



## Implementation of the principle of presumption of innocence of suspects in investigations, pre-trial and trial examinations

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### ABSTRACT

The principle of presumption of innocence is a fundamental legal principle in the justice system to protect the rights of suspects. Law No. 8 of 1981 concerning Criminal Procedure Law (KUHAP) Article 66 of the Criminal Procedure Code explains "every person suspected of committing a criminal act is deemed innocent, until a court decision is made that has permanent legal force." This means that as long as the decision has not been changed, the defendant or suspect cannot be blamed. The application of the principle of presumption of innocence has become the main basis in the modern justice system to guarantee justice and protect individual rights. This article explores the significance and implementation of the presumption of innocence in the context of protecting the rights of suspects in the justice system. Through an overview of the literature and context analysis, this article outlines the basic principles of the principle of presumption that brings truth and its influence on the process of examining disputes. Apart from that, this article also discusses the challenges and efforts to ensure the effective implementation of the principle of presumption of innocence in legal practice.

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## 1. Introduction

Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which is stated in Article 1 (3) of the 1945 Constitution of the Republic of Indonesia. With this formulation it means that the Unitary State of the Republic of Indonesia is a democratic state that respects human rights and protect the rights and position of every citizen. The meaning of justice in terms of human rights is that every rule of law must reflect justice and in enforcing the law must be fair without selecting someone based on a person's status, because the principle of presumption of innocence is a human right of justitia beben (suspect or defendant) as citizens whose rights are protected by law and the state, the principle of presumption of innocence is the principle of recognizing respect for and protecting the human

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rights of suspects and defendants in law enforcement who wish to seek and obtain justice. In order for the administration of criminal justice to be truly focused and achieve the desired objectives, namely justice (including legal order and fair legal certainty), then in the substance of the procedural policy (in this case the Criminal Procedure Law) guidelines must be established in the form of legal principles that bind all parties involved in the administration of criminal justice, so that in enforcing the law the goals desired so far will be truly achieved. The Indonesian state is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph 3 of the 4th amendment is explained there; The Indonesian state is a legal state aimed at realizing a prosperous, safe, peaceful, orderly and just national order of life. Law Enforcement is a problem that is never stopped being discussed, both nationally and internationally, this problem will always be discussed, as long as there are countries that recognize the existence of a rule of law and still believe in law as a means of regulating and resolving problems in social life.

One of the most important principles in criminal procedural law is the presumption of innocence. This principle was first contained in Article 8 of Law Number 48 of 2009 concerning Judicial Power. It is based on this principle that it is clear and natural that suspects and defendants in the criminal justice process are obliged to obtain their rights. Human Rights are basic rights that have been possessed since birth, this is in line with the provisions of Article 1 of the Universal Declaration of Human Rights which states that humans are born free and independent and have equality in dignity and respect. rights, but in practice, Challenges and Obstacles to the Presumption of Innocence Principle, namely that even though this principle is recognized, challenges still exist in its implementation. Detention without trial, false evidence, manipulation of the law, physical violence during examination, and even psychological threats against suspects can hinder the achievement of the goal of the presumption of innocence. ("Abdullah, M. Z. (2017)," n.d.) This often leads to violations of suspects' rights and injustice in the trial process. Therefore, it is important to investigate in depth how the application of the presumption of innocence can strengthen the protection of suspects' rights in the justice system. (Hukum, Keadilan, Anita, & Haryati, 2021)

The principle of presumption of innocence is regulated in the General Explanation of the Criminal Procedure Code point 3 letter c and Article 8 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power ("Judicial Power Law"). ("Coleman, M. (2020)," n.d.) This principle reflects that the suspect's rights must not be violated. If there is a violation of these rights, the suspect has the right to demand compensation and the official (investigator) who commits the violation can be punished in accordance with the provisions of the applicable legislation, this is as regulated in the provisions of Law no. 48 of 2009, namely such as Article 9 paragraph (1): "Every person who is arrested, detained, prosecuted, or tried without reasons based on law or because of a mistake regarding the person or the law they apply, has the right to demand compensation and rehabilitation." And Article 9 paragraph (2): "Officials who deliberately commit acts as intended in paragraph (1) shall be punished in accordance with the provisions of statutory regulations." (Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemedanaan, n.d.)

The formulation of phrases related to the legal principle of presumption of innocence in the Criminal Procedure Code and Law no. 48 of 2009 is different from the formulation in Article 14 of the Second Paragraph of the International Covenant on Civil and Political Rights of 1966. The brief formulation is as follows:

"Everyone charged with criminal offense shall have the right to be presumed innocent until proven guilty according to law."

The above covenant does not state the obligation to assume a person's innocence until it can be proven according to law. The word used is "law", not "legislation". Apart from that, there is also no confirmation regarding the issue of decisions that have permanent legal force which can be used as a limit to a person's tolerance until they can be said to be guilty.

Regarding proving someone is guilty based on the common law system, it is often stated with the term "proven guilty beyond reasonable doubt". This means that the statement of guilt is based on strong evidence or cannot be doubted. This is clearly different from Indonesia which adheres to a civil law system which uses the phrase "found guilty on the basis of a decision that has permanent legal force" to justify that the legal subject has complied with the law.

In Criminal Procedure Law, the principle of presumption of innocence can have an influence in terms of evidence. Every mistake must be proven first, therefore the suspect cannot be forced to give his statement or admit his mistake. ("Saktiawan, M. G. (2016).," n.d.) This means that law enforcers (investigators) must have extensive knowledge and insight in order to obtain information from suspects. Apart from that, the principle of presumption of innocence is essentially a way for law enforcers (investigators) to carry out their duties without deviating from applicable legal regulations. (Made, Kusuma, Sepud, Made, & Karma, 2020)

In practice, the principle of presumption of innocence is often ignored, especially in crime prevention efforts. For example, the order to shoot on sight is included in every order and security operation carried out by law enforcement officers (police). or beatings by police officers unrelated to the investigation. Human rights violations always occur. The principle of presumption of innocence is considered as a consequence of a person's legal position, where the person is considered legally innocent (legal guilt) in relation to the suspect's rights. (Kazakh, n.d.) Therefore, someone who has committed violations of the law (factual guilt) are given rights which are called the rights of the suspect/defendant. However, in the criminal justice process, law enforcers to determine whether someone who has committed a violation of the law can be categorized as guilty can use coercive measures such as arrest and detention. The principle of presumption of innocence is not violated by the application of coercive measures in accordance with the law. (Halabi & Markovits, n.d.) In other words, the use of force must be limited by law and cannot be manipulated to ensure that a person remains treated as innocent during the criminal justice process. According to Oemar, the suspect's right as a human being is to be considered innocent. The freedoms he alludes to include, for example, marriage and separation, taking part in decision making, and so on.

The principle of presumption of innocence is basically a manifestation of the function of (modern) criminal justice. Thus, all rights violations committed by a person must be resolved in accordance with applicable legal procedures. The principle of presumption of innocence in Indonesian positive law has been established in Law Number 48 of 2009 concerning Judicial Power which confirms that every person who is considered, arrested, detained, charged and brought under strict supervision by the court, must be considered innocent before a choice is made court, expresses its responsibility and acquires a very long-lasting legal force. ("Agustina, A., & Riyadi, S. (2020).," n.d.) Although in the Criminal Procedure Code (KUHAP) the guideline for the presumption of innocence is not stated explicitly, it is only contained in the overall explanation of point 3 c of the Criminal Code which states: every individual involved is arrested, detained, tried and brought under the strict supervision of the court, expresses its responsibilities and acquires very long-lasting legal force.

The principle of presumption of innocence, apart from being regulated in the provisions mentioned above, is further regulated in Part III of the KEPMENKEH of the Republic of Indonesia Number M.01.PW.07.03 of 1982 concerning Implementation Rules of the Criminal Methodology Code, the items included include: Some individuals If someone has not been found guilty then he has rights such as: the right to immediately receive an examination during the investigation phase, the right to immediately receive an examination by a court and obtain the fairest possible decision, (Luter, Sinaulan, & Ismed, 2022) the right to be informed of what he is suspected/accused of in a language that he understands, the right to prepare his defense, the right to obtain legal assistance and the right to family visits.

As an embodiment of the principle of presumption of innocence, a suspect or defendant is not burdened with the obligation to prove, in fact, based on the provisions of Article 17 of the

Criminal Procedure Code, law enforcers (investigators) are required to be able to prove the suspect's alleged guilt based on sufficient initial evidence with evidence as intended in provisions of Article 184 of the Criminal Procedure Code, namely: witness statements, expert statements, letters, instructions, and defendant's statement. ("Kumendong, W. J. (2017).," n.d.)

## **2. Method**

The method used in this research is a normative legal research method. This study takes a philosophical and analytical approach, drawing from a variety of theoretical frameworks to arrive at conclusions, which in turn seek to produce new results to address the key issues identified. In addition, descriptive analysis tools will be used to analyze existing problems. (*Metode Penelitian Hukum TEORI & PRAKTEK*, n.d.) This includes outlining relevant laws and regulations as they relate to legal theory as well as positive law enforcement tactics. Several steps are necessary to make a data source useful for criminal law research.

## **3. Analysis and Results**

### **3.1. Application of the principle of presumption of innocence in the investigation and trial process**

To understand the cycle of fair legitimacy, law enforcement is interpreted not only as enforcing legal regulations against violations committed by suspects or defendants, but also does not override regulations relating to the protection of authorities against the rights of suspects or defendants. law enforcement during the investigation process. (Hamdi Laiya & Insani, 2023) A suspect or defendant who is accused of committing a criminal offense but cannot be treated as guilty even though he has been arrested or detained according to applicable law adheres to the principle of presumption of innocence. As a result, the human rights of suspects/defendants must be upheld by all parties, including law enforcement officials. (Gede Atmadja, 2018)

According to Mardjono Resdiputro, the principle of presumption of innocence is the main guideline in a fair cycle of legitimacy (fair treatment of regulation), which includes in any case (1) security against erratic activities by state authorities; (2) that the court has the authority to decide whether the defendant is guilty or not; 3) that the suspect or defendant needs guarantees that he can fully defend himself. The application of the principle of presumption of innocence in criminal procedural law in force in Indonesia contains 2 (two) objectives, on the one hand to provide protection and guarantees for someone accused of having committed a criminal act, on the other hand the principle of presumption of innocence serves as a guide for law enforcers (investigators) in carry out inspection duties and not carry out arbitrary actions that can be categorized as violating the suspect's rights.

The principle of presumption of innocence is closely related to human rights which must be respected and upheld so that the position of the suspect or defendant must be considered innocent and have the same position as law enforcers (investigators); Therefore, the rights of suspects or defendants must also be respected because in principle the law views every Indonesian citizen as having the same position before the law. (Equality Before the Law), this is in accordance with the provisions of Article 27 paragraph (1) of the 1945 Constitution which states that all citizens have equal status under the law and government and are obliged to uphold the law and government without exception." And more This is further emphasized in the provisions of Article 28D paragraph (1) of the 1945 Constitution which explains: Every person has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law.

The Criminal Procedure Code stipulates rights that must be respected and protected by law enforcers in order to implement the principle of presumption of innocence.(Faisal, 2023) "The principle of presumption of innocence is the main principle of a fair legal process (due process of law) which at least includes:(Galagan, Ablamskyi, Udovenko, & Ablamska, 2021) (1) Protection from arbitrary actions by state officials, (2)The court has the authority to decide whether the defendant is guilty or not, (3) Open court proceedings are not permitted , (4) That suspects and defendants must be given guarantees to be able to fully defend themselves.

The Criminal Procedure Code (KUHAP) regulates legal procedures that must be followed by law enforcers in handling criminal cases. The section on pre-trial in the Criminal Procedure Code establishes procedures before a case reaches court, such as suspension of detention, confiscation, examination and evidence. This pre-trial aims to ensure that the legal process carried out is in accordance with the principles of justice, including the principle of presumption of innocence, as well as providing protection for the rights of individuals involved in the legal process.(Schinggyt Tryan & Serikat Putrajaya, 2016)

The Pre-Trial Stage is the authority of the district court to examine and decide in the manner regulated in the Criminal Procedure Code, regarding: (a) Whether or not an arrest and/or detention is valid at the request of the suspect or his family or another party such as the suspect's attorney by submitting reasons to the head of the district court, this is regulated in Article 79 of the Criminal Procedure Code (KUHAP), (b) Whether or not the termination of an investigation or prosecution is valid based on a request for the sake of upholding law and justice, this can be submitted by the investigator, public prosecutor, or third party who has an interest by submitting reasons to the head of the district court. This is regulated in article 80 of the Criminal Procedure Code (KUHAP), (c) Whether or not arrest, detention/other actions (search, confiscation, entering a house) without reason according to the law are legal and the case is not submitted to the District Court, this can be submitted by suspects, defendants, heirs, third parties who have an interest in demanding compensation. Loss in accordance with PP No. 27 of 1983, this is regulated in articles 81 and 95 of the Criminal Procedure Code (KUHAP), (d) Requests for rehabilitation by suspects/defendants, their heirs or families or other parties on their behalf whose cases have not been submitted to court, for requests for restoration of rights to dignity and dignity, this is regulated in articles 81 and 97 of the Criminal Procedure Code (KUHAP).

During the trial examination process, the implementation of the principle of presumption of innocence against the defendant starts from the beginning until the final decision.("Pura, M. H., & Kartika, R. Y. (2018).," n.d.) Here is an example implementation such as : (a) Filing of Charges: The prosecution must present strong evidence to support its case against the defendant. The defendant is presumed innocent at this stage, (b) Examination of Evidence: During the trial, the judge and jury must consider the evidence fairly and impartially. The accused has the right to respond to the evidence presented and provide evidence in the defense, (c) Examination of Witnesses: Judges and juries must treat witnesses fairly, including witnesses who are incriminating (turn their backs on) the defendant. However, the evidence from these witnesses cannot be considered to directly make the defendant guilty, (d) Decision Making: Before rendering a verdict, the judge and jury must consider all the evidence that has been presented in court. They must be convinced that the evidence proves the defendant's guilt beyond a reasonable doubt to reach a guilty verdict, (e) Final Verdict: If the judge or jury

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believes that the evidence presented proves the defendant's guilt beyond a reasonable doubt, only in this situation is the defendant found guilty. If not, the defendant is declared not guilty.

At every stage of the trial process, the principle of presumption of innocence ensures that the defendant is presumed innocent unless legally and convincingly proven otherwise. (Sari, n.d.)

### **3.2 Legal Protection for Suspects from a Human Rights Perspective through the Principle of Presumption of Innocence**

Due to the unequal position between the suspect or accused and the interested law enforcement officials, one of the problems with applying the principle of presumption of innocence in criminal cases is the fear that law enforcers will take arbitrary action. Therefore, the principle of presumption of innocence is essentially an embodiment of the protection of human rights. A person who is suspected of committing a criminal offense is considered innocent until his guilt is determined by a court decision, according to the principle of presumption of innocence. (*Praperadilan Sebagai Control Profesionalisme Kinerja Penyidik Arhjayati Rahim Abstrak*, n.d.) That a suspect or defendant is subject to the principle of presumption of innocence does not mean that the suspect or defendant has full rights of someone who has not committed the crime. On the contrary, the fact that each suspect or defendant is deemed innocent guarantees that he can exercise his right to defend himself at every stage of the investigation, until the court decision declaring the defendant's guilt has permanent legal force.

In this sense, criminal law and human rights have a close relationship because human rights require criminal law to criminalize human rights violations, while criminal law must be guided by human rights principles in its application. (Arief Amrullah, Gede Widhiana Suarda, Situbondo, & Java Indonesia, n.d.) Shared freedom in Indonesia is an issue that is closely related to the law enforcement framework, which means creating a fair and correct law enforcement situation in accordance with society's assumptions. Because the suspect is entitled to legal protection according to the Criminal Procedure Code and Law No. 39 of 1999 concerning Human Rights. So investigators must protect the human rights of suspects by applying the principle of presumption of innocence during the investigation process. (*Kajian Hukum dan Sosial Kemasyarakatan & Pangaribuan*, 2016)

According to Article 52 of the Criminal Procedure Code, suspects or defendants have the right to provide information freely to investigators or judges during examinations and trials. It is clear from the explanation of Article 52 of the Criminal Procedure Code that the suspect or defendant has the right to provide information freely and investigators are obliged to provide a sense of security when the suspect or defendant is questioned during the examination. In other words, the suspect or defendant cannot be pressured. Based on the provisions of Article 52 of the Criminal Procedure Code above, Andi Hamzah is of the opinion that the things that must be considered when examining a suspect are: (Putri & Sari, n.d.) such as : (1) Witnesses and suspects provide information to investigators without any internal pressure any form, and (2) In the event that the suspect provides information about what he actually did in connection with the planned crime, the investigator is obliged to record this accurately in the official report using the suspect's own words. (Wiguna, Sepud, & Sujana, 2020)

In addition to the KUHAP provisions mentioned above, the protection of suspects' human rights through the principle of presumption of innocence in the investigation process by investigators is also regulated in the provisions of Article 18 of Law No. 39 of 1999 concerning Human Rights, (Tumbur, Napitupulu, & Firmansyah, 2022) which explains that: (1) Every person who is arrested, detained, or charged on suspicion of committing a criminal offense has the right to be presumed innocent until his or her guilt is legally proven in court and is given all applicable legal guarantees. for their defense, in accordance with the rules and laws, (2) Every person may not be prosecuted for being rejected or punished for committing a mistake, except in accordance with the laws and regulations that existed before the mistake was

committed, (3) Suspects are subject to the most favorable provisions whenever regulations legislation changes, (4) From the start of the investigation until the court decision becomes final, every person being questioned has the right to receive legal assistance, (5) No one can be prosecuted twice for the same act in the same matter, if the court has made a decision that is permanent in law.

#### **4. Conclusion**

The application of the principle of presumption of innocence towards suspects in the investigation, pre-trial and trial processes is a necessity in maintaining the integrity and fairness of the criminal justice system. Through the analysis in this paper, it can be concluded that the presumption of innocence plays an important role in guaranteeing the rights of suspects, avoiding abuse of power by law enforcement officials, and ensuring a fair trial process. However, there are still challenges in its implementation, such as practices of torture and inhumane treatment of suspects, as well as weaknesses in the legal system that allow abuse of the legal process. Therefore, greater efforts are needed to strengthen the protection of suspects' rights, increase awareness of the importance of the presumption of innocence, and correct weaknesses in the criminal justice system in order to achieve true justice for all parties involved. It is necessary for law enforcers to understand the principle of presumption of innocence, and there are no strict sanctions if principles relating to the rights of suspects and defendants are violated. In this case, the Criminal Procedure Code does not further regulate the legal consequences if there is a violation of these rights, then it is necessary to refine these rights, then it needs to be refined in the sense of revising the content and editorialization of the rules regarding the principle of presumption of innocence and supervision of court institutions, starting from the investigation to the trial stage. In this case, it is not only law enforcers who need to understand the principle of presumption of innocence, but the entire community also needs to know what the principle of presumption of innocence means. In this regard, the government has an important role in socializing the rules, especially the principle of presumption of innocence so that vigilantism does not occur in society.

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