

Reconstruction of the Regulation on Legal Protection of Suspects' Right to Advocate Assistance in Criminal Case Investigation

Rahim Yasin^{1*}, Maria Silvya Elisabeth Wangga², Endang Pandamdari³

¹⁻³Doctoral Program in Law Sciences, Faculty of Law, Universitas Trisakti, Indonesia

Email: ¹⁾ rahimyasim7@gmail.com

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Abstract

Legal protection of suspects' rights during criminal investigations is essential to a fair justice system that upholds human rights. One key protection is the right to legal counsel. In practice, however, problems persist, including interrogations without counsel, formalistic legal assistance, intimidation, and weak oversight of investigators. This study aims to analyze the construction of the regulation on legal protection of suspects' right to advocate assistance in the criminal case investigation process and to formulate a more effective reconstruction of the regulation. Using normative legal research methods that combine statutory and conceptual approaches, this study examines primary and secondary legal materials. The results reveal that although various laws and regulations have established the right of suspects to receive legal aid, a number of deficiencies remain in their actual application. Reconstruction of the regulation is needed through strengthening the right to advocate assistance from the beginning of the investigation, giving advocates an active role, regulating the legal consequences of examination without assistance in certain cases, improving access to legal aid for underprivileged people, transparency of examinations through audio-visual recording, and strengthening oversight mechanisms and sanctions against investigators. Such reconstruction is expected to strengthen the protection of suspects' rights, create a balance between the authority of investigators and the interests of suspects, and support the realization of a criminal justice system that is fair, transparent, and oriented toward respect for human rights.

Keywords: Advocate, Criminal Case Investigation, Legal Protection, Legal Reconstruction, Suspects' Rights.

1. Introduction

As a nation grounded in law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia declares that all conduct of state administrators (Sembiring, 2016), which encompasses law enforcement officers, must be exercised in accordance with legal provisions while honoring human rights. Protecting the rights of suspects plays a central role in the criminal justice system as a means of fulfilling the principles of due process of law and a fair trial. One example of such protection is the right of suspects to receive assistance from advocates at each level of examination, particularly throughout the criminal investigation process.

The investigation process is the initial stage of the criminal justice system and plays a very important role, because at this stage a series of actions is carried out to seek and collect evidence in order to identify the suspect and determine whether a criminal offense has occurred (Idris, 2025). However, in practice the investigation process often becomes a vulnerable point for human rights violations against suspects. Acts of violence, intimidation, psychological pressure, coerced confessions, and restrictions on the right to obtain legal aid are not infrequently found in examinations conducted by investigators (Yuliani, 2025).



The right of suspects to be accompanied by an advocate is fundamentally governed by Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP), Law Number 18 of 2003 on Advocates, and a range of human rights instruments at both the national and international levels. Through these regulations, the state has shown its commitment to providing normative guarantees for the protection of suspects' rights. In practice, however, a variety of shortcomings and impediments continue to exist, preventing such legal protection from being carried out effectively.

In law enforcement practice, suspects are still found being examined without advocate assistance, particularly among poor people and people who lack understanding of the law. Even in some cases, the presence of an advocate is positioned merely as a formality without adequate room to carry out the defense function. This condition shows an imbalance of position between investigators, as holders of state authority, and suspects, who are in a weak position and vulnerable to rights violations.

In addition, weak oversight of the investigation process means that various forms of irregularities still often occur. Not a few criminal cases have caused controversy due to alleged case fabrication, coerced confessions, and even torture of suspects. Such conditions are contrary to the principles of the rule of law and respect for human rights as guaranteed by the constitution.

In principle, the progression of criminal procedural law in Indonesia, achieved through the passage of Law Number 20 of 2025 on the New KUHAP, represents a crucial moment for enhancing the protection of suspects' rights during investigations. The New KUHAP is anticipated to deliver a criminal justice system that is more civilized, up to date, and centered on the defense of human rights. However, a more comprehensive reconstruction of the regulation on legal protection of suspects' right to advocate assistance is still needed so that it is not only normative but also effective in its application.

Reconstruction of the regulation on legal protection is important because advocate assistance aims not only to provide legal aid to suspects but also functions as an instrument for overseeing the actions of investigators so that the examination process runs in accordance with the law and respects human rights (Pandiangan, 2024). The presence of advocates in the investigation process can prevent arbitrary actions, maintain the objectivity of examinations, and ensure that suspects receive fair treatment.

Therefore, renewal and restructuring of the regulation on legal protection of suspects' right to advocate assistance in the criminal case investigation process are needed (Hardian, 2023). Such reconstruction must be able to create a balance between the interests of law enforcement and the protection of human rights so that a criminal justice system that is fair, legally certain, and upholds humanitarian values is realized.

In light of the description above, a study addressing the reconstruction of rules on the legal protection of suspects' right to obtain advocate assistance in the criminal investigation process is warranted as a step toward reforming Indonesian criminal procedural law and strengthening suspects' rights in the criminal justice system. Theoretically, this study contributes to and expands the body of literature, particularly for the Doctoral Program in Law at Universitas Trisakti Jakarta. Furthermore, it supports the growth of legal scholarship, especially criminal law and criminal procedural law, and enhances the knowledge of police, prosecutors, judges, and society at large regarding the reconstruction of regulations on legal protection of suspects' right to advocate assistance in the Criminal Case Investigation Process. In addition, it is useful as practical input from experts, legal practitioners, and the public in the development and formation of law, primarily the improvement and refinement of laws and

regulations related to the reconstruction of the regulation on legal protection of suspects' right to advocate assistance in the Criminal Case Investigation Process (Suwandi, 2023).

2. Methods

The present research adopts a normative or doctrinal legal research approach. Research of this kind is carried out by exploring library sources or secondary data concerning the norms, principles, theories, concepts, and legislative provisions that regulate the legal protection of a suspect's rights in the process of criminal case investigation.

This research focuses on examining the applicable legal regulations, the synchronization of legal norms, the application of human rights principles, and legal reconstruction of the regulation on advocate assistance for suspects in the investigation process. Normative research was chosen because this research aims to find the ideal concept and formulation of legal regulation capable of providing effective legal protection for suspects' rights.

3. Results and Discussion

3.1. The Concept of Legal Protection of Suspects' Rights

Legal protection of suspects' rights is an important part of the criminal justice system based on the principles of the rule of law and respect for human rights. In a state based on law, every person who comes into contact with the law must receive treatment that is fair, humane, and non-discriminatory, including a person who has been named a suspect in a criminal case (Setiawan, 2020).

A suspect, as a legal subject, has rights that must be protected by the state, one of which is the right to obtain legal aid and be assisted by an advocate at every level of examination. This right aims to guarantee that the investigation process runs objectively and professionally and is free from arbitrary actions by law enforcement officers.

Legal protection of a suspect assisted by an advocate is an implementation of the principles of due process of law, presumption of innocence, equality before the law, and fair trial. In this context, advocate assistance is not merely an administrative formality but an important part of efforts to guarantee human rights in the criminal law enforcement process.

3.2. Regulation of the Suspect's Right to Be Assisted by an Advocate

Multiple Indonesian legal provisions govern a suspect's entitlement to legal aid. These include the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 on KUHAP, Law Number 18 of 2003 on Advocates, Law Number 16 of 2011 on Legal Aid, Law Number 39 of 1999 on Human Rights, and Law Number 20 of 2025 on the New KUHAP.

KUHAP in principle gives suspects the right to obtain legal aid from the investigation stage. In certain cases punishable by severe penalties, as well as for suspects who are unable to afford it, the state is obliged to provide legal counsel free of charge (Sahanggamu, 2013). In addition, such regulation also shows that advocate assistance is part of the guarantee of human rights protection that must be fulfilled by the state in the law enforcement process. However, even though normative regulation is available, the implementation of such legal protection in practice still does not run optimally.

3.3. Problems of Legal Protection of Suspects' Rights in Investigation Practice

In the practice of criminal case investigation, there are still various problems that cause legal protection of suspects' rights not to be implemented effectively.

3.3.1. Examination Without Advocate Assistance

Suspects are still found being examined without advocate assistance, especially at the initial stage of examination. This condition often occurs among people who do not understand the law and among underprivileged people. In fact, the initial stage of investigation is a phase highly vulnerable to human rights violations because the suspect is in a weak position before the investigator.

3.3.2. Advocate Assistance Is Only a Formality

In practice, the presence of an advocate is often merely to fulfill administrative requirements without adequate room being given to carry out the defense function actively. Advocates are sometimes not permitted to raise objections or to carry out effective oversight of the examination process (Solehoddin, 2023). As a result, the presence of an advocate has not been fully able to provide legal protection for the suspect.

3.3.3. Occurrence of Violence and Intimidation

There are still allegations of the use of physical and psychological pressure in the examination process to obtain the suspect's confession. Such practices are contrary to human rights principles and undermine the presumption of innocence. A confession obtained through pressure should not be used as a basis of proof in a criminal case.

3.3.4. Imbalance of Position Between Investigator and Suspect

Suspects find themselves in a disadvantaged and restricted position, while investigators possess enormous power to steer the course of an investigation. This unequal relationship creates the potential for authority to be abused whenever adequate legal protection is absent.

3.3.5. Weak Oversight of the Investigation Process

Oversight of investigators' actions is still not optimal, both internal and external. As a result, various procedural violations and violations of suspects' rights are often difficult to prove and do not receive effective handling.

3.4. Urgency of Reconstructing the Regulation on Legal Protection

Reconstruction of the regulation on legal protection of suspects' right to advocate assistance is an important need in the reform of criminal procedural law in Indonesia (Zubairy, 2022). Reconstruction is carried out because the current regulation has not been fully able to provide effective legal protection for suspects.

A number of objectives necessitate reconstruction, including strengthening human rights protection, preventing law enforcement officers from acting arbitrarily, balancing investigators' authority against suspects' rights, raising the professionalism of law enforcement, and achieving a fair and humane criminal justice system. Legal reconstruction additionally constitutes a component of criminal justice system reform that is directed toward the principle of due process of law.

3.5. Forms of Reconstruction of the Regulation on Legal Protection

3.5.1. Strengthening the Right to Advocate Assistance from the Beginning of the Investigation

The right to advocate assistance must be given from arrest, initial examination, and detention until the entire investigation process is completed. Such assistance must be mandatory, particularly for suspects of serious criminal offenses, children, women, persons with disabilities, poor people, and other vulnerable groups.

3.5.2. Giving Advocates an Active Role

Advocates must also be given a stronger position in the investigation process, among others by directly assisting examinations, providing legal consultation, raising objections to investigators' actions, ensuring that no intimidation occurs, and recording procedural violations (Ahmatnihar et al., 2024). In this way, advocates can carry out the legal protection function optimally.

3.5.3. Examination Without an Advocate Declared Invalid

In the concept of legal reconstruction, the examination of certain suspects without advocate assistance must be declared invalid or null and void by law. In addition, examination reports obtained through pressure, torture, or intimidation may not be used as evidence in the criminal justice process. This provision is important to prevent abuse of authority in the investigation process.

3.5.4. Strengthening Legal Aid for Underprivileged People

The state must guarantee the availability of free legal aid that is easily accessible to underprivileged people through increasing the legal aid budget, equitable distribution of legal aid organizations, provision of assisting advocates, and fast and professional legal aid services.

3.5.5. Transparency and Digitalization of Examinations

To prevent violations of suspects' rights, the examination process needs to be conducted transparently through audio-visual recording, digital documentation, and electronic oversight systems. Such transparency can serve as a tool to control investigators' actions and provide better protection for suspects (Rahmadani, 2025).

3.5.6. Strengthening Oversight and Sanctions Against Investigators

Legal reconstruction must also strengthen oversight mechanisms over investigators through internal oversight, external oversight, public complaint mechanisms, and imposition of administrative, ethical, and criminal sanctions. Strict sanctions are needed so that law enforcement officers carry out their duties professionally and respect human rights.

3.6. The Ideal Concept of Protection of Suspects' Rights in the New KUHAP

Under the New KUHAP, human rights protection must serve as the primary principle governing the criminal justice system. Suspects need to be situated as legal subjects whose rights are entitled to respect (Amin, 2024). A comprehensive vision of protecting suspects' rights comprises several elements: access to legal aid from the start, accompaniment by an advocate without any barriers, freedom from coerced confession, examination conducted in a humane manner, access to case-related information, the ability to stay in contact with family, and the availability of free legal aid for those unable to afford it. Through this concept, it is hoped that the investigation process can run fairly, transparently, and with respect for human dignity.

4. Conclusion

Reconstruction of the regulation on legal protection of suspects' right to advocate assistance in the criminal case investigation process is an important step in the reform of criminal procedural law in Indonesia. Such reconstruction is needed because there are still various weaknesses in the implementation of protection of suspects' rights, such as examination without advocate assistance, intimidation, and weak oversight of investigators. Strengthening the right to advocate assistance, transparent examinations, effective legal aid, and strict oversight of law enforcement officers are important parts of realizing a criminal justice system that is fair, legally certain, and upholds human rights.

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