal scholarship has consistently emphasized that legal reform should not merely introduce new statutory provisions but must also ensure the protection of human rights, legal certainty and proportional law enforcement. Studies addressing dignified justice, restorative justice, regulatory reform, and legal balancing demonstrate that the effectiveness of legal reform depends on the clarity and consistency of legal norms and their implementation within the justice system (Hutagalung, 2023; Kuncoro et al., 2025).

The urgency of this issue is reinforced by the relationship between pre-trial detention and structural problems in the criminal justice system. Hamja (2024) shows that pre-trial detention contributes to prison overcrowding in Indonesia, especially when law enforcement officers tend to favor detention over

alternative measures. In another study, Hamja (2024) argues that overcrowding is not merely a correctional problem but a downstream consequence of legal and judicial policies that still rely heavily on detention and imprisonment. Afrizal et al. (2024) further emphasize that detainee services in the correctional system are closely related to legal certainty and the protection of detainees. These findings demonstrate that the suspension of detention with guarantees has broader implications beyond individual cases; it may also contribute to reducing unnecessary detention, preventing institutional overcrowding, and strengthening a more humane criminal justice system.

Previous research has provided an important foundation for this study. Winata et al. (2021) examined the requirements and procedures for the suspension of detention with guarantees at the investigation stage. Supianto (2020) analyzed the legal consequences for guarantors and the considerations used by investigators in granting the suspension of detention. Gurusi (2022) discussed the legal arrangement of detention guarantees by police investigators under Article 31 KUHAP. Pramesti (2025) reviewed the suspension of detention with a guarantee based on Article 31 KUHAP and identified the absence of a specific regulation concerning the value of the guarantee. Alfath and Tornado (2025) moved the discussion further by examining detention suspension as an instrument of human rights protection within the framework of due process of law. However, these studies generally focus on the previous Article 31 KUHAP, practical implementation by investigators, or human rights protection in a broader sense. They have not specifically examined the legal certainty of the suspension of detention with a guarantee under Article 110 of Law Number 20 of 2025 as a new legal basis in the Indonesian criminal procedure.

This gap is significant for at least three reasons: First, the shift from the old KUHAP to the new KUHAP requires a fresh normative analysis because the reform is expected to improve procedural safeguards. Second, the continuing problems identified in prior studies—unclear guarantee standards, broad discretion, subjective assessment, and unequal access—may persist if Article 110 does not provide sufficiently precise legal parameters. Third, legal certainty in detention suspension is essential not only for suspects and defendants but also for investigators, prosecutors, judges, guarantors, and legal counsel, because each party requires predictable rules regarding the conditions, procedures, consequences, and limits of authority.

Based on this background, this article analyzes the legal certainty of the suspension of detention with a guarantee under Article 110 of Law Number 20 of 2025 concerning the Criminal Procedure Code. The novelty of this study lies in its focus on Article 110 KUHAP as a new normative framework and its evaluation through the lens of legal certainty, due process of law, and the protection of suspects' rights. This article does not merely describe the content of the provision; rather, it critically examines whether the regulation provides clear, measurable, and accountable standards for its implementation. Accordingly, this study addresses two research questions. First, how is the suspension of detention with a guarantee regulated under Article 110 of Law Number 20 of 2025 concerning the Criminal Procedure Code? Second, has the regulation of the suspension of detention with a guarantee under Article 110 provided legal certainty in its implementation?

METHOD

This study employs normative legal research (doctrinal legal research), which examines legal norms, statutory provisions, legal doctrines, and scholarly opinions to analyze legal issues concerning the suspension of detention with a guarantee under Article 110 of Law Number 20 of 2025 concerning the Indonesian Criminal Procedure Code (KUHP). Normative legal research was selected because the principal objective of this study is not to investigate empirical practices but to evaluate whether the newly enacted provision establishes sufficient legal certainty in regulating the mechanism for the suspension of detention with guarantees. This approach is appropriate for examining the consistency, adequacy, and coherence of legal norms within the framework of criminal procedural law (Pramesti, 2025; Supianto, 2020).

This study adopted three complementary approaches. First, the statutory approach (statute approach) was employed to examine Article 110 of Law Number 20 of 2025 and other related legislation governing detention, suspension of detention, guarantees, and procedural safeguards. Second, the conceptual approach (conceptual approach) was applied to analyze the legal concepts of legal certainty, due process of law, presumption of innocence, and the protection of human rights within criminal proceedings. Third, the

comparative approach (comparative approach) was utilized to compare the regulation of detention suspension under Article 110 of the new KUHAP with the previous framework under Article 31 of the former KUHAP to identify normative developments and remaining legal issues (Alfath & Tornado, 2025; Winata et al., 2021).

The legal materials consisted of primary, secondary, and tertiary sources. The primary legal materials included Law Number 20 of 2025 concerning the Criminal Procedure Code, relevant implementing regulations, and other statutory provisions governing coercive measures in criminal proceedings. Secondary legal materials comprised peer-reviewed journal articles, legal doctrines, and scholarly publications discussing detention, suspension of detention, legal certainty, due process of law, pretrial remedies, and the protection of suspects' rights. The selection of secondary materials emphasized recent studies published between 2020 and 2025 to ensure that the analysis reflected contemporary developments in Indonesian criminal procedural law and comparative legal scholarship. Tertiary legal materials, including legal dictionaries and encyclopedias, were used to clarify legal terminology, where necessary.

Legal materials were collected through documentary and literature research by identifying, reviewing, and classifying statutes, judicial scholarship, and scientific publications relevant to this research topic. The collected materials were subsequently organized according to the two research questions: (1) the normative regulation of the suspension of detention with a guarantee under Article 110 of the new KUHAP, and (2) the extent to which the regulation provides legal certainty in its implementation.

The collected legal materials were analyzed using qualitative legal analysis through descriptive, interpretative and evaluative methods. A descriptive analysis was employed to explain the normative structure of Article 110. The interpretative analysis examined the meaning and legal implications of the provision by considering statutory interpretations, legal principles, and doctrinal perspectives. Finally, the evaluative analysis assessed whether the regulation satisfies the requirements of legal certainty by examining the clarity, consistency, predictability, and enforceability of its normative formulation, while simultaneously considering the principles of due process of law and the protection of human rights in criminal proceedings (Ahwan & Rahmania, 2025; Jeffries & Owen, 2025; Noor et al., 2024).

The validity of the legal analysis was strengthened through legal triangulation, namely, by comparing statutory provisions with legal doctrines and recent scholarly findings. This triangulation enabled the study to identify areas of normative consistency, ambiguity, and potential legal gaps, thereby providing a comprehensive assessment of whether Article 110 of Law Number 20 of 2025 establishes adequate legal certainty regarding the suspension of detention with guarantees within Indonesia's criminal justice system.

RESULT & DISCUSSION

Normative Regulation of Suspension of Detention with Guarantee under Article 110 of Law Number 20 of 2025

The enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) represents a significant reform in Indonesia's criminal procedural system. One of the important changes concerns the regulation of the suspension of detention, which is now expressly governed by Article 110. This provision reflects the legislature's intention to balance effective criminal law enforcement with the constitutional protection of individual liberty, due process of law, and legal certainty. The General Elucidation of the new KUHAP emphasizes that criminal procedure reform aims to guarantee the rights of suspects, defendants, victims, and witnesses, while simultaneously strengthening an integrated criminal justice system based on legal certainty, justice, and utility.

A comparison between the former Criminal Procedure Code (Law No. 8 of 1981) and the new KUHAP demonstrates that the basic concept of suspension of detention has been retained, but the normative formulation has become more comprehensive and detailed. Under the previous KUHAP, Article 31 merely stipulated that investigators, prosecutors, or judges could grant suspension of detention upon the request of the suspect or defendant, with or without monetary or personal guarantees, and that such suspension could be revoked if the stipulated conditions were violated.

In contrast, Article 110 of Law Number 20 of 2025 expands the regulation by providing a more structured legal framework governing the authority to grant suspension, forms of guarantees, and legal

consequences of non-compliance. Therefore, the provision attempts to reduce the normative ambiguity that has long characterized the previous regulation.

Table 1. Comparison of the Regulation on Suspension of Detention

Regulatory Aspect	Article 31 Law No. 8 of 1981	Article 110 Law No. 20 of 2025
Competent authority	Investigator, prosecutor, or judge	Investigator, prosecutor, or judge according to respective authority
Requirement	Upon request of suspect/ defendant	Upon request of suspect/defendant
Form of guarantee	With or without monetary or personal guarantee	With or without monetary or personal guarantee
Conditions	Based on conditions determined by competent authority	Based on conditions determined by competent authority
Revocation	May be revoked if conditions are violated	Regulated more systematically with legal consequences
Normative orientation	Procedural discretion	Procedural safeguard and legal certainty

Source: Compiled by the author based on Laws No. 8 of 1981 and No. 20 of 2025 (Indonesia, 1981, 2025).

Table 1 indicates that the new KUHAP preserves the essential legal philosophy underlying the suspension of detention while introducing a more coherent normative structure. Rather than replacing the previous institution, Article 110 seeks to improve the legal formulation within the broader framework of criminal procedure reform.

The first important feature of Article 110 is the recognition that the suspension of detention is not granted automatically but only upon the request of the suspect or the defendant. Consequently, the initiative remains with the individual whose liberty has been restricted. Investigators, prosecutors, or judges are authorized to decide on the application according to their respective procedural jurisdictions. This arrangement demonstrates that detention remains legally valid unless an application for suspension is submitted and approved by the court.

The second element concerns the forms of guarantees. Article 110 continues to recognize both monetary and personal guarantees while allowing for suspension without a guarantee in appropriate circumstances. This flexibility reflects the principle that guarantees function primarily as procedural safeguards, ensuring the suspect's compliance with judicial proceedings rather than as punitive measures. Nevertheless, the provision does not prescribe detailed criteria governing when each form of guarantee should be applied. Consequently, the implementing authorities retain considerable discretion in determining the appropriate guarantee for each individual case.

This finding is consistent with earlier studies conducted under the previous KUHAP. Winata et al. (2021) observed that Article 31 of the former KUHAP merely recognized the existence of suspension without regulating detailed procedural standards. In practice, the amount of monetary guarantee, the conditions attached to suspension, and the administrative procedures were governed by Government Regulation No. 27 of 1983, creating substantial variation among law enforcement authorities. The authors further noted that guarantee amounts were determined by competent officials without statutory standards, thereby creating inconsistent implementation of the law.

Similarly, Supianto (2020) found that investigators frequently based decisions to grant suspension on subjective considerations, including the suspect's family background, occupation, health condition, social status, and perceived likelihood of absconding. Although these factors may be practically relevant, the absence of explicit statutory criteria weakens legal predictability and creates opportunities for inconsistent decision making.

Pramesti (2025) reached a comparable conclusion, emphasizing that although suspension with a guarantee constitutes an important procedural right, neither Article 31 of the former KUHAP nor its implementing regulations established measurable standards concerning guarantee valuation or objective eligibility criteria. As a result, the practical implementation of detention suspension depended heavily on discretionary judgments rather than uniform legal benchmarks.

The present study demonstrates that Article 110 has improved the systematic structure of regulation; however, it does not completely eliminate the principal normative problems identified in previous research. Although the new KUHAP expressly regulates the suspension of detention under a dedicated provision, it continues to employ open-ended phrases such as "based on the conditions determined," without specifying objective statutory indicators governing the approval or rejection of applications. Consequently, substantial discretion remains vested in the hands of investigators, prosecutors, and judges.

This normative observation corresponds closely with Alfath and Tornado (2025), who argue that the new KUHAP has strengthened the philosophical protection of human rights through detention suspension but still leaves unresolved issues concerning broad discretionary authority, unclear standards for granting suspension, and unequal access arising from guaranteed mechanisms. They concluded that further regulatory clarification is required to ensure transparency, accountability, and substantive justice in implementing detention suspension.

From the perspective of due process of law, Article 110 represents an important procedural safeguard because it acknowledges that detention should not automatically result from a criminal investigation. Rather, detention remains subject to judicially controlled alternatives that recognize the presumption of innocence and proportionality. This interpretation is consistent with contemporary scholarship emphasizing that detention should function as an exceptional measure rather than as the default response to criminal allegations. Excessive reliance on detention threatens individual liberty and increases the risk of arbitrary state power and institutional overcrowding.

The normative reform reflected in Article 110 is consistent with broader developments in Indonesian legal scholarship advocating for strengthening procedural safeguards and improving the coherence of criminal justice institutions through comprehensive legal reform (Hutagalung, 2023).

Accordingly, the findings indicate that Article 110 establishes a clearer statutory basis for the suspension of detention than its predecessor, particularly by incorporating the institution within the broader reform of criminal procedural law. However, legal certainty has not yet been fully achieved because the provision still leaves several essential matters, including objective eligibility criteria, proportional guarantee standards, and measurable decision-making parameters, to administrative discretion rather than statutory regulation. This remaining normative ambiguity becomes the central issue for evaluating whether Article 110 genuinely fulfills the principle of legal certainty, which is examined further in the second research question concerning the effectiveness of its implementation.

Legal Certainty in the Implementation of Suspension of Detention with Guarantee under Article 110

Legal certainty is a fundamental principle of the rule of law. In criminal procedures, legal certainty requires that every restriction on individual liberty be governed by clear legal norms, objective standards, and predictable procedures. Consequently, the effectiveness of Article 110 of Law Number 20 of 2025 should not be measured merely by its existence as a statutory provision but by whether it provides sufficient normative guidance for consistent implementation by investigators, prosecutors, and judges.

The findings indicate that Article 110 has improved legal certainty compared to Article 31 of the former Criminal Procedure Code; however, the certainty it provides remains partial rather than comprehensive. The provision clearly identifies the competent authorities authorized to grant suspension of detention, recognizes the right of suspects or defendants to submit applications, and expressly permits suspension with or without monetary or personal guarantees. These provisions undoubtedly provide a firmer statutory basis than the previous Criminal Procedure Code, where many procedural aspects depended primarily on Government Regulation No. 27 of 1983.

Nevertheless, a closer examination reveals that Article 110 continues to leave several essential aspects undefined. The law authorizes suspension "based on the conditions determined" but does not specify objective legal indicators governing the approval or rejection of applications. Likewise, the legislation provides no statutory criteria regarding the number of monetary guarantees, the proportionality of guaranteed requirements, or the circumstances justifying suspension without guarantee. As a result, substantial interpretative discretion remains vested in the law enforcement authorities.

To evaluate the extent of legal certainty provided by Article 110, this study identifies four principal indicators of legal certainty.

Table 2. Evaluation of Legal Certainty under Article 110 of Law Number 20 of 2025

Indicator	Assessment	Observation
Clarity of competent authority	High	Authority of investigators, prosecutors, and judges is expressly regulated.
Clarity of procedural rights	High	Suspects and defendants are entitled to submit applications for suspension.
Clarity of substantive criteria	Low	No measurable statutory standards governing approval or rejection of applications.
Uniformity of implementation	Low	Broad discretion creates the possibility of inconsistent application among law enforcement agencies.

Source: Author's normative analysis based on Law No. 20 of 2025 (Indonesia, 2025).

Table 2 demonstrates that legal certainty under Article 110 is considerably stronger in terms of institutional competence than substantive implementation. While the authority of decision-makers is clearly allocated, the legal standards governing the exercise of that authority remain largely unclear.

This ambiguity is particularly evident in discretionary decision-making. Article 110 neither prescribes objective assessment criteria nor establishes measurable indicators that investigators, prosecutors, or judges must consider before granting a suspension. Consequently, decisions may differ between institutions despite similar factual circumstances. Such discretion is characteristic of administrative decision-making; however, excessive discretion in criminal procedures risks undermining equality before the law.

This conclusion corresponds with previous empirical and doctrinal studies' findings. Winata et al. (2021) observed that under the previous KUHAP, the absence of statutory procedural standards caused guarantee requirements to vary substantially according to the subjective assessment of the competent authority. The amount of monetary guarantees, acceptable forms of personal guarantees, and procedural requirements differed among institutions because the implementing regulations provided only general guidance.

Recent scholarship evaluating the new KUHAP has drawn similar conclusions. Alfath and Tornado (2025) argue that although Article 110 strengthens the protection of human rights, it still fails to establish transparent standards governing detention suspension. The authors identified three persistent problems: broad law enforcement discretion, the absence of objective eligibility criteria, and unequal access created by guaranteed mechanisms. These deficiencies reduce legal certainty, despite the existence of a clearer statutory framework. The present findings also support recent discussions published in *Jurnal Smart Hukum*, which argue that legal certainty cannot be achieved solely through statutory enactment but requires coherent legal standards capable of guiding consistent law enforcement and balancing individual rights with public interest (Kuncoro et al., 2025).

The present findings may also be examined through Lon Fuller's theory of the internal morality of law, which emphasizes that legal rules should be clear, understandable, and consistently applied. Although Article 110 satisfies the requirement that legal authority be formally established, it only partially fulfills the requirement of clarity because the essential substantive standards remain undefined. Consequently, individuals cannot predict with reasonable confidence whether a request for the suspension of detention will be granted under similar factual circumstances.

From the perspective of Gustav Radbruch's concept of legal certainty, the law should enable citizens to foresee the legal consequences arising from their conduct and state decision-making. Therefore, predictability is a central element of legal certainty. However, under Article 110, predictability remains limited because similar applications may receive different outcomes depending on the discretionary evaluation of individual investigators, prosecutors, or judges.

This issue is further related to the principle of equality before the law. In the absence of objective statutory standards, economically advantaged suspects may possess greater capacity to satisfy guarantee requirements than individuals with limited financial resources. Although Article 110 formally allows suspension without a guarantee, the absence of measurable criteria governing when such discretion should be exercised may inadvertently produce unequal access to procedural rights. Recent legal scholarship has

similarly warned that guarantee mechanisms may create disparities unless they are supported by transparent and proportional standards.

From the standpoint of due process of law, legal certainty is not achieved solely through the statutory recognition of procedural rights but also through consistent and non-discriminatory implementation. A legal system that permits excessively broad discretion without adequate normative guidance risks producing inconsistent decisions that undermine both fairness and public confidence in the criminal justice system. Therefore, although Article 110 strengthens procedural protection compared with its predecessor, further implementing regulations are necessary to ensure uniform application throughout Indonesia.

Based on the foregoing analysis, this study concludes that Article 110 has substantially improved the normative foundation for the suspension of detention but has not yet provided complete legal certainty in its implementation. Legal certainty has been achieved regarding institutional authority and procedural recognition of detention suspension. However, certainty remains inadequate for substantive decision-making because objective statutory criteria, proportional guarantee standards, and uniform implementation guidelines are still absent. Accordingly, the realization of legal certainty under Article 110 depends not only on the statutory provision itself but also on implementing regulations capable of limiting excessive discretion while preserving judicial flexibility in individual cases.

This finding provides the basis for the next section, which examines how the remaining normative ambiguities affect the balance between human rights protection and effective criminal law enforcement in Indonesia's contemporary criminal justice system.

CONCLUSION

This study concludes that Article 110 of Law Number 20 of 2025 concerning the Criminal Procedure Code represents an important normative reform in regulating the suspension of detention with guarantees as part of Indonesia's criminal procedural system. Compared with the previous Criminal Procedure Code, the new provision establishes a more systematic legal framework by reaffirming the authority of investigators, public prosecutors, and judges to grant suspension of detention, recognizing monetary and personal guarantees, and strengthening procedural safeguards within the broader context of criminal justice reforms. The regulation reflects a greater commitment to balancing effective law enforcement with the protection of individual rights and the principle of due process.

Despite these normative improvements, Article 110 has not yet provided complete legal certainty regarding its implementation. The provision continues to leave several essential aspects undefined, particularly the objective criteria for granting or rejecting applications, proportional standards for determining guarantees, and measurable parameters for exercising official discretion. Consequently, the implementation of the suspension of detention remains vulnerable to inconsistent interpretation and unequal application among law enforcement authorities. Such normative ambiguity may reduce legal predictability, weaken equality before the law, and potentially affect the effective protection of suspects' procedural rights.

The novelty of this study lies in its evaluation of Article 110 from the perspective of legal certainty following the enactment of the new Criminal Procedure Code. Unlike previous studies that primarily examined procedural aspects or human rights protection under the former KUHAP, this study demonstrates that the principal challenge under the new regulation is no longer the absence of legal recognition of detention suspension but the absence of sufficiently precise statutory standards governing its implementation. Therefore, this study recommends the formulation of implementing regulations or judicial guidelines that establish objective eligibility criteria, proportional guarantee standards, and uniform procedural parameters to ensure the consistent application of Article 110 while preserving judicial discretion within the framework of legal certainty, due process of law, and the protection of human rights.

REFERENCES

- Afrizal, R., Kurniawan, I., & Wahyudi, F. (2024). Relevansi Pelayanan Tahanan Dalam Sistem Masyarakatan Terhadap Tujuan Masyarakatan (Tinjauan Perubahan Undang-Undang Masyarakatan). *Masalah-Masalah Hukum*, 53(1), 101–110. <https://doi.org/10.14710/mmh.53.1.2024.101->

- Ahwan, A., & Rahmania, N. (2025). Upaya Paksa Dalam Ruu Kuhap: Perspektif Model Sistem Peradilan Pidana. *Journal Kompilasi Hukum*, 10(2), 375–392. <https://doi.org/10.29303/jkh.v10i2.274>
- Alfath, N. K. R., & Tornado, A. S. (2025). *Penanggungan Penahanan Sebagai Instrumen Perlindungan Hak Asasi Dalam Perspektif Due Process Of Law The Suspension of Detention as an Instrument for Protecting Human Rights within the Framework of Due Process of Law Publisher : Universitas Muhammadiyah Pal.* 8(12), 9204–9212. <https://doi.org/10.56338/jks.v8i12.10723>
- Gurusi, L. (2022). Pengaturan Hukum Jaminan Penanggungan Penahanan oleh Penyidik Polri Berdasarkan Pasal 31 KUHAP (Studi di Polisi Sektor Pasarwajo). *Jurnal Kewarganegaraan*, 6(3), 6302–6309.
- Hamja. (2024a). Pembaruan Kebijakan Pemidanaan Dalam Rangka Mengatasi Faktor Penyebab Overcrowding Lembaga Pemasyarakatan Di Indonesia. *Masalah-Masalah Hukum*, 53(3), 261–270. <https://doi.org/10.14710/mmh.53.3.2024.261-270>
- Hamja, H. (2024b). The Impact of Pre-Trial Detention on Prison Overcrowding: Perspectives from Indonesia's Criminal Justice System. *Jurnal Wawasan Yuridika*, 8(1), 45–57. <https://doi.org/10.25072/jwy.v8i1.4303>
- Huennekens, K. (2022). Long Over-Due Process: Proposing a New Standard for Pretrial Detainees' Length of Confinement Claims. *Duke Law Journal*, 71(7), 1647–1700.
- Hutagalung, T. S. (2023). The Effectiveness of Restorative Justice Implementation in Indonesia's Juvenile Criminal Justice System *Jurnal Smart Hukum (JSH)*, 2(1), 37–46. <https://doi.org/10.55299/jsh.v2i1.1353>
- Indonesia P. R. (1981). Undang Undang No. 8 Tahun 1981 Tentang: Kitab Undang Undang Hukum Acara Pidana. *Sinar Grafika. Jakarta.*
- Indonesia, P. R. (2025). Undang-Undang No. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP). In *Pencabulan Anak Di Bawah Umur.*
- Jeffries, S., & Owen, B. (2025). Locked Away While Innocent: Women, Human Rights, and Pretrial Detention. *Laws*, 14(5), 1–17. <https://doi.org/10.3390/laws14050075>
- Kuncoro, O. E., Riyanto, T., & Wilbert, R. (2025). The Dynamics of Human Rights Issue Resolution from the Perspective of Dignified Justice. *Jurnal Smart Hukum (JSH)*, 4(1), 01–09. <https://doi.org/10.55299/jsh.v4i1.1355>
- Noor, M. S., Munawar, A., & Rahmathoni, L. Y. (2024). Paradigma baru hukum acara pidana: Rekonstruksi perlindungan hak asasi tersangka dalam proses peradilan. *Jurnal Hukum Lex Generalis*, 5(12).
- Pramesti, E. L. (2025). KAJIAN TERHADAP PENANGGUHAN PENAHANAN DENGAN JAMINAN BERDASARKAN PASAL 31 KITAB UNDANG-UNDANG HUKUM ACARA PIDANA (KUHAP). *Jurnal Crilawsci*, 1(1), 23–29.
- Supianto, S. (2020). Tinjauan Yuridis Terhadap Penanggungan Penahanan Dengan Jaminan (Study Di Polresta Bareleng). *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 18(1), 43–59.
- Winata, I. M. A. K., Sugiarta, I. N. G., & Widyantara, I. M. M. (2021). Proses Penanggungan Penahanan Dengan Jaminan Pada Tingkat Penyidik Berdasarkan Pasal 31 KUHAP. *Jurnal Interpretasi Hukum*, 2(2), 403–408. <https://doi.org/10.22225/juinhum.2.2.3449.403-408>