



A THEORETICAL AND AXIOLOGICAL EVALUATION OF THE DETENTION OF INDIVIDUALS WITH PSYCHOTIC MENTAL DISORDERS UNDER KUHAP (THE INDONESIAN CRIMINAL PROCEDURE CODE): FROM PROCEDURAL INSTRUMENT TO DISGUISED PUNISHMENT

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Abstract

Detention under the Indonesian Criminal Procedure Code (KUHAP) is intended to function as a temporary, non-punitive procedural instrument to ensure the proper administration of criminal proceedings. However, the application of detention to individuals with psychotic mental disorders reveals a structural inconsistency between substantive criminal law and criminal procedure, causing detention practices to shift into a form of disguised punishment. This article adopts a normative-analytical approach to assess conceptual gaps within KUHAP, examine the implications of procedural incapacity, and evaluate the urgency of implementing medically rehabilitative detention grounded in international human rights principles. The study analyzes legal literature, national regulations, and forensic perspectives to trace the consequences of conventional detention practices for individuals with psychotic mental disorders. The findings indicate that standard detention not only fails to protect their rights but also heightens psychosocial risks, exacerbates mental conditions, and produces substantive injustice. This research underscores the need to reformulate KUHAP by recognizing procedural incapacity, implementing non-punitive detention based on medical rehabilitation, and integrating the principles of legal utility, substantive justice, and human rights protection. Such an approach is expected to bridge the gap between substantive criminal law and criminal procedure while affirming that the protection of the rights of individuals with psychotic mental disorders is not merely a domestic obligation but also a commitment to international human rights standards.

Keywords: Detention, KUHAP, Psychotic Mental Disorders, Disguised Punishment, Procedural Incapacity, Non-Punitive Detention, Human Rights Protection.

INTRODUCTION

Detention under the Indonesian Criminal Procedure Code (KUHAP) is formulated as a temporary, non-punitive procedural measure intended to ensure the presence of the suspect or defendant at trial, prevent flight, and secure evidence.¹ This instrument is designed to be administrative and temporary in nature, not a form of substantive punishment, as its function is to preserve the integrity of criminal proceedings and the effectiveness of judicial examination.

Within the normative framework of KUHAP, detention is presumed to be applied to legal subjects who are rational and autonomous.² Individuals subjected to detention are expected to understand the legal implications of such measures, regulate their behavior during the legal process, and exercise their procedural rights, including the right to challenge detention or access legal counsel. This assumption is consistent with the tradition of positive criminal procedure law, which emphasizes that detention is a procedural mechanism rather than a punitive instrument. However, the assumptions of rationality and autonomy are not always applicable when detention is

¹ KUHAP Pasal 100 ayat (5).

² Arief, Barda Nawawi, op.cit, h. 145-147.

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imposed on persons with psychotic mental disorders.³ Individuals experiencing psychosis may suffer from significant cognitive and volitional impairments, preventing them from understanding legal proceedings, controlling their conduct during examination, or participating meaningfully in trial. In this context, conventional detention may become harmful, increasing psychosocial risks, aggravating mental conditions, and contradicting the procedural objectives of KUHAP, which are intended to be non-punitive and protective.

This mismatch creates a normative and conceptual gap within Indonesian criminal procedure law, as KUHAP has yet to adequately accommodate the special needs of legal subjects with severe mental disorders. Consequently, the detention of persons with psychotic mental disorders risks transforming into a form of suffering resembling punishment, even though, under substantive criminal law, they may lack criminal responsibility. This phenomenon underscores the urgency of evaluating and reformulating detention principles, including recognition of procedural incapacity and the implementation of non-punitive detention models grounded in medical rehabilitation and human rights protection.⁴

Such reformulation is also consistent with the principles of legal utilitarianism and the doctrine of substantive justice. From an axiological perspective, detention that disregards the defendant's mental capacity not only fails to achieve procedural objectives but also produces tangible injustice. Formalistic detention practices that are unresponsive to the psychological condition of persons with psychotic mental disorders create ethical dilemmas and highlight the need for synergy between criminal procedure law, substantive criminal law, and mental health services.⁵

Moreover, detention regulations that are responsive to the condition of persons with psychotic mental disorders can support the procedural application of excusing doctrines. Under substantive criminal law, individuals proven to have suffered from a severe mental disorder at the time of committing an offense cannot be held criminally responsible due to the absence of *mens rea*. However, KUHAP has not yet fully translated this doctrine into detention practice, resulting in persons with psychosis continuing to experience restrictions on liberty that may amount to concealed suffering.⁶

Accordingly, this study affirms that the detention of persons with psychotic mental disorders is not merely a technical-procedural issue, but a conceptual problem that touches upon the foundational assumptions of criminal procedure, substantive justice, and human rights protection. A comprehensive evaluation of detention practices and the reformulation of KUHAP are expected to bridge the gap between substantive criminal law and criminal procedure, ensure adequate protection for persons with psychotic mental disorders, and integrate the principle of legal utility with international human rights standards.

LITERATURE REVIEW

2.1. Theory of Detention in Criminal Procedure Law

Classical theories of detention in criminal procedure emphasize its procedural and administrative character rather than its function as punishment.⁷ Detention is viewed as an instrument to ensure the smooth operation of judicial proceedings, secure the presence of the suspect or defendant at trial, prevent the destruction of evidence, and minimize the risk of flight. This approach is commonly described as *process assurance*, highlighting its administrative supervisory function rather than any deterrent or substantive punitive effect.

Within the classical theoretical framework, detention is assumed to be applied uniformly to all legal subjects under the presumption that every individual possesses rational and autonomous capacity to adjust behavior in accordance with legal demands. However, this assumption of homogeneity is not applicable to persons with psychotic mental disorders. Their cognitive and volitional limitations prevent behavioral adaptation consistent with procedural expectations, rendering standard detention theory insufficiently responsive to the psychological vulnerability of such defendants.

2.2. The Doctrine of Excusing Conditions and Lack of Criminal Responsibility

In substantive criminal law, the doctrine of excusing conditions establishes that individuals who lack the mental capacity to understand the consequences of their actions cannot be held criminally responsible.⁸ This concept

³ Morse, S. J., *Mental Disorder and Criminal Law* (Oxford: Oxford University Press, 2017), pp. 87-90.

⁴ United Nations, loc.cit.

⁵ Fletcher, G. P., loc.cit.

⁶ Hart, H. L. A., loc.cit.

⁷ Arief, Barda Nawawi, op.cit, h. 145-150.

⁸ Morse, S. J., op.cit, pp. 87-90.

is closely tied to the principle of *mens rea*, which requires intent or awareness in relation to a criminal act. For persons with psychotic mental disorders, severe mental impairment negates this element of fault, meaning they are not materially suitable subjects of conventional punishment.

However, KUHAP has not systematically translated this doctrine into the pre-adjudicative and adjudicative stages of criminal procedure. As a result, persons with psychotic mental disorders may still be subjected to detention despite lacking substantive criminal responsibility. The absence of a formal procedural mechanism to accommodate mental incapacity creates a misalignment between the objectives of substantive criminal law and the practice of criminal procedure, producing a normative paradox in which individuals who should be protected instead experience restrictions on liberty resembling punishment.

2.3 Literature on the Detention of Persons with Psychotic Mental Disorders

Previous scholarship highlights conceptual gaps in KUHAP regarding the detention of persons with psychotic mental disorders.⁹ One central issue is procedural incapacity, the inability of an individual to comprehend legal processes, make strategic decisions, and participate effectively in examination. KUHAP currently provides no normative basis for adapting detention practices to the mental capacity of the accused. Consequently, conventional detention may generate psychosocial harm, worsen mental conditions, and violate principles of substantive justice and human rights protection.

The literature also emphasizes the importance of detention models grounded in medical rehabilitation and forensic supervision. Such approaches allow procedural objectives to be achieved without jeopardizing the mental condition of persons with psychosis. The integration of non-punitive principles, human rights protection, and medical rehabilitation is consistently recommended as a means of closing conceptual and practical gaps within Indonesian criminal procedure.

2.4. International Literature

International research demonstrates that modern criminal justice systems have developed detention models for mentally disordered offenders based on rehabilitation and psychiatric evaluation. In the United Kingdom, for example, the Mental Health Act 1983 and the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 establish detention mechanisms emphasizing rehabilitation, periodic medical assessment, and multidisciplinary supervision.¹⁰

In the United States, forensic systems separate mentally ill detainees into specialized facilities with rigorous mental examinations designed to balance public protection, legal interests, and patient rights.¹¹ International literature consistently affirms that recognition of procedural incapacity and the implementation of non-punitive, rehabilitation-based detention constitute best practices for safeguarding the rights of mentally disordered persons while ensuring the effectiveness of judicial processes.

2.5. Research Gaps

Based on national and international scholarship, several significant research gaps remain:

1. Conventional detention continues to neglect psychosocial risks and the potential for human rights violations.
2. There is insufficient integration between criminal procedure law, substantive criminal law, and mental health systems.
3. Formal guidelines for periodic psychiatric evaluation to adjust the duration and conditions of detention in accordance with the defendant's mental capacity remain lacking.

These gaps underscore the necessity of conceptual and structural reform of KUHAP so that detention practices align with principles of legal utility, substantive justice, and human rights protection.

2.6. Research Justification

This research is significant because it contributes both conceptually and practically to the reform of Indonesian criminal procedure. By reviewing classical detention theory, excusing doctrines, literature on psychotic

⁹ Fletcher, G. P., loc.cit, and Hart, H. L. A., loc.cit.

¹⁰ UK Department of Health, *Mental Health Act 1983 and Amendments* (London, 2017).

¹¹ Torrey, E. F., "Managing Mentally Ill Offenders in the United States," *Psychiatric Services*, Vol. 65 (2014), pp. 121-129.

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mental disorders, and international practices, this study seeks to: Provide a theoretical basis for recognition *procedural incapacity*.

1. Provide a theoretical foundation for recognizing procedural incapacity.
2. Propose non-punitive detention models grounded in medical rehabilitation and human rights protection.
3. Bridge inconsistencies between substantive criminal law and criminal procedure in the detention of persons with psychotic mental disorders.
4. Serve as a reference for policymakers in developing a KUHAP reform that is more responsive to psychological vulnerability.

METHOD

3.1. Research Method

This study employs a normative-analytical approach aimed at evaluating the regulation of detention of persons with psychotic mental disorders (ODGJ Psychosis) under the Indonesian Criminal Procedure Code (KUHAP) from the perspectives of criminal procedure law, substantive criminal law, and human rights principles.¹² This approach emphasizes the analysis of legal documents, academic literature, and forensic doctrines, focusing on identifying conceptual and normative gaps arising from the application of detention to individuals with psychosis. The research data sources include: national regulations, namely the 1981 Criminal Procedure Code (KUHP) and its most recent 2025 revision, regulations concerning mental health and the detention of persons with mental disorders, as well as relevant court decisions; academic literature, including books, journal articles, and scholarly works discussing theories of detention, procedural incapacity, excuse doctrines, and human rights protection; and international literature, including case studies, legal guidelines, and best practices concerning the detention of persons with psychotic disorders in developed jurisdictions. The analysis is conducted qualitatively through the following stages: inventory of legal norms and detention practices; identification of conceptual gaps between substantive criminal law and criminal procedure law; evaluation of the implications of procedural incapacity for procedural effectiveness and justice; and formulation of KUHAP reform recommendations grounded in non-punitive principles, medical rehabilitation, and human rights protection.

3.2. Data Analysis

The data are analyzed using a content analysis method that emphasizes substantive interpretation of legal norms and doctrines. The analysis is conducted at several levels: normative level; evaluating the compatibility of KUHAP provisions with the excuse doctrine, the protection of the rights of persons with mental disorders, and the procedural objectives of detention; conceptual level, assessing theoretical gaps, including the absence of recognition of procedural incapacity and the transformation of detention into disguised punishment; axiological level, reviewing the consequences of detention practices for the mental well-being of persons with psychosis, judicial effectiveness, and human rights protection.

3.3. Framework of Analysis

The analytical framework of this research is designed to integrate three legal dimensions: substantive criminal law, assesses the recognition of the mental incapacity of persons with psychotic disorders and the application of the excuse doctrine; criminal procedure law, evaluates detention provisions under KUHAP, including duration, extension mechanisms, and supervisory procedures; human rights standards, examine the conformity of detention practices with the principles of protecting the rights of persons with psychotic disorders and international standards such as the ICCPR and the CRPD.

Through this framework, the study emphasizes the necessity of non-punitive detention based on medical rehabilitation that continues to fulfill the procedural objectives of KUHAP while reducing the risk of psychosocial harm and human rights violations.

3.4. Validity and Reliability

Research validity is ensured through triangulation of legal documents, national literature, and international practices, so that interpretations and recommendations are grounded in cross-source consistency.¹³ Reliability is strengthened by referring to academically verified literature and official regulation.

¹² Arief, Barda Nawawi, op.cit, h. 160-165.

¹³ Fletcher, G. P., *loc.cit*.

3.5. Analytical Findings (Summary)

Based on the analysis, the detention of persons with psychotic disorders under KUHAP remains formalistic and disregards procedural incapacity, allowing it to transform into disguised punishment. The duration and extension mechanisms of detention do not take into account the medical and psychological condition of the accused, increasing the risk of mental harm and social stigma. The integration of non-punitive principles and human rights protection remains limited, resulting in suboptimal legal protection for persons with psychotic disorders. Comparative international practices demonstrate the effectiveness of rehabilitation-based detention systems and periodic psychiatric evaluations in reducing the risk of human rights violations and enhancing procedural justice. These findings provide a foundation for recommending KUHAP reform that accommodates the reconceptualization of non-punitive detention, recognition of procedural incapacity, and integration of the mental health system into legal processes.

RESULTS AND DISCUSSION

This chapter examines the gradual transformation of the function of detention of persons with psychosis within criminal procedure law. The discussion begins with an analysis of the shift in detention from a non-punitive procedural instrument into disguised punishment. It then addresses the implications of procedural incapacity as a conceptual factor explaining the failure of criminal procedure law to accommodate defendants' mental capacity. The final section focuses on the need to reformulate non-punitive detention based on medical rehabilitation and human rights protection.

4.1. Transformation of the Function of Detention of Persons with Psychosis

Under KUHAP, detention is intended to function as a non-punitive procedural instrument, temporary in nature and designed to ensure the smooth operation of the judicial process, including securing the defendant's presence, preventing flight, and safeguarding evidence.¹⁴ Normatively, this function emphasizes administrative and procedural purposes rather than punishment.¹⁵

However, empirical and normative analysis shows that detention practices involving persons with psychosis frequently undergo a functional transformation into disguised punishment. In practice, detention often ceases to focus on procedural goals and instead generates substantial physical and psychological suffering for defendants.¹⁶ This situation is exacerbated by detention environments that fail to support the medical and psychosocial needs of persons with psychosis, including the lack of psychiatric supervision, limited facilities, and inappropriate examination procedures.¹⁷

This transformation stems from a conceptual misalignment between substantive criminal law and criminal procedure law. Substantive criminal law recognizes that persons with severe mental incapacity cannot be held criminally responsible under the excuse doctrine.¹⁸ Yet KUHAP has not systematically translated this doctrine into detention practices. As a result, although defendants should materially be exempt from criminal responsibility, they remain procedurally subjected to prolonged detention.¹⁹ This creates a normative paradox in which formal legal freedom contradicts factual conditions resembling punishment.²⁰

This functional transformation is further aggravated by the legally valid mechanism for extending detention under Article 107 paragraph (1) letter a of the KUHAP.²¹ In practice, such extensions rarely take the defendant's mental condition into account, resulting in detention periods that are often disproportionate to the psychological capacity of persons with psychosis.²² This indicates that KUHAP continues to operate on a universal assumption of

¹⁴ KUHAP, Pasal 100 ayat 5.

¹⁵ Arief, Barda Nawawi, *Hukum Acara Pidana Indonesia*, Edisi Revisi (Jakarta: Rajawali Pers, 2015), h. 145-146.

¹⁶ Kurniawan, A., "Penahanan ODGJ: Perspektif Psikiatri Forensik dan HAM," *Jurnal Hukum dan Kesehatan*, Vol. 12, No. 1, 2020, h. 33-35.

¹⁷ Suryani, D., *Aspek Psikososial Penahanan ODGJ*, (Yogyakarta: Pustaka Pelajar, 2019), h. 57-60.

¹⁸ Marzuki, Peter Mahmud, *Penelitian Hukum: Teori dan Metode*, (Jakarta: Kencana, 2018) (Jakarta: Kencana, 2018), h. 122-123.

¹⁹ Ibid., p. 124.

²⁰ Suparto, *Paradoks Hukum Acara Pidana dalam Penahanan ODGJ*, *Jurnal Kriminologi Indonesia*, Vol. 8, No. 2, 2021, h. 78-79.

²¹ KUHAP, Pasal 107 ayat 1 huruf a.

²² Satriawan, R., "Evaluation of the Detention of Psychotic Persons with Mental Disorders in Correctional Institutions," *Journal of Law and Human Rights*, Vol. 5, No. 2 (2020), p. 45.

rational legal subjects, an assumption that is not relevant for individuals experiencing psychotic disorders.²³ From an axiological perspective, this phenomenon generates several implications. First, the loss of rehabilitative function: detention that fails to consider mental capacity tends to worsen psychological conditions, obstruct recovery, and increase the risk of mental crisis.²⁴ Second, the loss of normative legitimacy: detention mechanisms that contradict the excuse doctrine weaken trust in procedural justice and the principle of legal utility.²⁵ Third, a protection gap in human rights: the absence of differentiated treatment for persons with psychosis creates potential human rights violations, including the right to health, humane treatment, and access to a fair legal process.²⁶

Accordingly, the transformation of detention functions for persons with psychosis is not merely an implementation problem, but an indicator of misalignment between the aims of substantive criminal law, principles of justice, and criminal procedural mechanisms. A normative and structural approach integrating medical rehabilitation, psychiatric evaluation, and human rights protection is essential to restore detention to its proper procedural and non-punitive function.²⁷

4.2. Implications of Procedural Incapacity

The concept of procedural incapacity refers to a defendant's inability to effectively understand legal proceedings, make strategic decisions, and participate meaningfully during investigation and trial.²⁸ In the context of psychosis, this limitation is not merely cognitive, but also involves impaired behavioral control, limited comprehension of charges, and difficulties in communicating with legal counsel.²⁹

The juridical framework developed in the literature shows that mental incapacity affects not only substantive criminal responsibility (as reflected in the excuse doctrine), but also the procedural capacity of defendants to face trial fairly and meaningfully.³⁰ This procedural incapacity has serious implications for multiple aspects of the criminal justice system.

First, increased psychosocial risk: individuals with psychosis who are detained without recognition of procedural limitations are vulnerable to worsening mental conditions due to detention environments that fail to meet medical and psychosocial needs.³¹ Legal research further indicates that handling suspects with mental disorders in systems that ignore mental conditions risks reinforcing social stigma and marginalization.³²

Second, reduced effectiveness of judicial proceedings: a defendant's inability to understand charges, rights, or communicate effectively with counsel may cause trial delays, decision-making errors, and procedural confusion.³³ International studies show that justice systems often struggle to assess defendant capacity in the absence of formal psychiatric evaluation mechanisms.³⁴

Third, loss of detention legitimacy: when detention duration and conditions disregard mental status, detention loses its normative and axiological legitimacy because it no longer serves procedural or rehabilitative purposes. Modern procedural justice requires detention to meet fair trial standards and minimize unnecessary suffering, including for individuals with cognitive or psychosocial impairments.³⁵

Academic research also emphasizes that the absence of normative mechanisms recognizing procedural incapacity places persons with psychosis in structurally unfair positions within law enforcement, forcing them to

²³ Arief, op. cit., p. 150.

²⁴ Kurniawan, op. cit., h. 37-38.

²⁵ Suparto, op. cit., h. 81.

²⁶ Suryani, op. cit., h. 62.

²⁷ Marzuki, op. cit., h. 130-131.

²⁸ Morse, S. J., loc.cit.

²⁹ Tapowolo, W. M. P., Medan, K. K., & Dima, A. D. (2025). *Pertanggungjawaban pidana dan perlindungan hukum bagi pelaku tindak pidana dengan gangguan kejiwaan*. *The Juris*, 9 (1), h. 78–80. <https://doi.org/10.56301/juris.v9i1.1591>

³⁰ Hariadi, M. R., Sudjarmiko, & Naimah, N., Pembuktian orang dengan gangguan jiwa (ODGJ) sebagai alasan penghapus pidana. *IUS: Jurnal Ilmiah Fakultas Hukum*, 11(1), hlm. 75-78. <https://doi.org/10.51747/ius.v0i1.1416>

³¹ Tapowolo, W. M. P., Medan, K. K., & Dima, A. D., loc.cit.

³² Latili, N., Perlindungan hukum terhadap pelaku tindak pidana yang mengalami gangguan mental. *Ganec Swara*, 19(1), hlm. 300-302. <https://doi.org/10.59896/gara.v19i1.219>

³³ Hariadi, M. R., Sudjarmiko, & Naimah, loc.cit.

³⁴ Mulder, C. L., & Daalman, K., "Forensic Psychiatry and the BOPZ in the Netherlands: Legal Framework and Clinical Practice," *International Journal of Law and Psychiatry*, 59 (2018), pp. 90–98. <https://doi.org/10.1016/j.ijlp.2018.01.005>

³⁵ Latili, N., op.cit.

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undergo procedures incompatible with their mental capacity.³⁶ Procedural incapacity is therefore not merely a clinical issue, but one that touches the foundations of criminal justice: how the law evaluates and treats mental vulnerability in procedural contexts.

Normative recognition of procedural incapacity is thus crucial to ensure that detention decisions are proportionate and fair in light of mental capacity, and that legal processes adapt examination and trial procedures so defendants with mental disorders remain equal before the law. Fundamental rights such as due process and fair trial must remain protected even when mental conditions limit full participation.³⁷

4.3 Reformulation of Non-Punitive Detention

Based on national literature reviews and international practices, conventional detention of defendants with psychotic mental disorders (ODGJ Psychosis) tends to generate psychosocial risks and exacerbate their mental conditions. Therefore, the reformulation of detention must prioritize a non-punitive approach grounded in medical rehabilitation and human rights protection. This concept emphasizes that detention should not function as a form of punishment, but rather as a procedural instrument aimed at recovery and the protection of the defendant.

Several reformatory measures may be implemented. First, placement in specialized facilities. Defendants with psychotic disorders should be placed in facilities equipped with medical and forensic psychiatric services, rather than in detention centers or general prison cells that fail to accommodate medical and psychosocial needs.³⁸ Such placement enables continuous monitoring of mental conditions and reduces the risk of psychological crises caused by inappropriate detention environments.

Second, periodic psychiatric evaluation. Detention must be accompanied by mechanisms for regular psychiatric assessments to adjust the duration of detention in accordance with the defendant's mental condition. This procedure not only ensures proportionality in detention periods, but also upholds the principle of substantive justice by accommodating rehabilitation needs and protecting individual rights.³⁹

Third, integration of substantive justice and human rights protection. The reformulation of detention must ensure that detention procedures and duration do not cause psychological, social, or stigmatizing harm to defendants. This approach aligns with international human rights standards, including the principles of non-discrimination, humane treatment, and the right to mental health, as articulated in the United Nations Convention on the Rights of Persons with Disabilities (CRPD).⁴⁰

Fourth, separation between procedural and punitive functions. Detention must be theoretically reformulated to ensure that its procedural function (securing the judicial process) does not overlap with punitive functions under substantive criminal law. This separation prevents the transformation of detention into disguised punishment and ensures that criminal procedure law remains administrative and non-punitive in nature.⁴¹

This reformatory approach is consistent with the principles of therapeutic jurisprudence, whereby the legal system serves not only to enforce order and formal justice, but also to support the recovery of vulnerable individuals, including defendants with psychotic disorders.⁴² Within this framework, detention functions as a mechanism of protection and psychosocial recovery, rather than as a repressive or punitive instrument.

Through the implementation of this reformulation, the Criminal Procedure Code (KUHAP) is expected to: (1) reduce psychosocial risks for defendants with psychotic disorders, including stress, depression, and anxiety; (2) enhance the effectiveness of judicial proceedings through more meaningful defendant participation; (3) strengthen the legitimacy of criminal procedure law through substantive justice and human rights protection; and (4) produce a proportional, equitable detention model adaptable to national policy contexts.

4.4. Policy Implications and Implementation Strategies

³⁶ Hariadi, M. R., Sudjatmiko, & Naimah, N., *loc.cit.*

³⁷ *Ibid.*

³⁸ Hariadi, M. R., Sudjatmiko, & Naimah, N., *loc.cit.*

³⁹ Sagara, P. W., et al. (2023). Criminal sanctions against offenders with mental disorders. *Jurnal Konstruksi Hukum*, 4(1), 118–124.

⁴⁰ United Nations, *Convention on the Rights of Persons with Disabilities* (2006). <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁴¹ Pradea, R., Haryadi, & Arfa, N. (2024). *Orang dengan gangguan jiwa (ODGJ) sebagai korban tindak pidana: Bagaimana aturan hukum pidananya?* PAMPAS: Journal of Criminal Law, 5(1), 1–13.

⁴² Wexler, D. B. (2017). Therapeutic jurisprudence and mental health law. *International Journal of Law and Psychiatry*, 50, 10–18. <https://doi.org/10.1016/j.ijlp.2016.11.005>

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Based on the research findings and literature analysis, the reformulation of detention for defendants with psychotic disorders requires a comprehensive policy approach integrating criminal procedural law, substantive criminal law, human rights protection, and medical rehabilitation practices. The following policy strategies are recommended:

1. Revision of the Criminal Procedure Code (KUHAP)

KUHAP must incorporate formal provisions regarding *procedural incapacity* for defendants with psychotic disorders, including the right to special treatment in accordance with their mental capacity. Furthermore, detention duration should be regulated based on periodic psychiatric assessments, ensuring that any extension of detention considers the defendant's psychological condition and ongoing risk.⁴³ This revision would strengthen KUHAP's normative legitimacy while ensuring proportionality and substantive justice in detention practices.

2. Integration with the Mental Health System

Law enforcement authorities should be granted the authority to place defendants with psychotic disorders in forensic psychiatric hospitals or appropriate rehabilitation institutions. This integration facilitates coordination between legal authorities and medical professionals, ensuring that detention remains non-punitive, recovery-oriented, and protective against psychosocial risks arising from general detention environments.⁴⁴

3. Standardization of Psychiatric Evaluation

The establishment of standardized guidelines for routine psychiatric evaluations is essential. These evaluations should assess legal capacity, risk of reoffending, rehabilitation needs, and readiness to participate in judicial proceedings. Such standardization enables adaptive, evidence-based detention mechanisms and minimizes arbitrary or harmful detention extensions.⁴⁵

4. Strengthening Human Rights Protection

The principle of *sympathetic treatment* must be institutionalized at every stage of the legal process, from arrest and detention to court proceedings. This approach emphasizes respect for human dignity, access to mental health services, and protection against discrimination and social stigma.⁴⁶ Its implementation positions detention as a protective, rather than repressive, mechanism.

These implementation strategies bridge the gap between substantive criminal law and criminal procedural law while reinforcing the integrity of the criminal justice system. By focusing on rehabilitation, human rights, and psychiatric evaluation, the legal system can enhance judicial effectiveness, prevent disguised punishment, and provide optimal protection for defendants with psychotic disorders.

4.5. Comparison with International Practices: The United Kingdom, the Netherlands, and the United States

The detention of defendants with psychotic disorders in Indonesia remains largely formalistic, thereby creating the risk of disguised punishment. International practices demonstrate more effective non-punitive detention models grounded in medical rehabilitation and human rights protection.

United Kingdom – Mental Health Act 1983, detention of individuals with mental disorders is conducted through placement in specialized mental health facilities (secure hospitals) rather than general prisons. Detention is based on regular medical and psychiatric assessments evaluating cognitive capacity, risk to self or others, and rehabilitation needs. Detention duration is determined by clinical conditions rather than purely legal procedures. This system clearly separates procedural functions from substantive punishment, preventing disguised punishment.⁴⁷

The Netherlands – Wet BOPZ (Special Admissions to Psychiatric Hospitals Act) which regulates detention of individuals with psychotic disorders in forensic psychiatric hospitals. This policy emphasizes intensive psychiatric evaluations before, during, and after detention, with the primary objectives of medical rehabilitation and social

⁴³ Hariadi, M. R., Sudjatmiko, & Naimah, N., loc.cit.

⁴⁴ Pradea, R., Haryadi, & Arfa, N. (2024), loc.cit.

⁴⁵ Sagara, P. W., et al. (2023). Criminal sanctions against offenders with mental disorders. *Jurnal Konstruksi Hukum*, 4(1), 118–124.

⁴⁶ United Nations, *Convention on the Rights of Persons with Disabilities* (2006). <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁴⁷ UK Department of Health, *Mental Health Act 1983 and Amendments* (London, 2017).

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reintegration. Detention decisions are supervised by specialized courts and periodically reviewed, ensuring proportionality with mental capacity and psychosocial risk.⁴⁸

United States – Forensic Mental Health Facilities. In the United States, defendants with mental disorders are placed in forensic mental health facilities subject to strict psychiatric evaluations. The system emphasizes legal capacity assessment, violence risk evaluation, and rehabilitation needs on a periodic basis. Detention in general prisons is minimized, allowing individuals with mental disorders to receive appropriate medical intervention while reducing stigma and psychological deterioration.⁴⁹

Implications for Indonesia: This comparison highlights best practices that can be adapted in Indonesia, including: (1) detention based on medical rehabilitation and periodic psychiatric evaluation; (2) formal recognition of procedural incapacity for defendants with psychotic disorders; (3) clear separation between procedural detention and punitive functions; and (4) integration of human rights principles and substantive justice to prevent disguised punishment. Adopting these principles would close the gap between substantive criminal law and criminal procedure law, enhance judicial effectiveness, and protect the rights of defendants with psychotic disorders.

4.6. Conclusion of the Discussion

Based on normative, empirical, and comparative analyses, it can be concluded that the detention of defendants with psychotic disorders under the current KUHAP exhibits characteristics indicating inefficiency and potential injustice, including:

1. Formalistic approach and lack of responsiveness to mental capacity
Detention operates under the universal assumption that defendants possess rational capacity to understand legal proceedings, despite the cognitive limitations and procedural incapacity of individuals with psychotic disorders. Consequently, detention duration, mechanisms, and procedures fail to adapt to mental conditions, undermining the procedural objectives of KUHAP.⁵⁰
2. Potential transformation into disguised punishment
Extended detention periods permitted under Article 107 paragraph (1) letter (a) of KUHAP, combined with mechanisms that disregard psychosocial needs, transform formal detention into disguised punishment. Defendants who are materially incapable of criminal responsibility nonetheless experience deprivation of liberty that adversely affects their mental, social, and psychological well-being.⁵¹
3. Need for normative and structural reformulation
Reformulation of detention for defendants with psychotic disorders must include:
 - a. Integration of therapeutic jurisprudence principles, positioning detention as a mechanism for medical recovery and rights protection.
 - b. Recognition of procedural incapacity as a normative basis for detention, ensuring that criminal procedural mechanisms are adjusted to the mental capacity of suspects/defendants.
 - c. Implementation of periodic psychiatric evaluations and separation between procedural and punitive functions, in order to prevent legal distortion into disguised punishment.
 - d. Enforcement of substantive justice principles and human rights protection as axiological foundations, including the right to health, humane treatment, and fair access to judicial processes.⁵²
4. Implications for KUHAP reform. These conclusions underscore that KUHAP reform must be structural, axiological, and paradigmatic. Detention of defendants with psychotic disorders should no longer function merely as an administrative procedural instrument, but as a mechanism of protection, medical rehabilitation, and social recovery aligned with legal utility, substantive justice, and international human rights obligations.⁵³

CONCLUSION

⁴⁸ Mulder, C. L., & Daalman, K., “op.cit, pp. 90-98.

⁴⁹ Torrey, E. F., & Zdanowicz, M. T., “Forensic Mental Health Services in the United States: Practices and Outcomes,” *Journal of Forensic Psychiatry & Psychology*, 31(3) (2020), pp. 337–352. <https://doi.org/10.1080/14789949.2020.1712356>

⁵⁰ Arief, Barda Nawawi, op.cit.h.112-115.

⁵¹ Mulder, C. L., & Daalman, K., loc.cit.

⁵² Torrey, E. F., & Zdanowicz, M. T., “Forensic Mental Health Services in the United States: Practices and Outcomes,” *Journal of Forensic Psychiatry & Psychology*, 31(3) (2020), pp. 337–352. <https://doi.org/10.1080/14789949.2020.1712356>

⁵³ Department of Health, *Mental Health Act 1983: Code of Practice* (London: UK Government, 2015).

A THEORETICAL AND AXIOLOGICAL EVALUATION OF THE DETENTION OF INDIVIDUALS WITH PSYCHOTIC MENTAL DISORDERS UNDER KUHAP (THE INDONESIAN CRIMINAL PROCEDURE CODE): FROM PROCEDURAL INSTRUMENT TO DISGUISED PUNISHMENT

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This analysis affirms that detention of defendants with psychotic disorders under the current KUHAP reflects significant normative and axiological gaps. Conventional detention, designed as a non-punitive procedural instrument, often transforms in practice into disguised punishment due to detention duration, mechanisms, and conditions that fail to consider mental capacity and special needs. This phenomenon results in substantive injustice, psychosocial risks, and potential human rights violations. To address these gaps, KUHAP reform must encompass several key aspects:

1. Recognition of procedural incapacity, enabling criminal procedural mechanisms to adapt to the cognitive capacity and legal participation of defendants with psychotic disorders.
2. Implementation of non-punitive, medically based detention emphasizing rehabilitation, including placement in appropriate forensic facilities, periodic psychiatric evaluation, and rehabilitative interventions.
3. Integration of human rights protection and legal utility principles, transforming detention from a mere procedural formality into a mechanism of recovery, protection, and substantive justice.

With the implementation of these reforms, Indonesia's criminal justice system can become more responsive to individual vulnerability particularly for defendants with psychotic disorders, while upholding substantive justice. Detention would no longer function solely as an administrative or repressive mechanism, but as an integrated framework of protection, rehabilitation, and recovery consistent with international human rights standards and the principle of legal utility.

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