

Legal Protection by Advocates for The Rights of Suspects in The Investigation Process of Criminal Cases

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Legal Protection by Advocates for The Rights of Suspects in The Investigation Process of Criminal Cases

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Abstract. *In providing legal protection to a suspect, the implementation of Law Number 8 of 1981 concerning Criminal Procedure Law is crucial, especially at the investigation stage in a criminal case. At the interrogation stage, arbitrary actions often occur on the part of investigators against suspects suspected of being involved in criminal acts. This research explores the legal protection of suspects' rights in the process of examining criminal cases, with a focus on the role of advocates in accordance with the provisions of Law Number 8 of 1981 concerning Criminal Procedure Law. The interrogation stage in an investigation often becomes the focal point, where arbitrary actions on the part of investigators can threaten the suspect's rights. This research adopts a library research method with a normative juridical approach. The approach in this research involves library materials or secondary sources, which are then collected, analyzed and researched. Field studies were also carried out to obtain direct data regarding the protection of suspects' rights in the investigation process. The role of advocates in legal assistance at the investigation level has limitations regulated by Article 115 of the Criminal Procedure Code. These restrictions are a step to maintain the smoothness of the investigation process without any interference that could harm the interests of the state. Therefore, apart from advocates having a more passive role at this stage, the principle of legal protection for suspects remains the main focus in running the criminal justice system.*

Keywords: Legal Protection; Investigation; Advocate; Criminal Procedure Examination.

1. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia firmly stipulates that Indonesia is a legal state. The principle of the rule of law emphasizes the need to guarantee equality for every individual before the law, which is known as the principle of equality before the law. The 1945 Constitution of the Republic of Indonesia also asserts that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. To realize these principles, it is necessary not only to have clear legal norms or regulations but also the presence of officials who are professionals, have integrity, and discipline in implementing and enforcing the law. These legal officials need to be supported by adequate legal facilities and infrastructure, as well as active participation from the community in applying legal behavior. Indonesia, as a legal state, is expected to have institutions or law enforcement agencies with appropriate qualifications and competence. The existence of such institutions is crucial to ensure the protection of individual rights, provide legal certainty, and uphold the rule of law in order to create a just and civilized society.

Law enforcement involves individuals playing roles in various fields such as the judiciary, public prosecution, police, legal practice, and corrections. The success of a legal enforcement system does not solely depend on the responsibilities of institutions such

as the police, public prosecution, courts, or correctional facilities. Responsibilities also extend to lawyers or advocates. In Law No. 18 of 2003 concerning Advocates, an advocate is defined as an individual providing legal services, both within and outside the court, and meeting the requirements as stipulated by the law. The role of lawyers is crucial in the context of law enforcement. They not only act as legal defenders or advisors but also play a part in ensuring individual rights, including ensuring the principle of presumption of innocence is respected. The presence of lawyers contributes significantly to ensuring that every individual has access to fair legal protection.¹ Lawyers help bridge clients with the judicial system, provide legal advice, and ensure that legal processes are carried out with integrity and in accordance with human rights principles. In applying the principle of presumption of innocence, Harahap emphasized that suspects must be given a position that respects their dignity as human beings. This understanding requires that the suspect be considered as a subject, not an object. The focus of the examination must be on the criminal acts committed by the suspect, which is the object of the examination. The principle of presumption of innocence requires that guilt related to the criminal act of which the suspect is accused must be properly proven. The examination process must move towards determining whether the suspect is guilty of the crime charged. During the examination process, the suspect must be considered innocent in principle, in accordance with the principle of presumption of innocence, until a court decision has permanent force. Thus, this principle emphasizes that the essence of human dignity must always be respected in the legal process. Suspects must be given fair treatment and presumed innocent until proven otherwise through a fair and transparent court process. The application of the principle of presumption of innocence is the basis for justice and protection of human rights in the criminal justice system. In providing legal protection to a suspect, the implementation of Law Number 8 of 1981 concerning Criminal Procedure Law is crucial, especially at the investigation stage in a criminal case.² At the interrogation stage, arbitrary actions often occur on the part of investigators against suspects suspected of being involved in criminal acts. Even though the aim is to obtain a confession or direct information from the suspect, the methods used are not always in accordance with applicable legal norms. In providing information to investigators, the suspect must be able to do so freely without pressure or coercion from the investigator. This is important so that the examination process can take place fairly and in accordance with the actual truth. Nevertheless, the main problem that arises in this research is how the law protects the rights of suspects during the criminal case examination process, as well as the role of advocates in protecting the rights of suspects and defendants in the context of criminal case examinations.

2. METHODS

This research adopts a library research method with a normative juridical approach. The approach in this research involves library materials or secondary sources, which are then collected, analyzed and researched. Sources of primary legal materials include various laws, such as Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 39 of 1999 concerning Human Rights, Law Number 2 of 2002 concerning the Police of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power, and

¹ Budi Prasetyo. "The Legal Protection of Children's Rights due to Parental Divorce in Islamic Family Law in Predominantly Muslim Countries." *JURNAL AKTA* 10, no. 1: 61.

² Anak Agung Istri Agung, I. Nyoman Sukandia, I. Nyoman Alit Puspadma, and Yuliiia Chornous. "Legal Protection and Legal Certainty in Indonesia's Land Title Registration System." *JURNAL AKTA* 9, no. 4: 524-540.

¹ Government Regulation Number 27 of 1983 concerning Implementation Regulations of the Criminal Procedure Code. Sources of secondary legal materials include textbooks, legal journals, legal magazines, as well as opinions from experts who discuss or explain primary legal sources. Tertiary legal sources consist of supporting materials such as legal dictionaries, internet media, manuals, encyclopedias, and books on terms that are often used in the context of legal protection of suspects' rights in the process of investigating criminal cases. Data collection was carried out through intensive study of books, statutory regulations and related documents obtained from² relevant agencies. Field studies were also carried out to obtain direct data regarding the protection of suspects' rights in the investigation process. Thus, this method provides a solid foundation for analyzing and explaining legal aspects related to the protection of suspects' rights in the context of human rights in the criminal case investigation process.

3. RESULTS AND DISCUSSION

3.1. Legal Protection of Suspects' Rights in the Criminal Case Investigation Process

Legal protection of the rights of suspects is of significant relevance in maintaining balance and justice in the legal order of society.³ The term protection comes from a place of refuge, depicting the need to shield individuals from potential harm and danger. Arief⁴ identifies four main aspects of legal protection that need attention. First, society requires protection against anti-social behaviors that are harmful and dangerous. Second, protection is needed against the dangerous traits of individuals. Third, society needs protection from the misuse of sanctions or reactions that may be given by law enforcement or the general public. Fourth, protection is needed for the balance and harmony of various interests and values that are disrupted as a result of crime.⁵

The process of resolving criminal cases according to criminal procedural law is a lengthy journey involving several stages. The first stage is the investigation, where authorities collect evidence and information related to a case. The second stage is prosecution, where prosecutors determine whether the case is eligible to be brought to court. The third stage involves trial proceedings, where evidence and arguments are presented to determine the guilt or innocence of the suspect.⁶ Finally, the stage of implementing and overseeing the court's decision becomes the last step in upholding justice. In the investigation process, an investigator is an individual responsible for conducting an inquiry, a series of actions to search for and discover circumstances or events related to a crime or criminal act, or suspected criminal activity. The process of searching and efforts to find events suspected of being criminal acts aims to determine whether the events found qualify for investigation, in accordance with the provisions regulated by the

³ Kencana, Nareswari, and Liza Priandhini. "The Implementation of a Complete Systematic Land Registration Program to Realize Legal Protection and Public Welfare." *Jurnal Akta* 9, no. 4 (2022): 402-411.

⁴ Arief, Barada Nawawi. *Polisi Sebagai Penegak Hukum Masalah-Masalah Hukum*, (Undip: Semarang, 1988), 17

⁵ Zulyadi, Rizkan. "Police's Role in Investigation Process of Fraud Criminal Act of Civil Servants Candidate (Case Study of Police Station Binjai)." *Britain International of Humanities and Social Sciences (BIOHS) Journal* 2, no. 2 (2020): 403-411.

⁶ Ramadhani, Rahmat. "Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia." *International Journal Reglement & Society (IJRS)* 2, no. 2 (2021): 87-95.

Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*), as explained in Article 1 point 5.⁷

Investigation is a method or subfunction of the investigative process that serves as the initial step before enforcement actions such as arrest, detention, search, seizure, examination of documents, summons, investigative actions, and submission of case files to the public prosecutor are carried out. In the investigation stage, investigators are tasked with gathering preliminary evidence or sufficient evidence to allow for follow-up investigations. Investigation, in its concept, can be considered equivalent to the understanding of the investigation, where efforts are made to search for and find traces in the form of information and evidence related to an event suspected of being a criminal act.⁸ Article 1 point 2 of the Criminal KUHAP states that investigation is a series of actions by investigators to search for and collect evidence to explain the criminal act that occurred and find the suspect.⁹ Investigation, as interpreted by de Pinto, can be equated with opposing or interrogation, which refers to preliminary examinations by officials appointed by law after hearing reasonable reports of legal violations.¹⁰

In addition to carrying out their duties, an investigator has the primary obligation to uphold the applicable law. Empowering an investigator is not solely based on authority but is grounded in an approach of duties and responsibilities. The authority granted to an investigator is adjusted based on their position, rank, knowledge, as well as the weight of the duties and responsibilities they carry. An investigator is required to consider the humanitarian aspects, given that a suspect is not just an object but a subject with rights and obligations. The investigative process, as the initial step to gather evidence to explain a criminal act, is the full responsibility of the police. Therefore, regarding the results of suspect interrogations and other evidence, before being handed over to the public prosecutor, an investigator is expected to assess the evidence objectively, based on the true truth, while considering humanitarian principles.¹¹

3.2. Implementation of Legal Protection for Suspects' Rights in the Investigation Process²

In the implementation of legal protection for the rights of suspects during the investigation process, the normative foundation has been clearly regulated in the Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*). Investigators, as officials playing a primary role in conducting investigations, are granted authority as stipulated in Article 7 paragraph (1) of the KUHAP. Investigators have responsibilities that involve several powers, including receiving reports or complaints when present at the scene of a criminal act.¹² Furthermore, when present at the scene,

⁷ Nasution, Abdul Hayy, and I. Gusti Ayu Anita Lakshana. "Kewenangan Penyidik Pegawai Negeri Sipil (PPNS) dalam Undang-Undang Republik Indonesia No. 8 Tahun 1981 tentang Hukum Acara Pidana pada Pasal 1 Ayat (1) Jo. Pasal 6 Ayat (1) dan Undang-Undang No. 19 Tahun 2019 tentang Tindak Pidana Korupsi pada Pasal 1 Ayat (6) dalam Proses Peradilan Pidana Indonesia." *FOCUS* 3, no. 2 (2022): 92-101.

⁸ Ilham, Ilham, Asbullah Thamrin, Danil Danil, and Nurmiati Muhiddin. "Legal Protection for Victims of Wrongful Arrest Experiencing Violence in the Investigation Process." *TERAJU: Jurnal Syariah dan Hukum* 4, no. 02 (2022): 71-85.

⁹ Triyanto, Gatot. "Persamaan Hak bagi Tersangka atau Terdakwa untuk Memperoleh Bantuan Hukum dalam Kitab Undang-Undang Hukum Acara Pidana (KUHAP)." *Jurnal Rechtsens* 7, no. 2 (2018): 213-228.

¹⁰ Hamzah, Andi. *Pengantar Hukum Acara Indonesia*, (Jakarta: Ghalia Indonesia, 1984), 121

¹¹ Diepeveen, Aafke, Jan Svennevig, and Pawel Urbanik. "Suspects' opportunities to claim their legal rights in police investigative interviews." *International Journal of Speech, Language & the Law* 28, no. 2 (2021).

¹² Jayadi, Ahkam. "Implementasi Pasal 56 Ayat (1) KUHAP Atas Bantuan Hukum terhadap Terdakwa oleh Pos Bantuan Hukum (Posbakum) di Pengadilan Negeri Makale Kelas IB." *Alauddin Law Development Journal* 4, no. 3 (2022): 727-746.

investigators can take necessary initial actions. In interactions with suspects, investigators have the right to order a suspect to stop and examine their identification. Moreover, the authority of investigators also covers aspects of arrest, detention, search, and seizure, which can be carried out in accordance with applicable legal provisions. The investigative process also includes the examination and seizure of documents, fingerprinting, and photographing of a perpetrator for investigative purposes. Subsequently, investigators can summon individuals to be heard and examined as suspects or perpetrators. Investigator authority also involves the ability to summon necessary experts in connection with the examination of a case. In addition, investigators have the authority to terminate an investigation and take other actions in accordance with applicable law. All these powers are granted with the aim of providing legal certainty, safeguarding the rights of suspects, and ensuring that the investigative process adheres to the principles of applicable law.¹³

The initial action taken by investigators is to conduct an examination at the scene based on the received reports or complaints. After this examination, sufficient evidence is found to support the suspicion of a criminal act, the next step taken by investigators is to arrest the suspect. This is in accordance with the provisions of Article 16 paragraph (2) of the KUHAP, which states that, for the purposes of investigation, investigators and assistant investigators have the authority to make arrests. Arrest is a significant step in the investigative process when the collected evidence is deemed sufficient to involve someone as a suspect. This action is taken in good faith to ensure the smooth progress of the investigation and the continuity of the legal process in accordance with applicable regulations.¹⁴

The process of arresting a suspect is carried out based on sufficient preliminary evidence, as a preventive measure to avoid wrongful arrests that could adversely affect the rights and reputation of the suspect. This principle is emphasized by Article 17 of the KUHAP, which states that an arrest warrant is issued for someone who is strongly suspected of committing a criminal act, based on sufficient preliminary evidence.¹⁵ The arrest procedure is based on the existence of evidence that can adequately support the suspicion of a criminal act. This is to ensure that the arrest is made in good faith, in accordance with the law, and provides certainty that the arrested suspect is genuinely involved in a criminal act. This principle is crucial to safeguarding human rights, protecting privacy, and preventing the abuse of authority in the legal process.

3.3. The Role of Advocates in Protecting the Rights of Suspects and Defendants in Criminal Case Investigations

The right to legal assistance is one of the rights granted to the suspect, especially for those who have a limited understanding of the law, including socially disadvantaged suspects. The importance of considering the rights of the suspect, particularly those less fortunate and unfamiliar with the law, demonstrates justice in the judicial system. Every individual needs a figure who can provide reliable and trustworthy information, along with a signature and stamp that serve as strong evidence. This figure is a legal counsel or attorney. A lawyer is an individual who provides legal assistance or advice to clients or seekers of justice. A lawyer is defined as someone who performs the duty of providing

¹³ Sulistono, Eko. "Perlindungan Hukum Atas Hak-Hak Tersangka Pada Proses Penyidikan Perkara Pidana Dalam Perspektif Hak Asasi Manusia." *Mizan: Jurnal Ilmu Hukum* 8, no. 2 (2019): 96-103.

¹⁴ Caunang, Meyland Iwan. "Kajian Yuridis Penetapan Tersangka Dalam Proses Penyidikan Tindak Pidana Ditinjau Dari Perspektif Hak Asasi Manusia." *Lex Administratum* 5, no. 3 (2017).

¹⁵ Martono, Martono. "Perlindungan Hukum terhadap Penangkapan dan Penahanan Tersangka dalam Perspektif Hak Asasi Manusia." *Al-Ishlah: Jurnal Ilmiah Hukum* 23, no. 1 (2020): 98-114.

legal assistance in court, both in civil and criminal cases. Lawyers serve as advocates and legal experts who help clients understand the legal process, their rights, and provide competent legal representation. The right to legal assistance, especially through a lawyer, is a crucial step in ensuring that every individual has equal access to justice within the legal system.¹⁶

The legal profession plays a significant role in law enforcement, particularly in ensuring that individual rights are observed and not neglected, including efforts to uphold the presumption of innocence. This principle asserts that a suspect is considered innocent until there is a final legal decision. Article 54 of Law No. 8 of 1981 on the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*) emphasizes the right of the suspect or defendant to receive legal assistance for defense purposes.¹⁷ This right includes the right to have one or more legal advisors during any examination, in accordance with the procedures stipulated in the law. However, in practice, especially for individuals with limited resources and inadequate legal knowledge, access to legal assistance is not yet optimally realized. There are challenges in the accessibility and distribution of legal aid, which can hinder those in need.¹⁸

The presence of legal aid, especially through legal counsel or attorneys, plays a strategic role in anticipating the potential abuse of authority by law enforcement during the investigation stage. Legal assistance serves as a preventive measure to avoid arbitrary treatment of suspects, particularly for those who are less privileged or lack an in-depth understanding of the law. The current reality indicates that obtaining legal aid is not always cost-free. As mandated by Law No. 8 of 1981 on the KUHAP, the rights of individuals should not be ignored or diminished by law enforcement during the examination process, especially at the investigation level.¹⁹

The implementation of the presumption of innocence becomes crucial as a safeguard for human rights and an assurance that every individual is considered innocent until there is a final legal decision. In fulfilling and protecting human rights, law enforcement is inseparable from the criminal justice process regulated in the design of criminal justice procedure. The purpose of criminal procedural law is to carry out a fair legal process, known as due process of law. The definition of due process of law, according to Bazelon,²⁰ refers to a fair legal process that signifies, means, and essentially involves the right of a citizen to defend oneself and demand rights, recognizing equal standing in the law. The concept of due process of law emphasizes the right to freedom for citizens to defend themselves and demand their rights while acknowledging that every individual has an equal standing in the legal framework. Through a fair legal process, it is expected that every individual can actively engage in the criminal justice system, ensuring that their rights are recognized and respected, and upholding the principles of justice and impartiality within the legal system.²¹

¹⁶ Wexler, Rebecca. "Privacy asymmetries: Access to data in criminal defense investigations." *UCLA L. Rev.* 68 (2021): 212.

¹⁷ Pura, Margo Hadi, and Hana Faridah. "Asas Akusator Dalam Perlindungan Hukum Atas Hak Tersangka Berdasarkan Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana." *Jurnal Hukum Sasana* 7, no. 1 (2021).

¹⁸ Forde, Louise. "Realising the Right of the Child to Participate in the Criminal Process." *Youth Justice* 18, no. 3 (2018): 265-284.

¹⁹ Backus, Mary Sue, and Paul Marcus. "The right to counsel in criminal cases: Still a national crisis." *Geo. Wash. L. Rev.* 86 (2018): 1564.

²⁰ Bazelon, Lara, and Bruce A. Green. "Victims' Rights from a Restorative Perspective." *Ohio St. J. Crim. L.* 17 (2019): 293.

²¹ Arlen, Jennifer, and Samuel W. Buell. "The law of corporate investigations and the global expansion of corporate criminal enforcement." *S. cal. l. Rev.* 93 (2019): 697.

In their role during the police investigation, a legal advisor has the responsibility to provide advice and assistance to the suspect or client, especially in ensuring that the rights of the suspect are not violated. Although a lawyer is aware that their client is genuinely guilty, their primary duty at the investigation stage is not to defend the suspect to be acquitted of all charges. Instead, the role of a lawyer in the investigative stage conducted by the police is more advisory or supportive for the suspect. Legal advisors are responsible for ensuring that the rights of the suspect are maintained and not violated during the investigation process. Even if a suspect has committed an offense, as a human being and citizen, they still have the same rights and obligations under the law. Therefore, legal advisors act as protectors of individual rights, preventing rights violations and abuse of the investigative process by irresponsible individuals.²²

4. CONCLUSIN

Legal protection for suspects in the criminal justice system in Indonesia is detailed and firmly regulated in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana/KUHAP*). KUHAP ensures that the rights of the suspects are followed and respected at every stage of the procedure conducted by the investigators. The importance of adhering to the rights of suspects, as stipulated in the KUHAP, is crucial in preventing violations that could harm the legal process and individual rights. Thus, the role of lawyers in legal assistance at the investigation level has limitations set by Article 115 of the KUHAP. This article restricts the role of lawyers to that of observers, following the course of the examination with a more passive role, merely observing and listening to the investigative process. This limitation is stricter, especially in the context of crimes against state security, where the role of lawyers becomes even more restricted. This limitation, as explained in Article 115 of the KUHAP, is a measure to ensure the smooth progress of the investigation without any disruptions that could harm the interests of the state. Therefore, while lawyers have a more passive role at this stage, the principle of legal protection for suspects remains the main focus in executing the criminal justice system. The continuity of the investigation process is maintained, simultaneously preserving the balance between protecting individual rights and state interests within the framework of the applicable law.

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²² Nuna, Muten, Dince Aisa Kodai, and Roy Marthen Moonti. "Code of Ethics and the Role of Advocates in Providing Legal Aid to the Poor." *Indonesian Journal of Advocacy and Legal Services* 1, no. 2 (2020): 259-274.

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