

Legal Analysis of the Suspect's Right to Obtain Legal Assistance from an Advocate in the Criminal Justice System

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Abstract. *This study aims to review and analyze the regulation of the suspect's right to obtain legal assistance by an advocate in the criminal justice system. To review and analyze the weaknesses of the suspect's right to obtain legal assistance by an advocate in the criminal justice system. To review and analyze the formulation of the regulation of the suspect's right to obtain legal assistance by an advocate in the criminal justice system in the future. This research is of the normative juridical type, the method of the legislative approach, the comparative approach, the research specifications are descriptive analysis, the data sources used are secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, the data collection method through literature studies and analysis techniques using qualitative. The results of the study indicate that the suspect's right to obtain legal assistance by an advocate in the criminal justice system is regulated in Article 31 of Law Number 20 of 2025 concerning the Criminal Code, however, Article 31 of the 2025 Criminal Procedure Code still places legal assistance as an optional right and depends on the suspect's choice, without being accompanied by an active obligation for the state to ensure that these rights are truly fulfilled. In this context, the right to legal aid risks being reduced to merely administrative or formalistic fulfillment, where the state is deemed to have fulfilled its obligations simply by providing notification. However, without real legal assistance, suspects remain in a weak position and vulnerable to pressure, procedural errors, and abuse of authority during the investigation process. Weaknesses in the legal structure include psychological factors among law enforcement officers, closed-minded investigators, weak advocate integrity, and limited access to and distribution of legal aid. Substantive weaknesses in the law are found in Article 31 of the 2025 Criminal Procedure Code, which still positions legal aid as an optional right dependent on the suspect's choice, without an active obligation for the state to ensure that this right is truly fulfilled. Weaknesses in the legal culture include negative public stigma regarding advocates, a lack of legal awareness among suspects, and a lack of candor and honesty among suspects. Strengthening of normative regulations within the Criminal Procedure Code and its implementing*

regulations is necessary to ensure that the right to legal aid is not merely declarative but also operational.

Keywords: Advocate; Legal; Suspect.

1. Introduction

The right to legal aid is also widely recognized in various international human rights instruments. The International Covenant on Civil and Political Rights places the right to legal aid as an integral part of the right to a fair trial. This principle emphasizes that legal aid must not only be formal but also be provided effectively and with quality. Effective legal aid requires the active involvement of legal counsel in defending the legal interests of the suspect. Fulfillment of this right serve as a benchmark for the state's commitment to protecting human rights in the criminal justice process.¹

One of the important promises of the Criminal Procedure Code (KUHP) update is to strengthen the protection of suspects' rights from the investigation stage. At the normative level, this promise has been partially fulfilled. The 2025 Criminal Procedure Code introduces a number of new provisions that strengthen the role of advocates in every stage of the criminal justice system, as stated in Article 154 paragraph (2) of Law Number 20 of 2025 concerning the Criminal Procedure Code, which states that:

The relevant official at each stage of the examination is obliged to inform the suspect of the right to receive legal aid and appoint an advocate or legal aid provider for the suspect, defendant, reporter, complainant, witness or victim as referred to in paragraph (1).

The problem arises when the 2025 Criminal Procedure Code regulates legal assistance for suspects who cannot afford it. Article 155 paragraphs (1) and (2) of Law Number 20 of 2025 concerning the Criminal Procedure Code still gives investigators the authority to appoint advocates for suspects who are threatened with serious criminal penalties and/or do not have their own advocate.²

Formally, this provision is intended to guarantee the right to legal aid. However, structurally, it inherently creates a conflict of interest. Investigators have a direct stake in the success of the investigation, while advocates are supposed to be independent and protect the legal interests of suspects. When an advocate is

¹Andri Winjaya Laksana, [Restorative justice in resolving cases of children in conflict with the law in the juvenile criminal justice system](#), Journal of Legal Reform, Volume IV No. 1 January - April 2017, p. 57

²Andi Hamzah, Indonesian Criminal Procedure Law, Second Edition, Jakarta: Sinar Grafika. 2008, p. 24

appointed by an investigator, their independence is compromised from the outset.³

In practice, it's not uncommon to find advocates whose presence merely fulfills administrative requirements, without performing their defense function substantively or optimally. In fact, based on the author's experience, there are situations where advocates actually act as extensions of the interests of investigators, rather than balancing power.

For example, in the case of extortion of 45 Malaysian citizens at the 2024 Djakarta Warehouse Project (DWP). In the National Police ethics hearing, as conveyed by the National Police Commission (Kopolnas) The perpetrators admitted to the extortion. The investigators collaborated with an attorney to extort money from 45 Malaysian citizens. The extorted money was transferred to an account belonging to an attorney designated by the investigators. This fact is important to read not as a mere individual error, but as an indication of the fragility of oversight mechanisms during the investigation.⁴

Lessons from this practice reinforce the argument that the protection of suspects' rights, including through the presence of independent advocates, must be guaranteed from the outset. When the investigative space is closed and power relations are highly unequal, a legal aid design that places the appointment of advocates under the control of investigators has the potential to undermine suspects' rights and the advocates' performance. Therefore, reform of the Criminal Procedure Code should stem from an awareness of structural vulnerabilities, rather than simply relying on professional ethics or the assumption of good faith from officials.⁵

Based on the above description, the author will present the following problem formulations: first, the regulation of the suspect's right to receive legal assistance from an advocate in the criminal justice system. Second, the weaknesses of the suspect's right to receive legal assistance from an advocate in the criminal justice system. Third, the regulation of the suspect's right to receive legal assistance from an advocate in the criminal justice system in the future.

³Andri Winjaya Laksana, [Cybercrime Criminalization from a Positive Criminal Law Perspective](#), Journal of Law, Vol.35 No.1 2019, p. 53

⁴ <https://www.hukumonline.com/berita/a/problematik-advokat-pilihan-penyidik-dalam-kuhap-2025-lt698bf1547f443/?page=2> accessed on April 9, 2026

⁵Sitta Saraya, Andri Winjaya Laksana, Sri Endah Wahyuningsih, [Implementation of Restorative Justice in Terminating Investigations at the Kendal Police Resort](#), Proceedings Series on Social Sciences & Humanities, 2025, p. 62

2. Research Methods

This research is a normative juridical type using the statutory approach method and comparative studies, the research specifications are descriptive analysis, data sources are obtained from secondary data taken through primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies, and analysis techniques using qualitative.

3. Results and Discussion

3.1 The Right of Suspects to Obtain Legal Assistance from Advocates in the Criminal Justice System.

Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP) introduces important reforms in regulating the rights of suspects, particularly regarding legal assistance. These reforms are reflected in Article 31 of Law Number 20 of 2025 concerning the Criminal Code, which states:

Before commencing the examination as referred to in Article 30, the Investigator is obliged to inform the Suspect of his/her right to receive Legal Aid or assistance from an Advocate or Legal Aid Provider.

In addition to Article 31, the regulation of the right to legal assistance in the 2025 Criminal Procedure Code must also be read systematically with Article 142, which explicitly formulates the rights of suspects or defendants. Article 142 states that suspects or defendants have the right to: (a) immediately undergo examination; and (b) choose, contact, and receive assistance from an advocate during every examination. This provision positions the right to assistance from an advocate not merely as an additional procedural right but as a fundamental right inherent in every stage of the examination.⁶

The right to immediate examination as stipulated in letter (a) is closely related to the principle of protection against arbitrary detention and unreasonable delays in legal proceedings. This right is intended to prevent suspects from being subjected to prolonged legal uncertainty and to ensure that the examination process is conducted expeditiously, proportionately, and accountably.

Meanwhile, the right to choose, contact, and receive legal assistance as stated in letter (b) shows that the legislators not only recognize the suspect's freedom to appoint legal counsel, but also recognize the suspect's right to truly receive legal assistance in every examination. The phrase "receive assistance" contains the meaning that legal assistance is part of the guarantee of a fair trial process, not just a formal right that stops at the notification stage.

⁶Darman Primts, *Criminal Procedure Law in Practice*, Djambatan Publisher, Jakarta, 2002, p. 102.

Although this right is optional, meaning it may or may not be exercised by the suspect, its existence still creates a normative obligation for the state to provide and guarantee access to legal assistance. From a public law and human rights perspective, recognition of a right always implies an obligation for the state as a duty bearer. Therefore, Article 142 letter (b) of the 2025 Criminal Procedure Code should be understood as a norm that demands an active role for the state in creating conditions that enable suspects to actually exercise their right to legal assistance.⁷

The 2025 Criminal Procedure Code (KUHP) has not yet explicitly formulated an operational mechanism for fulfilling these rights. There are no provisions explicitly regulating the investigator's obligation to postpone an examination until legal assistance is available or to facilitate contact with an attorney when a suspect expresses a desire to exercise their rights. This absence of regulations indicates a gap between the recognition of rights in Article 142 and the mechanisms for their implementation in criminal investigation practices. Article 142 of the 2025 Criminal Procedure Code is a central norm in regulating the rights of suspects and defendants. This article states that a suspect or defendant has the right to: (a) immediately undergo examination; and (b) choose, contact, and receive assistance from an attorney during every examination. With this formulation, the legislators position the right to legal assistance as a fundamental right inherent in the criminal investigation process from the initial stage. This provision demonstrates normative recognition of the importance of legal assistance as part of protecting the rights of suspects.⁸

The investigator's obligation under this article is limited to notification of rights. The 2025 Criminal Procedure Code does not stipulate any further obligation for investigators to ensure the fulfillment of these rights if the suspect expresses a desire for legal counsel. Therefore, the fulfillment of the right to legal assistance depends entirely on the suspect's initiative and ability to exercise it.

This construction of norms positions legal aid as a passive right. The state is only obligated to provide information, without being obligated to take active steps to ensure the realization of this right. In the context of the criminal justice system, this approach is questionable, given the often unequal position of suspects relative to law enforcement officials.

The construction of the right to legal aid in the 2025 Criminal Procedure Code is relevant to be studied using the theory of legal protection. From the perspective of a conscious effort by the state, apparatus, or institution to provide protection, security, and fulfillment of human rights for the community from arbitrary acts.

⁷M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code*, Sinar Grafika, Jakarta, 2002, p. 334.

⁸OC Kaligis, *Legal Protection of the Human Rights of Suspects, Defendants, and Convicts*, Alumni, Bandung, 2006, p. 17.

This protection ensures that individuals can enjoy their rights according to legal provisions and is realized through preventive (prevention) and repressive (enforcement).⁹

In relation to the fair trial principle, this theoretical approach shows that the legal aid provisions in the 2025 Criminal Procedure Code (KUHAP) still tend to be procedural and formalistic. While the right to legal aid is recognized normatively, it lacks structural and operational guarantees to ensure its effectiveness. This situation has the potential to reduce the meaning of a fair trial to merely formal adherence to procedures, without guaranteeing substantive justice for the accused.

The above findings are analyzed using Phillipus M. Hadjon's legal protection theory. It can be concluded that the suspect's right to obtain legal assistance from an advocate has been recognized normatively, but not yet protected substantively. The elements of preventive and repressive legal efforts have not been implemented effectively, so the principle of the rule of law has not been fully realized. The state still fails to protect this right according to Phillipus M. Hadjon's legal protection standards.¹⁰

3.2 Weaknesses of the Suspect's Right to Obtain Legal Assistance from an Advocate in the Criminal Justice System.

1) Weaknesses of Legal Structure

a. Psychological Factors of Law Enforcement Officers

The complexity of police duties in the field makes them prone to stress and frustration. This task often invites danger. This is because police duties are particularly demanding and dangerous compared to other law enforcement agencies, such as judges and prosecutors. Although both enforce the law, police officers directly interact with the public in carrying out their duties. In addition to the high level of threat and occupational risk, police officers work 24 hours a day, seven days a week, regardless of holidays or weather. Police work around the clock. Dangerous working conditions are one source of occupational stress. Occupational stress can also occur in the police work environment, which demands high discipline, adherence to applicable regulations, submission to superiors' orders, and swift and responsive response to various problems. These conditions are likely to encourage police aggressiveness in handling cases.

⁹Fahri Firdaus, "Analysis of the Provisions on the Investigation Period Related to the Human Rights of Suspects in the Criminal Justice Process," *Tadulako Master Law Journal* 3, no. 3, October 23, 2019, p. 223.

¹⁰Akhdiari Harpa, "Legal Analysis of the Provision of Legal Aid for the Poor in Realizing Access to Justice for the Poor," *Tadulako Master Law Journal* 3, no. 2, June 30, 2019, p. 113

b. The investigator's attitude is sometimes closed.

A legal advisor from a law enforcement agency has argued that legal counsel obstructs the criminal justice process. They sometimes complicate and hinder the presence of legal counsel in assisting a suspect. This is in stark contrast to existing regulations, particularly the Criminal Procedure Code (KUHP), which stipulates that a suspect has the right to contact or be accompanied by legal counsel upon arrest or detention.

c. Weak Advocate Integrity

The personal integrity of advocates/lawyers also plays a crucial role in determining whether they will violate the code of ethics. As individuals, they may have weaknesses in morals and integrity, which may allow them to blatantly violate the code of ethics. Weak personal integrity is an indispensable factor in various ethical violations in the legal field. Developing personal integrity and ethics through formal education and robust ethics training is crucial to maintaining the standards of the legal profession.

d. Limited Access and Distribution of Legal Aid

The number of lawyers registered as legal aid providers is limited, particularly in remote areas and areas with high poverty rates. This leaves many suspects unable to access adequate legal representation. In many areas, particularly outside Java, legal aid services provided by the state and non-governmental organizations remain very limited. Suspects in these areas often struggle to find lawyers capable of providing adequate representation.

2) Weaknesses of Legal Substance.

The 2025 Criminal Procedure Code (KUHP) has not yet explicitly formulated an operational mechanism for fulfilling these rights. There are no provisions explicitly governing the investigator's obligation to postpone an examination until legal assistance is available or to facilitate contact with an attorney when a suspect expresses a desire to exercise their rights. This lack of regulation indicates a gap between the recognition of rights in Article 142 and the mechanisms for their implementation in criminal investigation practices. Article 142 of the 2025 Criminal Procedure Code is a central norm in regulating the rights of suspects and defendants. This article states that a suspect or defendant has the right to: (a) immediately undergo examination; and (b) choose, contact, and receive assistance from an attorney during every examination. With this formulation, the legislators position the right to legal assistance as a fundamental right inherent in the criminal investigation process from the initial stage. This provision demonstrates normative recognition of the importance of legal assistance as part of protecting the rights of suspects.

This construction of norms positions legal aid as a passive right. The state is only obligated to provide information, without being obligated to take active steps to ensure the realization of this right. In the context of the criminal justice system, this approach is questionable, given the often unequal position of suspects relative to law enforcement officials.

3) Weaknesses of Legal Culture.

1) Negative stigma in society regarding advocates

The author's perspective examines the cultural aspects of society regarding the use of legal services. In essence, legal awareness and compliance are growing within society. However, some people still lack knowledge and understanding of the right to legal aid, which can lead to a legal culture that discourages its implementation. Societal values that foster distrust in the provision of legal aid can, in practice, lead to a refusal to exercise the right to legal aid.

2) Lack of legal awareness of the suspect

The suspect's lack of legal awareness, where the obstacles to the implementation of the advocate's function actually come from (internally) the suspect himself, namely the suspect's lack of awareness of the importance of having a legal advisor due to a lack of understanding and the desire only to fulfill the trial requirements and quickly complete the case being faced as well as the growing assumption in society that being accompanied by a legal advisor will make it difficult for the suspect to be examined in the criminal justice system being undergone, because they think that the person who knows the problem is themselves.

3) There is a lack of candor and honesty from the suspect

The suspect's lack of candor and honesty in providing information or the chronology and facts of the incident meant that the legal advisor was less than optimal in determining the legal analysis and strategy in providing legal advice.

3.3 Regulation of the Rights of Suspects to Obtain Legal Assistance from Advocates in the Criminal Justice System in the Future

The principle of due process of law requires that everyone facing criminal justice receive fair and balanced procedural guarantees. A crucial element of this principle is the availability of effective legal assistance from the earliest stages of the process. Without legal assistance, suspects risk providing information that could be detrimental to themselves or failing to understand the legal consequences of their actions.

By positioning legal aid as an optional right without any active state obligation, Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) has the potential to render the protection of suspects' rights formalistic. While the right

to legal aid is recognized normatively, it lacks a mechanism to guarantee its effectiveness. This situation could undermine the principle of fair trial and increase the likelihood of procedural injustice.

Within the framework of access to justice, the right to legal aid should not only be understood as an individual's freedom to choose whether or not to exercise that right, but also as a state responsibility to ensure that every suspect has a real opportunity to obtain legal representation. Without an active state obligation, this right risks being enjoyed only by suspects with adequate knowledge and resources.

The right to legal assistance, as stipulated in Article 142 letter (b) of the 2025 Criminal Procedure Code, is essentially an optional right for suspects. This means that suspects have the freedom to exercise or not exercise this right at their own discretion. This freedom aligns with the principle of individual autonomy in law and human rights, which recognizes that rights holders cannot be forced to exercise their rights.

However, the optional nature of exercising rights does not eliminate the state's obligation to ensure the availability and accessibility of those rights. From a human rights law perspective, every recognition of a right always implies an obligation on the part of the state as a duty bearer. The state is not only obligated to respect rights but also to protect and fulfill those rights. Therefore, although suspects are free to choose whether or not to be assisted by an advocate, the state remains obligated to create conditions that enable the right to assistance to be exercised effectively and effectively.

The distinction between passive rights and active state obligations is relevant in this context. The right to legal assistance can be classified as a passive right, meaning its use depends on the suspect's wishes. However, the state's obligation is active, as it must ensure that access to legal assistance is available, easily accessible, and unimpeded by the actions or omissions of law enforcement officials. If the state merely adopts a passive stance, arguing that this right is optional, then the recognition of the right to legal assistance risks losing its substantive meaning.

The risk of a passive state stance is the reduction of the right to legal representation to a mere declaratory right. In practice, suspects who do not understand their rights, are under psychological pressure, or lack financial means may lose the opportunity to obtain adequate legal representation. This situation contradicts the primary purpose of recognizing the right to legal representation, namely, to ensure a balance between the parties and prevent procedural injustice in the criminal justice process.

It is necessary to strengthen norms that position the state not only as a provider of information but also as an active guarantor of the fulfillment of the right to legal

aid, so that the protection of suspects' rights does not stop at the normative level, but is truly realized effectively in criminal justice practice. It is necessary to strengthen normative regulations in the Criminal Procedure Code and its implementing regulations to ensure that the right to legal aid is not only declarative but also operational. This strengthening could take the form of regulating the active obligations of law enforcement officials in facilitating legal assistance for suspects, including the obligation to postpone examinations if the suspect expresses a desire to be assisted by an advocate or legal aid provider, as well as the obligation to provide an effective liaison mechanism with legal counsel.

With the enactment of the 2025 Criminal Procedure Code, which places legal aid as a fundamental right of suspects in every investigation, the state should be positioned more firmly as the party directly responsible for providing legal aid services. This revision is crucial for shifting the paradigm of legal aid from merely a community-based service to a state obligation, as a consequence of the recognition of the right to legal aid in criminal procedure law. By positioning the state as the primary guarantor of legal aid services, the right to legal assistance is no longer dependent on the initiative or capacity of legal aid institutions alone, but rather becomes an integral part of the criminal justice system. This strengthening is expected to ensure that the right to legal aid truly functions as an instrument for protecting human rights, while simultaneously strengthening the realization of a fair, balanced, and substantive justice-oriented criminal justice system.

4. Conclusion

The regulation of the suspect's right to obtain legal assistance by an advocate in the criminal justice system is regulated in Article 31 of Law Number 20 of 2025 concerning the Criminal Code, however, Article 31 of the 2025 Criminal Procedure Code still places legal assistance as an optional right and depends on the suspect's choice, without being accompanied by an active obligation for the state to ensure that this right is truly fulfilled. There are weaknesses in the legal structure including psychological factors of law enforcement officers, closed attitudes of investigators, weak integrity of advocates, limited access and distribution of legal assistance. Weaknesses in the legal substance are contained in Article 31 of the 2025 Criminal Procedure Code still places legal assistance as an optional right and depends on the suspect's choice, without being accompanied by an active obligation for the state to ensure that this right is truly fulfilled. Weaknesses in the legal culture include negative stigma in society regarding advocates, lack of legal awareness of suspects, lack of candor and lack of honesty of suspects. Regulation of the rights of suspects to obtain legal assistance by an advocate in the criminal justice system in the future based on comparative studies with the United States, Japan and the Netherlands, requires strengthening of normative arrangements in the Criminal Procedure Code and its implementing regulations to ensure that the

right to legal assistance is not only declarative, but also operational. This strengthening can take the form of regulating the active obligations of law enforcement officers in facilitating legal assistance for suspects, including the obligation to postpone examinations if the suspect states the desire to be accompanied by an advocate or legal aid provider, as well as the obligation to provide an effective liaison mechanism with legal counsel.

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