

Legal Protection Against the Defendants Who Are Not Guaranteed in Criminal Action Jurisdictions

Sujanto Sudiana¹, Megawati Barthos²
{sudjantosudiana @gmail.com¹ , megawati_barthos.ac.id²}

Universitas Borobudur, Indonesia

Abstract. Genuine protection and respect for fundamental opportunities are responsibilities of the state in the existence of society and the state. In policing as a matter of fact there is carelessness against policing the execution of the phases of the law enforcement framework process. The occurrence of wrongful behavior by law enforcement against community members, sometimes it is proven that the person concerned in the judicial process is declared innocent. In a normative study through a study of legal norms, related to these legal events, the state is obliged to be liable for giving lawful assurance to litigants who are demonstrated guiltless. The state constitution of Indonesia mandates legal protection for defendants who are found not guilty, as well as protection of human dignity in relation to law enforcement. Using the presumption of innocence as a legal safeguard for human dignity is an obligation that law enforcement personnel must fulfill at all stages of the criminal justice system, including the investigation, prosecution, and judicial process. The type of responsibility for lawful security incorporates the arrangement of remuneration and restoration to suspects who are demonstrated honest, in particular the state orders Unofficial law Number 92 of 2015 concerning the Second Revision to Unofficial law Number 27 of 1983 concerning Execution of the Criminal Methodology Code concerning the Execution of the Criminal Technique Code connected with legitimate cures in regards to pay and recovery. It has not yet been determined whether providing compensation and temporary rehabilitation will provide the defendant who has been found not guilty with the legal certainty they deserve.

Keywords: legal protection; against the defendant

1 Introduction

As indicated by the fourth section of the preface to the 1945 Constitution, Indonesia is committed to give its residents legitimate insurance as a lawful state in view of Pancasila: shield both Indonesia's whole country and its whole country.

The acknowledgment and security of human pride based on divine qualities, mankind, solidarity, thought, and civil rights is implied by lawful assurance in view of Pancasila. The acknowledgment and security of basic freedoms as individual and social creatures in a unitary express that maintains the soul of connection to accomplish shared flourishing is the consequence of these qualities.

For this situation, the state, addressed by the public examiner, bears the weight of demonstrating the criminal components charged in view of the use of the assumption of honesty, not the litigant, who should exhibit his blamelessness. Likewise, in the event that the proof is confined by regulation and upheld by the adjudicator's faith in its presence, the appointed

authority will choose whether to force a sentence on the respondent.

The assumption of honesty is quite possibly of the most squeezing and central legitimate guideline in coordinating the activity of the law enforcement framework. That's what this principle underscores, to maintain the law, each criminal case strategy should be completed with the assumption of honesty. A generally pertinent standard is the assumption of blamelessness. As well as being perceived in Indonesian criminal procedural regulation, worldwide criminal regulation hugs this standard.

Every rule of law is built on the foundations of human rights protection and respect; however, a nation cannot be considered a true state of the law if human rights are violated or neglected on purpose and the resulting suffering cannot be dealt with fairly.

It includes at least the in ensuring citizens' rights are protected and a fair legal system is established:

- a. Security from erratic activities of state authorities;
- b. The court has the privilege to decide if the suspect/respondent is liable;
- c. Trials should be available to the general population (should not be secret);
- d. Suspects and respondents should be given assurances to shield themselves completely.

The implementation of a free, quick, simple, inexpensive, open process: debasement, conspiracy, and nepotism are an interior piece of the Indonesian lawful culture. Types of criminal regulation classified in a regulation or a book of regulations have arisen as the encapsulation of lawful sureness and equity.

The Crook Code (KUHP) and the Criminal System Code (KUHP) are the two essential wellsprings of Indonesian criminal regulation codification.

A regulation, Regulation Number 8 of 1981 Concerning the Criminal System Code, laid out the Indonesian Criminal Strategy Code. To meet the necessities of the local area, the Criminal Technique Code (KUHP) is a bunch of composed criminal procedural regulation standards that depend on values and general legitimate standards.

To ensure that the investigation does not deviate from the truth, the suspect providing information must be free of any pressure or coercion from the investigator. At the examination level, investigators only record the suspect's information without having to compel the suspect to provide the required data. The method for brutality as indicated by the arrangements of the Criminal Strategy Code can't be legitimate on the grounds that a demonstration abuses the law.

Regulation Number 8 of 1981 concerning the Criminal Methodology Code has given legitimate certifications to associates to get the insurance with their privileges and seek fair treatment under the watchful eye of the law, disproving or not a suspect or respondent should be finished under the steady gaze of a court meeting which is available to the general population.

The practice of enforcing or actually carrying out legal norms as a guide for traffickers or legal relations in social and state life is known as law enforcement. This remembers the prudent standard for doing judicial actions against parties who are suspects and litigants in regards to the presence of a lawbreaker act, which has the option to legitimate security and regard for their basic freedoms which have been managed by the Criminal Strategy Code, connected with the execution of the law enforcement framework.

As indicated by Article 52 of the Criminal Technique Code, A suspect or respondent has the privilege to give data to the examiner or judge during examination at the level of the examination and the court openly.

2 Theoretical framework

State law theory

The people of Indonesia own sovereignty and the country is a legal one. This is stated in paragraphs 3 and 2 of Article 1 of the Republic of Indonesia's 1945 Constitution. According to the Theory of the State of Law, the rule of law is a state based on the law (rechtsstaat) with a government based on the constitution or basic law.

A state that is based on the law is known as the rule of law (Rechtstaat in Dutch, Rule of Law in English), which means that all members of the state apparatus, citizens, and state officials, including bureaucrats, must always follow the law.

The requirements for rechtsstaat are as follows:

1. Legality Principle.

Every government action must be based on the basis of laws and regulations (wettelijke grondslag). On this basis, the law in a formal sense and the constitution are the basic foundation of government action. In this connection, the formation of laws is an important part of the rule of law;

2. The division of power implies that state power should not only rely on one hand;
3. Basic rights (grondrechten) are the target of legal protection for the people and at the same time limit the power of making laws;
4. Court Supervision, for the people there is a channel through a free court to test the legitimacy of government acts (rechtmatigheids toetsing).

According to Stahl, the concept of the rule of law is characterized by four elements, namely:

1. Recognize and protect human rights;
2. To safeguard these common liberties, state organization should be founded on the hypothesis of Trias Politica;
3. In doing its obligations, the public authority depends on the law; and
4. If in completing their obligations under the law, government regulations actually abuse basic liberties (government obstruction in somebody's confidential life), and there is a regulatory court that will determine it.

Indonesia as a state of law, then in carrying out its authority based on state law has 3 (three) basic principles that must be upheld and carried out by every citizen, as well as its officials, namely:

1. The rule of law;
2. Equality before the law;
3. Law enforcement in ways that are not against the law.

Law Enforcement Theory

From a thin perspective, policing connected with policing, from a wide perspective, in the feeling of material regulation, policing called equity implementation. Accordingly, the reason for this assertion is to accentuate that the law that should be implemented incorporates the standard of the actual standard as well as its upsides of equity.

As a general rule, policing the most common way of endeavoring to uphold or really carry out lawful standards as conduct rules in friendly and state legitimate relations. Policing be seen according to the viewpoint of the subject overall or barely as a work to implement the law by the subject at large. The course of policing every single lawful subject and all legitimate connections from a wide perspective.

Policing likewise be characterized according to the point of view of the item, explicitly

regarding the law. In this occasion, both an expansive and a restricted significance are remembered for the importance. From a more extensive perspective, policing incorporates the upsides of equity that are exemplified in the conventional standards and in the public eye. In any case, stringently talking, policing involves the execution of formal, composed guidelines.

The most common way of attempting to uphold or really do legitimate standards as an aide for entertainers in rush hour gridlock or lawful connections in friendly and state life is known as policing. The objective of policing to cause the legitimate thoughts and ideas that individuals hope to happen a reality.

Legal Protection Theory

The English word "legal protection theory" is the origin of the term.

Protection is, grammatically, a. housing; or b. actions protect things. Protecting oneself is causing one to seek refuge. Among the meanings of "refuge" are: 1) hiding, 1) asking for help, or 2) putting oneself in a position where one cannot be seen. In the meantime, the term "protection" refers to: 1) concealing it from view, (2) guarding, taking care of, or maintaining it, and (3) saving or offering assistance

Satijipto Rahardjo says that legal protection is: safeguarding common freedoms that are disregarded by others and guaranteeing that the local area gets insurance so they can practice all legitimate privileges The fact is that legitimate security alludes to the state's activities to follow through with something (exclusively implementing state regulation) determined to ensure an individual's or alternately gathering's privileges.

3 Discussion

The commitment of the state to be answerable for giving lawful assurance to litigants demonstrated guiltless in the law enforcement process

a. Legal Basis of Legal Protection

After the amendment, the body of the 1945 Constitution regulates the concept of legal protection of human rights, namely:

Section 27; 1) The obligation to uphold the law and the government is shared by all citizens, who are treated equally before the law and the government.

G, Article 28;

(1) As a common liberty, everybody has the option to security for themselves, their family, honor, pride, and property under their influence. They likewise reserve the privilege to a feeling that everything is good and to be shielded from being compelled to do or not follow through with something.

(2) It is a fundamental human right for everyone to be protected from cruel or inhumane treatment.

I, Article 28;

e. Common liberties that can't be lessened are the right to life, the right not to be tormented, the right to opportunity of thought and still, small voice, the right not to be subjugated, the option to be perceived as an individual under the watchful eye of the law, and the right not to be indicted based on retroactive regulation.

f. Everyone has the right to protection against discrimination and the right to be free from any form of discrimination.

J; Article 28

(1) Everybody is obliged to regard the common liberties of others in the organized existence of society, country and state.

(2) While practicing their privileges and opportunities, everybody is committed to maintain the limitations forced by regulation for the sole motivation behind guaranteeing the acknowledgment and regard for the privileges and opportunities of others and the satisfaction of fair requests as per moral, moral, and key contemplations. security, strict convictions, and public request in a majority rule government.

"Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts," states Article 1 of Regulation Number 39 of 1999 concerning Common freedoms in Indonesia. which, for honor and the security of human poise, should be regarded, maintained, and protected by the state, regulation, and government, as well as by everybody.

b. Types of Legal Protection

Lawful assurance as far as its caring can be separated into latent and dynamic legitimate security. Other than the judicial process, passive legal protection is provided by external actions that recognize and guarantee the rights of perpetrators and victims through agreements or policies.

The active, on the other hand, can take the form of efforts to exercise their rights, such as;

- a. Protection Rights.
- b. Right Sense of Security
- c. Right to be Free from Torture
- d. Right not to be tortured

The standard of a fair preliminary can't be isolated from the guideline of uniformity under the steady gaze of the law which is an overall legitimate rule and the premise of the rule of harmony between the privileges of an individual, suspect and litigant to guard himself when his common liberties are disregarded, with freedoms, specialists, and even commitments. investigators, public prosecutors as well as judges to use coercive measures that rob the suspect, the accused, with the aim of overcoming and eradicating crime.

Rights of the Defendant

b. The Defendant's Rights According to the Criminal Procedure Code

The freedoms of the blamed are covered by a number for articles that are managed in the Criminal System Code. Articles 50 to 68 of the Criminal Technique Code administer the articles.

The accused has the right to an immediate examination during the investigation phase, the right to an immediate examination by the court and to a fair decision, the right to be informed of what is suspected or charged against him in a language he understands, the right to prepare his defense, the right to an interpreter, the right to legal aid, and the right to a family visit. These are all rights that the accused has.

As a result, the right to legal assistance during an investigation is passive. This indicates that even if the investigating officer grants the legal adviser permission to follow the investigation's progress, the legal adviser's position and presence are still merely that of a "spectator." His position and presence are restricted to "seeing or witnessing" and "listening" to the examination's progress (through sight and hearing).

Legal advisors can and may follow the course of the examination, but they are limited to "seeing" it. This passive position is further reduced in investigations into crimes against state security.

c. The Defendant's Rights Outside the Provisions of the Criminal Procedure Code

The right to be accompanied by a legal advisor is a requirement for the values of human rights. This right is protected by law, particularly by Law Number 39 of 1999, which deals with human rights, and by Law Number 48 of 2009, which deals with judicial power. The right to be accompanied by a legal counsel has been universally recognized as a part of human rights.

d. The concept of the principle of the presumption of innocence to protect human dignity

The assurance of human poise and nobility by upholding the assumption of guiltlessness is, then again, a commitment that policing should satisfy at all phases of the law enforcement framework, including the examination, indictment, and legal interaction.

Based on statutory provisions, Article 1 paragraph (1) of the Criminal Code regulates the protection of human dignity and dignity related to criminal law events: Any act can only be punished in accordance with the severity of the current criminal laws. Experts and lawyers are familiar with the provisions of this article as the principle of legality. This principle is analogous to the principle of presumption of innocence, which philosophically forms the basis for the criminal justice system.

The presumption of innocence is only used to protect suspects or defendants from legal uncertainty because it is human dignity that must be safeguarded and their rights must be secured in accordance with the law. Both material and immaterial damages can be claimed by the suspect or defendant if their rights are violated.

The assumption of blamelessness is basically a sign of the (cutting edge) capability of law enforcement, which replaces brutality or reprisal by a state-selected foundation. Subsequently, all privileges infringement should be settled as per appropriate legitimate methods.

A defendant should not be required to provide evidence because this is evidence of the presumption of innocence. The presumption of guilt principle focuses on factual guilt, whereas the presumption of innocence principle focuses on legal guilt.

Despite the fact that he might be likely to capture or confinement as per the relevant regulation, a suspect or respondent who is blamed for carrying out a lawbreaker act may not be treated as a blameworthy individual because of the reception of the assumption of guiltlessness. Subsequently, the suspect's or alternately respondent's basic liberties should keep on being safeguarded by all gatherings, including the overall set of laws. Thusly, the suspect or litigant should be exposed to the assumption of honesty during the examination.

e. Application of the Presumption of Innocence in the Criminal Court Process.

- 1) the implementation of the presumption of innocence in the course of an investigation.
The items in Article 1 point (1) of the Criminal System Code related to Articles 1 focuses (10) and (11) of Regulation Number 2 of 2002 concerning the State Police of the Republic of Indonesia incorporate the meaning of examination itself, which is as per the following: Authorities of the Republic of Indonesia's State Police or certain Government worker Authorities who are approved by regulation to lead examinations are known as specialists.
- 2) Use of the Assumption of Responsibility by the Public Examiner
In view of Regulation Number 16 of 2004, the Examiner's Office is given the position to practice state power in the field of arraignment. The Prosecutor's primary responsibilities are outlined in Article 1, point 6, letter a, of the Criminal Strategy Code: Authorities with the power to go about as open examiners and carry out court choices with dependable legitimate power are known as investigators.

Meanwhile, the public examiner's power is laid out in Article 137 of the Criminal Method Code, which states: By designating the case to a court with the position to mediate, the public examiner has the power to indict any individual who is blamed for carrying out a wrongdoing inside his ward.

- 3) the trial process's application of the presumption of innocence principle.
While the soul of an autonomous and free legal power should be acknowledged as an essential piece of the whole authoritative strategy that directs the whole course of policing to shape an incorporated law enforcement framework. Prior to the 1945 Constitution's amendment, judicial power was regulated in Article 24 paragraph (1), which states: A Supreme Court and other judicial bodies exercise judicial power in accordance with the law.

The concrete adjudication of cases, which is essentially an interpretation of what is frequently referred to as legal discovery, is the responsibility of judges. When the judge makes a decision, he or she must do so with a full sense of responsibility as a judge who is trustworthy, impartial, keeps in mind the oath of office, remembers that his or her position does not allow for the exercise of power, and is careful and thorough in his or her duties as a good judge.

Advocates have the responsibility, as law enforcers who are free and independent, to implement fair, just, and legal justice for all seekers while upholding law, truth, justice, and human rights, according to Law Number 18 of 2003.

Advocates or legal advisors are in charge of the law enforcement subsystem, which includes the legal aid function. In the real world of law enforcement, the idea of the presumption of innocence has become a concept that can only be understood with knowledge.

The Form of State Accountability Against the Defendant Who Was Decided by the Court Proved Not Guilty in a Criminal Case

a. Arrangements for Compensation according to the Criminal Procedure Code in Indonesia

The arrangement of pay is upheld by the arrangements of Article 9 section 1 of Regulation No. As indicated by Area 48 of 2009 with respect to Legal Power, The right to remuneration and restoration applies to any individual who is captured, confined, indicted, or attempted without a substantial legitimate explanation or due to an error in regards to the individual or the law he applies.

The Criminal Strategy Code's articles 95 and 96 give further explanation of the legitimate establishment laid out by Regulation No. 48 of 2009 with respect to Legal Power. As expressed in the general arrangements of point 22 of Article 1 of the Criminal Strategy Code: Remuneration is an individual's all in all correct to have their requests met as cash in return for being captured, confined, arraigned, or attempted with practically no legitimate support or due to a slip-up about the individual or how the law is applied.

It depends on the arrangements of passage (2) of Article 95 of the Criminal Strategy Code: The pre-preliminary hearing framed in section 1 will decide the suspect's or his main beneficiaries' cases for pay for their capture, detainment, or different activities without legitimization in view of the law or mistakes in regards to the individual or the law applied, on the off chance that the case isn't submitted to the Locale Court. in the referenced Article 77; As per the arrangements of this regulation, the Locale Court is approved to research and settle on a choice with respect to:

- a) The legality of an arrest, detention, investigation, or prosecution termination.
- b) Pay and recovery for an individual whose criminal case is ended at the degree of

examination or indictment.

The following is the new version of Article 77 as amended;

- a. According to Article 95 of the Criminal Strategy Code, a case for pay must be made in something like three months of the date the selection or duplicate of the court's choice has legitimate power and is as yet acknowledged.
- b. Within three months of the date of warning of the pretrial assurance, a case for remuneration should be recorded against a case that has finished at the degree of examination or arraignment portrayed in Article 77 letter b of the Criminal Strategy Cod.

Then Article 9 was amended so that it reads as follows;

1. According to Article 77, letter b, and Article 95 of the Criminal System Code, how much remuneration should be essentially Rp. 500,000 rupiahs, and something like Rp. 100,000,000.00 (100,000,000 rupiahs).
2. According to Article 95 of the Criminal Strategy Code, assuming that you experience a serious physical issue or handicap that keeps you from working, you are qualified for pay in how much essentially Rp. 25,000. 25 million rupiahs, up to 300,000,000 rupiahs, are the sums permitted.
3. The reasons recorded in Article 95 of the Criminal System Code decide how much remuneration, which brings about: death, the pay ought to be essentially Rp. 50,000. 500,000,000 rupiahs, with a limit of Rp. 600,000,000.00 (\$600,000,000.00).

b. The Principle of Compensation and Rehabilitation

Reasons that can be used as the basis for claims for compensation and rehabilitation:

- a. Compensation for losses caused by arrest or detention:
- b. Unlawful arrest or detention
- c. Arrest or detention is carried out because it is not based on the law
- d. Detention or arrest made for purposes that cannot be justified according to law.
- e. The detention or arrest made does not involve the person/wrong arrest. This means that the person who is being arrested/detained has an error, and the person concerned has explained that the person who wants to be arrested/detained is not him. But even so, he was still detained, and then the arrest/detention really went wrong.
- f. Compensation due to search/confiscation
- g. The act of entering the house illegally according to the law, namely without an order and permission letter from the head of the court.

The gatherings who are qualified for present an application for remuneration are helped out through the Region Court by the family, beneficiaries, or their legitimate agents as per the Criminal Strategy Code. As per Article 99 of the Criminal Technique Code, the Region Court should consider its position to mediate the claim to finish the application for pay. This authority includes consideration of the truth of the lawsuit's basis and the law regarding the reimbursement of the aggrieved party's costs.

4 Conclusion

In this example, the 1945 Constitution, the commitment of the State to be responsible for giving legitimate security to respondents who are found honest in the law enforcement process is an established request. Concerning policing, a philosophical, humanistic, and legitimate viewpoint, policemen — the two specialists and investigators — and judges who inspect cases should not act randomly. They should focus on the assumption of honesty, direct policing agreement with the law, maintain basic liberties, and comply to the standards for equity.

At the point when a criminal respondent is found not blameworthy, the state is committed to reestablish his respect and give material and irrelevant remuneration. This is the form of state responsibility. Because the State in law enforcement is represented by law enforcement officers, it makes sense that law enforcement officers who have erroneously applied the law or acted arbitrarily during a criminal case should also bear the burden of the State.

References

- [1] Andi Hamzah, (1993), *Hukum Acara Pidana Indonesia*, Jakarta; Media Cipta
- [2] Arief Budiman (2005), *Teori Pembangunan Dunia Ketiga*, Jakarta: Gramedia Pustaka Utama
- [3] Artidjo Alkostar (2003), *Membangun Kultur Polri yang Berorientasi Madani*, Yogyakarta: Gama UP
- [4] Tahir Azhari, (1995), *Negara Hukum Indonesia (Analisis Yuridis Tentang Unsur-unsurnya)*, Jakarta: UI-Press
- [5] Baharuddin Lopa, (1996), *Alquran dan Hak-Hak Asasi Manusia*, Yogyakarta: Bhakti Prima Group
- [6] Departemen Pendidikan dan Kebudayaan, (1991), *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka
- [7] Eman Basuki, (2014), *Sistem Peradilan Pidana Modern*, Surabaya: Dharmawangsa Press
- [8] Khairul Saleh Amin, (2016), *Perkembangan Sistem Peradilan Pidana di Indonesia*, Jakarta : Pamator Press
- [9] Kunarto, (2007), *Perilaku Organisasi Polri*, Jakarta: Cipta Manunggal
- [10] Lukman Harun (2017), *Hukum dan Keadilan (Dalam Perspektif Sosiologis)*, Jakarta: Pamator Press
- [11] Yahya Harahap. (2009), *Pembahasan Permasalahan dan Penerapan dalam KUHAP*, Jakarta; Sinar Grafika
- [12] Mien Rukmini, (2015), *Perlindungan HAM melalui Asas Praduga Tak Bersalah dan Asas Persamaan Kedudukan Dalam Hukum Pada Sistem Peradilan Pidana Indonesia*, Jakarta; Gramedia
- [13] Moeljatno, (1997), *Asas-asas Hukum Pidana*, Yogyakarta; Gama Press
- [14] Mohammad Muchlis (2017), *Penegakan Hukum Sistem Peradilan Pidana di Indonesia*, Jakarta; Pamator Press
- [15] Muladi, (1994), *Sistem Peradilan Pidana Indonesia*, Jakarta: Citrabaru
- [16] Philipus M. Hardjon, (1997), *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya: Bina Ilmu
- [17] Romli Atmasasmita, (2011), *Sistem Peradilan Pidana*, Jakarta: Intermasa
- [18] Rudi Faridarta, (2015), *Mencari Jejak Keadilan*, Yogyakarta: Kanisius

- [19] Soedarto, (2003), *Hukum Pidana Materiil*, Jakarta: Sinar Grafika
- [20] Sudikno Mertokusumo, (2011), *Teori Hukum*, Yogyakarta: Universitas Atmajaya
- [21] W. Friedman,(1990), *Teori dan Filsafat Hukum, Filosofis dan Problema Keadilan*, Jakarta;Rajawali Pers
- [22] Undang-undang Dasar 1945 dan Amandemennya.
- [23] Undang-Undang Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman, Jakarta: Cemerlang
- [24] Peraturan Pemerintah Nomor 92 Tahun 2015 tentang perubahan kedua atas Peraturan Pemerintah Nomor 27 Tahun 1983 tentang Pelaksanaan KUHAP tentang Pelaksanaan KUHAP