

Securing Access to Counsel in Mass Arrests of Protesters: Due Process of Law and the Reconstruction of Indonesia's New Criminal Procedure Code

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ABSTRACT

Mass arrests during public demonstrations raise a distinctive due process problem in criminal procedure: the state may lawfully maintain public order, yet coercive measures must not sever arrested persons from legal assistance at the earliest stage of custody. This article examines access to counsel in mass arrests of protesters in Indonesia through the principle of due process of law and the reform of the Criminal Procedure Code under Law No. 20 of 2025 on the Criminal Procedure Code (KUHAP 2025). Using normative legal research, the article applies statutory, conceptual, and regulatory-design approaches to constitutional norms, criminal procedure, legal aid legislation, and international standards on liberty, fair trial, and early access to legal aid. The article argues that Indonesian law formally recognizes the right to legal assistance, including through KUHAP 2025 and Law No. 16 of 2011 on Legal Aid. However, these guarantees remain framed primarily for ordinary individual criminal cases and do not provide an operational mechanism for mass arrests, where identification, notification, access to counsel, and documentation occur under compressed time and high police discretion. The article therefore proposes an Emergency Legal-Aid Protocol (Protokol Bantuan Hukum Darurat/PBHD) consisting of automated custody notification to accredited legal aid organizations and oversight bodies, mandatory delay of interrogation until counsel is present or a valid waiver is recorded, and a transparent public communication channel for families and lawyers. This protocol would shift legal aid from a passive right to an enforceable state duty and would better align protest policing with due process, accountability, and the protection of constitutional rights.

Keywords: access to counsel; due process of law; emergency legal aid; Indonesian criminal procedure; KUHAP 2025; mass arrest; protest policing.

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INTRODUCTION

Public demonstrations are a normal and constitutionally protected expression of democratic participation. In a state governed by the rule of law, the exercise of public authority must be constrained by legality, proportionality, accountability, and respect for human dignity. Indonesian constitutional law protects equality before the law and fair legal certainty under Article 28D(1) of the 1945 Constitution, while Article 28G(1) protects personal security and freedom from fear. Law No. 9 of 1998 on Freedom to Express Opinions in Public further recognizes demonstrations as a form of public expression and requires state officials to respect legality, human rights, and the presumption of innocence when securing public assemblies.

Despite this normative framework, the policing of demonstrations in Indonesia has repeatedly generated concern about the treatment of protesters after arrest. Recent reporting on the August 2025 protest wave recorded at least 6,719 arrests, hundreds of continuing political detention cases, and numerous prosecutions arising from public-order

offences (Anugrahanto, 2026). Regardless of how individual cases are ultimately assessed, the scale of such arrests reveals a recurring structural issue: mass arrest is not merely a multiplication of individual arrests. It is a distinct procedural situation in which large numbers of people are taken into custody simultaneously, often in volatile conditions, with limited time for identification, notification, legal consultation, and review of police discretion.

This procedural situation is especially sensitive because access to counsel is most valuable at the earliest stage of deprivation of liberty. The first hours after arrest determine whether a suspect understands the reasons for arrest, can contact family, can avoid intimidation or coerced statements, and can challenge unlawful detention. International standards therefore treat prompt legal assistance as an essential guarantee against arbitrary arrest, torture, and unfair trial (United Nations Human Rights Committee, 2014; United Nations Office on Drugs and Crime & United Nations Development Programme [UNODC & UNDP], 2014). The UN Basic Principles on the Role of Lawyers similarly state that arrested or detained persons must have prompt access to a lawyer and must be informed of that right without delay (United Nations, 1990).

Indonesia's enactment of Law No. 20 of 2025 on the Criminal Procedure Code (KUHAP 2025), which replaced Law No. 8 of 1981, provides an important opportunity to strengthen procedural protection. The new KUHAP emphasizes the rights of suspects, defendants, convicts, witnesses, victims, and persons with disabilities; revises coercive measures; reinforces pretrial review; and strengthens the role of advocates (Republic of Indonesia, 2025). Yet the problem addressed in this article is that the formal recognition of legal assistance is not sufficient unless it is translated into operational duties for police and investigators in mass-arrest contexts.

The central thesis is that Indonesian criminal procedure requires a specific emergency legal-aid mechanism for mass arrests of protesters. Without such a mechanism, the right to legal assistance remains dependent on the suspect's capacity to request counsel, the family's ability to locate the detainee, and the willingness of officers to facilitate access. In mass arrests, these conditions are frequently absent. The right to counsel must therefore be reconstructed as a state duty to notify, facilitate, delay interrogation, and document compliance.

This article addresses three research questions. First, how does the principle of due process of law frame access to counsel in the context of mass arrests of protesters? Second, to what extent do KUHAP 2025 and the Legal Aid Law regulate legal assistance in mass-arrest situations? Third, what regulatory construction is needed to ensure that legal aid is effective, immediate, and operationally enforceable during mass arrests?

The novelty of this article lies in its shift from a general discussion of the right to legal aid toward a regulatory design for mass-arrest situations. Existing Indonesian legal scholarship has generally examined due process, legal aid, and arrest as doctrinal categories in ordinary criminal proceedings. This article contributes a more specific framework by conceptualizing mass arrest as a high-risk procedural event and by proposing the Emergency Legal-Aid Protocol (PBHD) as a concrete regulatory model that can be incorporated into implementing regulations, police standard operating procedures, or KUHAP-based technical rules.

METHOD

This study uses normative legal research. The method is appropriate because the main object of analysis is the coherence between legal norms governing arrest, legal aid, public demonstrations, and due process guarantees. The research applies three approaches. The statutory approach examines the 1945 Constitution, Law No. 20 of 2025 on the Criminal Procedure Code, Law No. 16 of 2011 on Legal Aid, Law No. 9 of 1998 on Freedom to Express Opinions in Public, and Law No. 12 of 2005 ratifying the International Covenant on Civil and Political Rights. The conceptual approach examines due process of law, rule-of-law constraints on coercive power, access to counsel, legal aid, and procedural fairness. The regulatory-design approach formulates operational norms that could fill the protection gap in mass-arrest situations.

Legal materials consist of primary legal materials, including statutes and constitutional provisions; secondary legal materials, including books, journal articles, policy reports, and human rights instruments; and tertiary materials that assist in identifying legal concepts and terminology. The analysis is qualitative and deductive: it first identifies the governing legal principles, then tests whether existing Indonesian rules adequately address the procedural characteristics of mass arrests, and finally formulates a normative reconstruction consistent with due process.

Due process of law is a foundational principle of criminal procedure. It requires that state coercion be exercised only through lawful, fair, transparent, and reviewable procedures. The idea is historically associated with the prohibition of arbitrary deprivation of liberty and with the requirement that punishment or detention follow lawful process rather than executive will. In modern criminal justice theory, Packer's due process model emphasizes reliability, adversarial testing, legal safeguards, and restraints on official power, in contrast with a crime-control orientation that privileges speed and administrative efficiency (Packer, 1968).

For criminal procedure, due process has both formal and substantive dimensions. Formally, it requires compliance with arrest warrants, evidentiary thresholds, notification of reasons for arrest, records of custody, and access to judicial review. Substantively, it requires that these procedures protect human dignity and prevent domination by state power. Procedural justice theory also suggests that people are more likely to perceive legal authority as legitimate when procedures are neutral, respectful, transparent, and participatory (Tyler, 2006). In mass arrests of protesters, this legitimacy dimension is critical because opaque detention practices may intensify public distrust and transform law enforcement into a source of democratic conflict.

Access to counsel is not merely a trial-stage right. It is a custody-stage safeguard. Under the International Covenant on Civil and Political Rights, the prohibition of arbitrary arrest and the right to fair trial require that arrested persons be promptly informed of the reasons for arrest and be able to prepare an effective defence. The Human Rights Committee's General Comment No. 35 confirms the centrality of safeguards during deprivation of liberty, including prompt information, review, and protection from incommunicado detention (United Nations Human Rights Committee, 2014).

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recognize legal aid as an essential element of a functioning criminal justice system based on the rule of law (United Nations General Assembly, 2013). The UNODC and UNDP handbook on early access to legal aid emphasizes that legal aid should be available at police stations, places of detention, and the earliest stages of criminal proceedings, particularly because early legal assistance reduces wrongful convictions, coerced confessions, prolonged detention, and abuse (UNODC & UNDP, 2014). In Indonesia, Abbott (2018) has argued that early access to criminal legal aid is already a clear legal rule in theory, but that violations frequently occur in practice. This article extends that insight to the specific procedural architecture of mass arrests.

RESULTS AND DISCUSSION

1. Constitutional and Statutory Guarantees

The Indonesian legal framework contains several layers of protection relevant to mass arrests. At the constitutional level, Article 28D(1) guarantees recognition, protection, legal certainty, and equality before the law, while Article 28G(1) protects personal security. These provisions require that coercive measures during demonstrations be lawful, proportionate, and procedurally fair. Since Indonesia ratified the ICCPR through Law No. 12 of 2005, domestic interpretation of arrest and detention should also be read consistently with international obligations concerning liberty, fair trial, and protection from arbitrary detention.

Law No. 9 of 1998 provides the statutory basis for public demonstrations. It defines public expression broadly and recognizes demonstrations as one of its forms. The law does not treat public order as a license for repression. Instead, it balances citizens' duties to respect public order with state officials' duties to protect human rights, respect legality, uphold the presumption of innocence, and provide security. This balance is important because mass arrests often occur precisely at the boundary between public-order policing and criminal-law enforcement.

KUHAP 2025 represents a major reform of Indonesian criminal procedure. It replaces the 1981 KUHAP and regulates, among other matters, the strengthening of rights of suspects and defendants, the reform of coercive measures, pretrial mechanisms, restorative justice, compensation and rehabilitation, and the role of advocates (Republic of Indonesia, 2025). In relation to arrest and legal assistance, the provisions on suspect rights and the threshold for coercive measures should be understood as procedural safeguards designed to prevent arbitrary deprivation of liberty. Article 142, as cited in the draft manuscript, is particularly important because it recognizes the right of suspects or defendants to choose legal counsel and to obtain legal assistance. Articles concerning suspect designation and arrest must also be read together with constitutional standards on fair legal certainty.

Law No. 16 of 2011 on Legal Aid complements KUHAP by establishing state responsibility to provide free legal assistance to poor persons or groups who face legal problems. It recognizes legal aid in criminal, civil, and administrative matters and provides for accredited legal aid organizations. However, the law remains primarily application-based and individual-case oriented. It does not prescribe a rapid notification system for

arrests involving large numbers of protesters, nor does it require investigators to automatically connect detainees with accredited legal aid organizations during the first hours of custody.

2. The Protection Gap in Mass Arrests

The principal finding is that Indonesian law formally guarantees legal assistance but does not yet provide a mass-arrest mechanism. This creates what may be described as a protection gap: the gap between the existence of a right and the operational conditions necessary to exercise it. In ordinary individual arrests, a suspect may have a greater chance to contact family, identify a lawyer, or request legal aid. In mass arrests, however, several features undermine the practical exercise of rights.

First, the arrested persons are often transported to temporary holding locations, police stations, or other facilities in large numbers. Families and legal aid organizations may not immediately know where they are held. Second, administrative identification may be delayed or incomplete, creating a risk of incommunicado detention. Third, officers may prioritize rapid screening, interrogation, and preparation of investigation records over legal consultation. Fourth, suspects may sign statements or waive rights without understanding the legal consequences. Fifth, the absence of independent monitoring increases the risk of intimidation, violence, or procedural manipulation.

This protection gap undermines due process in two ways. It weakens individual defence rights, because counsel cannot advise suspects before statements are made. It also weakens institutional accountability, because the public cannot verify who has been arrested, where they are held, what legal basis is invoked, and whether coercive measures are properly recorded. The result is a tension between the formal promise of KUHAP 2025 and the practical reality of mass-arrest policing.

3. From Passive Legal Aid to an Active State Duty

The existing legal aid framework tends to conceptualize legal assistance as a right that a suspect or a poor legal-aid recipient may request. That design is insufficient for mass arrests. Due process requires a shift from a passive right to an active state duty. The state should not merely refrain from obstructing lawyers; it should affirmatively create the conditions for counsel to reach arrested persons. This duty is supported by the logic of the UN Principles and Guidelines on Access to Legal Aid, which call for accessible and effective legal aid systems, and by the early-access model promoted by UNODC and UNDP (United Nations General Assembly, 2013; UNODC & UNDP, 2014).

In the Indonesian context, such a shift is also consistent with the broader humanization of criminal justice. The manuscript's earlier reference to judicial pardon should be located in this broader policy context rather than treated as a KUHAP mechanism. Judicial pardon belongs to substantive criminal-law reform, while the problem examined here belongs to criminal procedure. Nevertheless, both developments reflect a movement away from purely repressive penal governance toward legality, proportionality, restoration, and rights protection.

4. The Emergency Legal-Aid Protocol (PBHD/ELAP)

To close the protection gap, this article proposes the Emergency Legal-Aid Protocol, translated from Protokol Bantuan Hukum Darurat (PBHD). The protocol is designed as a technical mechanism for mass arrests of protesters and should be

incorporated into KUHAP implementing regulations, police standard operating procedures, or a joint regulation between the police, the Ministry of Law and Human Rights, the national legal aid authority, and independent oversight bodies. It has three core pillars.

Table 1. Proposed Emergency Legal-Aid Protocol for Mass Arrests

Stage	Mandatory Measure	Due Process Function	Minimum Evidence of Compliance
0–2 hours after deprivation of liberty	Automated custody notification to accredited legal aid organizations, Komnas HAM or an authorized oversight body, and a designated family-contact system.	Prevents incommunicado detention; activates external monitoring; converts legal aid from a passive request into an early-warning mechanism.	Digital custody log; timestamped notification receipt; list of detainees; location record.
2–6 hours after deprivation of liberty	Mandatory interrogation delay until counsel is present, unless the suspect gives a written, informed, and independently witnessed waiver.	Protects voluntariness of statements; prevents intimidation and coerced confessions; preserves procedural fairness.	Counsel attendance record; waiver form; audiovisual record of notification and waiver; BAP timestamp.
Post-arrest and continuing custody	Transparent public communication channel containing names, custody locations, alleged offences, and access procedures, subject to child protection and data-protection safeguards.	Enables families and lawyers to locate detainees; strengthens accountability; reduces rumor, panic, and escalation.	Public registry update log; privacy exception record; complaint channel report.

a. Automated Custody Notification

The first pillar requires investigators or arresting officers to enter basic data into an integrated digital custody system immediately after mass arrest. The system should record the number of persons secured, available identities, locations, alleged offences, time of arrest, and officer in charge. It should automatically notify accredited legal aid organizations and relevant oversight bodies. Where identity is incomplete, the system should permit provisional entry using photographs or biometric-neutral identifiers, subject to privacy safeguards.

This mechanism responds directly to the risk of incommunicado detention. It also avoids placing the burden on families to search police stations or on detained persons to request legal aid under stressful conditions. The state, having initiated deprivation of liberty, should carry the administrative burden of notification.

b. Mandatory Interrogation Delay

The second pillar requires investigators to delay substantive interrogation and the preparation of the examination record until counsel is present. A waiver should be valid only if it is informed, written, voluntary, and independently witnessed. For children, persons with disabilities, or vulnerable suspects, waiver should be restricted or prohibited. Statements obtained in violation of this requirement should be presumptively inadmissible or subject to exclusion by the court.

This rule is necessary because early interrogation is the moment at which procedural violations are most likely to cause irreversible harm. A suspect who has not consulted counsel may not understand the consequences of confession, the meaning of public-order charges, or the right to remain silent. Mandatory delay is therefore not an obstruction of investigation; it is a reliability safeguard for the criminal process.

c. Transparent Public Communication Channel

The third pillar requires the police to provide a public information channel concerning mass-arrest cases. The channel should be updated in real time and contain the names of arrested persons, custody locations, alleged offences or legal basis for arrest, procedures for counsel access, and complaint mechanisms. Exceptions must be available for minors, victims, witnesses, or persons whose disclosure would create serious safety risks. These exceptions should be recorded and reviewable.

A transparent communication channel serves both rights-protective and public-order functions. Families can locate detainees, lawyers can coordinate legal aid efficiently, oversight institutions can monitor compliance, and the public can verify that arrests are not arbitrary or hidden. Transparency also reduces misinformation and conflict escalation after demonstrations.

5. Supervisory and Remedial Design

PBHD will be ineffective unless it is connected to supervision and remedies. First, non-compliance should create procedural consequences, including exclusion of statements obtained before counsel access, judicial scrutiny in pretrial proceedings, and administrative sanctions for officers who obstruct legal aid. Second, the custody-notification system should be auditable by an independent body, such as Komnas HAM, the Ombudsman, or an authorized legal aid supervisory authority. Third, police internal rules should require after-action reports in all mass-arrest operations, including the number of persons arrested, released, charged, injured, or transferred. Fourth, legal aid organizations should be granted controlled access to temporary detention sites during mass-arrest operations.

These supervisory mechanisms are consistent with due process because rights without remedies are merely declaratory. In mass arrests, the remedy must be rapid because delay itself can defeat the right. A detainee released after unlawful interrogation may still suffer legal harm if the statement remains in the case file. Therefore, procedural rules should attach legal consequences to violations of counsel-access obligations.

6. Implications for KUHAP 2025 Reform Implementation

KUHAP 2025 creates a reform window. The statutory text alone cannot regulate every operational detail of mass-arrest policing, but implementing regulations and police procedures can translate its rights orientation into practical duties. At minimum, the implementing framework should define mass arrest, require automated legal-aid notification, impose mandatory interrogation delay, standardize detainee documentation, regulate access for lawyers and accredited legal aid organizations, establish data-protection safeguards, and prescribe sanctions and evidentiary consequences for non-compliance.

Such reform would not prevent the state from responding to genuine public-order threats. Rather, it would ensure that public-order enforcement remains within

constitutional legality. The police would retain authority to arrest individuals on sufficient legal grounds, but that authority would be accompanied by transparent documentation and immediate access to counsel. This is the essence of due process: state power is not abolished, but it is disciplined by law.

CONCLUSION

Due process of law is a fundamental principle of Indonesian criminal procedure because it protects human dignity, constrains coercive power, and secures procedural fairness from the earliest stage of criminal proceedings. In the context of mass arrests of protesters, due process requires more than a formal statement that suspects have the right to legal assistance. It requires a concrete operational mechanism that enables counsel to reach arrested persons immediately, prevents interrogation before legal consultation, and allows families and oversight bodies to verify the location and legal status of detainees.

KUHAP 2025 and the Legal Aid Law provide important normative foundations for legal assistance, but they remain general and insufficiently tailored to mass-arrest situations. The distinctive features of mass arrest—simultaneous detention, limited identification, high discretion, temporary holding locations, and compressed interrogation timelines—create a protection gap. This gap risks undermining the right to counsel, the presumption of innocence, the prohibition of arbitrary detention, and public trust in criminal justice.

This article therefore recommends the adoption of an Emergency Legal-Aid Protocol (PBHD/ELAP) consisting of automated custody notification, mandatory interrogation delay, and a transparent public communication channel. The protocol should be embedded in KUHAP implementing rules, police standard operating procedures, and legal aid coordination mechanisms. By transforming access to counsel from a passive entitlement into an enforceable state duty, PBHD would strengthen the practical realization of due process and help ensure that protest policing remains lawful, transparent, and rights-oriented.

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References

- Abbott, M. (2018). The right of early access to criminal legal aid in Indonesia: Clear rule, clearer violations. *Indonesia Law Review*, 8(1), Article 2. <https://doi.org/10.15742/ilrev.v8n1.380>
- Anugrahanto, N. C. (2026, February 19). Unjuk rasa Agustus 2025 dan indikasi operasi pembungkaman aktivis. Kompas.id.
- Bambang Waluyo. (2001). *Penelitian hukum dalam praktik*. Sinar Grafika.
- Chandra, D. D. (2025). Tinjauan yuridis terhadap pelaksanaan due process of law sebagai elemen fundamental untuk melindungi hak dalam sistem peradilan pidana di Indonesia. *Jurnal Hukum dan Kebijakan Publik*, 7(2), 192.
- Djulaeka, & Rahayu, D. (2020). *Buku ajar: Metode penelitian hukum*. Scopindo Media Pustaka.
- Holder, R. L., & Dearing, A. (2024). Human dignity, rights and victim participation in criminal justice. *International Criminology*, 4(1), 108–119. <https://doi.org/10.1007/s43576-024-00119-3>
- Packer, H. L. (1968). *The limits of the criminal sanction*. Stanford University Press.
- Pahlevi, F. S. (2023). *Penegakan hukum berbasis nilai-nilai keadilan*. Sinar Grafika.
- Rahardjo, S. (2009). *Hukum progresif: Sebuah sintesa hukum Indonesia*. Genta Publishing.
- Republic of Indonesia. (1945). *The Constitution of the Republic of Indonesia of 1945*.
- Republic of Indonesia. (1998). Law No. 9 of 1998 on Freedom to Express Opinions in Public.
- Republic of Indonesia. (2005). Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights.
- Republic of Indonesia. (2011). Law No. 16 of 2011 on Legal Aid.
- Republic of Indonesia. (2025). Law No. 20 of 2025 on the Criminal Procedure Code.
- Turnip, R. E. (2026). Konsep dasar terkait due process of law. *Program Studi Doktor Hukum Universitas Katolik Parahyangan*, 3(2), 224.
- Tyler, T. R. (2006). *Why people obey the law*. Princeton University Press.
- United Nations. (1990). *Basic Principles on the Role of Lawyers*. Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
- United Nations General Assembly. (2013). *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*. United Nations.
- United Nations Human Rights Committee. (2014). *General comment No. 35: Article 9, liberty and security of person (CCPR/C/GC/35)*. United Nations.
- United Nations Office on Drugs and Crime & United Nations Development Programme. (2014). *Early access to legal aid in criminal justice processes: A handbook for policymakers and practitioners*. United Nations.