

Research Article

# Legal Protection of Suspects' Rights During the Investigation Stage Viewed from the Principle of Due Process of Law in the Indonesian Criminal Justice System

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**Abstract:** The protection of suspects' rights during the investigation phase is a fundamental component of a fair and effective criminal justice system. This study examines the implementation of the principle of due process of law in Indonesia and its implications for safeguarding human rights in criminal investigations. Utilizing a normative legal research approach, supported by statutory and conceptual analysis, the research evaluates both the legal framework and practical application of suspects' rights under the Indonesian Criminal Procedure Code (KUHAP), the 1945 Constitution, and international human rights instruments such as the ICCPR. Findings indicate that while Indonesia has established comprehensive regulations to protect suspects, the practical implementation remains inconsistent due to structural, cultural, and procedural challenges. Deviations such as limited access to legal counsel, incomplete documentation of interrogations, and occasional coercive practices undermine adherence to due process standards. The study highlights the critical need for regulatory improvements, capacity building for investigators, and strengthened supervision mechanisms to ensure full protection of suspects' rights. Enhancing the conformity of investigative practices with due process principles is essential not only for safeguarding individual rights but also for maintaining public trust and the integrity of the Indonesian criminal justice system.

**Keywords:** Criminal Investigation; Due Process of Law; Human Rights Protection; KUHAP; Suspects' Rights;

## 1. Introduction

The protection of human rights within the criminal justice system has become a central concern in modern legal frameworks, reflecting the global shift toward safeguarding individual liberties while ensuring the effective enforcement of law. In Indonesia, the criminal justice process is governed by a complex interplay of statutory regulations, constitutional guarantees, and international human rights obligations. Among the critical phases of this process is the investigation stage, during which individuals suspected of criminal activity hereinafter referred to as "suspects" are subjected to legal scrutiny and potential deprivation of liberty. This stage is particularly sensitive because it involves the exercise of significant authority by law enforcement agencies, which, if unchecked, can lead to violations of fundamental rights such as the right to legal counsel, the right to be free from torture or coercion, and the right to be informed of accusations.

The principle of due process of law serves as the cornerstone for ensuring procedural fairness and the protection of suspects' rights. Rooted in both national and international legal standards, this principle mandates that all actions taken by law enforcement and prosecutorial authorities adhere to established legal procedures, respect the inherent dignity of individuals, and maintain a balance between state power and personal liberty. In the Indonesian context, the principle of due process is enshrined in the 1945 Constitution, the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP), and various human rights

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instruments ratified by the state, creating a legal framework aimed at preventing arbitrary detention, unlawful coercion, and procedural violations during criminal investigations.

Despite the legal safeguards, empirical evidence and judicial review indicate that the protection of suspects' rights during the investigation stage often faces challenges. These challenges include procedural deficiencies, inconsistencies in law enforcement practices, lack of access to competent legal counsel, and insufficient mechanisms for accountability. Such conditions not only compromise the fairness of investigations but also undermine public trust in the criminal justice system. Consequently, a comprehensive examination of the legal protection afforded to suspects within the Indonesian framework, particularly through the lens of due process, is essential to identify gaps, evaluate compliance with human rights standards, and propose recommendations for strengthening procedural justice.

This study aims to explore the legal protection of suspects' rights during the investigation stage in Indonesia, emphasizing the application of the due process principle. By analyzing statutory provisions, jurisprudence, and scholarly perspectives, the research seeks to provide a critical assessment of the effectiveness of existing legal mechanisms and highlight areas requiring reform. Through this inquiry, the study contributes to the broader discourse on human rights protection, procedural fairness, and the rule of law within the Indonesian criminal justice system.

## **2. Literature Review**

### **The Concept of Suspects' Rights in the Criminal Justice System**

Suspects' rights constitute an integral part of human rights protection within the modern criminal justice system. Conceptually, a suspect is an individual who, based on preliminary evidence, is reasonably presumed to have committed a criminal offense, yet cannot be declared guilty prior to a final and legally binding court decision. This principle is consistent with the presumption of innocence, which positions the suspect as a legal subject who must be treated humanely and fairly throughout the criminal justice process. The protection of suspects' rights aims to prevent abuses of power by law enforcement authorities and to ensure that the pursuit of truth is conducted in a lawful and civilized manner (Ashworth & Redmayne, 2010).

Within the Indonesian legal system, the regulation of suspects' rights is explicitly set forth in the Criminal Procedure Code (KUHAP). KUHAP provides a broad range of guarantees, including the right to be promptly examined by investigators, the right to be clearly and comprehensively informed of the allegations, the right to give statements freely without coercion, and the right to legal assistance from the investigation stage onward. These provisions indicate that, at the normative level, Indonesian criminal procedural law has adopted universally recognized human rights protection principles (Harahap, 2016).

The right to legal assistance is one of the most fundamental rights afforded to suspects. The presence of legal counsel serves not only as support for the suspect but also as a control mechanism to ensure that investigative actions remain within legal boundaries. According to Spronken and Attinger (2011), access to legal counsel from the earliest stages of criminal proceedings is a key element in guaranteeing the fairness of proceedings and preventing torture or psychological pressure. Without adequate legal assistance, suspects are placed in a highly vulnerable position and face an increased risk of human rights violations.

Furthermore, the right to be free from torture and from cruel, inhuman, or degrading treatment constitutes an absolute principle that cannot be restricted under any circumstances (non-derogable rights). This principle is affirmed in various international legal instruments, including the Convention Against Torture (CAT) and the ICCPR. In the context of criminal investigations, the prohibition of torture is particularly relevant, as the interrogation stage often becomes a site of physical or psychological pressure aimed at extracting confessions. The use of evidence obtained through unlawful means not only violates suspects' rights but also undermines the integrity of the criminal justice system itself (Nowak, 2005).

Accordingly, suspects' rights should not be understood merely as obstacles to law enforcement, but rather as essential instruments for ensuring procedural justice and material truth. A criminal justice system that disregards suspects' rights risks producing erroneous and unjust decisions, while simultaneously eroding the legitimacy of the rule of law in the eyes of the public.

### **The Principle of Due Process of Law: Definition and Development**

The principle of due process of law is a central concept in criminal procedural law and constitutional law, functioning as a limitation on state power in law enforcement. Historically, this concept originates from the Anglo-Saxon legal tradition, particularly the Magna Carta of 1215, which affirmed that no individual may be deprived of liberty or rights except in accordance with lawful judgment. With the development of modern legal systems, due process of law has evolved into a universal principle recognized across diverse legal traditions and international human rights instruments (Hall, Ely & Grossman, 2014).

Conceptually, due process of law encompasses two primary dimensions: procedural due process and substantive due process. Procedural due process emphasizes compliance with fair and transparent legal procedures, such as the right to be heard, the right to legal counsel, and the right to an impartial tribunal. Substantive due process, by contrast, focuses on protecting fundamental individual rights from arbitrary state actions, even when such actions are carried out in accordance with formally valid procedures (Chemerinsky, 2019).

In the criminal justice context, due process of law serves as a guarantee that every stage of the criminal process from investigation to the execution of judgments is conducted with respect for human rights. This principle rejects the crime control model, which overly prioritizes enforcement efficiency at the expense of individual rights protection. Instead, the due process model places procedural fairness as a prerequisite for the legitimacy of law enforcement (Packer, 1968).

In Indonesia, the principle of due process of law has been adopted both implicitly and explicitly in various legislative instruments. The 1945 Constitution guarantees the right to fair legal certainty and equal treatment before the law. KUHAP likewise reflects the spirit of due process through its regulation of suspects' and defendants' rights. Nevertheless, several scholars argue that the implementation of due process of law in Indonesia remains largely formalistic and has not yet fully oriented itself toward the substantive protection of human rights (Muladi, 2009).

Global developments further demonstrate that due process of law is increasingly regarded as a minimum standard that must be fulfilled by modern constitutional states. The European Court of Human Rights (ECHR) and the UN Human Rights Committee have consistently affirmed that violations of due process principles may result in international state responsibility. This underscores that due process of law is not merely a domestic principle, but an integral part of binding international legal obligations (Joseph & Castan, 2013).

### **The Position of the Due Process of Law Principle in National and International Law**

The position of the due process of law principle in national and international law reflects a complementary relationship between domestic norms and global human rights standards. In international law, due process of law is clearly articulated in the ICCPR, particularly Articles 9 and 14, which regulate the right to liberty and security of person as well as the right to a fair trial. These provisions affirm that every individual who is arrested or detained has the right to be informed of the reasons for arrest, to obtain legal assistance, and to be tried within a reasonable time by an independent and impartial tribunal (United Nations Human Rights Committee, 2007).

As a State Party to the ICCPR, Indonesia is obligated to align its national laws and practices with the provisions of the Covenant. The ratification of the ICCPR through Law No. 12 of 2005 signifies Indonesia's commitment to protecting civil and political rights, including the application of the due process of law principle within its criminal justice system. In this regard, due process of law functions as an evaluative standard for assessing whether investigative and judicial practices comply with Indonesia's international obligations (Nowak, 2005).

Within national law, the principle of due process of law is reflected in various legislative instruments, ranging from the 1945 Constitution to KUHAP and the Human Rights Act. However, harmonization between international norms and domestic practice often encounters challenges. Certain provisions of KUHAP are considered insufficient in accommodating the development of international standards, particularly with respect to early access to legal counsel and oversight mechanisms for investigative actions (Spronken et al., 2016).

Moreover, judicial institutions and law enforcement agencies play a strategic role in translating the due process of law principle into concrete practice. Without strong institutional commitment, the principle risks becoming a symbolic norm lacking effective implementation. Therefore, strengthening due process of law requires a comprehensive approach encompassing regulatory reform, transformation of legal culture, and enhancement of law enforcement capacity.

### **Previous Studies on the Protection of Suspects' Rights**

Research on the protection of suspects' rights in criminal proceedings has been extensively conducted at both national and international levels. These studies generally highlight a gap between legal norms and law enforcement practices. Ashworth (2006) emphasizes that violations of suspects' rights frequently occur at the early stages of the criminal process, when oversight mechanisms are weak and suspects have not yet obtained adequate access to legal counsel.

In Indonesia, research conducted by Harahap (2016) demonstrates that although KUHAP provides normative guarantees for suspects' rights, its implementation continues to face various obstacles, including low legal awareness among law enforcement officials and limited effective oversight. Similar findings have been reported by the National Commission on Human Rights (Komnas HAM), which has documented the continued existence of torture and inhuman treatment during criminal investigations (Komnas HAM, 2021).

Comparative research by Spronken et al. (2016) indicates that countries providing early access to legal counsel tend to exhibit higher levels of compliance with due process of law principles. This suggests that strengthening the role of legal counsel is one of the key factors in enhancing the protection of suspects' rights.

### **3. Research Method**

This study employs normative legal research, focusing on the examination of positive legal norms governing the protection of suspects' rights during the investigation stage, particularly from the perspective of the principle of due process of law. The normative legal research model is selected because the primary objective of this study is to analyze the consistency, adequacy, and conformity of existing legal regulations with the principles of procedural justice and human rights, rather than to collect empirical data from the field. Accordingly, the law is positioned as a set of norms (law in the books) that are systematically, logically, and conceptually analyzed in order to develop prescriptive legal arguments (Soekanto & Mamudji, 2019).

The approaches employed in this study include the statutory approach and the conceptual approach. The statutory approach is conducted through an in-depth examination of relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia, the Criminal Procedure Code (KUHAP), the Human Rights Act, as well as international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by Indonesia. This approach aims to identify legal norms governing suspects' rights and the obligations of law enforcement authorities in ensuring the application of the due process of law principle during the investigation stage.

The conceptual approach, meanwhile, is utilized to examine legal doctrines, principles, and theories related to due process of law and the protection of suspects' rights. This approach is grounded in the view that an understanding of legal concepts cannot be separated from their underlying theoretical frameworks. Therefore, this study employs the theory of the rule of law, due process of law theory, and human rights protection theory as its primary analytical frameworks. Rule of law theory is used to emphasize that the limitation of state power and the protection of individual rights are essential requirements of a democratic legal system. Due process of law theory is applied to assess whether investigative procedures meet the standards of procedural justice and fair treatment of suspects, while human rights protection theory is employed to evaluate the conformity of investigative practices with national and international human rights standards.

The sources of legal materials in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, court decisions, and relevant international legal instruments. Secondary legal materials comprise legal textbooks, national and international scholarly journals, previous research findings, and reports issued by

authoritative institutions in the field of human rights. Tertiary legal materials are used as supporting references to clarify legal concepts and terminology, such as legal dictionaries and legal encyclopedias.

The collection of legal materials is carried out through library research, involving a systematic and critical review of relevant legal literature. Subsequently, the analysis of legal materials is conducted using qualitative analysis with deductive reasoning, whereby conclusions are drawn from general legal norms and theories toward their application in the context of protecting suspects' rights during the investigation stage. Through this method, the study is expected to produce comprehensive and policy-relevant legal arguments regarding the strengthening of the implementation of the due process of law principle within Indonesia's criminal justice system.

#### **4. Results and Discussion**

##### **The Position of Suspects' Rights in the Indonesian Criminal Justice System**

Suspects' rights occupy a highly strategic position within the Indonesian criminal justice system, as they are directly linked to the protection of human rights and the limitation of state power in the process of law enforcement. Within the framework of the criminal justice system, a suspect is an individual who is still at the initial stage of the legal process, where criminal liability has not yet been legally established. Accordingly, the treatment of suspects must be grounded in the principle of the presumption of innocence, which affirms that any person suspected of committing a criminal offense must be regarded as innocent until a final and legally binding court decision is rendered. This principle constitutes a fundamental tenet of modern criminal law and serves as the primary foundation for the protection of suspects' rights at every stage of the criminal justice process (Ashworth & Redmayne, 2010).

In the Indonesian legal system, the position of suspects' rights is normatively regulated in a comprehensive manner under the Criminal Procedure Code (KUHAP). KUHAP was designed as a legal instrument intended to balance the interests of the state in enforcing the law with the interests of individuals in obtaining protection of their human rights. The regulation of suspects' rights in KUHAP reflects a paradigm shift from a repressive approach that treated suspects merely as objects of investigation toward a more humanistic approach that recognizes suspects as legal subjects whose rights and human dignity must be respected (Harahap, 2016). Normatively, therefore, suspects' rights are inseparable from the principles of the rule of law and procedural justice.

The rights of suspects as regulated in KUHAP encompass several essential aspects, including the right to be promptly examined by investigators, the right to be clearly and comprehensively informed of the allegations against them, the right to provide statements freely without coercion, and the right to obtain legal assistance from the investigation stage onward. The right to legal assistance holds a particularly crucial position, as it functions as a safeguard against potential abuses of authority by law enforcement officials. According to Spronken and Attinger (2011), access to legal counsel from the earliest stages of criminal proceedings constitutes an essential element of a fair trial and due process of law, as it enables suspects to understand their rights and provides oversight of investigative procedures carried out by investigators.

Beyond KUHAP, the position of suspects' rights is further reinforced by constitutional provisions in the 1945 Constitution of the Republic of Indonesia. Article 28D paragraph (1) of the Constitution guarantees every person the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. This provision affirms that suspects, as citizens, continue to enjoy constitutional rights that must be respected by the state, including during the criminal investigation process. Consequently, violations of suspects' rights constitute not only breaches of criminal procedural law but also infringements of citizens' constitutional rights (Asshiddiqie, 2015).

Furthermore, the position of suspects' rights within the Indonesian criminal justice system cannot be separated from Indonesia's international human rights commitments. Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12 of 2005, thereby obligating the state to guarantee the protection of individual rights in criminal proceedings. Articles 9 and 14 of the ICCPR explicitly regulate the right to liberty and security of person and the right to a fair trial, including the suspect's

right to be promptly informed of the reasons for arrest and the charges brought against them, as well as the right to legal assistance (United Nations Human Rights Committee, 2007). The ratification of the ICCPR renders these principles binding legal standards that must be implemented in national criminal justice practice.

Despite the strong normative recognition and guarantees afforded to suspects' rights, law enforcement practice in Indonesia demonstrates that their effective implementation continues to face significant challenges. Various studies and reports by oversight institutions indicate that suspects' rights are often placed in a weak position when confronted with law enforcement priorities that emphasize efficiency and case completion targets. Practices such as interrogations conducted without the presence of legal counsel, delays in informing suspects of their rights, and the use of physical or psychological pressure during investigations have been reported in numerous cases (Komnas HAM, 2021). These conditions suggest that, empirically, suspects' rights have not yet been fully prioritized within the criminal justice system.

From the perspective of criminal justice system theory, this situation reflects the dominance of the crime control model, which emphasizes the effectiveness of crime repression, often at the expense of individual rights protection. Packer (1968) argues that an imbalance between the crime control model and the due process model may lead to the erosion of suspects' rights and increase the risk of miscarriages of justice. In the Indonesian context, this tendency is further reinforced by a legal culture that continues to place significant weight on confessions as primary evidence, thereby encouraging the use of coercive methods during interrogation.

The weak position of suspects' rights in investigative practice is also influenced by structural and institutional factors, such as limitations in human resources, high workloads faced by investigators, and weak internal and external oversight mechanisms. In the absence of effective oversight, violations of suspects' rights often go unpunished, creating impunity and undermining public trust in the criminal justice system. This indicates that strengthening the position of suspects' rights requires not only adequate normative regulation but also institutional reform and a transformation of the legal culture among law enforcement officials (Muladi, 2009).

In sum, the position of suspects' rights within the Indonesian criminal justice system lies at the intersection of strong normative guarantees and complex implementation challenges. Legal recognition of suspects' rights must be accompanied by genuine commitment in law enforcement practice to ensure the effective realization of the principle of due process of law. Strengthening the position of suspects' rights should not be viewed as weakening efforts to combat crime; rather, it constitutes a prerequisite for the establishment of a criminal justice system that is fair, accountable, and grounded in respect for human rights.

### **Forms of Legal Protection for Suspects' Rights at the Investigation Stage**

Legal protection of suspects' rights at the investigation stage constitutes an essential component of a criminal justice system oriented toward the principle of due process of law and respect for human rights. The investigation stage occupies a particularly critical position, as it is at this phase that the state, through law enforcement authorities, begins to exercise its coercive powers over individuals suspected of committing criminal offenses. Accordingly, legal protection for suspects functions not only as a safeguard of individual rights but also as a control mechanism against potential abuses of power by investigators. Within a rule-of-law framework, every investigative action must be carried out in accordance with the law, lawful procedures, and principles of justice (Ashworth & Redmayne, 2010).

One of the most fundamental forms of legal protection for suspects at the investigation stage is the right to be clearly and comprehensively informed of the allegations brought against them. The Criminal Procedure Code (KUHP) provides that, from the outset of the examination, suspects have the right to be officially notified of the alleged criminal offense, including its legal basis and the underlying factual circumstances. This right is of strategic importance, as it forms the foundation for suspects to prepare their defense and determine appropriate legal steps. Without clear information regarding the charges, the position of the suspect becomes inherently unequal and contrary to the principle of fairness in criminal proceedings (Harahap, 2016). A similar principle is affirmed in Article 9(2) of the ICCPR,

which obliges states to promptly inform any arrested person of the reasons for arrest and the charges against them (United Nations Human Rights Committee, 2007).

In addition, the right to legal assistance represents a highly significant form of legal protection at the investigation stage. KUHAP grants suspects the right to be accompanied by legal counsel from the initial phase of examination. The presence of legal counsel serves not merely as formal accompaniment, but also as a guarantee that investigative procedures are conducted in accordance with the law and do not infringe upon suspects' rights. According to Spronken and Attinger (2011), early access to legal counsel constitutes one of the principal indicators of due process of law, as it is capable of preventing practices of torture, intimidation, and psychological pressure that frequently occur during investigations. In the absence of effective legal assistance, suspects are placed in a highly vulnerable position and face an increased risk of human rights violations.

Another important form of legal protection is the suspect's right to provide statements freely, without pressure, coercion, or intimidation. This principle affirms that any statement given by a suspect must result from free will rather than physical or psychological compulsion. The prohibition of torture and inhuman or degrading treatment constitutes an absolute legal norm that cannot be derogated under any circumstances. In the context of criminal investigations, the use of violence or coercion to obtain confessions not only violates human rights, but also undermines the validity of evidence and the integrity of the criminal justice process as a whole (Nowak, 2005). Consequently, the protection of this right is a key element in maintaining procedural justice.

Another form of legal protection concerns the regulation of limits and conditions governing coercive measures, such as arrest, detention, search, and seizure. KUHAP explicitly stipulates that such measures may only be carried out on the basis of lawful grounds, clear procedures, and within specified time limits. These regulations aim to prevent arbitrary actions by investigators and to ensure that restrictions on individual liberty are applied proportionately and can be legally justified. From the perspective of due process of law theory, limitations on individual liberty can only be justified when they are grounded in law and subject to strict judicial oversight (Chemerinsky, 2019).

In addition to preventive safeguards, the Indonesian legal system also provides repressive legal protection mechanisms, one of which is the pretrial (*praperadilan*) institution. Pretrial proceedings function as a form of judicial control over the actions of investigators and public prosecutors, particularly with regard to the legality of arrests, detentions, termination of investigations, and the designation of suspects. The existence of pretrial review represents a concrete manifestation of the principle of checks and balances within the criminal justice system. According to Harahap (2016), pretrial proceedings play a strategic role in protecting suspects' rights against investigative actions that are inconsistent with criminal procedural law.

Furthermore, legal protection for suspects' rights is reinforced through internal and external oversight mechanisms over law enforcement authorities. Internal oversight is conducted through institutional structures within the police, while external oversight involves independent bodies such as the National Commission on Human Rights (Komnas HAM). Reports issued by Komnas HAM indicate that external oversight plays an important role in exposing and preventing violations of suspects' rights, particularly those related to torture and inhuman treatment during investigations (Komnas HAM, 2021). Nevertheless, the effectiveness of these oversight mechanisms largely depends on institutional commitment and firm follow-up actions in response to identified violations.

Despite the existence of various normative forms of legal protection for suspects' rights, the primary challenge lies in their implementation. Numerous studies demonstrate that legal protection often remains formalistic and has not been fully realized in investigative practice. Factors such as legal culture, performance target pressures, and law enforcement paradigms that prioritize confessions continue to pose serious obstacles to the effective protection of suspects' rights (Muladi, 2009). This condition suggests that strengthening legal protection cannot be achieved solely through norm-making, but also requires paradigm shifts and enhanced professionalism among law enforcement officials.

In conclusion, forms of legal protection for suspects' rights at the investigation stage encompass interrelated normative, institutional, and procedural dimensions. Such protection must be understood as an integral part of efforts to realize a criminal justice system that is fair, transparent, and accountable. Strengthening the protection of suspects' rights should not be viewed as an impediment to law enforcement, but rather as a prerequisite for achieving substantive justice and ensuring the legitimacy of the criminal justice system within a democratic rule-of-law state.

### **The Implementation of the Due Process of Law Principle in Investigative Practice**

The implementation of the principle of due process of law in investigative practice constitutes a primary indicator of the quality of a criminal justice system within a rule-of-law state. This principle requires that all investigative actions be conducted lawfully, fairly, transparently, and with full respect for human rights, particularly the rights of suspects as legal subjects who have not yet been declared guilty. In the context of criminal investigations, due process of law functions as a mechanism for limiting state power and as a guarantee that the pursuit of truth is not carried out through arbitrary means or in ways that violate human dignity (Ashworth & Redmayne, 2010). Accordingly, the implementation of this principle is not merely a matter of formal compliance with criminal procedural law, but also reflects the ethical and institutional commitment of law enforcement authorities to the values of justice.

Normatively, the principle of due process of law has been integrated into the Indonesian legal system through various legislative instruments, particularly the Criminal Procedure Code (KUHAP) and the 1945 Constitution of the Republic of Indonesia. KUHAP regulates investigative procedures in detail, including investigators' powers and suspects' rights, which collectively reflect the spirit of due process. Nevertheless, the main challenge lies in how these norms are translated and applied in the daily practices of law enforcement officials. The gap between law in the books and law in action often constitutes the primary source of violations of due process of law (Friedman, 2019).

In investigative practice, the implementation of due process of law can be assessed by the extent to which investigators respect suspects' rights from the earliest stages of the criminal process. One of the most crucial aspects is the prompt and clear provision of information regarding the suspect's legal status and the charges brought against them. This right is a prerequisite for suspects to understand their position and to effectively exercise their rights, including the right to legal assistance. However, numerous studies indicate that, in practice, the notification of suspects' rights is often conducted in a merely formalistic manner or even neglected, particularly at the initial stage of examination, thereby undermining the substance of due process (Harahap, 2016).

The implementation of the due process of law principle is also highly dependent on the effectiveness of the right to legal assistance. The presence of legal counsel from the investigation stage constitutes a key element in ensuring procedural justice and preventing torture or psychological pressure. Comparative studies demonstrate that criminal justice systems providing early and effective access to legal counsel tend to exhibit higher levels of compliance with fair trial and due process standards (Spronken et al., 2016). Nevertheless, in Indonesian investigative practice, access to legal counsel continues to face various structural and cultural obstacles, resulting in the incomplete realization of due process of law.

Another critical determinant of due process implementation is the prohibition of torture and inhuman or degrading treatment during investigations. This prohibition represents an absolute norm of international law that is non-derogable under any circumstances. In the context of criminal investigations, the use of physical or psychological pressure to obtain confessions directly contradicts the principles of due process of law and the right to a fair trial. According to Nowak (2005), torture not only violates human rights but also undermines the validity of judicial proceedings by producing unreliable evidence. Although Indonesia has normatively prohibited torture, reports from oversight institutions indicate that such practices continue to occur during investigations, reflecting weak implementation of due process principles.

The implementation of due process of law in investigative practice is also closely related to the regulation and execution of coercive measures, such as arrest and detention. The due process principle requires that any restriction of individual liberty be carried out in accordance with the law, based on lawful grounds, and within prescribed time limits. Abuse of authority

in arrest and detention not only violates criminal procedural law but also infringes upon the right to liberty and security of person as guaranteed under the ICCPR (United Nations Human Rights Committee, 2007). In practice, cases of excessive or disproportionate detention are still reported, indicating insufficient control over investigators' discretionary powers.

Judicial oversight mechanisms, such as pretrial (praperadilan) proceedings, constitute an important instrument for ensuring the implementation of due process of law in investigative practice. Pretrial review serves as a means of controlling investigative actions that may infringe upon suspects' rights. However, the effectiveness of pretrial mechanisms largely depends on the willingness of suspects or their legal counsel to file applications, as well as on the independence and quality of judicial decisions. Several studies indicate that pretrial proceedings have not yet been optimally utilized as instruments for protecting suspects' rights, resulting in inadequate judicial correction of due process violations (Harahap, 2016).

From the perspective of criminal justice system theory, these conditions reflect an ongoing tension between the crime control approach and the due process approach. Packer (1968) argues that the dominance of the crime control model, which prioritizes efficiency and effectiveness in law enforcement, carries the risk of sacrificing individual rights protection. In Indonesian investigative practice, performance target pressures and demands for rapid case resolution often encourage law enforcement officials to sideline due process of law principles. This demonstrates that the implementation of due process is not merely a legal issue, but also one of policy orientation and institutional culture.

In conclusion, the implementation of the due process of law principle in investigative practice in Indonesia continues to face a range of normative, institutional, and cultural challenges. Although the legal framework provides a relatively strong foundation, its application remains inconsistent and suboptimal. Strengthening the implementation of due process of law requires a comprehensive approach, including regulatory reform, enhancement of investigators' capacity and professionalism, strengthening the role of legal counsel, and optimizing internal and external oversight mechanisms. Only through a strong commitment to due process principles can the criminal justice system perform its functions in a fair, accountable manner, grounded in respect for human rights.

### **Obstacles to the Protection of Suspects' Rights**

The protection of suspects' rights constitutes an essential element of a criminal justice system grounded in the principle of due process of law and respect for human rights. Although Indonesia's legal framework provides relatively comprehensive normative guarantees, law enforcement practice demonstrates that the protection of suspects' rights continues to face various structural, cultural, and institutional obstacles. These barriers not only affect the effectiveness of suspects' rights protection but also have broader implications for the quality of justice and the legitimacy of the criminal justice system as a whole (Ashworth & Redmayne, 2010).

One of the primary obstacles in protecting suspects' rights lies in the structural and institutional factors within the law enforcement system. Heavy investigative workloads, limited human resources, and inadequate facilities and infrastructure are often cited as justifications for disregarding procedural requirements that should be observed. Under such conditions, the protection of suspects' rights is frequently perceived as an administrative burden that slows down the investigation process, rather than as an integral component of procedural justice. Friedman (2019) emphasizes that the effectiveness of law is significantly influenced by institutional structures and the capacity of law enforcement actors; thus, structural weaknesses may ultimately lead to violations of individual rights in criminal justice practice.

Another major obstacle relates to the legal culture of law enforcement officials. A legal culture that remains oriented toward a repressive and crime control paradigm tends to position suspects as objects of investigation whose guilt must be established from the earliest stages of the process. This paradigm encourages investigative practices that prioritize confessions as the primary form of evidence, thereby creating space for the use of physical or psychological coercion. Packer (1968) warned that the dominance of the crime control model risks undermining the principle of due process of law and increasing the likelihood of

miscarriages of justice. In the Indonesian context, this paradigm remains relatively entrenched and constitutes a serious impediment to the effective protection of suspects' rights.

In addition, unequal access to legal assistance represents a significant barrier to the protection of suspects' rights. Although the Criminal Procedure Code (KUHAP) guarantees the right of suspects to be accompanied by legal counsel from the investigation stage, in practice many suspects do not receive effective legal representation, particularly those from economically disadvantaged backgrounds. The limited number of advocates, low levels of legal awareness among suspects, and the suboptimal implementation of state-funded legal aid result in the right to legal assistance often being fulfilled in a merely formalistic manner. Spronken and Attinger (2011) argue that without adequate legal representation, suspects are placed in a highly vulnerable position with respect to human rights violations, especially during the closed and coercive nature of the investigation stage.

Another obstacle is the weakness of oversight mechanisms over investigators' actions. Although Indonesia's legal system provides for both internal and external oversight mechanisms, their effectiveness remains limited. Internal oversight is often constrained by institutional solidarity and conflicts of interest, while external oversight bodies frequently lack strong enforcement powers. As a result, violations of suspects' rights are not always addressed firmly and consistently. Reports by the National Commission on Human Rights (Komnas HAM) indicate that complaints concerning torture and inhuman or degrading treatment during investigations continue to emerge, yet they do not always lead to adequate legal accountability (Komnas HAM, 2021).

Obstacles to protecting suspects' rights are also influenced by regulatory weaknesses and shortcomings in the implementation of criminal procedural law. Certain provisions of the KUHAP are considered insufficient to fully accommodate the development of international standards on fair trial and due process of law, particularly with regard to early access to legal counsel and the recording of interrogation processes. Moreover, differing interpretations of legal norms are often used to justify investigative practices that are inconsistent with due process principles. This demonstrates that the protection of suspects' rights depends not only on the existence of legal norms but also on the clarity and consistency of their application (Harahap, 2016).

Another important factor is performance pressure and public demands placed on law enforcement officials. In many cases, investigators face strong pressure to promptly uncover and resolve criminal cases, particularly those that attract significant public attention. Such pressure may encourage investigators to prioritize case outcomes over procedural safeguards and the protection of suspects' rights. According to Ashworth (2006), an excessive focus on efficiency and results can undermine the balance between the interests of law enforcement and the protection of individual rights.

Beyond internal factors within the legal system, low levels of public legal awareness also constitute an obstacle to protecting suspects' rights. Many suspects lack sufficient understanding of their rights during the investigation process and are therefore unable to assert or defend those rights when violations occur. This situation is exacerbated by information asymmetries and power imbalances between suspects and law enforcement authorities. From a sociology of law perspective, such power imbalances create conditions that are particularly conducive to human rights violations (Friedman, 2019).

In sum, the obstacles to protecting suspects' rights are multidimensional and interconnected, encompassing structural, cultural, regulatory, and social aspects. Efforts to strengthen the protection of suspects' rights cannot be pursued in a piecemeal manner but instead require a comprehensive and sustained approach. Regulatory reform must be accompanied by changes in legal culture, enhanced capacity and professionalism of law enforcement officials, strengthened oversight mechanisms, and improved public legal awareness. Without such comprehensive efforts, the principle of due process of law risks remaining an ideal norm that is difficult to realize in concrete practice within Indonesia's criminal investigation process.

### **Efforts to Strengthen the Protection of Suspects' Rights**

Strengthening the protection of suspects' rights is an urgent necessity in order to realize a criminal justice system that is fair, accountable, and grounded in the principle of due process of law. Suspects' rights function not only as individual safeguards against potential abuses of

power, but also as instruments for maintaining the integrity of the criminal justice process as a whole. Accordingly, efforts to reinforce the protection of suspects' rights must be undertaken systematically through regulatory reform, improvement of law enforcement quality, strengthening the role of legal counsel, and optimizing internal and external oversight mechanisms (Ashworth & Redmayne, 2010).

One fundamental effort to enhance the protection of suspects' rights is the reform of criminal procedural law to ensure its alignment with the development of international human rights standards. The Criminal Procedure Code (KUHAP), as the primary foundation of Indonesia's criminal justice process, is widely regarded as having several shortcomings, particularly in guaranteeing the protection of suspects' rights at the early stages of investigation. Reform of criminal procedural law should be directed toward strengthening fair trial principles, including clearer guarantees of the right to legal assistance from the first interrogation, stricter limitations on coercive measures, and more explicit regulation of the prohibition of torture and inhuman or degrading treatment. The United Nations Office on Drugs and Crime (UNODC, 2014) emphasizes that the modernization of criminal procedural law is a key prerequisite for ensuring the effective protection of suspects' rights in practice.

Beyond regulatory reform, enhancing the professionalism and integrity of investigators constitutes a crucial factor in strengthening the protection of suspects' rights. Law enforcement officials must be equipped with a strong understanding of human rights and the principle of due process of law, not merely as legal norms but as values that must be internalized in every investigative action. Continuous education and training that emphasize a human rights-based policing approach are necessary to shift investigative paradigms away from confession-oriented practices toward evidence-based methods grounded in scientific proof. According to Goldstein (2001), law enforcement professionalism supported by ethics and accountability serves as a fundamental foundation for preventing violations of individual rights in the law enforcement process.

Efforts to strengthen the protection of suspects' rights must also include reinforcing the role of legal counsel during the investigation stage. The effective presence of legal counsel from the outset of interrogation functions as a control mechanism against potential abuses of authority by investigators. To this end, the state must ensure genuine and substantive access to legal aid, particularly for economically disadvantaged suspects, rather than merely formal compliance with legal requirements. The provision of high-quality, independent, and professional legal assistance enhances suspects' bargaining positions and promotes a more transparent and fair investigative process. Spronken and Attinger (2011) emphasize that early access to legal counsel constitutes one of the most effective guarantees for protecting suspects' rights against unlawful investigative practices.

In addition, strengthening internal and external oversight mechanisms represents a strategic step toward ensuring the consistent protection of suspects' rights. Internal oversight must be supported by firm, transparent, and conflict-free disciplinary and ethical enforcement systems. At the same time, external oversight by independent bodies, such as police oversight institutions and the National Commission on Human Rights (Komnas HAM), should be reinforced in terms of authority, resources, and the implementation of their recommendations. Reiner (2010) argues that effective oversight systems function as deterrent mechanisms against abuses of power and contribute to increased public trust in law enforcement institutions.

The utilization of technology in the investigative process also constitutes an important effort to strengthen the protection of suspects' rights. The implementation of audio and visual recording during suspect interrogations can enhance transparency and accountability in investigators' actions, while also serving as objective evidence in cases of alleged rights violations. This practice has been adopted in various jurisdictions as part of criminal justice reform and has proven effective in reducing claims of torture and coercion during interrogations. According to Fair Trials International (2016), electronic documentation in the investigative process is a critical instrument for ensuring procedural justice and safeguarding suspects' rights.

Another equally important effort is the enhancement of public legal awareness, particularly with regard to suspects' rights in the criminal justice process. A legally informed society is better equipped to demand rights protection and to monitor the performance of

law enforcement authorities. Legal education and human rights awareness programs should therefore be developed on a sustained basis as part of a broader strategy to prevent violations of suspects' rights. Friedman (2019) notes that the effectiveness of law is strongly influenced by a society's legal culture, making the strengthening of legal awareness a long-term investment in the development of a just criminal justice system.

Furthermore, strengthening the protection of suspects' rights requires a paradigm shift in law enforcement from a predominantly repressive approach toward one that balances the interests of crime control with the protection of human rights. The principle of due process of law must be positioned as a primary guideline at every stage of the criminal process, rather than as a technical obstacle that undermines investigative efficiency. Packer (1968) underscores that maintaining a balance between the crime control and due process models is essential to preventing arbitrariness and ensuring substantive justice within the criminal justice system.

In conclusion, efforts to strengthen the protection of suspects' rights must be comprehensive and sustainable, encompassing normative, institutional, cultural, and social dimensions. Legal reform without corresponding changes in law enforcement culture risks losing its effectiveness, while improvements in professional capacity without robust oversight may prove unsustainable. Therefore, synergy among progressive regulation, professional law enforcement, effective oversight mechanisms, and a legally aware society constitutes a fundamental prerequisite for realizing the protection of suspects' rights in accordance with the principle of due process of law within Indonesia's criminal justice system.

## 5. Conclusion

Based on the results of the analysis and discussion, it can be concluded that the legal protection of suspects' rights at the investigation stage is an inseparable component of the implementation of the principle of due process of law within Indonesia's criminal justice system. Normatively, the regulation of suspects' rights in the Criminal Procedure Code (KUHAP), the 1945 Constitution of the Republic of Indonesia, and international human rights instruments ratified by Indonesia reflects the State's commitment to ensuring procedural justice and the protection of human rights from the earliest stages of the criminal process. These rights include the right to legal assistance, the right to be clearly informed of the charges brought against the suspect, the right to give statements freely without coercion, and protection against arbitrary actions by law enforcement authorities.

Nevertheless, this study finds that the implementation of the principle of due process of law in investigative practice has not yet been fully effective. Various obstacles persist, both structural in nature such as limited resources and the heavy workload of investigators and cultural, particularly law enforcement paradigms that remain oriented toward obtaining confessions from suspects. In addition, limited access to effective legal assistance and the suboptimal functioning of internal and external oversight mechanisms further weaken the protection of suspects' rights in practice.

Therefore, strengthening the protection of suspects' rights requires comprehensive and sustainable measures. Reform of criminal procedural law is necessary to align national regulations with international human rights standards. Furthermore, enhancing the professionalism and integrity of law enforcement officials, strengthening the role of legal counsel from the investigation stage, optimizing oversight mechanisms, and utilizing technology in examination processes constitute strategic efforts that must be implemented consistently. In this way, the principle of due process of law will not merely remain an ideal norm, but can be realized concretely in investigative practice to create a criminal justice system that is fair, humane, and grounded in respect for human rights.

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