

## **Criminal Procedure Code: Application “*Due Process Of Law*”**

**Murti Dwi Sutrisna**

Law Postgraduate Student, University of Indonesia

---

### **Article Info**

#### **Article history:**

Received: 21 Agustus 2023

Publish: 08 Agustus 2023

---

#### **Keywords:**

*Criminal Procedure Code, Rights of Suspects and Defendants, Human Rights, Due Process of Law*

---

### **Info Article**

#### **Article history:**

Received: 21 Agustus 2023

Publish: 08 Agustus 2023

---

### **Abstract**

As a constitutional state, Indonesia must uphold the existence of human rights (HAM). Everyone without discrimination has the right to be respected and protected by human rights, even if he or she is a suspect or accused. The existence of the Criminal Procedure Code (KUHAP 1981) which replaced the Herzien Inlandsch Penalty (HIR) has succeeded in placing suspects and defendants with full human dignity through guaranteeing legal rights to avoid arbitrary actions. However, violations of the rights of suspects and defendants still occur. On the other hand, in order to answer the problems that occurred during the enactment of the 1981 Criminal Procedure Code, currently the reform of the criminal procedural law is still being discussed through the RKUHAP. However, until the KUHAP is passed and the KUHAP comes into force, the 1981 KUHAP is still valid to serve as a guideline for law enforcement officials in the judicial process. Therefore, this article intends to discuss: The application and interpretation of the Criminal Procedure Code articles must be based on the protection of human rights; The importance of fighting for the upholding of the rights of suspects and defendants as part of human rights; and Application “*Due Process of Law*” in an effort to protect the rights of suspects and defendants.

---

### **Abstract**

*Sebagai negara hukum, Indonesia harus menjunjung tinggi keberadaan Hak Asasi Manusia (HAM). Setiap orang tanpa diskriminasi berhak untuk dihormati dan dilindungi oleh hak asasi manusia, meskipun dia adalah tersangka atau terdakwa. Keberadaan Kitab Undang-Undang Hukum Acara Pidana (KUHAP 1981) yang menggantikan hukuman Herzien Inlandsch (HIR) telah berhasil menempatkan tersangka dan terdakwa dengan martabat kemanusiaan yang seutuhnya melalui jaminan hak hukum untuk menghindari tindakan sewenang-wenang. Namun, pelanggaran hak tersangka dan terdakwa masih saja terjadi. Di sisi lain, guna menjawab persoalan-persoalan yang terjadi selama berlakunya KUHAP 1981, saat ini masih digodok pembaruan hukum acara pidana melalui RKUHAP. Meski demikian, sampai disahkan dan berlakunya RKUHAP, maka KUHAP 1981 masih berlaku untuk menjadi pedoman aparat penegak hukum dalam proses peradilan. Oleh sebab itu, artikel ini bermaksud membahas mengenai: Penerapan dan penafsiran Pasal-Pasal KUHAP harus berdasarkan atas perlindungan HAM; Pentingnya memperjuangkan tegaknya hak-hak tersangka dan terdakwa sebagai bagian dari HAM; dan Penerapan “*Due Process of Law*” dalam upaya perlindungan terhadap hak-hak tersangka dan terdakwa.*

*This is an open access article under the [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)*



---

### **Corresponding Author:**

**From Murti Dwi Sutrisna**

University of Indonesia

Email : [sutrisnasaka@gmail.com](mailto:sutrisnasaka@gmail.com)

---

## **1. INTRODUCTION**

In the concept of a good rule of law country, the protection of Human Rights (HAM) is not only a normative requirement for the existence or absence of a rule of law state, but empirically it is a requirement that must be implemented by a state that has claimed to be a rule of law state. The existence of human rights provides moral strength to guarantee and protect

human dignity based on law, not on the basis of will, circumstances or certain political tendencies. Anyone without discrimination, has the right to receive appreciation and guarantees for the protection of human rights, even if he is a suspect or a defendant, who also adheres to the principle of presumption of innocence. This is in line with Mardjono Reksodiputro's opinion which states that a disgraceful act (criminal act) committed by a citizen does not abolish or eliminate his rights as a citizen.

The existence of the Criminal Procedure Code has elevated and placed suspects or defendants in an "equal" position, as creatures of God who have complete human dignity. Which is placed in position "*his entity and dignity as a human being*", which must be treated in accordance with the noble values of humanity. This is also inseparable from the process of its formation (KUHAP), which wants to fight for an understanding to see the criminal justice process based on "fair legal process" or "*due process of law*", which protects the rights of suspects/defendants/convicts as part of the rights of citizens (because that is part of human rights).

The Criminal Procedure Code has been in effect for more than 40 years and during that time there have been various changes in it through judicial review at the Constitutional Court, including through Decision No. 65/PUU-VIII/2010 (Expansion of the definition of Witness), 21/PUU-XII/2014 (regarding the phrases "initial evidence," "sufficient preliminary evidence" and "sufficient evidence"), and other decisions. In addition, there have been many developments in criminal procedural law in Indonesia that have arisen from the criminal justice process. This is none other than because the provisions regulated by the Criminal Procedure Code are still limited, while legal developments are always ongoing. For this reason, currently the reform of criminal procedural law is still being discussed through the RKUHAP, in order to answer the problems that occurred during the current Criminal Procedure Code. However, until the KUHAP is passed and the Criminal Procedure Code comes into effect, the Criminal Procedure Code is still valid to serve as a guideline for law enforcement officials in the judicial process.

Understanding the Criminal Procedure Code is not enough just to study the articles, but also to study the history of its formation and the design of the procedures for the criminal justice system laid out in it. In studying the history of its formation, the Elucidation of the Criminal Procedure Code plays a major role, because it is there that the principles of protecting human rights are found as a guide/foundation in understanding and interpreting the meaning of the provisions contained in the Articles of the Criminal Procedure Code. This is often forgotten by law enforcers.

So do not be surprised if violations of the rights of suspects/defendants are still found in law enforcement practices. For example, based on the indicators in the 2018 Report on the Assessment of the Implementation of Fair Trial in Indonesia by ICJR, it was noted that the fulfillment of the suspect's rights during the trial process only reached 37%, the fulfillment of the principle of assistance by legal counsel was at 50.5%. then based on observations from the Judicial Monitoring Coalition (KPP) consisting of YLBHI, LeIP, IJRS, ICJR, LBH Jakarta, PBHI, ELSAM, KontraS, ICW, LBH Masyarakat, PSHK, ICEL, LBH Apik Jakarta, and PILNET Indonesia, in a release entitled "*Note for Your Honors Who Will Choose a New Chief Justice*" April 6, 2020, one of the points of the note mentions that the judiciary currently still has problems, namely the non-fulfillment of the rights of the parties in examining and handling cases, especially in criminal cases. For example, the right to legal aid, the right to protection from torture during interrogation for the investigation process, the right to get an interpreter, the right to health services, and others.

Based on the foregoing, this article will describe three main points of discussion, namely: The application and interpretation of the Articles of the Criminal Procedure Code must be based on the protection of human rights; The importance of fighting for the upholding of the rights of suspects and defendants as part of human rights; and Application "*Due Process of Law*" in an effort to protect the rights of suspects and defendants. Among the three main points is also inserted regarding to RKUHAP draft 2012.

## 2. RESEARCH METHODS

In this article the author uses normative legal research methods. The definition of normative legal research according to Soerjono Soekanto and Sri Mamudji as quoted by Ishaq is legal research which is only carried out by examining "library materials" or "secondary data". Library materials themselves are materials that come from primary sources and secondary sources. Which, materials derived from primary sources consist of: a. book b. work c. Research report d. technical report e. magazine f. Dissertation g. thesis h. Patent. Then, materials derived from secondary sources consist of: a. Abstract b. Index c. Bibliography d. Government issuance e. Other reference materials. As for the secondary data, according to Abdul Kadir Muhammad as also quoted by Ishaq, legal materials can be distinguished, namely: a. Derived from law, namely legislation, legal documents, court decisions, legal reports, and legal records, b. Derived from the science of law, namely legal teachings or doctrine, legal theory, legal opinions, legal reviews. Therefore, normative legal research is also referred to as library legal research, theoretical/dogmatic legal research.

## 3. DISCUSSION

### A. The application and interpretation of the Criminal Procedure Code must be based on the protection of human rights

In the Criminal Procedure Code there are at least ten principles governing the protection of citizens' rights and the protection of the nobility of human dignity and the enactment of *due process of law*, which, according to Mardjono Reksodiputro, was in line with what was also requested by "*the international bill of human rights*, among others:

- 1) Equal treatment before the law without discrimination or *equality before the law*;
- 2) Presumption of innocence (*presumption of innocence*);
- 3) Attempts to force arrest, detention, search and confiscation must be based on law and carried out with a written order;
- 4) Every suspect/accused has the right to be informed about the suspicion/prosecution against him/her;
- 5) Every suspect/defendant has the right to obtain legal assistance;
- 6) Every accused has the right to appear at his trial;
- 7) Trials are carried out quickly, simply and at low cost, and are free, honest and impartial;
- 8) Courts must be open to the public, unless otherwise stipulated in the law;
- 9) A suspect/defendant has the right to obtain compensation (compensation) and rehabilitation because of mistakes and errors in the arrest, detention, prosecution, both regarding the person and the law;
- 10) There is supervision of the implementation of court decisions.

Of the ten principles, only nine are the rights of the suspect/defendant. Because, one of them, namely "There is supervision over the implementation of court decisions" is no longer attached to the suspect/defendant but is attached to the convict himself. This section will only focus on two principles, namely: the principle of equality before the law (*equality before the law*) and the presumption of innocence (*presumption of innocence*) from a human rights perspective. Both are principles that apply universally, and are part of the foundation/basic provisions of the Criminal Procedure Code, in which these principles are also maintained in the foundational provisions. RKUHAP 2012. Although change must be interpreted with a more advanced desire, especially for the sake of creating a sense of justice in society in line with the aspirations of the people who develop according to their demands. However, changes to the Criminal Procedure Code, which must reflect these demands, do not abandon the principles contained previously. Because it has regulated the protection of the rights of citizens and the protection of the nobility of human dignity and its enforcement *due process of law*. In addition to the description of these principles, this section will also mention the rights of the suspects listed in the Articles of the Criminal Procedure Code.

**a. The basis of "Equality" or "Equal Treatment" before the Law (*Equality Before the Law*)**

In Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia it has been emphasized that Indonesia is a constitutional state. As a rule of law country, Indonesia upholds principles "*equality before the law*" which has been guaranteed by the constitution in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "*All citizens have the same position before law and government and are obliged to uphold that law and government without exception.*" and also in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: "*Every Person Has the Right to Recognition, Guarantee, Protection and Fair Legal Certainty and Equal Treatment Before the Law*".

*Equality before the law* is the "main pillar" of building a rule of law (*state law*) that put the law first on everything (*supreme of law*). Each individual is recognized in his position before the law regardless of social status (*social stratum*). Therefore, this principle is one of the "manifestations" of the rule of law, which requires "equal treatment" for everyone before the law. (*Equality of all before the law*).

Regarding "equal treatment" on this principle, according to Mardjono Reksodiputro, it cannot only be interpreted by how to treat suspects and defendants in different positions or wealth. More than that, the term "same" or "*equal*" should be construed as an obligation not to provide discriminatory treatment based on: "*race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status*". This is because this principle is similar to that stated in Articles 6 and 7 "*Universal Declaration of Human Rights*" (UDHR), Article 16 "*International Covenant on Civil and Political Rights*" (ICCPR).

According to Bagir Manan as quoted by Hernadi Affandi, "equality" or "equal treatment" in the field of law includes both substantive law and procedural law. Thus, "equality before the law" must be interpreted as occurring both in terms of legal substance and its application in court. Content material or certain laws may not contain or be discriminatory in nature, namely discriminating with reasons that deviate from the principle of "equality before the law". However, it is possible for differences to exist, as long as they are not intended to isolate or isolate, but to provide benefits and protection for the differentiated party. There are differences (discrimination) with the intention of not isolating or isolating but providing benefits and protection, for example: For the police to apply certain special measures designed to deal with the special status and needs of women (including pregnant women and mothers who have just given birth), children, sick people, the elderly and others who need special treatment in accordance with international human rights standards, must be presumed not to unlawfully discriminate.

Based on the description above, according to the writer's opinion, equality or equal treatment before the law without discrimination (*equality before the law*) must be interpreted as the treatment of every person before the law without discriminating between them, whether because of position, wealth, ethnicity, skin color, gender, language, religion, politics, nation, descent or because they have opposing thoughts/opinions. Except that the distinction provides benefits and protection to the person being distinguished.

**b. Basis of Presumption of Innocence (*Presumption of Innocence*)**

The principle of presumption of innocence states that every person who is suspected of being arrested, detained, prosecuted and/or presented before a court hearing, must be presumed innocent until there is a court decision with permanent legal force declaring guilt. According to Mardjono Reksodiputro, this principle is the main principle for protecting the rights of citizens in the "Due Process of Law". The principle of presumption of innocence is a fundamental principle in the protection of human rights for suspects and defendants in order to avoid arbitrary treatment by investigators, public prosecutors and judges in the criminal justice process.

According to M. Yahya Harahap, from a technical juridical or investigative technical point of view, the principle of presumption of innocence is called the "accusatory principle" or "accusatory procedure (accusatorial system)", in which the accusatory principle places the suspect/defendant as the subject in every examination. which positions and treats the suspect/defendant as a human being who has dignity and self-respect, while the object is "mistake" (crime). With this principle adhered to by the Criminal Procedure Code, it provides guidelines for Law Enforcement Officials to use the "accusatory principle" in every examination, and keep them away from using the "inquisitor principle" or "inquisitorial system", which places the suspect/defendant himself as the object of examination, which can give arbitrary treatment.

To support the principle of the presumption of innocence and the accusatory principle in law enforcement, the Criminal Procedure Code has provided a shield to the suspect/defendant in the form of a set of human rights that must be respected and protected by law enforcement officials. From the start of the examination, theoretically the suspect/defendant has an "equal position" with the examining official in legal standing, and has the right to demand the treatment outlined in the Criminal Procedure Code in chapter VI, namely the right to:

Immediately examined by the investigator and immediately brought to court by the public prosecutor for the suspect (Article 50 Paragraph (1), (2)), and immediately tried by the court for the Defendant (Article 50 Paragraph (3));

Be informed about what is alleged for the suspect (Article 51 letter a), and what is charged for the Defendant (Article 51 letter b), clearly in a language that is understandable in order to prepare the defense;

Provide information freely (Article 52, Article 117);

Obtaining sworn interpreters and as translators (Article 53 Paragraph (1) jo Article 177 Paragraph (1)) including for the mute and deaf (Article 53 paragraph (2) jo Article 178);

Receive legal assistance (Article 54);

Choose your own legal adviser (Article 55);

Obtain free legal counsel upon appointment of an authorized official, for those suspected/charged with a crime that carries a death penalty, a sentence of fifteen years or more, or for those who are incapacitated, whose punishment carries a sentence of five years or more and does not have an advisor own law (Article 56);

Contacting his legal adviser, or his country's representative, in the event of detention (Article 57);

Contacting and receiving personal doctor visits for health purposes in the event of detention (Article 58);

Be informed about his arrest to his family or other people who live with him or other people whose help is needed to get legal help or guarantee for his delay (Article 59);

Contacting and receiving visits from parties who have family or other relations with him in order to obtain guarantees for suspended detention or to seek legal assistance (Article 60);

Contacting and receiving visits from relatives either directly or through their legal advisers for work or family purposes (Article 61);

Sending and receiving letters from legal advisers or relatives (Article 62);

Contacting and receiving visits from clergy (Article 63);

Tried in a court session open to the public (Article 64);

Seeking and submitting witnesses and or someone who has special expertise to provide information that is profitable for him (Article 65);

Not burdened with the obligation of proof (Article 66);

Appeal against the decision of the court of first instance, (Article 67);

Demand compensation and rehabilitation. (Article 68 jo Article 95, Article 96, Article 97)

Meanwhile, RKUHAP 2012, regulates the rights of suspects and defendants in Chapter V concerning the rights of suspects and defendants from Article 88 to Article 102. Other rights outside chapter VI are scattered in other articles in the Criminal Procedure Code and Chapter V in the 2012 RKUHAP, such as the right to show warrant of assignment and given an arrest warrant when an arrest is made (Article 18 paragraph (1) and (3) Criminal Procedure Code & Article 56 RKUHAP 2012), the right to request copies of the minutes of examination (Article 72 of the Criminal Procedure Code & Article 106 RKUHAP 2012), the right to obtain a copy of the case delegation letter (Article 143 paragraph (4) of the Criminal Procedure Code & Article 50 paragraph (5) RKUHAP 2012), the right to be given an excerpt of the decision and request a copy of the decision (Article 226 paragraph (1) and (2) Criminal Procedure Code & Article 220 RKUHAP 2012), ext.

Then regarding when the legal protection of the presumption of innocence ends, refers to opinion Romli Atmasasmita in his article entitled "Legal Logic of the Presumption of Innocence: Reactions to the Individualistic Paradigm by Romli Atmasasmita", states that a court decision declaring a defendant guilty based on evidence that does not doubt the panel of judges (of the defendant's guilt), must be interpreted as the end of the legal protection of the defendant's right to be presumed innocent.

Thus, as a fundamental principle in the criminal justice process which is also the main principle for protecting the rights of citizens in the "Due Process of Law", the principle of presumption of innocence should be the basis for the treatment of suspects/defendants by law enforcers at every stage of examination, whether the police, prosecutors and courts. At the same time, it provides guarantees that the rights of the suspect/defendant granted by the Criminal Procedure Code must really be respected and protected. This is solely a form of protection of the human rights possessed by the suspect/defendant.

Based on the description above, it shows that the Criminal Procedure Code contains protection for human rights. Even though the formulation of the Articles of the Criminal Procedure Code is not clearly a formulation of human rights for suspects/defendants, the inner attitude of the Criminal Procedure Code rejects the existence of human rights violations at every stage of the criminal justice system. So that the interpretation of the Articles must be in accordance with the principles contained in the General Elucidation of the Criminal Procedure Code. It is in this way that we can respect the first considerations of the Criminal Procedure Code which states, "that the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution, which upholds human rights and guarantees that all citizens are equal before the law...". Therefore, in the opinion of the author, it is appropriate that the interpretation and application of the Articles of the Criminal Procedure Code be in accordance with the objective of protecting citizens' rights (which are part of human rights), especially against suspects/defendants. Thus, the rights of the suspect/defendant contained in the Articles of the Criminal Procedure Code should also be upheld as part of the implementation of human rights protection.

## **B. Importance fight for upholding the rights of suspects and defendants as part of human rights**

The purpose of criminal procedural law is to seek material truth (*objective truth*) and protecting the basic rights of the accused so that innocent people are not sentenced to punishment, in addition to paying attention to victims of crime. Basing the KUHAP on the principles of protecting human rights means that the existence of the Criminal Procedure Code requires guarantees for the protection of the human rights of suspects/defendants. Of course, this must be balanced with its implementation by law enforcers, so that it does not stop as a whim.

We also need to remember that even though everyone is able to discipline themselves not to commit a crime, this does not guarantee that they will be free from the risk of becoming suspects or accused. This is not an empty sentence, below will be described briefly as an example of a case, which can explain to us that the status of a suspect or defendant can ensnare anyone, including those who actually have nothing to do with the case being investigated, even to the point of taking them to become a convict.

#### **The case of Imam Chambali (Kemat) and Devid Eko Priyatno (Devid) Jombang**

This case began with the discovery of a corpse in a damaged and decaying condition with a wound in the stomach in a sugar cane plantation by the owner of the plantation on September 29 2007, and was subsequently reported to the Bandar Kedungmulyo Jombang Police who were then taken to Jombang Hospital by investigators. Then on October 1, a man named Jalal was present at the Jombang Hospital who claimed to have lost his son, then after examining the body he was convinced that the corpse was his son named M. Asrori. For this incident, the Jombang Police have questioned Imam Chambali (Kemat) and Devid Eko Priyanto (Devid) after the two were named suspects in the murder of M. Asrori based on the examination of witnesses by the Bandar Kedungmulyo Jombang Police.

The two of them initially strongly denied what was alleged by the police, after going through a lengthy examination process they finally signed an agreement on the Minutes of Investigation which determined both of them as suspects. The agreement had to be made because both of them were subjected to physical and psychological torture in order to admit that they were the perpetrators of the murder of M. Asrori. Another fact during the investigation process was that the two were not accompanied by legal counsel. So that those who do not really understand the existence of their rights as suspects, it is very possible that acts of intimidation can be carried out by investigators.

In May 2008, the Jombang District Court in its decision No. 48/Pid.B/2008/PN.JMB and 49/Pid.B/2008/PN.JMB stated that both of them were legally and convincingly proven to have committed the crime of "premeditated murder" against M. Asori. And the sentences handed down to each were imprisonment for 17 (seventeen) years for Kemat, and 12 (twelve) years for Devid. And the decision has permanent legal force after the two of them do not make an appeal until the specified time.

However, later it was discovered that the corpse was not M. Asrori, but another person named Ahmad Fauzin, and the killers were Rudi Hartono and Jono Kristanto. Based on the new condition (*novum*) obtained from various pieces of evidence such as Ryan's statement (confession) and witnesses, letters especially letters from the National Police Medical Center for Police Medicine, which was justified by the Supreme Court as stated in decision No. 48 PK/Pid/2008/and No. 49 PK/Pid 2008 which finally through the Judicial Review decision finally released Kemat and Devid.

In this case, the suspect's rights were granted by the Criminal Procedure Code, such as: the right to give information freely and without pressure during an investigation (Article 52 because Article 117), the right to be accompanied by a legal adviser in every examination (Article 54), even in cases that ensnare Kemat and Devid, assistance by legal advisers should be mandatory (Article 56), apparently the police (investigators) have not fulfilled it. In fact, as previously described, these rights are part of a set of humanitarian rights granted by the Criminal Procedure Codes a shield to the suspect/defendant to support the presumption of innocence and accusatory principles in law enforcement which must be respected and protected by law enforcement officials. This also includes the right to be accompanied by a legal advisor (as part of the right to legal assistance).

For someone who is involved in legal issues, the right to obtain legal assistance is a basic right or human rights that he has, namely as one way of access (access) to justice. In addition, it is also a manifestation of the principle of "equal treatment before the law" or "*equality before the law*", which is a consequence for the State of Indonesia as a State of Law. This is very important, because, in law enforcement practice, at every stage of the



criminal justice process, starting from the pre-adjudication stage to the adjudication stage, suspects/defendants are often found who are not accompanied by an Advocate/Legal Counsel. During the investigation process, the rights of the suspects were often ignored due to the absence of legal assistance. Likewise, at the trial examination stage, the defense made by the defendant was only based on what he had done, even though there were many ways and arguments for the defendant to defend himself so that the judge's decision was not one-sided.

Thus, the non-fulfillment of the rights of the suspect/defendant granted by the Criminal Procedure Code does not reflect the spirit of understanding from *due process of law* as also required by the enactment of the Criminal Procedure Code. So that it is vulnerable to arbitrary actions, and the material truth sought by criminal procedural law is also difficult to obtain, as in the Kemat-Devid case above. In fact, it is fitting that after the entry into force of the Criminal Procedure Code, the criminal justice process in Indonesia is obliged to really uphold the rights of suspects/defendants by using the understanding "*due process of law*" properly, and not just formally.

Kemat and Devid probably never dreamed of running into the police for a crime they never committed. But in fact, the incident happened to them. Another similar case which was reported in the national media a few years ago was the case that happened to a child busker (cipular) Fikri, Fatahillah, Ucok, and Pau) who were accused of killing a man named Dicky in 2013. The legally enforceable court decision still found them guilty, but later in the PK decision it was proven that they were not the perpetrators. Also, the case that happened to Dedi, a motorcycle taxi driver in East Jakarta, who in 2014 was accused of being the perpetrator of beating a minibus driver to death. Had been found guilty at the District Court Decision, but ultimately found not guilty at the appeal level decision. The last two cases are the same as what happened to Kemat-Devid, in that they were not the real perpetrators.

Then another case that was not the same but had also been reported in the national media, namely the case that happened to Ferdian Paleka, a YouTuber who was made a suspect in mid-2020 for the "garbage prank" video content he made. However, in the end the victim withdrew the complaint and the case was dismissed before it reached trial. Also, the case that happened to an artist Galih Ginanjar and his two colleagues Rey Utami and Pablo Benua in 2019 was related to a video that had gone viral as the salted fish video. From the video, the three of them become defendants. Both Ferdian Paleka, Galih Ginanjar, Rey Utami and Pablo Benua, probably never thought or even thought that the video he made would end up making him a suspect and dealing with law enforcement officials.

Therefore, the several examples above once again confirm that even though everyone is capable of disciplining himself not to commit a crime, this does not guarantee that he will be free from the risk of becoming a suspect or a defendant. Including both to those related to the intended act, or even to those who have absolutely nothing to do with it. This shows how important it is to fight for the upholding of the rights of suspects/defendants to: be heard, be accompanied by legal counsel, submit a defense, be proven wrong by the public prosecutor, and be faced with a fair and impartial trial, as well as other rights as provided for by the Criminal Procedure Code. Apart from that, the right of the suspect/defendant, which is part of human rights, should be fought for its enforcement. Especially in the country of Indonesia as a rule of law. In order to achieve a fair legal process in the criminal justice process in Indonesia.

### **C. Application "*Due Process of Law*" In Efforts to Protect the Rights of the Suspect/Defendant**

The principle of "Due Process of Law" is one of the concepts of Human Rights (HAM) that has entered into the criminal justice system. In history, this human rights institution "Due Process of Law" first appeared in the charter "Magna Charta 1215". According to the translation of the Magna Charta Charter, as quoted by Luhut M. Pangaribuan which was later quoted by Wellza Ardiansyah stated that, this Charter is known as the first written human



rights document and which occurred in England on June 15 1215. It was written in pedantic Latin during the time of King John Runnymede. Where in charter That formulated, "No freeman shall be taken or (and) imprisoned or diseased or exiled or in any way destroyed . . . except by the legal judgment of his peers or (and) by the law of the land." Which means "no free person will be arrested or (and) imprisoned or made sick or ostracized or damaged in any way, except by a legal decision from a colleague or (and) by applicable law".

Then "Due Process of Law" by Mardjono Reksodiputro, translated into "Fair Legal Process", and is the opposite of "Arbitrary Process" or "Arbitrary Legal Process (based on the power of law enforcement officials)". According to Tobias and Petersen as quoted by Mardjono Reksodiputro revealed that in order to fulfill the "Due Process of Law" derived from the "Magna Charta 1215" charter, at least it has several minimal elements including: "hearing (hearing the Suspect and Defendant), counsel (adviser) law), defense, evidence and a fair and impartial court.

Yesmil Anwar and Adang as quoted by Diah Ratna Sari Hariyanto, et al., revealed that "Due Process of Law" is an essential element in administering justice, the essence of which is that it is "...a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial...". And as the central point is the protection of individual human rights against the arbitrary action of the government.

According to M. Yahya Harahap, the essence of due process is that every enforcement and application of criminal law must be in accordance with "constitutional requirements" and must "obey the law", therefore, in a due process it does not allow violations of a part of a legal provision on the grounds to enforce another part of the law.

However, linking the "Due Process of Law" only to the application of formal legal rules (law of criminal procedure) in proceedings against suspects and defendants is wrong. Because even further than that, this principle contains an appreciation for the freedom rights of citizens, because after a person is made a "suspect" his legal status change, that person is marked by various restrictions on his freedom and often also by moral degradation, thus limiting his ability to act. to defend itself against the "alleged" state.

In the criminal justice process, the independence of citizens is vulnerable to the possibility of abuse of authority by law enforcement officials. So, through such an understanding, "Due Process of Law" must be understood as a form of protection of the right to independence of every citizen in a rule of law state. In the criminal justice system, "Due Process of Law" or "Fair Legal Process" can occur if law enforcement officials carry out their duties by not only applying existing rules, but also having to ensure that the rights of the suspect/defendant have been fulfilled. As well as in this process, it is also obligatory to implement the principles and principles underlying it, even though they are not positive legal regulations.

Based on the description above, an example of its application can be explained, namely: in Article 114 of the Criminal Procedure Code, it states that every person suspected of having committed a crime before the start of an examination by investigators, the investigator is obliged to inform him about his right to obtain legal assistance or that he must be accompanied in his case. legal adviser as referred to in Article 56 of the Criminal Procedure Code. Based on this in relation to due process of law, the person may not only be asked whether he wants to be accompanied by a legal adviser or not, but must be notified of his right to receive legal assistance (he has the right to obtain legal assistance). Because if you are only "asked" without informing you about your rights, while you say that you come from a poor/poor family and/or don't understand your rights, then it is very likely that you will answer "no". Because they think that if they are to be accompanied, they have to pay for a legal adviser, while they cannot afford it, and so on.

Then another example: when a suspect/defendant who by law must be accompanied by a legal adviser in accordance with Article 56 of the Criminal Procedure Code but is tricked by the presence of a "mysterious" legal representative who has never physically existed but is

listed in the minutes of examination. Namely just simply affixing a signature without ever accompanying his client in an examination. This is not a reflection of the application of due process of law, even though formally it has been accompanied, but the meaning of this assistance is not only on paper, but must be applied in real situations by the relevant law enforcers.

Thus, in an effort to protect the rights of the suspect/defendant, as well as to fight for the upholding of the rights of the suspect/defendant, the criminal justice process must use a "fair legal process" or "due process of law" properly, which not only paying attention to the application of formal criminal law, but also includes an inner attitude of respect for the rights of citizens. In order to achieve a fair law enforcement process in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. So that suspects and defendants avoid the possibility of arbitrariness.

#### 4. CLOSING

In the Criminal Procedure Code there are at least ten principles governing the protection of citizens' rights and the protection of the nobility of human dignity and the enactment of *due process of law*, which is consistent with what was also requested by "*the international bill of human rights*". So that it is proper to interpret and apply the Articles of the Criminal Procedure Code must be in accordance with the objective of protecting the human rights of citizens, especially against suspects/defendants. This also applies to the interpretation and application of the Articles in RKUHAP 2012 when confirmed later. Because, the principles of human rights protection are also used as the basis of the provisions of the RKUHAP 2012.

Basing the KUHP on the principles of protecting human rights means that the existence of the Criminal Procedure Code requires guarantees for the protection of the human rights of suspects and defendants. Aside from the fact that the rights of suspects/defendants are part of human rights, we also have to remember that everyone has the risk of becoming a suspect/defendant. Thus, this shows how important it is to fight for the upholding of the rights of the suspect/defendant.

Through the Criminal Procedure Code, it is fitting that the criminal justice process in Indonesia is obliged to really uphold the rights of suspects/defendants by using an understanding "*Due Process of Law*" properly, and it is not just the application of formal laws and regulations, because it also contains respect for the rights of citizens to freedom. "*Due Process of Law*" This can be realized if law enforcement officials carry out their duties by not only applying existing rules, but also ensuring that the rights of suspects/defendants have been fulfilled. Thus, suspects and defendants can avoid arbitrary treatment. The law must be upheld, but don't ignore the rights of the suspect/defendant, in addition to paying attention to the victims of crime.

At present the Criminal Procedure Code is more than 40 (forty) years old, and during that time there have been many changes in the economic, social, technological and legal fields which have also influenced the development of the field of criminal law. The State of Indonesia has also ratified various international conventions whose substance is directly related to law enforcement, including: *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; *International Covenant on Civil and Political Rights*; *United Nations Convention Against Corruption*. So that the Indonesian Criminal Procedure Code must be adapted to the changes and developments that have occurred, which are currently still being discussed RKUHAP. Even so, because the RKUHAP has not yet been ratified, to provide guarantees for the protection of human rights in upholding the law and obtaining a fair legal process is still expected to be realized through the Criminal Procedure Code (1981).

Therefore, the author at the same time encourages discussion of RKUHAP immediately completed and then soon to be ratified, which is expected to be able to resolve all problems that have not been resolved during the Criminal Procedure Code period. And can further reduce the occurrence of violations of the rights of suspects and defendants in the criminal justice process

## 5. BIBLIOGRAPHY

### Book:

- Arsil dkk. *Penafsiran Terhadap Pasal 156A Huruf a KUHP tentang Penodaan Agama Analisis Hukum dan Hak Asasi Manusia*. (Jakarta: Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), 2018).
- Harahap, M. Yahya. *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*. (Jakarta: Sinar Grafika, Edisi Kedua. Cetakan 112015).
- Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, (Bandung: Alfabeta, 2017).
- Naskah Akademik Rancangan Undang-Undang Hukum Acara Pidana tanggal 19 November 2012.
- Reksodiputro, Mardjono. *Bunga Rampai Permasalahan Dalam Sistem Peradilan Pidana* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi) Universitas Indonesia, 2007).
- Reksodiputro, Mardjono. *Hak Asasi Manusia Dalam Sistem Peradilan Pidana* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi) Universitas Indonesia, 2007).

### Journal/Thesis/Thesis/Research Report/Course Material:

- Affandi, Hernadi. *Kontekstualitas Makna “Bersamaan Kedudukan di Dalam Hukum dan Pemerintahan” Menurut Undang-Undang Dasar 1945*. (Padjajaran: Jurnal Ilmu Hukum Volume 1 Nomor 1 Tahun 2017).
- Ardhiansyah, Wellza. *Kewenangan Penyadapan: Suatu Tinjauan Aspek Hak Asasi Manusia Di Indonesia (Perlindungan Hak Pribadi Warga Negara Dalam Negara Hukum)*. (Tesis Fakultas Hukum Universitas Indonesia, 2012).
- Bachtiar. *Urgensi Penyelenggaraan Bantuan Hukum Bagi Masyarakat Miskin Oleh Pemerintah Daerah*. (Salam: Jurnal Sosial dan Budaya Syar-i. Volume 3 No. 2, 2016).
- Faisal. *Perilaku Penegak Hukum Dalam Peradilan Asrori (Telaah Melalui Pendekatan Hukum Progresif)*. (Tesis Universitas Islam Indonesia 2009).
- Fitriasih, Surastini. *Hak Asasi Manusia dalam Proses Pra-ajudikasi*. (Materi PPT Mata Kuliah Sistem Peradilan Pidana 2019 Program Pascasarjana Magister Ilmu Hukum Universitas Indonesia, 2019).
- Hariyanto, Diah Ratna Sari. Kadek Erlina Wijyanthi. dan Febripusoa Surya Candra. *Due Process Of Law Dalam KUHAP Di Indonesia*. (Laporan Penelitian Fakultas Hukum Universitas Udayana, Januari 2017).
- ICJR, *Laporan Penilaian Penerapan Fair Trial di Indonesia 2018*, (Jakarta: Institute for Criminal Justice Reform, 2019).
- Ramdan, Ajie. *Bantuan Hukum Sebagai Kewajiban Negara Untuk Memenuhi Hak Konstitusional Fakir Miskin*. (Jurnal Konstitusi, Volume 11, Nomor 2, Juni 2014).
- Setiaji, Mukhamad Luthfan, Ibrahim, Aminulah. *Kajian Hak Asasi Manusia dalam Negara the Rule of Law: Antara Hukum Progresif dan Hukum Positif*. (Lex Scientia Law Review: Volume 1 No. 1, November, 2017).
- Siregar, Rahmat Efendy Al Amin. *Studi Tentang Peradilan Sesat (Rechterlijke Dwaling) Dan Hubungannya Dengan Memudarnya Kepercayaan Masyarakat Terhadap Hukum*. (FITRAH Vol. 08 No. 1 Januari-Juni 2014).

### Media Online:

- Anggara dan Sustira Dirga, *Penerapan Prinsip yang Adil dalam Sistem Peradilan Pidana*, diakses dari <https://icjr.or.id/penerapan-prinsip-yang-adil-dalam-sistem-peradilan-pidana/> pada 16 Mei 2020.
- Bantuanhukum.or.id, *Anak-Anak Pengamen Cipulir Korban Salah Tangkap Dan Penyiksaan Polisi Tuntut Ganti Rugi Ke Negara*, <https://www.bantuanhukum.or.id/web/anak-anak-pengamen-cipulir-korban-salah-tangkap-dan-penyiksaan-polisi-tuntut-ganti-rugi-ke-negara/> diakses pada 9 Agustus 2020.

- Cnnindonesia.com, *Korban Cabut Laporan, Ferdian Paleka Bebas dari Tahanan*, diakses dari <https://www.cnnindonesia.com/nasional/20200604143426-12-509869/korban-cabut-laporan-ferdian-paleka-bebas-dari-tahanan> pada 08 September 2020.
- <https://www.bantuanhukum.or.id/web/catatan-bagi-para-yang-mulia-yang-akan-memilih-ketua-mahkamah-agung-baru/> pada tanggal 10 September 2020.
- Jecky Tengens, *Refleksi Pelaksanaan Bantuan Hukum dan Praktik Advokat Pohon Mangga*, diakses dari <https://www.hukumonline.com/berita/baca/lt56c5525fc80e6/refleksi-pelaksanaan-bantuan-hukum-dan-praktik-advokat-pohon-mangga-broleh--jecky-tengens-/> pada 22 Agustus 2020.
- Rivki, *Ini Kasus yang Menjerat Dedi Korban Salah Tangkap Hingga Bebas*, diakses dari <https://news.detik.com/berita/d-2980444/ini-kasus-yang-menjerat-dedi-korban-salah-tangkap-hingga-bebas> pada 10 Agustus 2020.
- Riyan Setiawan, *Trio Ikan Asin Divonis Bersalah, Galih Ginanjar Dihukum Terberat*, diakses dari < <https://tirto.id/trio-ikan-asin-divonis-bersalah-galih-ginanjar-dihukum-terberat-eMZn>> pada 08 September 2020.
- Romly Atmasasmita, *Logika Hukum Asas Praduga Tak Bersalah: Reaksi Atas Paradigma Individualistik*, diakses dari <https://www.hukumonline.com/berita/baca/lt4b25f96c2ed41/logika-hukum-asas-praduga-tak-bersalah-reaksi-atas-paradigma-individualistik-br-oleh-romli-atmasasmita-?page=2> pada tanggal 11 Mei 2020.
- Law:**
- Undang – Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, LN Nomor 76 Tahun 1981, TLN Nmor 3209.
- Rancangan Kitab Undang-Undang Hukum Pidana draft 2012.