

The Limits of a Prosecutor's Authority to File Appeals and Cassation Petitions Against a Defendant Whose Detention Period Has Expired Under the New Criminal Procedure Code (KUHP)

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Abstrak

Pembaharuan hukum acara pidana melalui Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHP Baru) membawa perubahan terhadap pengaturan upaya hukum dan penahanan. Artikel ini menganalisis batas kewenangan Penuntut Umum dalam mengajukan banding dan kasasi ketika jangka waktu penahanan Terdakwa telah berakhir, dengan perspektif hak asasi manusia, kepastian hukum, proporsionalitas, dan overkapasitas pemasyarakatan. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan, konseptual, kasus, dan perbandingan. Hasil penelitian menunjukkan bahwa berakhirnya jangka waktu penahanan tidak secara otomatis menghapus hak Penuntut Umum untuk mengajukan upaya hukum. Namun, berakhirnya masa penahanan mengakhiri dasar penahanan sebelumnya, sehingga penahanan pada tahap banding atau kasasi harus didasarkan pada kewenangan dan penetapan baru sesuai KUHP Baru. Penahanan tanpa dasar hukum yang sah berpotensi melanggar hak atas kebebasan dan kepastian hukum. Khusus terhadap putusan bebas, Terdakwa yang masih ditahan wajib dilepaskan sejak putusan diucapkan dan putusan bebas tidak dapat diajukan kasasi. Oleh karena itu, diperlukan harmonisasi norma dan penguatan pengawasan yudisial agar upaya hukum tidak disalahgunakan sebagai sarana mempertahankan penahanan serta untuk menjamin perlindungan hak asasi manusia.

Kata Kunci: KUHP Baru; penahanan; banding; kasasi; Penuntut Umum.

Abstract

Reform of criminal procedural law through Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code) brings changes to the regulation of legal action and detention. This article analyzes the limits of the public prosecutor's authority in filing appeals and cassation when the defendant's detention period has ended, from the perspective of human rights, legal certainty, proportionality and correctional overcapacity. This research uses normative juridical methods with statutory, conceptual, case and comparative approaches. The research results show that the end of the detention period does not automatically eliminate the public prosecutor's right to file legal action. However, the end of the detention period ends the previous basis for detention, so that detention at the appeal or cassation stage must be based on new authority and determinations in accordance with the New

Criminal Procedure Code. Detention without a valid legal basis has the potential to violate the right to freedom and legal certainty. Specifically for acquittal decisions, defendants who are still detained must be released from the moment the decision is pronounced and an acquittal decision cannot be challenged by cassation. Therefore, it is necessary to harmonize norms and strengthen judicial supervision so that legal measures are not misused as a means of maintaining detention and to guarantee the protection of human rights.

Keywords: *New Criminal Procedure Code; detention; appeal; cassation; public prosecutor.*

INTRODUCTION

Criminal procedural law is essentially not just a technical device to bring someone to justice. Criminal procedural law is a constitutional instrument that limits state power when the state uses its most coercive authority over individuals, namely arrest, detention, prosecution, examination at trial, and execution of decisions.¹ Therefore, the measure of the success of criminal procedural law lies not only in the state's ability to find and punish perpetrators of criminal acts, but also in the law's ability to prevent arbitrariness, maintain due process of law, and ensure that restrictions on freedom are carried out based on law, real needs, and judicial supervision.

Law Number 20 of 2025 concerning the Criminal Procedure Code is a major update after more than four decades of the 1981 Criminal Procedure Code. This law has been in effect since January 2 2026 and revokes Law Number 8 of 1981. The legislators stated that the New Criminal Procedure Code, among other things, is intended to strengthen the rights of suspects, defendants, convicts, witnesses, victims and people with disabilities, renew coercive measures, strengthen pretrial law, and reorganize legal remedies.

However, reforming norms does not by itself guarantee that law enforcement practices will become more humane. One problem that is worth studying is the relationship between the public prosecutor's right to submit legal action and the time limit for the defendant's detention. The problem becomes even sharper when the District Court has handed down a decision, the detention period at the first instance has expired, but the public prosecutor continues to file an appeal or, after the appeal process, cassation.

At this point, two issues that are often confused must be distinguished: first, whether the public prosecutor is legally entitled to file legal action; second, whether the defendant can still be detained after the basis for detention at the previous level ends. These two questions do not always have the same answer. The right to appeal or cassation is an institution of legal action, while detention is a coercive measure that directly limits a person's freedom. Because the character of the two is different, the existence of the right of appeal cannot be automatically considered as an extension of the detention period.²

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika), Hlm. 34.

² Ahmad Sanusi, "Pengeluaran Tahanan Demi Hukum bagi Tersangka dalam Perspektif Hukum dan Hak Asasi Manusia," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 435–444. Doi : <https://doi.org/10.30641/kebijakan.2020.V14.435-444>

The New Criminal Procedure Code explicitly states that an appeal can be submitted by the Defendant, his Advocate, or the public prosecutor. This provision is contained in Article 285 paragraph (1). In contrast to the old KUHAP, the new formulation no longer includes exceptions to acquittals and acquittals in the general norms regarding appeals. This has given rise to doctrinal and practical debate.

On the other hand, the New Criminal Procedure Code specifically regulates the consequences of an acquittal. Article 244 paragraph (4) determines that if the defendant is released, the defendant who is in detention is released from detention from the moment the decision is pronounced. The release order is then executed by the public prosecutor no later than one day after the decision is pronounced based on Article 245. This norm shows that an acquittal decision has direct consequences for detention status.

The problem becomes more complex because Article 299 paragraph (2) of the New Criminal Procedure Code explicitly states that an acquittal decision cannot be cassation. Thus, after the enactment of the New Criminal Procedure Code, a careful distinction must be made between criminal decisions, acquittals and acquittals when assessing the authority of the public prosecutor to use legal remedies.

In Case Number 133/Pid.B/2026/PN Ckr, the defendant was sentenced by the Cikarang District Court and their detention period has expired; however, legally, they must still face and contest the appeals—up to the cassation stage—filed by the public prosecutor. This situation raises issues of fairness because the expiration of the detention period does not automatically provide legal certainty for the defendant, while the case proceedings continue due to the legal remedies pursued by the prosecutor. The defendant is still required to devote time, energy, funds, and mental effort to defending their rights and legal interests at the appeal and cassation stages, even though the period of liberty restriction resulting from detention has concluded. This situation highlights a tension between the public prosecutor's authority to exercise legal remedies available under statutory regulations and the defendant's right to legal certainty, a fair trial, and the resolution of the case within a reasonable timeframe. The injustice in question, therefore, lies not merely in the public prosecutor's pursuit of legal remedies, but in the condition where a defendant—having completed their detention—remains in a state of uncertainty regarding their legal status and fate, while continuing to bear the burden of defending themselves in judicial proceedings that extend to the cassation level.³

This problem is relevant to the issue of the capacity of correctional institutions and detention centers. The correctional system based on Law Number 22 of 2022 places respect, protection and fulfillment of human rights as part of the administration of the correctional system. Therefore, every policy that causes someone to remain in detention must have clear legal legitimacy. Overcapacity is not an excuse to ignore the legal process, but it also should not be seen as a mere administrative problem because overcrowding is related to the quality of treatment of detainees and the fulfillment of their rights.⁴

³ Supriyanta, "KUHP dan Pembaharuan Sistem Peradilan Pidana Indonesia," *Jurnal Dinamika Hukum*.

⁴ Nur Khalis Rahman Alfath dan Anang Shophan Tornado, "Penanggulangan Penahanan sebagai Instrumen Perlindungan Hak Asasi dalam Perspektif Due Process of Law," *Jurnal Kolaboratif Sains* 8, no. 12 (2025). Doi : <https://doi.org/10.56338/jks.v8i12.10723>

This is where the main thesis of this article is built. The author believes that the New Criminal Procedure Code still leaves room for problems regarding human rights protection if the relationship between legal action and detention is not interpreted strictly. However, it is normatively incorrect to state that the expiration of the detention period at the District Court level automatically eliminates the public prosecutor's right to file an appeal or causes the case to stop. The New Criminal Procedure Code actually provides a mechanism for detention at the appeal and cassation levels through Article 105 and Article 106. What must be ensured is that there must not be a single day of detention that takes place without legal basis and valid determination.

With this approach, this article is not intended to justify the practice of indefinite detention, but to critically examine whether the design of the New Criminal Procedure Code has provided an adequate balance between the interests of law enforcement and the protection of individual freedom rights.⁵

The problem formulations or research questions addressed in this paper are as follows: First, what are the limits of the public prosecutor's authority to file appeals and cassation petitions when the defendant's detention period at the District Court level has expired? Second, how are the defendant's right to liberty and the obligation to release them from detention viewed from a human rights perspective when the public prosecutor pursues legal remedies? Third, what constitutes the ideal legal framework to prevent the excessive use of legal remedies that results in disproportionate detention?

This research aims to analyze the normative limits of the public prosecutor's authority in pursuing legal remedies, distinguish between the right to pursue legal remedies and the authority to detain, and formulate a legal framework that is more oriented towards legal certainty, proportionality, and human rights. The conceptual framework employed in this study comprises the following: The first concept is legal remedies. The New Criminal Procedure Code (KUHP) defines legal remedies as the right of the defendant or the public prosecutor to contest a court judgment through means such as objection (*perlawanan*), appeal (*banding*), and cassation (*kasasi*) as well as the right of a convicted person to file a request for judicial review (*peninjauan kembali*) under the circumstances and procedures prescribed by law.⁶ The second concept is detention. Detention entails placing a suspect or defendant in a specific location by an investigator, public prosecutor, or judge, pursuant to statutory authority. Since detention constitutes a restriction on liberty, such authority must be lawful, limited in scope, and subject to review. The third concept is proportionality. Restrictions on rights are justifiable only if they have a legal basis and a legitimate objective, are necessary to achieve that objective, and do not impose a burden that is excessive in relation to the intended goal. In criminal cases, this principle is crucial because the status of a defendant is not synonymous with that of a person who has been convicted by a final and binding court judgment.⁷

⁵ Andi Hamzah, *Hukum Acara Pidana Indonesia*, (Jakarta: Sinar Grafika, 2001), Hlm. 12

⁶ Martono, "Perlindungan Hukum terhadap Penangkapan dan Penahanan Tersangka dalam Perspektif Hak Asasi Manusia," *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (2020). DOI: <https://doi.org/10.56087/aijih.v23i1.39>

⁷ Agus Raharjo, "Mediasi Penal dalam Sistem Peradilan Pidana Indonesia," *Jurnal Hukum Pro Justitia*.

This article criticizes the New Criminal Procedure Code because there is still a potential imbalance between the state's interest in maintaining the prosecution process and the individual's interest in obtaining freedom. However, this criticism must be placed on the correct norms. If the public prosecutor files an appeal within the time limit specified by law, the existence of the right of appeal is not automatically illegal just because the first instance detention period has expired. What becomes a human rights issue is if the defendant continues to be detained without a new decision, or new detention is used without fulfilling the requirements, or the legal process is maintained without objective legal reasons.⁸

Thus, criticism of the "passion for punishment" must be transformed into legal criticism that can be tested: whether there is a basis for authority, whether legal action is submitted on time, whether the type of decision allows for such legal action, whether detention has a legal determination, and whether detention is still necessary and proportional.

RESEARCH METHOD

This research is normative legal research, namely research that places law as a norm that regulates the behavior and authority of state institutions and analyzes the coherence between norms.⁹ Normative research was chosen because the main object of research is the relationship between the New Criminal Procedure Code norms regarding detention, court decisions, appeals and cassation with the principles of protecting human rights.

The position and novelty of this research can be shown through the research gap in three previous studies. First, M. Rizki Yudha Prawira's¹⁰ research regarding the immediate judicial review mechanism for detention in the RKUHAP focuses on detention at the investigation stage and its conformity with the ICCPR and General Comment No. 35, specifically regarding the need for judicial supervision of detention actions, but has not studied the relationship between the end of the detention period and the continuation of legal action after the court decision. Second, research by Yusuf Darmaputra, Yogi Fransis Taufik, Reasondar Polasio Sihalo, and Jennifer Sylvia Manurung¹¹ specifically discusses the juridical construction of appeals against acquittal decisions in Law Number 20 of 2025, especially as a result of no longer including an explicit prohibition on appeals against acquittal decisions, but this research does not place the issue of legal action in relation to this. detention regime and protection of the defendant's freedom. Third, research by Nur Khalis Rahman Alfath and Anang Shophan Tornado¹² analyzed the

⁸ Wicipto Setiadi, "Politik Hukum Pembaharuan Hukum Acara Pidana Indonesia," *Jurnal RechtsVinding*.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana), Hlm. 11

¹⁰ M. Rizki Yudha Prawira, "Mechanism of Immediate Judicial Review After Detention at the Investigation Stage: A Human Rights Perspective," *Qaumiyah: Jurnal Hukum Tata Negara*, Vol. 6 No. 2 (2025), hlm. 181-209

¹¹ Yusuf Darmaputra, Yogi Fransis Taufik, Alasandar Polasio Sihalo, dan Jennifer Sylvia Manurung, "Konstruksi Yuridis Banding terhadap Putusan Bebas (Vrijspraak) dalam Perspektif KUHAP Baru (Undang-Undang Nomor 20 Tahun 2025)," *JPNM Jurnal Pustaka Nusantara Multidisiplin*, Vol. 4 No. 3

¹² Nur Khalis Rahman Alfath dan Anang Shophan Tornado, "Penangguhan Penahanan Sebagai Instrumen Perlindungan Hak Asasi Dalam Perspektif Due Process of Law," *Jurnal Kolaboratif Sains*, Vol. 8 No. 12 (2025)

suspension of detention in the New Criminal Procedure Code from the perspective of due process of law and found problems in the form of wide discretion of the authorities, unclear standards for suspension, and potential inequality of access, but did not yet connect this with the juridical consequences of court decisions as well as appeals and cassation filed after the defendant's detention period ended. the court, the authority of the public prosecutor to file appeals and cassation, and its implications for legal certainty, proportionality, due process of law, and protection of the defendant's freedom in the New Criminal Procedure Code regime; This gap is the focus and distinction of this research.

The approach used consists of four approaches. First, the statutory approach. This approach is carried out by examining the 1945 Constitution of the Republic of Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code, Law Number 22 of 2022 concerning Corrections, Law Number 39 of 1999 concerning Human Rights, Law Number 48 of 2009 concerning Judicial Power, as well as relevant international human rights instruments.

Second, conceptual approach. This approach is used to analyze the concept of due process of law, the principle of presumption of innocence, proportionality, legal certainty, judicial control, as well as limits on the use of coercive measures in the criminal justice system. Third, case approach. Case Number 133/Pid.B/2026/PN Ckr is used as a case study based on a concrete case which is analyzed through a copy of the official court decision and trial documents relating to the case examination process, including aspects of the decision, detention, and legal remedies taken by the parties. The aim of using this case approach is to test the application of the New Criminal Procedure Code norms in practice, especially regarding the relationship between the end of the defendant's detention period, the continuation of the legal process, and the protection of the defendant's rights in facing appeals and cassation. Fourth, a comparative approach, especially with the old KUHAP, is used to compare the construction of regulations regarding detention and legal remedies to determine changes in norms that have occurred, including whether the New KUHAP provides strengthening of legal certainty and protection of the defendant's human rights or instead creates new space for uncertainty in criminal justice practice.

Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 20 of 2025, Law Number 22 of 2022, Law Number 39 of 1999, Law Number 48 of 2009, as well as relevant Constitutional Court decisions. Secondary legal materials include criminal procedural law books, journal articles, academic comments and human rights literature. Tertiary legal materials are used on a limited basis as search aids.

The analysis was carried out prescriptively using grammatical, systematic, historical and teleological interpretation methods. Grammatical interpretation is used to read the text of Articles 104 to 107, Article 244, Article 245, Article 285 and Article 299 of the New Criminal Procedure Code. Systematic interpretation is used to link detention norms with legal remedy norms. Teleological interpretation is used to test whether the application of norms is in line with the objectives of reforming the Criminal Procedure Code, especially strengthening the rights of suspects and defendants.

The prescriptive analysis in this study employs four methods of interpretation applied to key provisions of the New Criminal Procedure Code (KUHAP), with each method yielding a distinct yet complementary interpretation. First, through grammatical interpretation, Article 285 of the New KUHAP textually grants both the public prosecutor and the defendant the right to appeal a court of first instance's judgment; this is because the provision employs general phrasing regarding the parties entitled to appeal without explicitly stating exceptions for specific types of judgments. However, this grammatical interpretation cannot stand alone, as it must be tested against the broader context of the regulations governing legal remedies. Second, through systematic interpretation, Article 285 must be read in conjunction with Articles 244 and 299 of the New KUHAP. The interrelationship between these provisions demonstrates that the regulation of legal remedies concerns not only the formal authority to challenge a judgment but also the limitations regarding the types of judgments subject to review at a higher level. Consequently, it is necessary to examine whether the general provision in Article 285 can override the restrictions or specific characteristics of certain judgments as constructed in Article 244 and how Article 299, concerning cassation, affects the continuity of the judgment correction mechanism. Third, through historical interpretation, the enactment of the New KUHAP must be understood as part of a criminal procedural law reform aimed at balancing effective law enforcement with the protection of individual rights; thus, changes to norms regarding legal remedies should be viewed as a deliberate policy choice by the legislature rather than a mere editorial adjustment. If the legislature intended to expand the public prosecutor's authority regarding acquittals, it is necessary to determine whether this change is accompanied by a clear rationale regarding oversight mechanisms for the potential prolongation of criminal proceedings against the defendant. Fourth, through a teleological interpretation, provisions regarding appeals, cassation, and detention must be construed in light of the primary objective of the New Criminal Procedure Code (KUHAP) reform: establishing a criminal justice process that is fair and proportionate while guaranteeing the protection of individual liberty. Under this approach, the public prosecutor's authority to pursue legal remedies remains recognized as part of the judicial corrective mechanism; however, its exercise must be constrained by the principles of legal certainty and the presumption of innocence, as well as the prohibition against the disproportionate use of state power. Meanwhile, regarding Articles 104 through 107 concerning detention, systematic and teleological interpretations indicate that the authority to detain cannot be assessed solely based on the fulfillment of formal requirements; it must also take into account necessity, duration, and the balance between the interests of the case proceedings and the defendant's right to liberty. Thus, the overall interpretation demonstrates that the norms of the New KUHAP must be understood as an integrated system that situates the authority for legal remedies and detention measures within the boundaries of due process principles, rather than viewing them merely as procedural powers for law enforcement officials.

The use of statutory, conceptual, case and comparative approaches in this research is useful for producing a comprehensive analysis of the legal issues being studied from a normative and implementation perspective. A legislative approach is used to identify, interpret and examine the relationship between provisions

regarding detention, court decisions, appeals and cassation in the New Criminal Procedure Code with constitutional norms and provisions for the protection of human rights. The conceptual approach is useful as a basis for assessing these norms based on the principles of due process of law, presumption of innocence, proportionality, legal certainty, judicial control, and protection against excessive use of coercive measures. Meanwhile, a case approach is used to reconcile this normative construction with concrete problems that arise in practice, so that the legal consequences experienced by the defendant can be known when the period of detention has ended but still has to face legal appeals and cassation from the public prosecutor. The comparative approach with the old KUHAP is useful for identifying changes in legal construction and assessing whether the New KUHAP provides stronger protection for defendants' rights and legal certainty or whether it still leaves room for uncertainty. By integrating these four approaches, this research is expected to be able to find harmony and conflict between norms, identify regulatory weaknesses, and formulate legal arguments and recommendations that can guarantee a balance between the authority of law enforcement and the protection of the defendant's human rights.¹³

RESULTS AND DISCUSSION

Reform of the Criminal Procedure Code and Issues of Human Rights Protection

The new Criminal Procedure Code (KUHAP) was enacted with a broad mandate for reform. Officially, Law Number 20 of 2025 identifies the strengthening of the rights of suspects, defendants, convicts, witnesses, victims, and persons with disabilities as one of its core elements. Furthermore, the law updates regulations concerning coercive measures and legal remedies. Thus, from the perspective of legal policy, the new KUHAP should be viewed as an instrument that not only enhances the effectiveness of law enforcement but also tightens oversight regarding the exercise of state power.¹⁴

In the context of detention, the "human rights-friendly" nature of the process cannot be assessed solely by the duration of detention. A more critical measure is whether any restriction on liberty rests on a clear legal basis, is carried out by an authorized official, serves a legitimate purpose, is subject to oversight, can be challenged by the defendant, and ceases once the legal basis for it expires.¹⁵

Article 100 of the new KUHAP stipulates that detention must be carried out pursuant to a warrant or a judicial order and in relation to criminal offenses that meet specific criteria. This provision indicates that detention must not proceed based on the general assumption that an individual undergoing criminal proceedings must invariably be detained.

¹³ Chaerudin, "Penegakan Hukum Pidana dan Perlindungan Hak Asasi Manusia," *Jurnal Cita Hukum*.

¹⁴ Stephen Josua Gerald Carundeng, "Prinsip-Prinsip Penangkapan dan Penahanan dalam UU Nomor 8 Tahun 1981 Perspektif Hak Asasi Manusia," *Lex Crimen* 10, no. 6 (2021). URL: <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen>

¹⁵ Soalihin, Syamsuddin, dan Gufran, "Aspek Perlindungan HAM dalam Pengaturan Batas Waktu Penahanan," *Pagaruyuang Law Journal* 10, no. 1 (2025). DOI: <https://doi.org/10.31869/plj.v10i1.8238>

Consequently, when the detention period expires, the legal issue is not merely whether the case is still ongoing, but rather whether a valid legal basis remains to justify the continued restriction of liberty.¹⁶

Detention Time Limits as a Safeguard Against Arbitrariness

The New Criminal Procedure Code (KUHP) establishes a tiered detention scheme. At the investigation stage, Article 102 stipulates the initial duration and provisions for extensions. At the prosecution stage, Article 103 regulates a maximum detention period of 20 days with a maximum extension of 30 days, after which the public prosecutor is obliged to release the suspect from custody. At the District Court trial stage, Article 104 stipulates a 30-day period and a 60-day extension.

This framework holds significant importance: detention time limits are not merely administrative deadlines but serve as safeguards for individual liberty. When the time limit expires, the authority to detain based on that specific provision also lapses. Detention cannot be extended simply because the case remains unresolved or because law enforcement officials still deem detention necessary.¹⁷

However, the New KUHP also recognizes detention at the appeal and cassation stages. Article 105 empowers High Court judges to order detention for a maximum of 30 days and to extend it for up to 60 days. Article 106 grants similar authority to Supreme Court justices for cassation proceedings—specifically, a 30-day period and a maximum extension of 60 days.

This implies that the expiration of the detention period at the District Court level does not equate to the end of all possibilities for detention at subsequent stages. Nevertheless, the transition between stages of proceedings must be accompanied by a new legal basis for authority. There must be no automatic continuation of detention.¹⁸

Difference between the Right to File Legal Remedies and the Right to Detain

An analytical error that often occurs is assuming that because the public prosecutor has the right to appeal, the Defendant can automatically remain in detention. This conclusion is incorrect.¹⁹

Article 285 paragraph (1) gives the right to appeal to the Defendant, his Advocate or the public prosecutor. These norms regulate who can request an appellate hearing. The norm is not a norm that in itself creates a restraining order.

On the other hand, Article 105 is a norm that specifically regulates detention for appeal hearings. Thus, there are two different legal events: filing of appeal and issuance of detention order. The first concerns the procedural right to request a re-examination; the second concerns restrictions on freedom.²⁰

¹⁶ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, (Jakarta: Sinar Grafika, 2022), Hlm. 52

¹⁷ Iswahyudi Makaminan, "Penahanan Terpidana Menurut KUHP dalam Perspektif Hak Asasi Manusia," *Lex Privatum*. URL: <https://ejournal.unsrat.ac.id/>

¹⁸ Kristian, "Sistem Peradilan Pidana Terpadu di Indonesia," *Jurnal Veritas et Justitia*.

¹⁹ Asep Suherman, "Penahanan sebagai Upaya Paksa dalam Hukum Acara Pidana," *Jurnal Hukum Ius Quia Iustum*.

²⁰ Novritsar Hasitongan Pakpahan et al., "Penegakan Hak dan Kepastian Hukum dalam Proses Penahanan serta Pengeluaran Tahanan di Indonesia," *Bureaucracy Journal* 5, no. 2 (2025). DOI: <https://doi.org/10.53363/bureau.v5i2.700>

Consequently, when the District Court detention period ends, the Defendant must be released from detention if there is no other valid basis for detention. After an appeal is filed, the High Court can determine detention under Article 105 if the conditions are met. This is a construction that is more consistent with the principles of legality and judicial control.²¹

Acquittal: A More Protective Regime

Article 244 paragraph (2) stipulates that if the charged criminal offense is not proven legally and convincingly, the Defendant shall be acquitted. Article 244 paragraph (4) further mandates that a detained Defendant be released from custody immediately upon the pronouncement of the acquittal.

This mandate is reinforced by Article 245 paragraph (1), which requires the public prosecutor to execute the release no later than one day after the judgment is pronounced. This provision constitutes a concrete form of protection for individual liberty.

Furthermore, Article 299 paragraph (2) explicitly excludes acquittals from the scope of cassation. Consequently, if a District Court judgment is indeed an acquittal, there is no basis under the New Criminal Procedure Code (KUHP) to file an appeal for cassation against that judgment.

However, an interpretive issue remains regarding appeals against acquittals, as Article 285 paragraph (1) identifies the public prosecutor as a party entitled to file an appeal without specifying any exceptions. This debate even reached the Constitutional Court via Case Number 176/PUU-XXIV/2026. On June 29, 2026, the Court declared the petition inadmissible because the Petitioner lacked legal standing; thus, the ruling did not provide a final interpretation that would alter Article 285 paragraph (1).

The normative issue regarding whether or not the public prosecutor can appeal against an acquittal decision cannot be concluded simply from editorial differences between articles, but must be resolved through a systematic interpretation of the overall construction of the New KUHP. Article 285 paragraph (1), which generally gives the defendant and the public prosecutor the right to appeal, must be read together with Article 244 which regulates the position and consequences of court decisions, Article 299 regarding the scope of cassation remedies, as well as an official explanation of each provision to determine whether the legislators intended to open appeals against acquittal decisions or instead maintain certain restrictions as known in the previous regime. In this framework, the principle applies that a norm should not be interpreted separately, but rather as part of a legal system that must be attempted to remain coherent; If there are general norms and other norms that specifically regulate certain types of decisions or legal remedies, it is also necessary to examine the application of the principle of *lex specialis derogat legi generali*, the purpose of forming the norms, and the legal consequences of each interpretation. The review of Article 285 paragraph (1) through Case Number 176/PUU-XXIV/2026 has also not resolved the issue substantively because the Constitutional Court on June 29 2026 stated that the petition could not be accepted regarding the issue of the Petitioner's legal standing,

²¹ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Prenada Media Group, 2010). Hlm. 21.

so that no constitutional interpretation was born that changed or gave a binding meaning to this provision. Therefore, the legal issue is not simply that Article 285 paragraph (1) does not include exceptions to acquittals, but rather how to harmonize Article 244, Article 285, Article 299, and their official explanations to determine argumentatively the limits of the public prosecutor's rights in filing legal remedies while maintaining legal certainty, consistency of the criminal justice system, and protection of the defendant's rights as is one of the directions for reforming the Criminal Procedure Code through Law Number 20 of 2025.

Therefore, from a doctrinal standpoint, one must be cautious in asserting that the New KUHP definitively prohibits the public prosecutor from appealing an acquittal. What can be stated with certainty based on the prevailing text is that Article 244 paragraph (4) mandates the release of the Defendant from custody upon the pronouncement of an acquittal, while Article 299 paragraph (2) prohibits cassation against an acquittal. The issue of appeals, however, remains a matter of interpretation requiring further normative certainty.

Conviction and the Expiration of the Detention Period

The primary issue addressed in this article differs when the District Court hands down a conviction. In such a situation, the public prosecutor's right to appeal remains governed by Article 285; the expiration of the detention period at the District Court level does not extinguish the right to appeal.

However, if the Defendant remains in custody at the time the verdict is pronounced, their detention status must be determined based on the operative part of the judgment and the judge's ruling. Article 244 paragraph (6) stipulates that in the event of a conviction, the judge may order the Defendant to be detained if the detention criteria set forth in Article 100 paragraph (5) are met.

Consequently, in cases resulting in a conviction, a legal basis for detention may arise from the new judgment or ruling. If no such basis exists and the prior detention period has expired, then keeping the Defendant in custody solely because the public prosecutor intends to appeal is problematic.²²

Does the End of Detention Make the Defendant "Away from the Law"? The statement that defendants whose detention periods have ended are "free from the law" needs to be straightened out. The end of the detention period basically means the end of the authority to maintain restrictions on freedom based on the basis of the detention. This does not automatically mean that the criminal case is dropped, the indictment is cancelled, or the District Court decision becomes legally binding.²³

The distinction is important. Detention is a coercive measure, while the criminal process is a series of examinations to determine criminal responsibility. Therefore, a person can be out of detention but the case process is still ongoing.²⁴

From a human rights perspective, this construction is actually more appropriate. The State can continue examination or legal action with the Defendant

²² M. Supian Noor et al., "Paradigma Baru Hukum Acara Pidana: Rekonstruksi Perlindungan Hak Asasi Tersangka," *Jurnal Hukum Lex Generalis* 5, no. 12 (2024). DOI: <https://doi.org/10.56370/jhlg.v5i12.821>

²³ Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro), Hlm 43

²⁴ Hari Sasangka, "Penahanan, Penuntutan, dan Praperadilan dalam Praktik Hukum Acara Pidana," *Jurnal Hukum*.

outside detention if the conditions for detention are not met. Freedom does not mean impunity.²⁵

Criticism of the "Lust for Punishment" and the Ethical Limits of public prosecutors

The author uses the term "lust to punish" to describe the concern that the public prosecutor is using all available legal instruments to defend criminal demands. Academically, this term should be translated into an objective question regarding prosecutorial proportionality.²⁶

The public prosecutor does have the authority to represent the interests of the state in prosecution and has the right to legal action. However, this authority is not absolute authority. Prosecutors are law enforcement officers who are obliged to carry out their duties based on the law and the principles of professionalism. The aim of prosecution is not to punish as many people as possible, but rather to ensure that the criminal law is applied correctly.²⁷

Therefore, an appeal should not be considered bad just because the Defendant has been detained for a long time. On the other hand, appeals should also not be used as a tool to defend detention without basis.²⁸ The parameters that can be used are the quality of the legal reasons in the appeal memory, compliance with time limits, the relevance of objections to the decision, and the objective need for detention.

Cassation and the Limits of the public prosecutor's Authority

Cassation differs in nature from a standard appeal. Article 299 paragraph (1) grants the defendant or the public prosecutor the right to file an appeal for cassation against a final-instance criminal judgment rendered by a court other than the Supreme Court. However, Article 299 paragraph (2) establishes exceptions, including acquittals.

Thus, under the New Criminal Procedure Code (KUHP), it is incorrect to state that the prosecutor may always file for cassation against any judgment. The right to cassation is a right circumscribed by the specific objects and conditions prescribed by law.²⁹

Furthermore, detention during the cassation stage must comply with Article 106. A Supreme Court Justice is authorized to order detention for a maximum of 30 days, which may be extended by the Chief Justice of the Supreme Court for up to 60 days. Upon the expiration of this period, the defendant must be released from custody.

²⁵ Yenti Garnasih, "Sistem Peradilan Pidana Terpadu dan Penegakan Hukum Modern," *Jurnal Legislasi Indonesia*.

²⁶ Darwan Prinst, "Perlindungan Hak Tersangka dalam KUHP," *Jurnal Hukum*.

²⁷ Mahmud Mulyadi, "Criminal Justice System dan Pendekatan Hak Asasi Manusia," *Jurnal Konstitusi*.

²⁸ Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia: Melihat kepada Kejahatan dan Penegakan Hukum dalam Batas-Batas Toleransi* (Jakarta: Fakultas Hukum Universitas Indonesia, 1994), Hlm. 62

²⁹ Pangaribuan Luhut MP, "Reformasi Hukum Acara Pidana Indonesia," *Jurnal Hukum Prioris*.

This framework demonstrates that the New KUHP does not grant unlimited authority to law enforcement officials; even at the highest level of proceedings, detention remains subject to time limits.³⁰

Detention After Verdict and the Principle of Presumption of Innocence

The principle of presumption of innocence requires that a person be treated as innocent before there is a legally binding decision stating otherwise. Detention before a decision has permanent legal force should therefore not be understood as a preliminary punishment.³¹

When detention lasts too long and approaches or even exceeds the expected sentence, there is a risk that detention becomes de facto punishment. This risk becomes even more serious if the defendant is ultimately acquitted or obtains a verdict that is disproportionate to the length of detention.³²

In this context, the New Criminal Procedure Code needs to be read together with the principles of the rule of law, fair legal certainty and protection of human rights. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees fair legal recognition, guarantees, protection and certainty as well as equal treatment before the law.

Correctional Overcapacity as a Dimension of Legal Policy

Overcapacity of detention centers and correctional institutions is not a legal reason to cancel lawful detention. However, this situation is a policy reason to tighten the use of detention.³³ Excess capacity (overcapacity or overcrowding) in detention centers and correctional institutions must be placed appropriately in the construction of this research argument, namely not as a legal basis that determines whether or not detention is legal, but rather as a policy consideration that strengthens the need for a proportionality review of the use of detention. The legality of detention must still be assessed based on the conditions, reasons, authority, procedures and time limits for detention determined by the Criminal Procedure Code; Thus, the condition of an overcrowded detention center cannot by itself cancel detention which is still normatively legal. On the other hand, if the legal basis or period of detention has ended, the existence of overcapacity is also not a reason to keep someone in detention, because the issue concerns legal certainty and protection of individual freedom. The Directorate General of Corrections itself differentiates the problem of overstaying, namely detention beyond the specified time, from the problem of overcrowding, even though both can mutually worsen correctional conditions. Therefore, the relevance of overcapacity in this research lies in the legal policy dimension: this condition shows the need for law enforcement officials to implement detention more selectively, necessary and proportionally, especially because residential density has an impact on limited facilities,

³⁰ Nandang Sambas, "Perlindungan Hukum terhadap Terdakwa dalam Sistem Peradilan Pidana," *Jurnal Hukum Ius Quia Iustum*.

³¹ Dimas Saputra dan M. Mustofah Bisri, "Ratio Legis Therapeutic Jurisprudence dalam Perlindungan Hak Tahanan," *Suara Keadilan* 26, no. 2 (2025). DOI: <https://doi.org/10.24176/sk.v26i2.15915>

³² Eddy O.S. Hiariej, "Prinsip Legalitas dan Perlindungan Hak Individu dalam Hukum Pidana," *Jurnal Mimbar Hukum*.

³³ Lilik Mulyadi, "Perlindungan Hak Terdakwa dalam Pemeriksaan Perkara Pidana," *Jurnal Yudisial*.

supervision, security, health and the fulfillment of detainees' rights. With this construction, overcapacity functions as a supporting argument for strengthening the principle of proportionality and the use of detention as a measure that is truly necessary, while the legality of detention remains fully determined by the basis of authority and normative requirements stipulated in criminal procedural law.

Law Number 22 of 2022 emphasizes that correctional services are an inseparable part of the integrated criminal justice system and that its implementation upholds respect, protection and fulfillment of human rights. Therefore, the higher the capacity pressure, the greater the need for the state to ensure that only people who legally need to be detained are placed in detention centers. Unnecessary detention will increase the burden on facilities, officers, budgets and risks to the quality of treatment of detainees. Thus, restrictions on detention not only benefit the defendant, but also support the rationalization of the correctional system.

In case Number 133/Pid.B/2026/PN Ckr, according to the author's information, the defendant accompanied by the author has served a period of detention and the Cikarang District Court has handed down a decision, while the period of detention has ended. According to this information, the public prosecutor then continued to use legal remedies. This case study shows the importance of conducting a legal audit of four documents: (1) the final arrest warrant/determination; (2) date and ruling of the District Court; (3) deed of application for appeal or cassation; and (4) determination of detention at the next level if the Defendant remains detained.³⁴

Without these four documents, it cannot be concluded that detention after the end of the detention period is definitely illegal. On the other hand, if there is a period of time where no detention order is in effect, the matter can be tested as unlawful detention.³⁵ In an academic context, this case is very valuable because it shows the gap between legal entitlement to appeal and legal basis of detention. Even if the public prosecutor's appeal is declared valid, the detention must still have independent grounds.³⁶

To avoid overly subjective arguments, this study proposes six parameters. First, whether the legal remedy was filed within the seven-day timeframe stipulated in Article 285. Second, whether the judgment in question is indeed one subject to appeal. Third, whether, following the appeal request, a detention order was issued by the authorized official pursuant to Article 105. Fourth, whether the substantive requirements for detention remain satisfied. Fifth, whether the detention period has been correctly calculated, including any lawful extensions under Article 107. Sixth, whether a release mechanism exists for when the time limit expires. If any of these elements are not met, the legitimacy of the detention must be challenged, even if the appeal proceedings continue.³⁷

³⁴ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995), Hlm. 48

³⁵ Shafira Candra Dewi, "Penahanan Menurut KUHP," *Jurnal Studi Hukum Pidana*. URL: <https://media.neliti.com/>

³⁶ Topo Santoso, "Pembaharuan Hukum Pidana dan Sistem Peradilan Pidana," *Jurnal Hukum dan Pembangunan*.

³⁷ Marwan Effendy, "Kedudukan Kejaksaan Republik Indonesia dalam Sistem Peradilan Pidana," *Jurnal RechtsVinding*.

These six parameters were formulated through a derivation process that combines a normative approach to the provisions of the New Criminal Procedure Code with theories regarding limitations on state authority in limiting individual freedom. Theoretically, detention is a form of state coercive action which can only be justified if it meets the principles of legality, necessity, proportionality and judicial control. From this principle, the need is derived to test not only the existence of formal authorities, but also the fulfillment of procedures, reasons, time periods and protection of the defendant's rights. Based on the principle of legality, parameters are needed regarding the timeliness of filing legal action and the authority to submit an appeal to ensure that the legal process runs within the limits determined by law. Based on the principle of due process of law, it is necessary to test the existence of a valid detention order, the fulfillment of the substantive reasons for detention, as well as the correct calculation of the detention period so that restrictions on freedom do not turn into arbitrary actions. Meanwhile, the principle of legal certainty and protection of the right to freedom creates parameters regarding the obligation to have a release mechanism when the detention time limit has expired. Thus, these six parameters are not subjective measures, but are the result of analytical construction of the relationship between the New Criminal Procedure Code norms regarding legal remedies and detention and the theory of human rights protection in criminal procedural law.

Table 1. New Criminal Procedure Code and Theoretical Basis

No.	Testing Parameter	Normative Basis in the New Criminal Procedure Code (KUHP Baru)	Theoretical Basis
1	Whether the legal remedy was filed within the seven-day period as stipulated by law	Article 285 of the New KUHP concerning the time limit for filing an appeal	The principles of legality and legal certainty require that every legal action be carried out within a predetermined time limit to prevent uncertainty for the parties involved
2	Whether the relevant decision is a type of decision that may be subject to appeal	Article 285 of the New KUHP concerning the right to file an appeal and Article 244 of the New KUHP concerning the relationship between types of judgments and legal remedies	The principle of <i>due process of law</i> requires that every restriction or continuation of criminal proceedings must have a clear legal basis and must not rely on an interpretation that excessively expands legal authority
3	Whether, after the appeal application was accepted, a detention order was issued by an authorized official	Article 105 of the New KUHP concerning the authority and procedure for issuing detention orders	The principle of legality in coercive measures requires that any restriction on a person's liberty must be carried out based on the authority of a legally authorized official and in accordance with statutory procedures
4	Whether the substantive grounds and requirements for detention remain fulfilled	Articles 104 to 106 of the New KUHP concerning the grounds, requirements, and procedures for detention	The principles of proportionality and necessity require that detention may only be imposed when it is genuinely required for the interests of criminal

			proceedings and cannot be replaced by less restrictive measures
5	Whether the detention period has been calculated correctly, including any valid extensions	Article 107 of the New KUHP concerning the duration and extension of detention	The principle of protection of individual liberty requires that restrictions on rights must have clear time limits and must not continue without a definite legal basis
6	Whether a release mechanism is available once the detention period has expired	Provisions concerning detention limits under Articles 104 to 107 of the New KUHP and the principle that coercive measures must end once their legal basis no longer exists	The principles of <i>habeas corpus</i> , legal certainty, and judicial control require the state to release an individual when the legal justification for continued detention has ceased to exist

Based on this table, six parameters can be used as analytical instruments to assess whether a detention during the appeal or cassation process still has legal legitimacy. The continuation of the legal action process does not automatically extend or justify detention, because the legality of detention remains dependent on the fulfillment of all elements of legality and proportionality cumulatively. If one of the parameters is not met, then there is a normative basis for questioning the legality of the detention action, even though the process of examining legal remedies is still ongoing.

Detention as an *Ultimum Remedium* in Criminal Procedural Law. Although the term *ultimum remedium* is more frequently employed in substantive criminal law, the concept of limiting the use of coercive measures is equally relevant to criminal procedural law. Detention should be resorted to only when the objectives of the proceedings cannot be adequately achieved through measures that are less restrictive of liberty. The use of the concept of *ultimum remedium* for detention in criminal procedural law needs to be understood analogically and limitedly, not in the same sense as *ultimum remedium* in material criminal law which places punishment as the final means of controlling behavior. The theoretical basis of this analogy lies in the principles of necessity, proportionality, subsidiarity, and respect for individual freedom, namely that every state action that limits a person's freedom must have a legal basis, a legitimate aim, is truly necessary to achieve the objectives of the judicial process, and there are no other measures that are lighter but equally effective. With this construction, detention can be positioned as a last resort in the realm of criminal procedural law, so that law enforcement officials do not only need to prove that detention is permitted by law, but also need to consider whether detention is necessary and proportionate in concrete circumstances, including considering alternative actions that limit freedom less if the objectives of the judicial process can still be achieved. However, the limits of the analogy must be emphasized: the concept of *ultimum remedium* cannot be used as an independent legal basis for eliminating or creating the authority to detain, does not replace the detention requirements that are limitatively determined in the Criminal Procedure Code, and does not mean that every detention is automatically invalid if alternative measures are available. This concept is more appropriately used as an interpretive

principle and parameter for testing proportionality in the implementation of the authority to detain, so that the authority formally granted by law remains exercised with maximum respect for the right to freedom and the principle of presumption of innocence.

The new Criminal Procedure Code (KUHP) provides for various forms of detention, including detention in a state detention center, house arrest, and city arrest. This diversification demonstrates that the restriction of liberty need not always take the form of incarceration in a detention facility.³⁸ Consequently, when a public prosecutor appeals a District Court judgment, the necessity of detention must still be assessed on an individual basis. The status of a defendant undergoing the appeal process does not automatically necessitate their placement in a state detention center.

The Authority of the public prosecutor is Not Absolute Power. The public prosecutor has an important function in the criminal justice system. However, this authority is limited by the principle of legality and accountability. In cases that have already been decided, the public prosecutor must be able to show reasons why the decision needs to be re-examined.

From a rule of law perspective, the state must be able to explain the basis for any restrictions on freedom. The heavier the state's interference with individual rights, the higher the standard of justification that must be met.³⁹

Therefore, filing an appeal or cassation should not simply be a bureaucratic routine. It must be a professional decision based on a misapplication of the law, an error of judgment that can be tested within the scope of legal remedies, or other reasons recognized by law.

Reconstructing an Ideal Legal Framework

Several improvements are needed for the future. First, lawmakers need to clarify the relationship between Article 244 and Article 285, particularly regarding whether the public prosecutor may appeal an acquittal. Ambiguity in the legal norms can lead to inconsistent practices. Analysis of the relationship between Article 244 and Article 285 needs to clearly differentiate between the *de lege lata* and *de lege ferenda* perspectives so that there is no confusion between the interpretation of the positive law in force and recommendations for legal changes. From a *de lege lata* perspective, the meaning of the law currently in force must first be determined through grammatical, systematic and teleological interpretation of Article 244 and Article 285 by taking into account other provisions regarding legal remedies, official explanations of laws, as well as the principles of criminal procedural law; Thus, the conclusion regarding whether or not the public prosecutor can appeal against an acquittal decision must be the result of an interpretation of the entire KUHP system, not solely based on the fact that Article 285 mentions the public prosecutor as the party who has the right to appeal without explicitly stating an exception. If after the interpretation process there is still more than one interpretation that can equally be maintained regarding the relationship between the types of decisions

³⁸ Lilik Mulyadi, *Hukum Acara Pidana: Normatif, Teoretis, Praktik dan Permasalahannya* (Bandung: Alumni, 2012), Hlm. 91

³⁹ Indriyanto Seno Adji, "KUHP dan Due Process of Law dalam Perspektif Perlindungan Hak Tersangka," *Jurnal Hukum dan Pembangunan*.

regulated in Article 244 and the right of appeal in Article 285, that situation indicates a problem of legal certainty at the *de lege lata* level. Furthermore, from a *de lege ferenda* perspective, legislators need to improve norms by explicitly formulating whether an acquittal decision can or cannot be challenged by cassation by the public prosecutor, including determining the limits, conditions and legal consequences. The separation of these two perspectives is important because the recommendation for changes to Article 244 and/or Article 285 is not a statement regarding the current law, but rather a proposal for legal reform to eliminate potential differences in interpretation, prevent non-uniform judicial practices, and strengthen legal certainty and protect the rights of defendants.

Second, it must be explicitly stated that filing an appeal does not automatically extend the detention period ordered at the trial court level. Detention following an appeal must always be based on a new court order, in accordance with Article 105. Third, an automated or digital mechanism should be established to alert the court and the detention center regarding the expiration date of the detention period.⁴⁰ The information technology-based criminal justice system—also provided for in the New Criminal Procedure Code (KUHAP)—could be utilized for this purpose.

Fourth, defendants' or their counsels' access to detention data needs to be strengthened. Every defendant must be able to ascertain the grounds, start date, end date, and basis for any extension of their detention.⁴¹

Fifth, if detention is declared unlawful, the compensation mechanism must be truly effective. The New KUHAP grants the right to claim compensation in cases of unlawful detention.

Resolution Model for Concrete Cases

In cases like the one experienced by the author, a stronger legal strategy is not just to state that "the detention period has expired so the prosecutor cannot appeal". This argument is too broad and can be refuted by Article 105.

A more precise argument is:

- a. the detention period at the District Court level has ended on a certain date;
- b. the expiration of this period does not automatically erase the right to appeal, but does erase the basis for previous detention;
- c. if the Defendant is still detained, there must be a new detention order from the High Court based on Article 105;
- d. if there is no new determination or the new detention period has expired, the Defendant must be released from detention;
- e. if the District Court decision is an acquittal, Article 244 paragraph (4) requires release from the moment the decision is pronounced and Article 299 paragraph (2) prohibits cassation of an acquittal decision;

⁴⁰ Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis* (Yogyakarta: Genta Publishing, 2009), Hlm. 31

⁴¹ Eva Achjani Zulfa, "Keadilan Restoratif dan Sistem Peradilan Pidana Indonesia," *Jurnal Hukum Pidana dan Kriminologi*.

- f. If the decision is a punishment, the analysis must be directed at the verdict and the basis for detention after the decision, not just at the end of the previous detention period.

This argument is much stronger because it differentiates the authority for legal action from the authority for detention. Human rights demand that the state not only respect a person's freedom after he has been declared innocent. The right to freedom and security of the person must be respected throughout the legal process.⁴² Detention that is formally legal but takes place without sufficient need can also give rise to proportionality issues. Therefore, every detention must have actual, not just historical, justification. In this context, the New Criminal Procedure Code must be interpreted *pro libertate* when there are two equally possible interpretations and one of them results in more severe restrictions on freedom, as long as it does not conflict with the text of the law. Legal certainty does not imply that every case must result in a criminal conviction. Rather, it means that the public can understand the legal consequences of their actions and that the state exercises its authority based on predictable rules.⁴³

If public prosecutors were free to file appeals at any time without a deadline, legal certainty would be compromised. However, the new Criminal Procedure Code (KUHP) establishes a seven-day limit for filing appeals. Thus, the issue of legal certainty lies not in the existence of the appeal process itself, but in how the relevant rule is applied regarding detention status. The legal policy underlying the new Criminal Procedure Code (KUHP) can be viewed as an attempt to balance effective law enforcement with the protection of rights. However, this balance remains imperfect. The tension between Article 244 and Article 285 highlights a need for harmonization.

Constitutional Court Decision Number 176/PUU-XXIV/2026 is noteworthy because the petition directly challenging the public prosecutor's authority to appeal an acquittal was declared inadmissible. Since the ruling was one of inadmissibility, the issue regarding the constitutionality of Article 285 paragraph (1) has not been resolved through a decision that alters the legal norm. This means the issue remains open for debate within academic circles and among lawmakers. Nevertheless, until there is an amendment or a binding interpretation, law enforcement officials must operate based on the prevailing norms.⁴⁴

The research results show four analytical conclusions. First, the public prosecutor has the right to file an appeal within the limits determined by Article 285, so that the end of the first level detention period does not automatically erase this right. Second, detention is a separate authority from the right to legal action. The expiry of the detention period ends the basis for the detention. Detention at the appeal and cassation level must have a new determination in accordance with Article 105 and Article 106. Third, for acquittal decisions, the protection of the Defendant is stronger: Detained defendants must be released from the moment the verdict is pronounced and an acquittal decision cannot be challenged by cassation

⁴² Harkristuti Harkrisnowo, "Reformasi Hukum dan Hak Asasi Manusia dalam Sistem Peradilan Pidana," *Jurnal Hukum dan Pembangunan*.

⁴³ Bambang Waluyo, "Penegakan Hukum di Indonesia dalam Perspektif HAM," *Jurnal Yuridis*.

⁴⁴ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2016), Hlm. 75

according to Article 299 paragraph (2). Fourth, the New KUHAP still has normative problems regarding the relationship between acquittal and appeal because Article 285 paragraph (1) does not provide an explicit exception. This ambiguity has the potential to result in non-uniformity of practice and requires consistent legislative or jurisprudential solutions.

The New Criminal Procedure Code is “not yet human rights friendly” can be defended as an academic critique of the design and potential implementation of the norm, but should not be expressed as an absolute conclusion that any appeal after the detention period has ended is illegal.⁴⁵ A more appropriate criticism is that the New Criminal Procedure Code still allows for the risk of human rights violations if authorities do not clearly separate the legality of legal action from the legality of detention.

CONCLUSION

The limits of the public prosecutor's authority in filing appeals and cassation must be distinguished from the limits of the authority to carry out detention. Article 285 paragraph (1) of the New Criminal Procedure Code gives the public prosecutor the right to submit an appeal within the specified time limit. Therefore, the end of the detention period at the District Court level does not in itself eliminate the public prosecutor's right to file an appeal. However, the end of the detention period means the end of the basis for the detention. If the defendant wishes to remain detained during the appeal process, there must be a new detention order based on Article 105. Likewise, at the cassation stage, Article 106 applies. Human rights protection requires that there be no restrictions on freedom without a valid legal basis, without time limits, and without judicial supervision. Therefore, detention should not be considered as an automatic consequence of filing an appeal or cassation. Detention is a coercive measure that must meet its own grounds, conditions, official authority and time limits. If the detention period ends and there are no new valid grounds, the defendant must be released.

For acquittal decisions there are stricter protections. Article 244 paragraph (4) of the New Criminal Procedure Code requires defendants who are being detained to be released from the moment the acquittal is pronounced. Article 245 requires the release to be carried out no later than one day. Furthermore, Article 299 paragraph (2) states that an acquittal decision cannot be challenged by cassation. Thus, for an acquittal, the use of legal remedies by the public prosecutor has much stricter limits. Regarding appeals against acquittal decisions, there are still problems of interpretation because Article 285 paragraph (1) does not contain explicit exceptions. Case Number 133/Pid.B/2026/PN Ckr, based on the author's information, shows the importance of auditing the basis and chronology of detention. The fact that the public prosecutor filed legal action is not enough to conclude that detention after the end of the first degree detention period is automatically legal. Legality must be tested by looking at the end date of detention, decision, deed of legal action, and whether or not there is a new detention order. Because the case documents have not been provided, this article does not definitively conclude the legality of the actions in the case.

⁴⁵ Satjipto Rahardjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, (Yogyakarta: Genta Publishing), Hlm. 8

Correctional institution overcapacity strengthens the policy case for tightening the use of detention, although overcapacity is not an automatic basis for eliminating lawful detention. The correctional system based on Law Number 22 of 2022 places respect, protection and fulfillment of human rights as an important principle. Therefore, restrictions on freedom must be truly necessary and proportionate. In de lege ferenda, it is necessary to harmonize norms between the provisions regarding acquittal decisions, appeals and cassation. Lawmakers also need to emphasize that filing legal action does not automatically extend the previous level of detention. Detention at each level of examination must be based on new determinations and clear time limits. The justice information system needs to be developed to provide automatic warnings regarding the due date of detention so that the risk of overstay detention can be minimized.

Thus, the main issue of the New Criminal Procedure Code is not merely whether the Prosecutor may or may not file an appeal after the detention period has expired. A more fundamental issue is whether the state is able to differentiate in a disciplinary manner between the right to continue the examination process and the right to limit a person's freedom. The rule of law must allow the legal process to continue without making detention a preliminary punishment. It is at this point that human rights protection, legal certainty and the effectiveness of law enforcement must be brought together.

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LEGISLATION

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