

## **Legal Protection of the Rights of Suspects in Criminal Case Investigation Process in Human Rights Perspective**



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**ABSTRACT:** At each stage of the examination, especially during the examination at the investigation stage, the right to obtain legal assistance must be given to suspects, especially for those who are less able and for those who do not understand the law. As regulated in 54 UU No. 8 Tahun 1981 tentang KUHAP, it is stated that: In the interest of defense, the suspect/defendant has the right to obtain legal assistance from one or more legal advisers during the time and at each stage of examination, according to the procedures regulated in this law. It is clear that since the investigation stage the suspect has been allowed to enjoy or obtain his rights, one of which is the right to obtain legal assistance or legal counsel. Where in UU No. 18 Tahun 2003 pasal 22 ayat 1 that advocates are obliged to provide free legal aid to justice seekers who cannot afford it. This provides an understanding, where the suspect's rights are guarantees of human rights (HAM), with legal assistance or legal counsel helping to provide protection for the suspect in this case what the suspect's rights cannot be revoked or contested.

**KEYWORDS:** Legal Protection, Suspect, Human Right

### **I. INTRODUCTION**

The practice of lack of respect for human rights, in society many indicators are found from time to time. Correctional institutions are never deserted from inmates, even in almost all Correctional Institutions the residents are increasing, so that Correctional Institutions are often overcapacity. It's so easy for the police to determine someone as a suspect. Suspect is a term for those who are suspected of committing a crime. Although the allegation of committing a criminal act has a bad and negative stamp/stigma, it does not mean that a person can be treated by violating their human rights. After all, a suspect who has committed a crime has human rights, in other words, has rights that must also be fulfilled legally. "In the criminal justice system, provisions for the protection of the human rights of suspects, defendants and convicts, and convicts lead to the main obligation of the State through the Criminal Procedure Code to be in line with the objectives of the Criminal Procedure Code, namely to realize and guarantee the truth in accordance with humanity.

Meanwhile, the low legal awareness of the community and law enforcement related to the quality of resources in institutions that are members of the criminal justice system, has created a gap between legal awareness (law awareness), legal behavior (law behavior) of criminal justice institutions. . In the end, this gap gave birth to repressive enforcement practices, such as torture, suppression and intimidation in investigations, even though such methods are prohibited by Article 117 paragraph (1) of the Criminal Procedure Code which reads as follows: Statements of suspects and witnesses to investigators are given without pressure from anyone and or in any form.

The indicator of failure in enforcing the law, due to the abuse of power among law enforcers in a criminal case, is actually realized by the Government and law enforcers. In Law No. 8 of 1981 concerning the Criminal Procedure Code has not provided optimal guarantees to protect the human rights of suspects, defendants and convicts.

Efforts to provide human rights protection include the rights of suspects, in Indonesia it is the will of the 1945 Constitution of the Republic of Indonesia and laws and regulations, and the Law on Human Rights mandates this. The ongoing reforms have strengthened Indonesia's determination to respect human rights. The 1945 Constitution of the Republic of Indonesia, which initially only contained certain guarantees for the protection of human rights, was then supplemented with several amendments that formulated human rights in a separate chapter. With the enactment of Law Number 39 of 1999 concerning Human Rights and Law Number 26 concerning the Human Rights Court, the legal basis for efforts to protect human rights in Indonesia is getting stronger and stronger from a legal perspective.

### II. DISCUSSION

#### Theory of Legal Protection and Human Rights

Legal protection in English is known as the term "protection of the law". The definition of legal protection is an act of protecting carried out by law for every citizen. Legal experts have their own meaning regarding legal protection, as follows; According to Satjipto Raharjo, legal protection is to provide protection for human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law; According to Philipus M. Hadjon, legal protection is the protection of the dignity and worth, as well as the recognition of human rights possessed by legal subjects based on the legal provisions of the law arbitrariness. According to CST Kansil, legal protection is various legal efforts that must be provided by law enforcement officers to provide a sense of security, both mentally and physically from disturbances and various threats from any party.<sup>1</sup>

Human rights are rights that are inherent since humans are born so that they are absolute rights, cannot be reduced under any circumstances and by anyone.<sup>2</sup> Arief Budiman stated that human rights are natural human rights, once humans are born, human rights are immediately attached to him as a human being. In this case, human rights stand outside the existing law, so it must be separated between the rights of citizens and human rights.<sup>3</sup>

#### Protection of Suspect's Rights in Case Investigation Process Criminal

The protection of suspects in the investigation process according to the Criminal Procedure Code where in law enforcement against crimes that occur in the people of the Indonesian State already has elements of the Criminal Justice System (SPP) which have the resultant of various authorities within the state working together as explained that: "Starting from the legislators - the law that provides the rules of criminal law as well as the authority and limitations in the implementation of the rule of law. Then the Police and the Prosecutor's Office, which are the implementers of law enforcement, determine policies in investigation and prosecution". Furthermore, the Court as the examiner of the investigation and prosecution policy determines whether it is true that there is a right to convict and if so, how big the punishment is. And finally, Penitentiary as the executor of the crime imposed by the Court has a policy in "treating" convicts and trying to get them back into the community. For this reason, the components of the criminal justice system must not work without being directed by criminal policies, which means that there must be work integration. This is what is briefly called the integrated approach.<sup>4</sup>

The quality of the results of the investigation by the Police sub-system, will affect the quality of prosecution by the Prosecutor's Office. The quality of prosecution by the Prosecutor's Office will affect the quality of examinations and decisions made by judges. Likewise, the quality of criminal decisions will affect the quality of the implementation of decisions in the form of coaching and convicting prisoners by the Correctional Center.

In addition, in the integrated system there will also be a mechanism of checks and balances between the law enforcement sub-systems, so that at each stage of the criminal process, there will be a mechanism of cooperation, mutual supervision and balance between law enforcement sub-systems. In this integrated system, there will also be a mechanism for checks and balances between the law enforcement sub-systems, so that at each stage of the criminal process, there will be a mechanism for cooperation, mutual monitoring and balancing between the law enforcement sub-systems.

The systematic approach with the mechanism of checks and balances can be seen clearly, for example at the pre-adjudication stage. In this stage, the Criminal Procedure Code stipulates that the authority and responsibility for conducting detention and investigation, which includes examination, filing and delegating cases to the Public Prosecutor, is given to the Police sub-system. Meanwhile, the authority to manage places of detention and treatment of suspects is given to another sub-system, namely correctional facilities.

Regarding the granting of rights to suspects, those who are responsible are the officers who carry out the detention and the institution where they are detained. Detention of the suspect in the State Detention Center (RUTAN) The Criminal Procedure Code (KUHAP) has explained the protection of the rights of the Suspect/Defendant or Suspect. Although the limits of authority have been outlined in the Criminal Procedure Code, their implementation in practice often deviates, both at the investigation stage to court decisions. This has led to strong reactions and criticisms from victims of crime as well as from the public towards the negative behavior of law enforcement officers. The formulation of the Criminal Procedure Code, one of the issues regarding detention, is

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<sup>1</sup> Menurut CST Kansil, perlindungan hukum adalah berbagai upaya hukum yang harus diberikan oleh aparat penegak hukum untuk memberikan rasa aman, baik secara pikiran maupun fisik dari gangguan dan berbagai ancaman dari pihak manapun.

<sup>2</sup> Pasal 4 Undang-Undang Nomor 39 Tahun 1999 Lembaran Negara (LN) Tahun 1999 Nomor 165 Tambahan Lembaran Negara (TLN) 3886 tentang Hak Asasi Manusia.

<sup>3</sup> O.C. Kaligis, *Perlindungan Hukum Atas Hak Asasi Tersangka, Terdakwa dan Terpidana*, Cetakan 2, Bandung: PT. Alumni, 2013, hlm. 60-61.

<sup>4</sup> Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana, Kumpulan Karangan Buku Kedua*, Pusat Pelayanan Keadulan dan Pengabdian Hukum (d/h Lembaga Kriminologi), Universitas Indonesia, Jakarta, 2007, hal 93

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still being discussed, because it is closely related to human rights. The Criminal Procedure Code (KUHAP) already contains the protection of the rights of the suspect/defendant and this is a limit for law enforcement officers in carrying out their duties. Mardjono Reksodiputro said that the rights of suspects that need to be protected in the criminal justice process that are limited in the Criminal Procedure Code are: Equal treatment before the law without any discrimination. Equal treatment before the law without discrimination means to deal with suspects and defendants (suspects) who are different in position and wealth and even more so. Presumption of innocence. The presumption of innocence means that we cannot say someone is guilty before being found guilty by the Court. The presumption of innocence is not an absolute principle in law. The presumption of innocence can only be carried out to continue to treat a suspect or defendant humanely. That someone, even though he is a suspect or defendant, must still be treated that he is not necessarily really guilty.

The right to obtain compensation (compensation) and rehabilitation. This right actually contains 2 (two) principles, namely the rights of citizens to obtain compensation in the form of money and rehabilitation in the form of restoring his good name, as well as the obligations of law enforcement officers accountable for their behavior during the adjudication stage. This right on. In principle, the state can be held accountable for all the actions it takes against its citizens. The right to obtain legal aid; This right is a logical consequence of the three rights above. If a citizen has the right to be treated equally before the law and law enforcement officers should treat him with the presumption that he not guilty with the consequence that in the event of arbitrariness he will obtain compensation or rehabilitation. This right demands a profession lawyers for suspects and defendants.

The right of the defendant's presence before the Court; Judiciary that is free and carried out quickly and simply; Courts that are open to the public; Violations of individual rights (arrest, detention, search and confiscation) must be based on law and carried out by warrant (written); The right of a suspect to be informed of his suspicions and charges against him; This right is part of a correct understanding of "due process of law" where one of the elements is suspects and defendants must be given guarantees to fully defend themselves. More rights to be granted to suspects: a). The right not to get disciplinary punishment, for violating rules when deposited in a correctional institution or home State Suspect.; b). The right not to be tortured, ill-treated or behavior that violates the decency of fellow suspects; c). The right to obtain medical treatment; d). The right to carry out religious activities; e). Rights in terms of dealing with the community; f). Other rights justified by applicable regulations, such as eating and drinking, cleaning oneself, sleeping and so on. The obligation of the court to control the implementation of its decisions.<sup>5</sup>

Furthermore, in the Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Performing the Duties of the Indonesian National Police as the basis for carrying out the duties of investigators has stated that the prohibition is regulated in Articles 11 and 13: a). Arbitrary and unlawful arrest and detention by law; b). Torture of a suspect or of a person suspected of being involved in a crime; 3. Sexual harassment or violence against suspects or persons suspected of being involved in the crime; 4). In carrying out investigation activities, every Polri officer is prohibited from doing intimidation, threats, physical, psychological or sexual torture to obtain information, information or confessions; ordering or inciting others to commit acts of violence outside the legal process or arbitrarily; tell someone's secret litigation; manipulate or lie in making or submitting a report on the results of an investigation; fabricate the report so as to obscure the investigation or distort the truth; take action aimed at seeking compensation from the litigating party. Furthermore, in carrying out their investigative duties, investigators based on Law Number 39 of 1999 concerning Human Rights, the provisions of Article 18 paragraph (1) state that: "Everyone who is arrested, detained, and prosecuted because he is suspected of committing a criminal act has the right to be presumed innocent until his guilt is legally proven in a court session and given all the legal guarantees needed for his defense in accordance with the provisions of the legislation.

In Law No. 26 of 2000 concerning the Human Rights Court, Article 10 is implicit which reads: "In the event that this law does not specify otherwise, the procedural law for cases of gross human rights violations is carried out based on the provisions of the criminal procedure law. " So the principle of presumption of innocence is used from a technical point of view of the investigation called the "accusator principle". The akusator principle places the position of a suspect or defendant at every level of examination. 1). Is a subject, not an object of examination, therefore a suspect or defendant must be positioned and treated in a human position that has dignity and worth self. 2). The object of examination in the accusator principle is an error (criminal act) committed by the suspect or the defendant towards which the examination was aimed. Based on the explanation regarding the protection of the rights of suspects above, it is clear that the role and position of the Criminal Procedure Code, which is so strategic in achieving the ultimate goal of law enforcement, namely the occurrence of a fair law enforcement process (due process of law), in which the rights lawbreakers, respected and fulfilled.

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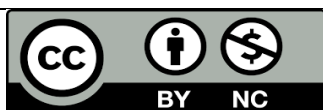
<sup>5</sup> Mardjono Reksodiputro, 2007, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana Indonesia, Kumpulan Karangan Buku Ketiga*, Pusat Pelayanan Keadulan dan Pengabdian Hukum (d/h Lembaga Kriminologi), Universitas Indonesia, Jakarta, hal. 27.

### III. CONCLUSION

In conducting an investigation, especially investigators must pay attention to the suspect's human rights, lack of understanding of the applicable laws and regulations can result in a violation of the suspect's human rights, legal remedies that can be taken by the suspect if his human rights are violated are to apply for legal protection by the suspect, file application for title cases and pretrial legal remedies. In protecting suspects from arbitrary actions by investigators, this Criminal Procedure Code regulates the protection of the rights of suspects in the process of investigating criminal cases. These rights are regulated in Chapter VI (Article 50 to Article 68) of Law Number 8 of 1981.

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