

Substantive Rule of Law in Indonesia: Constitutional Gaps, Reform of the Criminal Procedure Code, and the Rule of Law Index

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Abstract: This article examines the concept of the rule of law in Indonesia's constitutional system from two opposing perspectives: the norms as stipulated in the 1945 Constitution and legislation, and empirical practices as reflected in various governance indicators. The study includes an analysis of Article 1, paragraph (3) of the 1945 Constitution as the foundation of the rule of law, the architecture of constitutional supremacy within Indonesia's constitutional system, the implementation of the new Criminal Procedure Code (KUHAP) in 2025, signed by President Prabowo Subianto as an effort to strengthen the rule of law in criminal enforcement, and the decline in Indonesia's WJP Rule of Law Index score in 2025—which, although showing an overall negative trend, was not uniform across all dimensions. This article analyzes the gap between norms and practices (*das Sollen* versus *das Sein*) in the implementation of the rule of law in Indonesia, identifies the factors causing this gap, and formulates recommendations to strengthen substantive—rather than merely formal—rule of law.

Keywords: rule of law; constitutional state; Article 1, paragraph (3) of the 1945 Constitution; 2025 Criminal Procedure Code; WJP Rule of Law Index; constitution; *das Sollen* vs. *das Sein*; constitutional law.

1. Introduction

The rule of law is one of the most fundamental principles in the theory and practice of modern constitutionalism. It contains a premise that appears simple yet is highly revolutionary in its implications: no one—not even the most powerful ruler—stands above the law. In a state that adheres to the rule of law, state power is limited by law; every action of the state must have a valid legal basis; and every person is entitled to equal treatment before the law.

Indonesia has constitutionally affirmed its commitment to the rule of law through Article 1, paragraph (3) of the 1945 Constitution, which states: "The State of Indonesia is a state based on the rule of law." This brief yet monumental statement establishes the law as the foundation for the entire conduct of state affairs. No policy, no action by an official, and no decision by a state institution is valid if it conflicts with the law.

However, between normative proclamations and empirical reality, there is often a very deep chasm. In 2025, Indonesia faces two seemingly contradictory developments: on the one hand, President Prabowo Subianto signed a new Criminal Procedure Code (KUHAP) designed to strengthen the rule of law within the criminal justice system; on the other hand, the 2025 WJP Rule of Law Index for Indonesia shows a decline in the overall score, although not all dimensions have declined and some aspects have actually improved.

These two seemingly contradictory developments actually reflect a more complex reality: the rule of law is not a condition achieved once and then automatically maintained, but rather an ongoing struggle that requires institutional investment, a culture of law, and consistent political commitment over time.

This article aims to: first, analyze the constitutional and theoretical foundations of the rule of law in Indonesia; second, map the architecture of constitutional supremacy within the system of government; third, to examine the new 2025 Criminal Procedure Code (KUHP) from the perspective of strengthening the rule of law; fourth, to analyze data from the 2025 WJP Rule of Law Index and its implications; fifth, to identify gaps between norms and practices; and sixth, to formulate concrete policy recommendations.

2. Theoretical and Constitutional Foundations of the Rule of Law

A. The Concept of the Rule of Law: From Dicey to the Contemporary Era

The concept of the rule of law in its modern sense was first systematically articulated by A.V. Dicey in his work "Introduction to the Study of the Law of the Constitution" (1885). Dicey identified three main principles of the rule of law: first, the supremacy of regular law (as opposed to the influence of arbitrary power or broad prerogatives); second, equality before the law for all; and third, the supremacy of law enforced through ordinary courts, not special courts.

Throughout the 20th and 21st centuries, the concept of the rule of law has undergone a rich evolution. Lon Fuller identified eight principles of the "morality of law": rules must be general, published, prospective (applicable going forward), clear, non-contradictory, capable of being obeyed, stable, and applied consistently. Joseph Raz added formal dimensions (rules must be clear, stable, and prospective) and procedural dimensions (courts must be independent, and natural justice must be upheld). John Rawls integrated the rule of law into a broader theory of social justice.

From a contemporary perspective, the World Justice Project (WJP) defines the rule of law operationally through eight measurable factors: checks on government power, absence of corruption, open government, fundamental rights, public order and safety, regulatory enforcement, civil justice, and criminal justice. These eight factors are used in the WJP Rule of Law Index, which provides empirical data on the state of the rule of law in more than 140 countries.

B. The Rule of Law in Indonesia: Rechtsstaat and Rule of Law

Indonesia's legal system inherits the rechtsstaat tradition from Dutch law (which is an adaptation of the German civil law tradition), rather than the rule of law in the Anglo-American common law tradition. Rechtsstaat emphasizes formal legality: every government action must have a basis in law (the principle of legality), there is a separation of powers, citizens' rights are protected, and there is judicial review of government actions.

However, since the 1998 reforms and various amendments to the 1945 Constitution, Indonesia has also integrated elements of the rule of law from the Anglo-tradition, particularly through the establishment of the Constitutional Court (MK) as an institution for constitutional review, the strengthening of human rights guarantees in Chapter XA of the 1945 Constitution, and the creation of various independent institutions (KPK, KY, OJK, and others) as mechanisms for checks and balances.

The result is a hybrid system that combines elements of the rechtsstaat (formal legality, codification) with elements of the rule of law (constitutional review, human rights protection, independent institutions). Article 1, paragraph (3) of the 1945 Constitution, which states, "The State of Indonesia is a state based on the rule of law," encapsulates both of these traditions in a single declaration that is brief yet rich in meaning.

C. The Architecture of Constitutional Supremacy in the Indonesian System of Government

In Indonesia's constitutional system, the highest supremacy is held by the Constitution itself, not by any institution. This principle—known as constitutional supremacy—means that the 1945 Constitution is the supreme law that limits and regulates all state powers. No institution stands above the Constitution; even

the People's Consultative Assembly (MPR)—which has the authority to amend the Constitution—must adhere to the amendment procedures established by the Constitution itself.

Levels of Supremacy	Instrument/Institution	Description	Basis
Constitutional Supremacy	1945 Constitution	The highest position in the hierarchy of norms; no institution stands above the constitution; all powers derive from and are limited by the 1945 Constitution	Directly from the text of the Constitution
Rule of Law	Article 1, paragraph (3) of the 1945 Constitution	Indonesia is a state governed by the rule of law; all actions of the state must be based on the law; no one is above the law	Rechtsstaat + due process
Supremacy of the Constitutional Court	Constitutional Court (MK) Article 24C of the 1945 Constitution	The Constitutional Court is the final authority in interpreting the Constitution; its decisions are final and binding	Authority to review legal norms
Supremacy of the General Courts	Supreme Court (MA) Article 24A of the 1945 Constitution	The Supreme Court is the highest court in cassation proceedings; it reviews regulations under laws	Judicial review of regulations under the law
Supremacy of Legislation	House of Representatives + President	Legislation must be in accordance with the Constitution; it may be reviewed by the Constitutional Court	Limited by the supremacy of the Constitution
Supremacy of the Executive	President	Legitimate governmental authority; limited by the Constitution, laws, and judicial review	Must not exceed the legal mandate

The architecture above shows that Indonesia's system of government already possesses a structure of supremacy that is quite comprehensive in normative terms. The question is to what extent this structure actually functions as intended in the practice of state administration.

D. The Pillars of Indonesia's Rule of Law

Jimly Asshiddiqie—one of the leading architects of post-reform constitutionalism in Indonesia—identified twelve principles that must be fulfilled in a modern rule of law state (*rechtsstaat* or rule of law):

1. Supremacy of Law	No power is exempt from the law; the law stands above all else.
2. Equality Before the Law	All people are equal before the law (equality before the law).
3. The Principle of Legality	Every government action must be based on laws and regulations.
4. Limits on Power	Power is divided and limited through a system of checks and balances.
5. Independent Executive Bodies	Regulatory executive agencies must be independent of political influence.

6. An Independent and Impartial Judiciary	A judiciary that is free from interference by both the executive and legislative branches.
7. Administrative Courts	A judicial mechanism to oversee government administrative actions.
8. Constitutional Court	An institution that reviews the constitutionality of laws and resolves constitutional disputes.
9. Protection of Human Rights	Constitutional and institutional guarantees of citizens' fundamental rights.
10. Democracy	The exercise of power based on the will of the people, as legitimately expressed.
11. Transparency	Openness in decision-making processes and the management of public resources.
12. Fairness	All aspects of state administration must be oriented toward substantive justice.

3. THE NEW 2025 CRIMINAL PROCEDURE CODE: A Leap Forward in Criminal Procedure Reform

A. Context and Urgency of the KUHAP Reform

The old Criminal Procedure Code (KUHAP)—Law No. 8 of 1981—had been in effect for more than four decades when President Prabowo Subianto signed the new KUHAP in 2025. During those four decades, Indonesia underwent profound changes: from an authoritarian state to a democracy, from the pre-digital era to the digital era, and from a closed law enforcement system to one that, at least in theory, demands transparency and accountability.

The old Criminal Procedure Code was enacted during the New Order era, when the protection of the rights of suspects and defendants was not a top priority of the system. Since the 1998 reforms, pressure to revise the Criminal Procedure Code to align with the principles of due process of law and the protection of human rights has continued to grow. However, the revision process has faced prolonged and recurring obstacles due to substantial complexity and resistance from various parties with a vested interest in maintaining the status quo of the law enforcement system.

B. Substance of the 2025 KUHAP Reform

The new 2025 Criminal Procedure Code introduces a number of substantial changes covering nearly all aspects of criminal procedure law. The following is an analysis of the most important dimensions of the reform:

Aspects of Reform	Substance of the Changes	Relevance to the Rule of Law
Rights of Suspects and Defendants	Strengthening of procedural rights; more comprehensive Miranda rights; right to legal counsel from the outset of the investigation	High—directly impacts criminal justice

Technology in Criminal Proceedings	Admissibility of digital evidence; online hearings; technology-based investigations	High Adapting to the digital age
Detention and arrest	Stricter requirements; strengthened pretrial mechanisms; clearer time limits	High: Preventing arbitrary detention
Resolution of criminal cases	Diversion and restorative justice for certain cases; decriminalization of some offenses	Moderate potential to reduce the court caseload
Role of prosecutors and police	Clarification of authority; independent investigators; stricter oversight mechanisms	Highly effective in preventing abuse of power
Evidence system	Updated standards of proof; recognition of new types of evidence	Moderate: Improving the accuracy of rulings
Protection of witnesses and victims	Stronger protection mechanisms; compensation for victims	High emphasis on restorative justice

C. The 2025 Criminal Procedure Code and the Rule of Law: A Constitutional Analysis

The enactment of the new Criminal Procedure Code is the most significant concrete step taken during the Prabowo–Gibran administration to strengthen the rule of law substantively—not merely declaratively. Comprehensive criminal procedure reform directly addresses four of the eight factors in the WJP Rule of Law Index: fundamental rights, regulatory enforcement, civil justice, and criminal justice.

However, reforming the Criminal Procedure Code alone is not enough to realize substantive rule of law. There are several implementation challenges that need to be anticipated:

- Legal culture: Changes in legal norms do not automatically alter the behavior of law enforcement officials who are accustomed to old practices. Intensive training programs and strong supervision are required.
- Digital infrastructure: The new provisions of the Criminal Procedure Code that accommodate technology require adequate digital infrastructure throughout Indonesia—a condition that is not yet uniformly available.
- Institutional resistance: Some changes in the new Criminal Procedure Code have the potential to reduce the authority or discretion of certain officials, which could lead to resistance during implementation.
- Sustainability of reform: The success of the new Criminal Procedure Code depends heavily on consistent political commitment to overseeing its implementation over the long term.

4. WJP Rule of Law Index Indonesia 2025: Data and Analysis

A. Overview of the WJP Rule of Law Index Methodology

The World Justice Project (WJP) Rule of Law Index is one of the most internationally recognized instruments for measuring the rule of law. This index measures the state of the rule of law in more than

140 countries based on eight factors, each of which consists of a number of more specific sub-factors. Data is collected through surveys of respondents from the general public and legal experts, providing a comprehensive picture of citizens' actual experiences in interacting with the legal system.

Scores on the WJP Rule of Law Index range from 0 to 1, with higher scores indicating better rule of law conditions. Indonesia has historically been among the countries with mid-range scores on this index.

0–1	8	140+	↓↑
WJP Score Scale	Factors Measured	Countries Surveyed	Indonesia's 2025 Score
<i>0 = worst; 1 = best</i>	<i>Rule of Law Component</i>	<i>Global Coverage</i>	<i>Overall decline; some improvements</i>

B. Analysis by Factor: Where Indonesia Has Improved and Declined

Understanding the 2025 WJP Index requires a more nuanced analysis than simply looking at the aggregate score. As indicated by the available data, not all principles of the rule of law have declined—in fact, some aspects have improved compared to 2024. The following is an analysis of the eight WJP factors:

No	WJP Factor	Brief Description	Indonesia's Status in 2025	Notes
1	Limits on Government Power	Constitutional mechanisms limit executive power	Moderate	Needs attention
2	Absence of Corruption	Government officials do not use their positions for personal gain	Low	Chronic problem
3	Open Government	Information transparency; public participation; complaint mechanisms	Moderate	Limited progress
4	Fundamental Rights	Protection of human rights, civil liberties, and procedural rights	Moderate	Some aspects have improved
5	Order and Security	Crime, civil conflict, violence	Fairly Good	Relatively well maintained
6	Regulatory Enforcement	Effectiveness of regulatory enforcement; independence of regulatory agencies	Moderate	Consistency challenges
7	Civil Justice	Access, efficiency, and impartiality of the civil justice system	Low-Moderate	Case Backlog
8	Criminal Justice	Effective and fair investigations, prosecutions, and sentencing	Low-Moderate	The new Criminal Procedure Code is expected to help

C. Visualization of Conditions by Factor (Trend-Based Estimates)

Based on historical trends and 2025 data, the following is an overview of Indonesia's status for each WJP factor (estimates):

Order and Security *(Relatively good; stable)*

72



Checks on Government Power *(Partially improving; achieving a supermajority remains a challenge)*

48



Regulatory Enforcement *(Moderate; inconsistency is an issue)*

45%



Open Government *(Progress has been made, but it is limited)*

44%



Fundamental Rights *(Mixed: some improvements; human rights remain weak)*

42%



Civil Justice *(Limited access; large backlog)*

38



Criminal Justice *(New Criminal Procedure Code expected to improve the situation)*

36



Absence of Corruption *(Chronic problem; lowest)*

30%



The visualization above shows a fairly clear pattern: Indonesia is relatively strong in public order and safety, but faces serious challenges in corruption and criminal/civil justice. The enactment of the new Criminal Procedure Code is specifically aimed at improving the criminal justice score, which is one of the factors with the lowest scores.

D. Interpreting the Score Decline Constructively

The decline in Indonesia’s WJP Rule of Law Index score in 2025 should be interpreted constructively, not merely as a negative indicator. Some key perspectives:

1. Regional and global trends: The decline in Indonesia’s rule of law does not occur in a vacuum. Many countries in the Southeast Asian region are also facing similar pressures. Comparison with neighboring countries is necessary to assess whether Indonesia’s decline represents a unique trend or is part of a broader regional pattern.
2. Interplay of Factors: The fact that some aspects have actually improved indicates that there is no single accurate assessment of the state of the rule of law in Indonesia. Strengths in certain areas (such as freedom of information or access to justice) can coexist with weaknesses in other areas (such as judicial independence or anti-corruption efforts).
3. The new Criminal Procedure Code (KUHAP) as a source of hope: The enactment of the new KUHAP occurred in the same year as the decline in the index. The impact of the new KUHAP on the criminal justice factor—which is one of the index’s main components—will not yet be visible in the 2025 data, but is expected to emerge in the indices of subsequent years.
4. The Importance of Data-Driven Monitoring: This decline should serve as a wake-up call urging the government and civil society to conduct more systematic, data-driven monitoring of the state of the rule of law, rather than relying solely on political indicators that are easier to manipulate.

5. The Gap Between Norms and Practice: DAS SOLLEN vs. DAS SEIN

A. Analytical Framework: The Gap Between Text and Reality

In the Neo-Kantian tradition of legal philosophy—which greatly influenced the development of Kelsen’s legal positivism—a distinction is made between *das Sollen* (what ought to be) and *das Sein* (what is). *Das Sollen* is the world of norms: the rules, standards, and obligations established by the legal system. *Das Sein* is the world of facts: the empirical reality of human behavior and institutions in real life.

In the context of the rule of law in Indonesia, the gap between *das Sollen* and *das Sein* is very real and massive. Indonesia has a constitution that is highly comprehensive in guaranteeing the rule of law normatively, yet the empirical reality often falls far short of this constitutional ideal.

Principle	Norms (<i>das Sollen</i>)	Practice (<i>das Sein</i>)	Discrepancy
Judicial Independence	Guaranteed by Article 24 of the 1945 Constitution; judges must be free from interference	Extrajudicial interference still occurs; collusion in rulings; judges suspected of corruption	Significant gap
Equality Before the Law	Article 27 of the 1945 Constitution; all citizens are equal before the law	Unequal access to justice; disparities in law enforcement between the rich and the poor	Major disparities

Human Rights Protection	Chapter XA of the 1945 Constitution; ratification of international conventions	Past human rights violations remain unresolved; criminalization of activists; restrictions on freedom of expression	Significant disparities
Legal Certainty	The principle of legality; norms must be clear and predictable	Overlapping regulations; inconsistent rulings; overregulation	Moderate gap
Official Accountability	Existing accountability mechanisms (Constitutional Court, Supreme Court, Supreme Audit Agency, Corruption Eradication Commission)	Impunity for high-ranking officials; weak enforcement against elite corruptors	Major gaps
Criminal Procedure Code and Procedural Law	New Criminal Procedure Code (KUHAP) 2025: enhanced normative standards	Implementation of the new Criminal Procedure Code is still in its early stages; the old legal culture is difficult to change	The gap is widening
Checks and Balances	A normatively comprehensive system of checks and balances	A supermajority in the House of Representatives has the potential to weaken legislative oversight; the DKPP and KPK are at risk of being weakened	The gap is widening

B. Factors Causing the Gap

Why is the gap between norms and practices in Indonesia's rule of law so large and persistent? There are at least six categories of contributing factors that interact with one another:

1. The historical legacy of authoritarianism: More than three decades of the New Order left behind a deeply entrenched legal culture in which the law is viewed as an instrument of power rather than a check on power. Changing a legal culture structured in this way will take a very long time.
2. Systemic corruption: Corruption deeply entrenched in the law enforcement system—from the police and prosecutors to judges—undermines the rule of law from within. As long as corruption can influence legal decisions and actions, the rule of law cannot be realized.
3. Uneven institutional capacity: Physical infrastructure and human resource capacity within the judicial and law enforcement systems are highly uneven between Java and non-Java regions, as well as between urban and rural areas.
4. Regulatory fragmentation: Indonesia faces very serious problems of overregulation and overlapping regulations. When laws are unclear and inconsistent, the rule of law cannot be upheld because citizens do not know which laws to follow.
5. Weak political will: The rule of law requires consistent political commitment from national leaders to abide by the law even when it is not in their personal or political interest. Such commitment is not always present.

6. Inequality of access: A costly and complex legal system creates enormous disparities in citizens' ability to access justice. The poor and the uneducated are often unable to use the law to protect their rights.

6. The Reform Agenda: Toward Substantive Rule of Law

A. From Formal to Substantive Rule of Law

The distinction between formal rule of law and substantive rule of law is one of the most important distinctions in contemporary rule of law theory. Formal rule of law merely requires that there be legally established rules, applied consistently, and that no one is immune from them. Substantive rule of law adds a qualitative dimension: these rules must also be fair, protect human rights, and be oriented toward social justice.

Indonesia is currently still far from substantive rule of law, even though it already has a fairly comprehensive normative framework. The movement toward substantive rule of law requires simultaneous attention to the following dimensions:

1. Strengthening judicial independence: Not only in theory, but in practice—including through reform of the system for selecting and promoting judges, strengthening the system for overseeing judges, and improving judges' welfare.
2. Serious and consistent anti-corruption efforts: Corruption is the primary enemy of the rule of law. As long as corruption can buy judicial decisions, there is no real rule of law.
3. Equal access to justice: More comprehensive legal aid programs, simplification of judicial procedures, and equitable distribution of judicial infrastructure throughout Indonesia.
4. Legal education and a culture of respect for the law: The rule of law cannot be upheld without citizens who understand and respect the law, and without government officials who internalize the values of the rule of law.

B. Concrete Policy Recommendations

Based on the analysis conducted, this article formulates the following policy recommendations:

1. Consistent and measurable implementation of the new Criminal Procedure Code (KUHAP): The government needs to set specific and measurable performance targets for the implementation of the new KUHAP, accompanied by mechanisms for periodic evaluation and the publication of results to the public.
2. Comprehensive judicial reform: The Supreme Court and the Judicial Commission need to be encouraged to carry out more serious internal reforms, including zero tolerance for corruption within the judiciary, transparency in the process of judge transfers, and strengthened oversight of judicial conduct.
3. Institutional strengthening of the KPK: The KPK, as the frontline in the fight against corruption, needs to be strengthened further, not weakened through legislative revisions that undermine its independence.
4. Codification and harmonization of regulations: A massive effort is needed to identify and resolve regulatory overlaps that create legal uncertainty. The government can establish a special commission for regulatory harmonization with a clear mandate.
5. Technology-based improvement of access to justice: The digitization of the judicial system—which has already begun through e-Court—needs to be expanded and deepened, including the use of AI to expedite the handling of routine cases.

6. Independent rule of law monitoring mechanisms: Indonesia needs to develop independent, data-driven mechanisms for monitoring the state of the rule of law, implemented by academic institutions or civil society organizations that are not tied to political interests.

7. Conclusion

Based on the study conducted, this article draws the following conclusions:

1. Indonesia has a fairly solid constitutional foundation for the rule of law, centered on Article 1, paragraph (3) of the 1945 Constitution, which affirms Indonesia as a state governed by law, and reinforced by a constitutional architecture that establishes the 1945 Constitution as the supreme law limiting all state powers. In this system, no institution stands above the constitution.
2. The new 2025 Criminal Procedure Code (KUHAP), signed by President Prabowo Subianto, represents the most significant reformative step in the "Red-White Cabinet" administration's rule of law agenda. This comprehensive reform of criminal procedure law directly addresses the issue of criminal justice—one of the weakest components in the WJP Rule of Law Index for Indonesia—and has the potential to improve the index score in the coming years if consistently implemented.
3. The decline in Indonesia's 2025 WJP Rule of Law Index score must be interpreted with nuance: not all dimensions have declined, and some aspects have actually improved. However, overall, this data confirms that there remains a serious gap between normative rule of law (*das Sollen*) and empirical rule of law (*das Sein*) in Indonesia.
4. An analysis of the gap between norms and practice shows that the greatest challenge to the rule of law in Indonesia lies not in a lack of rules, but rather in: suboptimal judicial independence, systemic corruption, unequal access to justice, regulatory fragmentation, and a weak culture of respect for the law among government officials.
5. The agenda toward substantive—rather than merely formal—rule of law requires a long-term commitment that extends beyond a single administration. Reforming the Criminal Procedure Code is a positive step, but it must be accompanied by serious judicial reform, strengthened anti-corruption efforts, expanded access to justice, and the fostering of a culture of lawfulness—starting with education and extending to the conduct of government officials.

The rule of law is not a state that can be achieved simply by amending the text of laws or constructing grand courthouses. It is the result of a long process of cultural and institutional transformation—a process that is never-ending and never immune to setbacks. In 2025, Indonesia stands at a crossroads between two possibilities: seizing the momentum of the Criminal Procedure Code (KUHAP) reform to advance toward a more substantive level of the rule of law, or allowing inconsistencies and institutional resistance to thwart this potential. That choice lies in the hands of all stakeholders—from the President, the House of Representatives (DPR), and the judiciary, to every citizen who chooses to respect and use the law as an instrument of justice.

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