

Indonesian Journal of Criminal Law Studies

ISSN 2548-1568 (Print) 2548-1576 (Online)

Vol. 10 Issue 2 (2025) 417-450

The title has been indexed by **SCOPUS**, **SINTA**

DOI: <https://doi.org/10.15294/ijcls.v10i2.32033>






Online since: November 3, 2025

**Indonesian Journal of
CRIMINAL
LAW STUDIES**

A peer-reviewed journal published by **Faculty of Law
Universitas Negeri Semarang, Indonesia.**

Online at <https://journal.unnes.ac.id/journals/ijcls/index>

Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice

Heri Purwanto^a, Pujiyono^a, Irma Cahyaningtyas^a,
Ridwan Arifin^b, Muhammad Azil Maskur^c

^a Faculty of Law, Universitas Diponegoro, Indonesia

^b Faculty of Law, Universitat de Barcelona, Spain

^c Faculty of Law, Universitas Negeri Semarang, Indonesia

✉ Corresponding Email: herip79@students.undip.ac.id

Abstract

The presumption of innocence (APTb) is a well-known principle that guarantees human rights. This principle is also used in criminal law to protect suspected criminals. The problem is that law enforcement officials do not fully understand this principle in criminal proceedings, as they tend to believe that the presumption of guilt applies to suspected criminals. Law enforcement officials believe that the judicial process cannot proceed if the presumption of guilt principle is not applied. However, the APTb is not the opposite of the presumption of guilt principle; rather, it is a principle that can bring balance to the criminal justice process by prioritizing legal protection for those seeking justice to prevent them from facing arbitrary actions by law enforcement officials. This method employs normative research, prioritising the analysis of secondary data/literature supported by other literature and cases drawn from internet sources. The findings of this



Copyrights © Author(s). This work is licensed under a Creative Commons Attribution 4.0 International License (CC BY 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

study explain that law enforcement officials' understanding of APTB is crucial in the criminal justice process as a form of legal protection for those seeking justice. Applying the principle must be supported by clearly incorporating APTB into the provisions of the Criminal Procedure Code (KUHAP) for the future. Currently, APTB is not regulated in the provisions of the KUHAP, so in the future, when the principle is regulated, law enforcement officials in the criminal justice process will have a strong basis for not disregarding the presumption of innocence principle.

Keywords

Criminal Justice; Law Enforcement; Presumption of innocence.

HOW TO CITE:

Chicago Manual of Style Footnote:

¹ Heri Purwanto, Pujiyono Pujiyono, Irma Cahyaningtyas, Ridwan Arifin and Muhammad Azil Maskur. "Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice." *Indonesian Journal of Criminal Law Studies* 10, no 2 (2025): 417-450. <https://doi.org/10.15294/ijcls.v10i2.32033>.

Chicago Manual of Style for Reference:

Purwanto, Heri, Pujiyono Pujiyono, Irma Cahyaningtyas, Ridwan Arifin and Muhammad Azil Maskur. "Reconstructing the Legal Understanding of the Presumption of Innocence in Criminal Justice to Achieve Justice." *Indonesian Journal of Criminal Law Studies* 10, no 2 (2025): 417-450, <https://doi.org/10.15294/ijcls.v10i2.32033>.

Introduction

In Indonesia, the presumption of innocence plays a vital role in balancing effective law enforcement with the protection of human rights.¹ The actions taken and permitted in the effort to enforce the law must uphold human rights. The rights of individuals suspected of committing a criminal offence must also be protected and upheld from the police investigation stage to the court proceedings, ensuring that such individuals receive maximum protection before ultimately accepting a court ruling by Indonesia's criminal justice system.²

The Indonesian criminal justice system has a guiding principle: the presumption of innocence. This principle forms the basis of the Indonesian criminal justice process. It is only reflected in the general explanation of the Criminal Procedure Code (KUHAP) in point 3 (three) letter C. Sudikno Mertokusumo states that legal principles are general and abstract fundamental ideas, or the backdrop of concrete regulations, which are found within and behind every legal system embodied in legislation and judicial decisions that constitute positive law. Legal principles can be identified by seeking out the concrete regulations' general characteristics or features. Legal science aims to identify these legal principles within positive law.³

It is well known that the Indonesian criminal justice system recognizes the use of coercive measures. Coercive measures are actions taken by law enforcement officials in the form of arrests, detentions,

¹ Leandro Mancano, "A Theory of Justice? Securing the Normative Foundations of EU Criminal Law through an Integrated Approach to Independence," *European Law Journal* 27, no. 4 (2021): 477–501, <https://doi.org/10.1111/eulj.12442>.

² Anis Widyawati et al., "Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System," *Journal of Law and Legal Reform* 5, no. 2 (2024): 431, <https://doi.org/10.15294/jllr.vol5i2.3886>.

³ Anonim, "Naskah Akademik RUU Tentang Hukum Acara Perdata," bphn.go.id, 2025.<Accessed on August 6, 2025>

searches, seizures, and investigations to carry out the judicial process.⁴ According to Mudzakir, coercive measures can only be used during the investigation stage because the investigation process is a stage that has not yet reached the point of criminal law enforcement. The regulation of coercive measures is explicitly stated in Article 112, Paragraph 1 and Paragraph 2 of the Criminal Procedure Code. Coercive measures include arrest, detention, search, seizure, examination, and mandatory reporting to the police.⁵

During these actions in the coercive measures stage, the presumption of innocence applies to a person suspected of committing a criminal offence. An individual suspected of committing a criminal offence during the judicial process is then designated according to the legal stage or legal process being conducted.⁶ A person suspected of committing a criminal offence at the beginning of the legal process at the police level is referred to as a suspect. After the public prosecutor receives the complete file from the police and then issues an indictment, the person is referred to as a defendant until the accused is brought to trial in court. Following the evidentiary process in court, the individual brought to trial who receives a court ruling and accepts the decision is referred to as a Convicted Person.⁷

In criminal court cases, there are still a lot of times when law enforcement doesn't care about the presumption of innocence. Sometimes, it's just a symbol on paper, but in reality, it's often broken. For example, the case involving Siyono, a suspected terrorist who died after being arrested by Densus 88 in Klaten, Central Java. Such cases continue

⁴ Anonim, "Arti Kata Upaya Paksa," kamushukum.web.id, 2025. <Accessed on August 6, 2025.>

⁵ Ibid

⁶ Anis Widyawati et al., "Optimizing Oversight: Developing an Ideal Framework for Supervision Prisoners' Right Allocation," *Indonesia Journal of Criminal Law Studies* 9, no. 2 (2024): 189, <https://doi.org/https://doi.org/10.15294/ijcls.v9i2>.

⁷ Hadassa Noorda, "Regulation as Punishment," *Criminal Justice Ethics* 40, no. 2 (2021): 108–23, <https://doi.org/10.1080/0731129X.2021.1949922>.

to emerge year after year.⁸ A recent case in 2023 in Banyumas resulted in the death of Oki Kristodiawan (27), who died after being tortured by police officers. The officers were found guilty and sentenced to eight years in prison. The latest case in 2025 occurred in Semarang, where Darso, a resident of Semarang, was picked up by police officers from the Yogyakarta Police Department in Semarang while in good health. He was then taken to Yogyakarta, where he was reported to have been admitted to a hospital in Yogyakarta and later died due to the abuse he endured.

Another example occurred when the author conducted legal counselling at the Wates Kulonprogo Correctional Institution (LP). The convict recounted how he was mistreated during the police investigation stage, experiencing torture in the form of electric shocks administered by law enforcement officials. The cases mentioned above are situations where the presumption of innocence is not fully upheld for individuals suspected of committing criminal offences. The police may assume that the suspect is uncooperative during the legal process at the police station, but does that mean that law enforcement officials are permitted to use violence against the suspect merely to obtain a confession?

The rule of law governs Indonesia with a criminal justice system, which includes laws and regulations designed to serve as guidelines for carrying out processes and protecting parties involved in criminal acts, including the general public, victims, and perpetrators. Indonesia's criminal justice system itself adheres to the accusatory principle, meaning that the perpetrator of a crime is treated as a subject and not an object, meaning that the focus is on the act they committed.

Several previous studies have sharply focused on how the presumption of innocence gets undermined in Indonesia's criminal justice system. Enggarsasi (2021), for instance, critiques the court's reliance on

⁸ Khairina Fadlan Mukhtar Zain, "Kasus Tahanan Tewas Di Banyumas, Seorang Polisi Divonis 8 Tahun Penjara," *regional.kompas.com*, December 2023. <Accessed on August 6, 2025.>

weak circumstantial evidence in high-profile murder trials, raising concerns about fairness and evidentiary standards.⁹ Luntungan et al. (2023) emphasize the systemic imbalance between state authorities and defendants.¹⁰ Doodoh & Tuwaidan (2025) revealed the urgent need for institutional safeguards that ensure fair treatment and legal protection.¹¹ Syarif et al. (2024) frame the presumption of innocence as a cornerstone of human dignity.¹² Indriawati et al. (2023) highlight a shifting paradigm toward restorative justice and the role of justice collaborators in uncovering organized crime.¹³ What makes this study unique is its integrative approach to reinterpreting the presumption of innocence in light of emerging restorative models, an angle not fully explored in prior research. The manuscript's novelty lies in reconstructing this principle as a dynamic legal tool that responds to individual rights and collective justice. Therefore, this research is urgent amid increasing procedural violations and significant in laying the groundwork for a more balanced, human rights-oriented, and context-sensitive framework in Indonesian criminal law.

The term “accuser” in Indonesian can be equated with the word “to accuse” a suspect, that is, a person who has been charged with a criminal offence in a process and procedure and examination system where the

⁹ Umi Enggarsasi, “Presumption of Innocence in Murder Trials: Legal Principles of Circumstantial Evidence in Indonesian Criminal Law,” *IJLR: International Journal of Law Reconstruction* 5, no. 2 (2021): 367–78, <https://doi.org/10.26532/ijlr.v5i2.35992>.

¹⁰ Nancy Glorya Luntungan, Muhamad Rusdi, and Muhammad Zaki Sierrad, “Asas Praduga Tak Bersalah Dalam Hukum Pidana : Refleksi Hak Asasi Manusia,” *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 2, no. 2 (2023): 63–76, <https://doi.org/10.37631/jrkhm.v2i2.23>.

¹¹ Martin Doodoh and Herry F.D. Tuwaidan, “Perspektif HAM Terhadap Asas Praduga Tak Bersalah Pada Hukum Pidana Indonesia,” *Jurnal Nuansa Akademik* 10, no. 1 (2025): 95–106, <https://doi.org/10.47200/jnajpm.v10i1.2723>.

¹² Nurbaiti Syarif, Januri Januri, and Eva Lestari Dolok Saribu, “Perlindungan Hak-Hak Tersangka Melalui Asas Praduga Tidak Bersalah (Presumption of Innocent) Dalam Sistem Peradilan Pidana,” *Audi Et AP: Jurnal Penelitian Hukum* 3, no. 02 (2024): 112–20, <https://doi.org/10.24967/jaeap.v3i02.3310>.

¹³ Sri Endah Indriawati et al., “Reconstructing Legal Protections for Justice Collaborators within the Criminal Justice System as an Effort to Uncover Common Crimes in Indonesia,” *Sinergi International Journal of Law* 1, no. 3 (2023): 192–204, <https://doi.org/10.61194/law.v1i3.94>.

defendant is considered solely as a subject when dealing with the police or the prosecutor's office in such a way that both parties have equal rights, and the judge is above both parties to resolve the criminal case by applicable criminal law (positive law).¹⁴ Therefore, if acts of violence or deprivation of rights, such as the example above, are committed by law enforcement officials, this constitutes a violation of the principle of presumption of innocence.

Due to the occurrence of events that are considered to have violated the rights enshrined in the principle of presumption of innocence, implementing this principle must be reviewed and subsequently strengthened to reinforce the understanding of the principle of presumption of innocence among law enforcement officials. The function of criminal procedure law is to limit the state's power to take action against citizens involved in criminal proceedings.¹⁵ The provisions in criminal procedure law protect suspects and defendants from unlawful actions by law enforcement officials. In addition, it appears that the same law also grants certain powers to the state, through its law enforcement officials, to take actions that may violate the human rights of its citizens. The Criminal Procedure Code is a double-edged sword, meaning that on the one hand, it must protect the rights of suspects and defendants by the principles of presumption of innocence and equality before the law.¹⁶ On the other hand, it also provides opportunities for law enforcement officials to carry out coercive measures that often violate the human rights of suspects and defendants.

¹⁴ Lilik Mulyadi, *Hukum Acara Pidana Indonesia Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi Dan Putusan Peradilan* (Bandung: Citra Aditya Bakti, 2002).

¹⁵ Anis Widyawati et al., "Dynamics of the Penitentiary System, Transparent, and Accountable Handling of Criminal Cases in Criminal Execution Law in Southeast Asia: Convergence and Divergence of International Perspectives," *Indonesia Law Review* 15, no. 1 (2025): 19, <https://doi.org/https://doi.org/10.15742/ilrev.v15n1.1>.

¹⁶ Superior Basoeky, "The Reformulation of Criminal Procedure Law against the Rights of Suspects and Defendants in the Perspective of the Criminal Justice System," *Ratio Legis Journal* 1, no. 4 (2022): 1015–29, <https://doi.org/http://dx.doi.org/10.30659/rlj.1.4.%25p>.

Law enforcement agencies are mandated to carry out their duties in the criminal justice system. These law enforcement agencies include the police, the public prosecutor's office, and the courts. The Police, by the mandate of Law No. 2 of 2002 on the Police, are authorized to conduct investigative and prosecutorial processes.¹⁷ During these investigative and prosecutorial processes, violations of the rights of suspects often occur. Therefore, during this process, law enforcement officers should be informed about suspects' rights related to the presumption of innocence principle. Violations of the rights of individuals who are merely suspected of committing a criminal offence and have not yet been designated as suspects also frequently occur. This suggests that law enforcement officials may not fully understand the accusatorial principle, as their actions align more closely with the inquisitorial principle.¹⁸

In a criminal justice system that uses the Inquisitor principle, a person suspected of committing a crime is placed in the position of an object. In this system, the presumption of innocence does not exist because the principle used by law enforcement is the presumption of guilt.¹⁹ Under this principle, the confession of a person who has committed a criminal offence is paramount. Therefore, to obtain a confession from an individual, actions of a coercive nature are taken, making it easier to secure an admission of the criminal offence committed.²⁰

In law enforcement processes that use this accusatory principle, it is

¹⁷ Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 01 (2025): 137, <https://doi.org/http://dx.doi.org/10.33756/jlr.v7i1.27595>.

¹⁸ Jacqueline S Hodgson, "Miscarriages of Justice and Procedural Change," *The Metamorphosis of Criminal Justice*, 2020, 251–79, <https://doi.org/10.1093/oso/9780199981427.003.0008>.

¹⁹ Hafsa Mansoor, "Guilty Until Proven Guilty: Effective Bail Reform as a Human Rights Imperative," *SSRN Electronic Journal* 70, no. 1 (2020), <https://doi.org/10.2139/ssrn.3566273>.

²⁰ E. Lea Johnston et al., "Diminished Criminal Responsibility: A Multinational Comparative Review," *International Journal of Law and Psychiatry* 91, no. August (2023): 19, <https://doi.org/10.1016/j.ijlp.2023.101919>.

not surprising that, in uncovering an alleged crime, there is a pattern of violence against the person suspected of committing the crime. Issues in this study: (1) How do law enforcement officials understand the principle of presumption of innocence in Indonesian criminal courts? (2) How can we reconstruct law enforcement officials' understanding of the principle of presumption of innocence in Indonesia?

Method

The research method employed in this paper is normative legal research, which involves studying legal theories and then relating them to the laws and regulations that apply in legal practice.²¹ The approaches used in this journal article are the statutory, case, and analytical approaches. The primary legal materials used in this journal article are binding legal sources, such as norms, basic principles, and related regulations. Secondary legal materials are legal materials that provide explanations regarding primary legal materials. Tertiary legal materials provide guidance or explanations regarding primary and secondary legal materials, such as the Indonesian and legal dictionaries. Normative legal research aims to determine and understand whether and how positive law applies to a particular legal issue. The normative legal approach from a purpose perspective can be divided into four approaches, namely: (1). The legislative approach, which involves examining all laws and regulations related to the legal issues raised; (2) The conceptual approach, which is carried out by referring to legal principles found in the views of legal scholars or legal doctrines. (3) The case approach is carried out by using cases taken from various internet sources as legal material sources, and (4) the Historical approach, which aims to find legal rules over time to understand the philosophy of those rules and study the development of those legal rules.

²¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Pers, 1986), 174.

Soerjono Soekanto explains that normative doctrinal legal research can be divided into four types, namely:

- 1) Research to discover legal principles,
- 2) Research the legal system's systematics from a set of legal rules compiled in a specific codification or legislation.
- 3) Research on the level of synchronisations (consistency) of legislation, both vertically and horizontally. This can be done in specific areas regulated by law and other regions with reciprocal relationships. Legal comparison focuses primarily on the differences (and possibly similarities) between two or more different legal systems.
- 4) Research on legal history, which focuses on the development of law, both in a specific field of law and within a specific legal system.²²

The research data will be analysed using a normative descriptive method. A descriptive method is a type of research that combines a normative approach (based on legal norms and rules) with a descriptive method (systematically and accurately describing a phenomenon). In the law context, normative-descriptive research will examine legislation and legal standards (normative approach), then explain how these norms are applied in practice or how certain legal phenomena occur (descriptive approach).

²² Ibid, p 180

Result and Discussion

A. Law Enforcement's Understanding of the Presumption of Innocence in Indonesian Criminal Courts

Indonesia has a criminal law system and a criminal justice system. Law enforcement officials, as the executors of the criminal justice process, must understand that in carrying out their duties, they must adhere to the provisions of the law.²³ The Criminal Procedure Code is the primary legislation governing the implementation of the criminal justice system.

In implementing the criminal justice process, the foremost concern for victims and perpetrators is obtaining justice. For victims, legal protection is represented by law enforcement agencies such as the police, the prosecutor's office, and the courts.²⁴ However, for suspected perpetrators of criminal acts, legal protection is often neglected by law enforcement agencies, especially police investigators.

The cases of abuse of power by law enforcement officials, in this case, investigators, in carrying out criminal proceedings, which have resulted in many victims due to such abuse, are an essential consideration in achieving justice for those seeking justice. Because in the criminal justice system, justice means justice for the victims and justice for the suspected criminals, as criminals also have the right to be protected by the law, under the Criminal Procedure Code.²⁵

Cases of the deprivation of the rights of suspected criminals always arise every year due to law enforcement officials not correctly understanding the principle of the presumption of innocence. This occurs

²³ Ni Nengah Adiyayani and Kadek Agus Sudiarawan, "Surveillance Function in Law Enforcement in Indonesia: Integrated Criminal Justice System Perspective," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 471, <https://doi.org/10.24843/jmhu.2021.v10.i03.p04>.

²⁴ Ramdhan Kasim, "The Giving Legal Aid For The Poor On A Criminal Case," *Substantive Justice International Journal of Law* 1, no. 1 (2018): 33, <https://doi.org/10.33096/substantivejustice.v1i1.12>.

²⁵ Zico Junius Fernando, "Due Process of Law Dalam Penanggulangan Tindak Pidana Di Indonesia," *Majalah Keadilan* 21, no. 1 (2021): 67.

because Indonesia has not maximized the protection of suspected criminals, as it is not regulated in the main provisions of the Criminal Procedure Code. The cases mentioned above in the introduction, both old and new, always arise every year.²⁶

Currently in force as positive law, the Criminal Procedure Code does not protect suspected criminals' rights under the presumption of innocence principle in its provisions.²⁷ This principle is only reflected in the explanation of the Criminal Procedure Code in point 3, letter c, which states:

“Everyone who is suspected, arrested, detained, prosecuted, and/or brought before a court of law shall be presumed innocent until proven guilty by a court decision that has obtained permanent legal force.”

Simply placing such protection of rights in the explanatory notes makes the judicial process open to multiple or wild interpretations. This is because in the criminal justice process, there is also a theory used by law enforcement officials as a basis for conducting the judicial process, namely, the presumption of guilt.²⁸

If we examine the legal force of the term “explanation” in a law, it aligns with the theory of constitutional law, which plays a role in the creation and implementation of laws. Placing the principle of presumption of innocence only in explaining the Criminal Procedure Code nullifies its legal force. This can be seen in Law No. 15 of 2019 amending Law No. 12 of 2011, in Annex II, Section E on Explanations, paragraph 177, which states as follows:

²⁶ John Clegg et al., “Punishment in Modern Societies: The Prevalence and Causes of Incarceration Around the World,” *Annual Review of Criminology* 7 (2024): 211–31, <https://doi.org/10.1146/annurev-criminol-022422-020311>.

²⁷ Mahrus Ali et al., *Protecting Environment Through Criminal Sanction Aggravation*, *Journal of Indonesian Legal Studies*, vol. 7, 2022, <https://doi.org/10.15294/jils.v7i1.54819>.

²⁸ Leon McRae, “Blaming Rape on Sleep: A Psychoanalytic Intervention,” *International Journal of Law and Psychiatry* 62, no. January 2019 (2019): 135, <https://doi.org/10.1016/j.ijlp.2018.12.004>.

“Explanations cannot be used as a legal basis for making further regulations and should not include formulations containing norms.”

In point 176, the annex states:

“Explanations serve as official interpretations of specific norms in the body of legislation. Therefore, explanations only contain descriptions of words, phrases, sentences, or equivalents of foreign words/terms in the norms, which examples may accompany. Explanations clarifying norms in the body of legislation must not result in ambiguity of the norms in question.”

Meanwhile, in Law No. 48 of 2009 concerning Judicial Authority, the principle of presumption of innocence is stipulated in Article 8, paragraph (1), which reads:

“Everyone who is suspected, arrested, detained, prosecuted, or brought before a court shall be presumed innocent until proven guilty by a court decision that has attained final and binding force.”

One book discusses the principle of presumption of innocence: “Discussion of Issues and Application of Criminal Procedure Code Investigation and Prosecution” by M. Yahya Harahap.²⁹ In this book, he discusses the application of the principle of presumption of innocence as follows:

“The suspect must be treated as a human being with dignity. He must be regarded as a subject, not an object. It is not the suspect being examined, but his criminal acts. The examination is directed toward the criminal acts committed. The suspect must be presumed innocent,

²⁹ M Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2012).

with the principle of presumption of innocence until a final and binding court decision is obtained.”

This means the need to provide legal protection to suspected criminals to seek justice must be fully realised. Law enforcement officials' understanding of the principle of presumption of innocence in the judicial process is currently not optimal because the basis used as a guideline for their work has not been regulated.³⁰

Law enforcement officials' understanding of suspected criminals at present is that law enforcement officials cannot carry out judicial processes, such as coercive measures, including arrest, imprisonment, and others, without relying on the presumption of guilt. Several scholars, including M. Yahya Harahap, note that investigators frequently prioritize confessions over evidentiary safeguards, which indirectly reflects a presumption of guilt rather than innocence.³¹ This tendency is reinforced by the absence of a clear presumption of innocence norm in the Criminal Procedure Code (KUHAP) binding provisions, where the principle is only found in the general elucidation of Article 3(c). without using the presumption of guilt, and tend to ignore the presumption of innocence because they interpret that if they work using the presumption of innocence, their work will be disrupted, or they will not be able to work because they are not using the presumption of guilt. In essence, they understand that in carrying out criminal judicial proceedings, the principle of presumption of guilt is used.³²

³⁰ Stephanie Schweitzer Dixon, “Law Enforcement Suicide: The Depth of the Problem and Best Practices for Suicide Prevention Strategies,” *Aggression and Violent Behavior* 61, no. August (2021): 2, <https://doi.org/10.1016/j.avb.2021.101649>.

³¹ M Zaid, M Musa, and Bianglala Asmarasari, “‘Novum’ in Indonesian Criminal Justice: Problems and Legal Reform,” *Indonesian Journal of Crime and Criminal Justice* 1, no. 1 (2025): 68, <https://doi.org/10.62264/ijccj.v1i1.121>.

³² Daniel Pascoe and Andrew Novak, “Deadly Justice without Mercy in East Asia?,” *International Journal of Comparative and Applied Criminal Justice* 46, no. 2 (2022): 141–65, <https://doi.org/10.1080/01924036.2020.1824873>.

According to the author, the theory of the presumption of guilt, if it is still understood by law enforcement officials and used as a basis for their work, has deviated from the leading theory underlying the formation of the Criminal Procedure Code (KUHAP).³³ The KUHAP was established and implemented with a new spirit to protect those seeking justice. Today's principle underlying the KUHAP is the accusatory principle, not the inquisitorial one.

The accusatory principle emphasizes that every suspect/defendant has the right not to be made the object of a trial, but that the suspect/defendant can provide testimony according to their conscience and alibi as they see fit. However, law enforcement officials must uncover the facts of a legal case. The opposite of the accusatory principle is the inquisitorial principle (Inquisitor), which means that the suspect/defendant becomes the subject of the trial, and the suspect/defendant's confession or statement is the most substantial evidence.³⁴

The presumption of guilt by some legal scholars in Indonesia is interpreted as a guideline for law enforcement officials to carry out criminal reform. Some Indonesian legal scholars describe the existence of a "presumption of guilt," not as a legal principle enshrined in positive law, but as a description of the prevailing practice among law enforcement officials. In contrast, the principle of presumption of innocence is construed as a form of protection for suspected criminals to prove whether they are guilty.³⁵ According to the author, this opinion is not in line with the spirit of the Criminal Procedure Code. This is because allowing the

³³ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

³⁴ Raymond Ali et al., "Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia," *Scholars International Journal of Law, Crime and Justice* 4, no. 2 (2021): 27–33, <https://doi.org/10.36348/sijlcj.2021.v04i02.001>.

³⁵ Robiatul Adawiyah and Umi Rozah, "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System," *Law Reform: Jurnal Pembaharuan Hukum* 16, no. 2 (2020): 149–62, <https://doi.org/10.14710/lr.v16i2.33783>.

presumption of guilt in processing criminal acts in criminal proceedings reduces the right to the presumption of innocence. When the presumption of innocence is also interpreted as a form of defence for the act, it is like a reversal of the burden of proof. However, it must be emphasized that the only principle formally recognized in Indonesian criminal procedure law is the presumption of innocence, as stipulated in the elucidation of Article 3(c) of the Criminal Procedure Code (KUHAP) and in Article 8(1) of Law No. 48 of 2009 concerning Judicial Power. The presumption of guilt is closely related to the burden of proof reversal. However, when discussing the reversal of the burden of evidence, such proof applies to specific criminal offenses, while in ordinary criminal cases, the burden of proof lies with the prosecution. This means that the presumption of innocence cannot be interpreted in the same way as the reversal of the burden of proof.

Applying the presumption of guilt principle is practically contrary to the presumption of innocence principle, which has become the most fundamental principle in the criminal justice system in Indonesia. A comparative study of applying these two principles in the criminal justice system, particularly when a suspect is caught in the act of committing a crime, focuses on examining the suspect's rights to prove their innocence. This is because applying the presumption of guilt creates a paradigm that the suspect arrested or caught in the act is indeed the perpetrator of the crime, even though the criminal act itself has not yet been proven.³⁶

The application of this principle can reduce the fundamental rights of the suspect. On the other hand, the Criminal Procedure Code (KUHAP) was created with the spirit of applying the due process model, one of whose objectives is to protect the rights of the accused. Therefore, the author proposes to re-examine the application of the presumption of guilt principle in such circumstances as an effort to establish a criminal justice

³⁶ Ridwan Arifin, Hartini Atikasari, and Waspiah, "The Intersection of Criminal Law, Technology and Business Commercial Law on Carding as Cyber Fraud," *Jurnal Hukum Novelty* 11, no. 2 (2020): 235–46, <https://doi.org/10.26555/novelty.v11i2.a15700>.

system based on the due process model.³⁷ Therefore, it is more accurate to regard the presumption of guilt as an empirical phenomenon in law enforcement practice, not as a normative legal principle.

B. Reconstructing Law Enforcement's Perspective on the Presumption of Innocence in Indonesia

The presumption of guilt is not recognized as a legal principle in the criminal justice system, either in Indonesia or abroad. What some Indonesian investigators appear to apply in practice should therefore not be regarded as a formal principle, but rather as a misinterpretation of their authority in conducting coercive measures. . The presumption of guilt is a form of denial of international human rights based on Article 11 of the Universal Declaration of Human Rights.³⁸ Thus, when this article previously referred to the “application” of the presumption of guilt by investigators, it should be understood as describing a de facto practice that contradicts the presumption of innocence principle, not as recognition of a valid legal doctrine. What is used and applies both internationally and in Indonesia is the presumption of innocence and the principle of equality before the law. The presumption of innocence is regulated internationally in:

Article 14 (1) of the International Covenant on Civil and Political Rights (ICCPR), which reads:

“All persons shall be equal before the courts and tribunals. In determining any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. The Press and the public may be excluded from all

³⁷ Daryna Dzemish Abdulovna, “Advancing Criminal Justice Reform through Restorative Justice: A Narrative Review,” *Sinergi International Journal of Law* 2, no. 4 (2024): 274–85, <https://doi.org/10.61194/law.v2i4.719>.

³⁸ Benjamin A. Barsky and Michael Ashley Stein, “The United Nations Convention on the Rights of Persons with Disabilities, Neuroscience, and Criminal Legal Capacity,” *Journal of Law and the Biosciences* 10, no. 1 (2023): 1–18, <https://doi.org/10.1093/jlb/lsad010>.

or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”

The provisions in the ICCPR form the basis for creating a fair and impartial criminal justice system, which, when viewed in a broad context, encompasses the elements of investigation, prosecution, and adjudication. Law enforcement officials' understanding of the presumption of innocence must be encouraged by reconstructing their thinking. The prevailing knowledge among law enforcement officials that the presumption of guilt applies must be eroded and abandoned, as it is far removed from the spirit of legal protection for those seeking justice.³⁹

One way to reform the law is through reconstruction. According to Barda Nawawi Arief, the essence of reconstruction is an effort to reform/reconstruct/restructure the entire substantive criminal law system. “Reconstruction” means “rebuilding,” which is the definition of reconstruction according to Barda Nawawi Arief.⁴⁰ Therefore, the effort to reconstruct innocence presumes to rebuild the mindset of law enforcement officials in understanding the presumption of innocence in criminal procedure law, and this is part of the effort to develop the national legal system. In this regard, the reconstruction offered in this article is not merely conceptual but adopts an integrative approach by linking the principle of

³⁹ Rodiyah Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith, “Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia,” *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 333–78, <https://doi.org/10.15294/jils.v7i2.60096>.

⁴⁰ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1998), 87.

presumption of innocence with restorative justice values. This integrative perspective ensures that reform is not limited to abstract principles but is also directed at concrete models of legal protection, which may serve as a reference in future revisions of the Criminal Procedure Code (KUHAP). Discussing reconstruction about law enforcement officials' understanding of the presumption of innocence is a form of legal reform, as currently, many law enforcement officials still understand their role in the judicial process as applying the presumption of guilt. In contrast, the mandate of human rights in legal protection for suspected criminals is to use the presumption of innocence.⁴¹

Developing a national legal system is a form of national legal reform. The scope of national legal system development can be viewed from various aspects/perspectives. When viewed from the scope of the national legal system, development can include “substantive” development (legal substance), ‘structural’ development (legal structure), and “cultural” development (legal culture).⁴²

At its core, legal science is a normative science concerning concepts/perspectives on humanity and society. Therefore, in the Indonesian context, Indonesian/National Legal Science refers to the normative science relating to concepts of social life in Indonesia. When linked to the terms in the Preamble of the 1945 Constitution of the Republic of Indonesia, it can be said that Indonesian Law is a normative science about the concept of free national life in Indonesia, which encompasses a comprehensive aspect, namely all aspects of social/national/state life (including the “*ipoleksosbud*” aspect).

The development of National Law is closely related to the understanding and essence of “law” as “normative social science,” that is, “the normative science of social relations” or “the normative science of social relations (reality).” Thus, law is a “normative science (*das Sollen*)

⁴¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2002), 78.

⁴² Barda. Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) Di Indonesia* (Semarang: Badan Penerbit Universitas Diponegoro, 2017), 3.

about reality (*das Sein*)” or a “normative science of reality (*das Sein*).” Creating a National Criminal Law System aims to develop a criminal justice system appropriate for Indonesian society. Formal criminal law must support substantive criminal law. Prof. Sudarto states that *ius puniendi* must be based on *ius poenale*. The current Criminal Procedure Code (KUHAP), which originates from the HIR, is oriented toward the Criminal Code (KUHP) inherited from the Dutch East Indies. Therefore, the new Criminal Procedure Code should also be oriented toward the concepts of the new Criminal Code. It is thus necessary to review the principles and norms of the new Criminal Procedure Code (KUHAP) in line with the draft of the new Criminal Code (KUHP).⁴³

The many obstacles faced by Indonesia in its efforts to carry out national development (Bangnas), particularly in the area of national legal development (Bangkumnas), can be identified as at least three major problems, namely:

1. the problem of improving the quality of law enforcement in concerto (the problem of “law enforcement”);
2. the issue of developing/updating the National Legal System (SHN); and
3. the complex globalisation process, the internationalisation of law, the globalisation/transnationalities of crime, and the evolving issue of high-tech/cybercrime.

These three issues can be distinguished, but are difficult to separate due to their close interconnection.⁴⁴

According to Barda Nawawi Arief, if the national legal system aspires to be a Pancasila legal system, then it is appropriate to study and develop a criminal law system (that embodies the values) of Pancasila, namely criminal law oriented toward the values of “Belief in One God,” criminal law that is “Humanity that is just and civilized,” criminal law that embodies

⁴³ Sudarto, *Kapita Selektta Hukum Pidana* (Bandung: Alumni, 1981), 739.

⁴⁴ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H. Noho, and Aga Natalis, “The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems,” *Cogent Social Sciences* 8, no. 1 (2022): 17–19, <https://doi.org/10.1080/23311886.2022.2104710>.

the values of "unity" (including: not discriminating based on ethnicity/group/religion, prioritizing the common good), criminal law imbued with the values of "democracy guided by wisdom and deliberation" (including prioritizing the interests/welfare of the people, resolving conflicts wisely, through deliberation/family ties), and criminal law that is "socially just." This is a significant challenge that remains unresolved.⁴⁵

Law enforcement officials' understanding of legal reform must also include an understanding that Indonesia is a country founded on the principles of Pancasila. In carrying out their duties, law enforcement officials must also understand that the fifth principle of Pancasila, as the final principle, is the principle of justice for all Indonesian people. This means that law enforcement officials must also prioritize justice in their duties. In the new National Criminal Code No. 1 of 2023, which will come into effect in 2026, a provision stipulates that if there is a conflict between legal certainty and justice, justice shall take precedence.⁴⁶

Pancasila, as the root of the Indonesian nation's legal ideology, has consequences in the dynamics of national and state life, as a way of life that provides direction for thoughts and actions. Legal ideology is an idea, intention, creation, and thought related to law or the perception of the meaning of law, which essentially consists of three elements: justice, usefulness or benefit, and legal certainty. The legal philosophy is formed in the minds and hearts of people as a product of the integration of worldviews, religious beliefs, and social realities. In line with this, legal science and Indonesian law should be based on and refer to this legal philosophy.⁴⁷

The development of the national legal system, both criminal law and criminal procedure law, as the basis for the enforcement of criminal law,

⁴⁵ Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: Kencana Prenada Media Grup, 2007), 274.

⁴⁶ Martha Minow, "Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court," *Harvard International Law Journal* 60, no. 1 (2019): 44.

⁴⁷ Nodi Putrado, "Hukum Dan Keadilan Dalam Perspektif Filsafat Hukum," *AHKAM* 1, no. 1 (2022), <https://doi.org/10.58578/ahkam.v1i1.745>.

must be rooted in the noble values of Pancasila and contained within Pancasila so that it is in line with the spirit of the nation. A law that grows and develops from society by integrating the noble values of its community will, in turn, be able to produce aspirational and accommodating law in line with the thoughts and developments of its society.⁴⁸

In relation to this, the concept of law enforcement in understanding the principle of presumption of innocence must also be able to understand the values contained in Pancasila, which includes justice, as mandated in Pancasila, particularly principles 1, 2, and 5. Within the framework of the national legal system, it is clearly stated: (a) Article 29(1) of the 1945 Constitution: The State is based on the belief in the One and Only God; (b) Article 3(2) of Law No. 4 of 2004 on Judicial Power, which has been amended to Law No. 48 of 2009, states, "The state judiciary applies and enforces law and justice based on Pancasila"; (c) Article 4(1): Judicial proceedings are conducted "in the name of justice based on the One Almighty God"; (d) Article 8 paragraph (3) of Law Number 16 of 2004 concerning the Attorney General's Office, "In the name of justice and truth based on the One Almighty God, prosecutors shall conduct prosecutions with conviction based on valid evidence." In criminal proceedings in court, the meaning of the phrase "In the name of justice based on God Almighty" in a court decision indicates that justice must be based on God's guidance and not solely on the law.

The approach to the divine element is also part of the effort to develop a national legal system that must be unified in Bangkumnas. The development of the Pancasila legal system is a step towards a more dignified national law, particularly the first principle of "Belief in One God", which is religious and the fifth principle, which emphasises social justice.⁴⁹ This is

⁴⁸ Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 15, <https://doi.org/10.1080/23311886.2023.2301634>.

⁴⁹ Jeremy Zefanya Yaka Arvante, Maulana Fuad Nugraha, and Ridwan Arifin, "A Pseudo Freedom for Faith: A Discourse of Religious Freedom in Russia and Indonesia," *Contemporary Issues on Interfaith Law and Society* 1, no. 2 (2022): 217, <https://doi.org/10.15294/ciils.v1i2.59062>.

a key point in the reconstruction of the presumption of innocence principle, as the enforcement of justice allows for the maximum respect of this principle, and the enforcement of the law must prioritise the respect for human rights as enshrined in the presumption of innocence principle.

The essence/substantial value of reconstructing law enforcement officials' understanding of the presumption of innocence in criminal proceedings must be based on:

1. The value of God, meaning that the purpose of strengthening the presumption of innocence by re-regulating it as a form of reconstruction, must truly interpret the phrase "For Justice Based on God Almighty." "Judicial independence" should stem from a belief in the principle of justice carried out "for the sake of justice based on the Almighty God." Substantial freedom/independence only exists in people who feel bound/dependent on divine (transcendental) power/guidance, not on other powers. By internalizing/embodying the essence of justice based on divine guidance, only then will individuals (judges) be free from "subjective values/power" such as personal desires, group hatred, or familial connections (nepotism/favoritism).
2. Humanitarian values, meaning that humanitarian values must be upheld as a tribute to human rights. These human values, as mentioned in Pancasila, must enforce the meaning of "fair and civilised." The presumption of innocence is a principle that protects human rights because it protects suspects and defendants by recognizing that they are not yet guilty or people who cannot yet be blamed.
3. Social Justice means that suspects and defendants must be treated fairly by the law. This means they must receive equal treatment before the law during the judicial process. Pancasila is the source of all national law and contains many values that reflect the Indonesian people. Article 5 of Pancasila refers to social justice for all Indonesian people. Social justice, as summarized in Pancasila, is interpreted not only as economic equality and development, but also as justice for all Indonesian people to have equal access to the law and justice. Social justice is a right for every citizen living in this country. Legal treatment does not discriminate between the upper and lower classes; all have the right to equal access to the law and

justice. John Rawls proposed a theory of justice, stating that the consequences of living together in society must uphold the values of justice, namely distributive justice, legal justice, and commutative justice.⁵⁰

Based on this, reconstructing the understanding of law enforcement officials in criminal courts, particularly in implementing criminal procedure law using the presumption of innocence, must still refer to the knowledge of Pancasila, particularly the first, second, and fifth principles. Reconstructing the understanding of law enforcement officials regarding the presumption of innocence is a legal reform involving both legal structure and culture. It is hoped that through future criminal law policies, there will be changes in the substance of the law with the new Criminal Procedure Code (KUHAP) that must prioritise the values of justice based on God, humanity, and social justice for all Indonesian people by applying the principle of presumption of innocence.⁵¹

The presumption of innocence must be given attention in criminal law reform. This principle must be reconstructed, given that it is often disregarded and ignored by law enforcement officials, including the police, prosecutors, and judges in court. The presumption of innocence is inherent to a suspect or defendant until a final and binding court decision is rendered. This principle is the essence of justice, acknowledging that an individual is presumed innocent until a court decision is rendered and becomes final and binding.⁵²

Law enforcement officials must understand that the reform of Indonesia's national legal system, particularly criminal procedure law, must

⁵⁰ Ridwan Arifin et al., "Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?," *Journal of Law and Legal Reform* 4, no. 4 (2023): 601, <https://doi.org/https://doi.org/10.15294/jllr.v4i4.74120>.

⁵¹ Babajide Olatoye Ilo and Adekunbi Folashade Imosemi, "Prospect and Challenges of Criminal Procedures in Nigeria: A Review," *Unnes Law Journal* 8, no. 2 (2022): 306, <https://doi.org/10.15294/ulj.v8i2.56482>.

⁵² Cecep Mustafa, "The Perceptions of Indonesian Judges in Sentencing Minor Drug Offenders: Challenges and Opportunities," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 5, <https://doi.org/10.25216/jhp.9.1.2020.1-26>.

delve deeper into the values of justice enshrined in Pancasila. Suppose the Criminal Procedure Code Bill (RUU KUHAP) is eventually enacted into law. In that case, it is hoped that the principles governing the criminal justice system within it will be superior to the current Criminal Procedure Code (KUHP), thereby establishing an Indonesian criminal justice system that upholds the rights of suspected criminal offenders based on the presumption of innocence.⁵³

According to Barda Nawawi Arief, the development of the National Legal System involves “development,” “reform,” “renovation,” “rebuilding,” “reconstruction,” and “evaluation/reevaluation”.⁵⁴ At the same time, from a theoretical/conceptual perspective, it is a series of interconnected sub-systems of the National Legal System (Kumnas), namely the substance of Kumnas, the structure of Kumnas, and the culture of Kumnas. Therefore, it is not excessive to suggest that in the National Legal System Development (Bangkumnas), a moral-religious approach oriented toward the Divine becomes a necessity of the times in the Pancasila-based State of Indonesia. There are moral principles that transcend the law. This depends greatly on the perspective from which we define the boundaries of law and morality. If “law” is defined as positive law, many moral principles, such as those relating to family relationships, will lie outside it. Individuals have their morality, which is not found in positive law. A distinct set of moral principles demands supererogatory actions in which a person does more than what is required of them as a moral or legal obligation, such as self-sacrifice, charitable acts, or forgiveness.

The legal system that applies in a society manifests the legal ideals (*recht idee*) embraced by that society in various positive legal regulations,

⁵³ Rd Muhammad Iksan et al., “Restorative Justice On Blasphemy Cases: Overview of The Prosecutors Role and Legal Reform,” *Bengkoelen Justice: Jurnal Ilmu Hukum* 14, no. 2 (2024): 191–211, https://doi.org/10.33369/j_bengkoelenjust.v12i1.32363.

⁵⁴ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru)* (Jakarta: Kencana, 2011), 65.

legal institutions, and bureaucratic and social processes.⁵⁵ Changes in the criminal justice system paradigm cannot be separated from criminal policy/criminal politics as a comprehensive policy implemented through legislation and official bodies to uphold society's central norms. This means that in reconstructing law enforcement officials' understanding of the presumption of innocence in criminal justice, changes in legal substance, legal structure, and legal culture are needed.

Conclusion

Law enforcement officials still widely apply the principle of presumption of guilt in carrying out their duties. This understanding has been passed down through generations, with the belief that without using the principle of presumption of guilt in the judicial process against suspected criminals, they cannot do their jobs. Meanwhile, the principle of presumption of innocence, which should serve as a guiding principle in performing their duties, is often disregarded. This is evident in the numerous cases where suspected criminals have become victims of abuse of power by law enforcement officials. The case of the death of a suspected criminal in Semarang, who AKP tortured from the Yogyakarta Criminal Investigation Unit and others. The way to reconstruct law enforcement officials' understanding of the presumption of innocence in criminal proceedings at this time is to instill the knowledge that justice is paramount in every criminal proceeding, and that law enforcement officials using the presumption of guilt in the performance of their duties is an act without legal basis. It must be understood that the current Criminal Procedure Code (KUHAP) adheres to the principle of the presumption of innocence. However, its provisions are currently only outlined in the Explanation of

⁵⁵ Mohammad Ilham et al., "Reform of the Indonesian Criminal Procedure Law: Urgency and Impact on The Criminal Justice System," *History of Medicine* 9, no. 1 (2023): 193–209, <https://doi.org/10.17720/2409-5834.v9.1.2023.025>.

Article 3(c) of the KUHAP. In the future, fundamental changes to the Criminal Procedure Code as a new Criminal Procedure Code must clearly regulate the presumption of innocence or make it a norm and stipulate it in the main provisions of the Criminal Procedure Code.

References

- Abdulovna, Daryna Dzemish. "Advancing Criminal Justice Reform through Restorative Justice: A Narrative Review." *Sinergi International Journal of Law* 2, no. 4 (2024): 274–85. <https://doi.org/10.61194/law.v2i4.719>.
- Adawiyah, Robiatul, and Umi Rozah. "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System." *Law Reform: Jurnal Pembaharuan Hukum* 16, no. 2 (2020): 149–62. <https://doi.org/10.14710/lr.v16i2.33783>.
- Adiyaryani, Ni Nengah, and Kadek Agus Sudiarawan. "Surveillance Function in Law Enforcement in Indonesia: Integrated Criminal Justice System Perspective." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (2021): 471. <https://doi.org/10.24843/jmhu.2021.v10.i03.p04>.
- Ali, Raymond, Muhammad Said Karim, Andi Muhammad Sofyan, and Achmad Ruslan. "Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia." *Scholars International Journal of Law, Crime and Justice* 4, no. 2 (2021): 27–33. <https://doi.org/10.36348/sijlcj.2021.v04i02.001>.
- Ali, Mahrus, Rofi Wahanisa, Jaco Barkhuizen, and Papontee Teeraphan. *Protecting Environment Through Criminal Sanction Aggravation. Journal of Indonesian Legal Studies*. Vol. 7, 2022. <https://doi.org/10.15294/jils.v7i1.54819>.
- Anonim. "Arti Kata Upaya Paksa." kamushukum.web.id, 2025.
- . "Naskah Akademik RUU Tentang Hukum Acara Perdata." bphn.go.id, 2025.
- Arifin, Ridwan, Hartini Atikasari, and Waspiyah. "The Intersection of

- Criminal Law, Technology and Business Commercial Law on Carding as Cyber Fraud.” *Jurnal Hukum Novelty* 11, no. 2 (2020): 235–46. <https://doi.org/10.26555/novelty.v11i2.a15700>.
- Arifin, Ridwan, Nadiyah Meyliana Putri, Mutia Azizah Aksan, Radhitya Pratama, and Angel Maris Linda. “Pancasila Values in the New Indonesian Criminal Code: Does the Code More Humanist?” *Journal of Law and Legal Reform* 4, no. 4 (2023): 601. <https://doi.org/https://doi.org/10.15294/jllr.v4i4.74120>.
- Arvante, Jeremy Zefanya Yaka, Maulana Fuad Nugraha, and Ridwan Arifin. “A Pseudo Freedom for Faith: A Discourse of Religious Freedom in Russia and Indonesia.” *Contemporary Issues on Interfaith Law and Society* 1, no. 2 (2022): 217. <https://doi.org/10.15294/ciils.v1i2.59062>.
- Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru)*. Jakarta: Kencana, 2011.
- Barsky, Benjamin A., and Michael Ashley Stein. “The United Nations Convention on the Rights of Persons with Disabilities, Neuroscience, and Criminal Legal Capacity.” *Journal of Law and the Biosciences* 10, no. 1 (2023): 1–18. <https://doi.org/10.1093/jlb/lsad010>.
- Basoeky, Superior. “The Reformulation of Criminal Procedure Law against the Rights of Suspects and Defendants in the Perspective of the Criminal Justice System.” *Ratio Legis Journal* 1, no. 4 (2022): 1015–29. <https://doi.org/http://dx.doi.org/10.30659/rlj.1.4.%25p>.
- Butt, Simon. “Indonesia’s New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?” *Griffith Law Review* 32, no. 2 (2023): 190–214. <https://doi.org/10.1080/10383441.2023.2243772>.
- Clegg, John, Sebastian Spitz, Adaner Usmani, and Annalena Wolcke. “Punishment in Modern Societies: The Prevalence and Causes of Incarceration Around the World.” *Annual Review of Criminology* 7 (2024): 211–31. <https://doi.org/10.1146/annurev-criminol-022422-020311>.
- Doodoh, Martin, and Herry F.D. Tuwaidan. “Perspektif HAM Terhadap Asas Praduga Tak Bersalah Pada Hukum Pidana Indonesia.” *Jurnal*

- Nuansa Akademik* 10, no. 1 (2025): 95–106. <https://doi.org/10.47200/jnajpm.v10i1.2723>.
- Enggarsasi, Umi. “Presumption of Innocence in Murder Trials: Legal Principles of Circumstantial Evidence in Indonesian Criminal Law.” *IJLR: International Journal of Law Reconstruction* 5, no. 2 (2021): 367–78. <https://doi.org/10.26532/ijlr.v5i2.35992>.
- Fadlan Mukhtar Zain, Khairina. “Kasus Tahanan Tewas Di Banyumas, Seorang Polisi Divonis 8 Tahun Penjara.” *regional.kompas.com*, December 2023.
- Faisal, Andri Yanto, Derita Prapti Rahayu, Dwi Haryadi, Anri Darmawan, and Jeanne Darc Noviyanti Manik. “Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code.” *Cogent Social Sciences* 10, no. 1 (2024): 15. <https://doi.org/10.1080/23311886.2023.2301634>.
- Fernando, Zico Junius. “Due Process of Law Dalam Penanggulangan Tindak Pidana Di Indonesia.” *Majalah Keadilan* 21, no. 1 (2021): 67.
- Glorya Luntungan, Nancy, Muhamad Rusdi, and Muhammad Zaki Sierrad. “Asas Praduga Tak Bersalah Dalam Hukum Pidana : Refleksi Hak Asasi Manusia.” *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 2, no. 2 (2023): 63–76. <https://doi.org/10.37631/jrkhm.v2i2.23>.
- Harahap, M Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2012.
- Hodgson, Jacqueline S. “Miscarriages of Justice and Procedural Change.” *The Metamorphosis of Criminal Justice*, 2020, 251–79. <https://doi.org/10.1093/oso/9780199981427.003.0008>.
- Iksan, Rd Muhammad, Hamonangan Albariansyah, Neia Ang rum Adisti, Henny Yuningsih, and Desia Rakhma Banjarsari. “Restorative Justice On Blasphemy Cases: Overview of The Prosecutors Role and Legal Reform.” *Bengkoelen Justice: Jurnal Ilmu Hukum* 14, no. 2 (2024): 191–211. https://doi.org/10.33369/j_bengkoelenjust.v12i1.32363.
- Ilham, Mohammad, Fitra Mayesti, Eni Rosimah, and Bara Parsaoran Limbong. “Reform of the Indonesian Criminal Procedure Law: Urgency and Impact on The Criminal Justice System.” *History of Medicine* 9, no. 1 (2023): 193–209. <https://doi.org/10.17720/2409->

5834.v9.1.2023.025.

- Ilo, Babajide Olatoye, and Adekunbi Folashade Imosemi. "Prospect and Challenges of Criminal Procedures in Nigeria: A Review." *Unnes Law Journal* 8, no. 2 (2022): 306. <https://doi.org/10.15294/ulj.v8i2.56482>.
- Indriawati, Sri Endah, Dian Eka Prastiwi, Halimah Humayrah Tuanaya, and Halimah Humayrah Tuanaya. "Reconstructing Legal Protections for Justice Collaborators within the Criminal Justice System as an Effort to Uncover Common Crimes in Indonesia." *Sinergi International Journal of Law* 1, no. 3 (2023): 192–204. <https://doi.org/10.61194/law.v1i3.94>.
- Johnston, E. Lea, Kendall D. Runyan, Fernando José Silva, and Francisco Maldonado Fuentes. "Diminished Criminal Responsibility: A Multinational Comparative Review." *International Journal of Law and Psychiatry* 91, no. August (2023): 19. <https://doi.org/10.1016/j.ijlp.2023.101919>.
- Kasim, Ramdhan. "The Giving Legal Aid For The Poor On A Criminal Case." *Substantive Justice International Journal of Law* 1, no. 1 (2018): 33. <https://doi.org/10.33096/substantivejustice.v1i1.12>.
- Mancano, Leandro. "A Theory of Justice? Securing the Normative Foundations of EU Criminal Law through an Integrated Approach to Independence." *European Law Journal* 27, no. 4 (2021): 477–501. <https://doi.org/10.1111/eulj.12442>.
- Mansoor, Hafsa. "Guilty Until Proven Guilty: Effective Bail Reform as a Human Rights Imperative." *SSRN Electronic Journal* 70, no. 1 (2020). <https://doi.org/10.2139/ssrn.3566273>.
- McRae, Leon. "Blaming Rape on Sleep: A Psychoanalytic Intervention." *International Journal of Law and Psychiatry* 62, no. January 2019 (2019): 135. <https://doi.org/10.1016/j.ijlp.2018.12.004>.
- Minow, Martha. "Do Alternative Justice Mechanisms Deserve Recognition in International Criminal Law?: Truth Commissions, Amnesties, and Complementarity at the International Criminal Court." *Harvard International Law Journal* 60, no. 1 (2019): 44.
- Mulyadi, Lilik. *Hukum Acara Pidana Indonesia Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi Dan Putusan Peradilan*. Bandung: Citra Aditya Bakti, 2002.

- Mustafa, Cecep. "The Perceptions of Indonesian Judges in Sentencing Minor Drug Offenders: Challenges and Opportunities." *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020): 5. <https://doi.org/10.25216/jhp.9.1.2020.1-26>.
- Nawawi Arief, Barda. *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) Di Indonesia*. Semarang: Badan Penerbit Universitas Diponegoro, 2017.
- Nawawi Arief, Barda. *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana*. Bandung: Citra Aditya Bakti, 1998.
- . *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti, 2002.
- . *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenada Media Grup, 2007.
- Noorda, Hadassa. "Regulation as Punishment." *Criminal Justice Ethics* 40, no. 2 (2021): 108–23. <https://doi.org/10.1080/0731129X.2021.1949922>.
- Pascoe, Daniel, and Andrew Novak. "Deadly Justice without Mercy in East Asia?" *International Journal of Comparative and Applied Criminal Justice* 46, no. 2 (2022): 141–65. <https://doi.org/10.1080/01924036.2020.1824873>.
- Putrado, Nodi. "Hukum Dan Keadilan Dalam Perspektif Filsafat Hukum." *AHKAM* 1, no. 1 (2022). <https://doi.org/10.58578/ahkam.v1i1.745>.
- Rodiyah, Rodiyah, Siti Hafsyah Idris, and Robert Brian Smith. "Mainstreaming Justice in the Establishment of Laws and Regulations Process: Comparing Case in Indonesia, Malaysia, and Australia." *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 333–78. <https://doi.org/10.15294/jils.v7i2.60096>.
- Schweitzer Dixon, Stephanie. "Law Enforcement Suicide: The Depth of the Problem and Best Practices for Suicide Prevention Strategies." *Aggression and Violent Behavior* 61, no. August (2021): 2. <https://doi.org/10.1016/j.avb.2021.101649>.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Pers, 1986.
- Sudarto. *Kapita Selekta Hukum Pidana*. Bandung: Alumni, 1981.

- Syarif, Nurbaiti, Januri Januri, and Eva Lestari Dolok Saribu. "Perlindungan Hak-Hak Tersangka Melalui Asas Praduga Tidak Bersalah (Presumption of Innocent) Dalam Sistem Peradilan Pidana." *Audi Et AP: Jurnal Penelitian Hukum* 3, no. 02 (2024): 112–20. <https://doi.org/10.24967/jaeap.v3i02.3310>.
- Wardhani, Lita Tyesta Addy Listya, Muhammad Dzikirullah H. Noho, and Aga Natalis. "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems." *Cogent Social Sciences* 8, no. 1 (2022): 17–19. <https://doi.org/10.1080/23311886.2022.2104710>.
- Widyawati, Anis, Ade Adhari, Ali Masyhar, Bearlly Deo Syahputra, and Didik Purnomo. "Dynamics of the Penitentiary System, Transparent and Accountable Handling of Criminal Cases in Criminal Execution Law in Southeast Asia: Convergence and Divergence of International Perspectives." *Indonesia Law Review* 15, no. 1 (2025): 15–35. <https://doi.org/https://doi.org/10.15742/ilrev.v15n1.1>.
- Widyawati, Anis, Ridwan Arifin, Rohadhatul Aisy, Shofriya Qonitatin Abidah, and Heru Setyanto. "Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System." *Journal of Law and Legal Reform* 5, no. 2 (2024): 433–58. <https://doi.org/https://doi.org/10.15294/jllr.vol5i2.3886>.
- Widyawati, Anis, Dian Latifiani, Helda Rahmasari, and Ade Adhari. "Optimizing Oversight: Developing an Ideal Framework for Supervision Prisoners' Right Allocation." *Indonesia Journal of Criminal Law Studies* 9, no. 2 (2024): 189. <https://doi.org/https://doi.org/10.15294/ijcls.v9i2>.
- Widyawati, Anis, Muhammad Azil Maskur, Rohadhatul Aisy, Papontee Teeraphan, and Heru Setyanto. "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws." *Jambura Law Review* 7, no. 01 (2025): 137. <https://doi.org/http://dx.doi.org/10.33756/jlr.v7i1.27595>.
- Zaid, M, M Musa, and Bianglala Asmarasari. "'Novum' in Indonesian Criminal Justice: Problems and Legal Reform." *Indonesian Journal of Crime and Criminal Justice* 1, no. 1 (2025): 68.

<https://doi.org/10.62264/ijccj.v1i1.121>.

DECLARATION OF CONFLICTING INTERESTS

The authors states that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None.

ACKNOWLEDGMENT

None.

HISTORY OF ARTICLE

Submitted : August 8, 2025

Revised : September 13, 2025

Accepted : September 16, 2025

Published : November 3, 2025