

The Application Of Presumption Of Innocence As The Protection Of Human Rights Of Suspect Or Defendant In Preventing Miscarriage Of Justice In The Indonesian Criminal Justice System

Ratna Nurhayati

Faculty of Law, Social and Political Science Universitas Terbuka, Indonesia
Corresponding author: Ratna Nurhayati

ABSTRACT

This article examines the implementation of the "Presumption of Innocence" as protection of suspects or defendants' rights in preventing miscarriage of justice in the Indonesian criminal justice system. The result of the discussion in this article shows that the Indonesian criminal justice system has assured the regulation on the concept of guaranteeing and regulating the presumption of innocence. However, the application of this right has not reached the expectation, as various cases have been continually occurred in Indonesia, such as Asrori murder cases in Jombang, the Sengkon and Karta case, the unsolved Marsinah case in Sidoarjo, the case of the journalist Udin, the torture case of Tje Tje Tadjudin and many more happened due to the major factor of positivism views that have neglected the values of justice, abuse of power by law enforcement officials and the practice of judicial mafia in Indonesia.

Keywords: Presumption of Innocence, Protection of Human Right, Miscarriage of Justice

Correspondence:

Ratna Nurhayati
Faculty of Law, Social and Political Science Universitas Terbuka, Indonesia

*Corresponding author: Ratna Nurhayati

INTRODUCTION

The Republic of Indonesia is a constitutional State based on the Pancasila and the 1945 Constitution which upholds Human Rights and guarantees all rights of its citizens which entitle equal position before law and government with no exception. In this regard, the State shall respect human rights of its citizens.¹ As prescribed in Article 28 J paragraph 2 of the 1945 Constitution:

" In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society. "

As a rule of law which upholds human rights with the purpose of creating public order and democracy, as a logical consequence, the law enforcement officials (police, public prosecutors, judges, lawyers, prisons) shall carry out their duties and obligations based on the law and uphold human rights towards seekers of justice (*Justibelen*) in order to achieve the ultimate justice. The Indonesian criminal justice system in general is normatively stipulated in Law Number 8 of 1981 on the Criminal Procedure Code and other laws such as the Judicial Power Law the Law of the Public Prosecution Service, the Police Law, the Judiciary Power Law and many more. The implementation of human rights in the criminal justice system has become one important issue in achieving the ultimate justice due to its direct relation to the rights of suspects and defendants that shall be protected with regard to the treatment of law enforcement officials in carrying out the act of *force*. As emphasized by Mien Rukmini, human rights in Indonesia are associated with the criminal justice system. Therefore, a research regarding the judicial process including

general definition and its development in ensuring and protecting the human rights of suspects and *defendants*² shall be carried out as a means to achieve the fair and appropriate judicial system in accordance with the goals and expectations of the Indonesian people. In such regard, the Indonesian criminal justice system as stipulated in the Criminal Procedure Code (Law Number 8 of 1981) uses the term of "due process model". Marc Weber Tobias asserts that "due process model of law is the frame work upon which the system of ordered justice is build..." implying that due process of law is a framework created to ensure the achievement of justice in the criminal justice system, as a conformity to the democratic governance and the rule of law. The influence of the concepts and principles of human rights on the law, particularly the criminal justice system is inevitable.³ This influence has emerged for quite some time until today. This influence has substantially impacted the State jurisdiction boundaries becomes relative due to the universal nature of human rights. For instance, the title "master piece" introduced in the Indonesian criminal procedure law while it was merely promulgated because the concepts and substance of human rights were contained in it. Moreover, the official recognition was given particularly because the title encompasses the concepts of "The International Bill of Human Rights". The Criminal Procedure Code stipulates ten principles on the provision of Human Rights. The principles are the *habean corpus*, the right to Silence, the principle of nonself mermination, time limit for arrest and detention, compensation and rehabilitation and Miranda warnings. In a brief, the law and human rights materials in the Criminal Procedure Code are substantially osmose which make the status of the Code is positive law. Therefore, the spirit of law from the concept of Human Rights along with its concepts and substances have in fact been merged

¹ Mien Rukmini, *Perlindungan HAM Melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Dalam Hukum Pada Sistem Peradilan Pidana Di Indonesia*. Alumni, 2003 , p 1

² Mien Rukmini Op cit Hal. 69

³ Marc weber Tobias R David Peterson, pre-trial criminal procedure, a survey of constitutional right. Charles.

The Application Of Presumption Of Innocence As The Protection Of Human Rights Of Suspect Or Defendant In Preventing Miscarriage Of Justice In The Indonesian Criminal Justice System

without an official legal transplant process to become provision of the Criminal Procedure Code.⁴

The Criminal Procedure Code has accommodated the principles and concepts related to the protection of human rights, particularly the rights of suspects and defendants. The principle of presumption of innocence is one of the most important principles with the aim to protect the human rights of suspects and defendants. The principle of presumption of innocence is stipulated in the general elucidation point 3 letter C. The principle being included in the general elucidation that governed the Code implies the fact that the legislators have determined it as the principle underlying the Code and its enforcement. Besides, Article 8 of the Law Number 4 of 2004 also emphasizes the presumption of innocence. As a logical consequence, suspects or defendants have the right to be considered innocent until proven guilty by the decision of the court with permanent legal force during the investigation process until the trial session. However, the implementation of the criminal justice system, particularly at the level of investigation indicates that the law enforcement officials frequently neglected this principle (presumption of innocence) by applying coercive measures against suspects and/or defendants. Such action may lead to the violation of human rights hereinafter known as "miscarriage of justice". The instances of miscarriage of justice cases in Indonesia are the Sengkon and Karta case, the Marsinah case in Sidoarjo, the Udin journalist case, the Tje Tje Tadjudin torture case and recently the Asrori case in Jombang. These cases imply a fact that the criminal justice subsystem in Indonesia frequently neglects the principle of presumption of innocence which lead to the deviation of the purpose of the law.

Based on the foregoing discussion, the main problems can be identified aiming to be addressed in this article. First, the implementation and application of the presumption of innocence in protecting the human rights of *Justiabelen* (justice seeker) in the criminal justice system in Indonesia. Second, the influencing factors that cause the application of the presumption of innocence to be neglected and lead to miscarriage of justice in the Indonesian criminal justice system.

DISCUSSION

A. Implementation and Application of the Presumption of Innocence in Protecting the Rights of *Justiabelen* (justice seekers) in the Indonesian criminal justice system.

The criminal justice system is an essential system aiming to overcome crimes, and as an effort of society to control the crimes maintain to conform with the limits of community tolerance and ensures that the suspects and/or defendants shall enjoy the human rights as a means to create social balance and justice. Based on its purposes, the criminal justice system is emphasized by Muladi which asserts "The aims of criminal justice system cover three levels namely the short-term level

(rehabilitation of the offender), the medium level (crime prevention), and long level (social warfare).⁵

The Indonesian criminal justice system is stipulated in Law Number 8 of 1981 on the Criminal Procedure Code and other laws related to the judicial system, such as the Police Law, the Law on the Public Prosecution Service, and the Judiciary Power Law have accommodated principles that uphold human rights, one of which is the presumption of innocence. This principle has been widely recognized and accommodated in almost all criminal justice systems of State over tge world because of its universal nature. In international law, the principle of presumption of innocence is stipulated in Article 39 of the Magna Charta states that:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way except by the lawful judgement of his equals or by the law of the land."

In the sixteenth century, it was expanded with the stipulation that "No person at any level or in any condition of life may be brought, or seized, or executed without being held responsible through a due process of law".⁶

Meanwhile, the implementation of the principle of presumption of innocence in the criminal justice system in Indonesia is stipulated in the general elucidation point 3 letter C "Anyone who is suspected, arrested, detained, prosecuted or brought before a court, should be regarded as innocent until a court decision determining his guilt acquires a permanent legal force." This provision is implicitly prescribed in Articles 35, Article 36 and Article 66 of the Criminal Procedure Code by which Article 66 stipulates that "A suspect or defendant shall not be burdened with the duty of providing evidence". In addition to the Criminal Procedure Code, Article 8 of Law Number 4 of 2004 on Judicial Power also stipulates the presumption of innocence. In Law Number 39 of 1999 on Human Rights, the provisions of Article 18 paragraph (1) stipulates that:

"Everyone arrested, detained, or charged for a penal offence has the right to be presumed innocent until proven guilty according to law in a trial at which he has had all the guarantees necessary for his defense, according to prevailing law.."

Thus, it can be normatively concluded that the Indonesian judicial system has accommodated the provisions of the presumption of innocence as mandated by the international law, additionally the criminal justice system that upholds law and human rights is also established in the process of its implementation at every levels of examination of suspects and/or defendants. The principle of presumption of innocence based on technical juridical side also is known as the "accusatory principle" or accusatory procedure (accusatorial system). The principle of accusatory put the position of a suspect or defendant in every examination:

As a subject not an object of examination, therefore a suspect or defendant must be seated and treated humanely with its dignity. The object of examination using the principle of accusatory is the "wrongdoings" (a criminal act), which is

⁴ Luhut Pangribuan. *Lay Judge Dan Hakim Ad hoc suatu stidu teoritis mengenai sistem peradilan pidana Indonesia*. UI Press dan Papas sinar sinanti.2009. p 56.

⁵ Muladi, Restoring The Integrity of the criminal justice system. Eleminating corruption in criminal justice system, Makalah yang disampaikan dalam UNAFEI

⁶ Mien Rukmini Op cit Hal. 42

The Application Of Presumption Of Innocence As The Protection Of Human Rights Of Suspect Or Defendant In Preventing Miscarriage Of Justice In The Indonesian Criminal Justice System

committed by a suspect or defendant as the aim of the examination.⁷

Therefore, the principle of presumption of innocence adhered to the Criminal Procedure Code with the aim to provide guidelines for law enforcement officials use the principle of accusatory in all level of examinations. Law enforcement officials shall prevent using the "inquisitor" or the inquisitorial system examination method which may lead to arbitrary treatment to the object. The implementation of the principle of the presumption of innocence in the criminal justice process in Indonesia has not reached the expectation of the people since the miscarriage of justice continually occurred such as the murder case of Asrori in Jombang with the suspect or defendant David Eko. Priyanto alias Devid, Imam Chambali alias Kemat, and Maman Sugianto alias Sugij.⁸

This Asrori case portrayed an inappropriate process since the beginning, as the crucial mistake conducted by the investigators which failed to identify the victim and resulting in the false process in determining the suspect. The statement of the Jombang Police Criminal Investigation Unit Chief, Bobby P. Tambunan, confirmed that the investigation team made a mistake in identifying the victim named Asrori who was found in the sugar cane plantation. Thereafter, it was found that the body was Fauzan. The inappropriate actions carried out by investigators were not only conducted by mistakenly identifying the victim and perpetrator, but the worst actions were the physical intimidation and physical abuse by the investigators of the District Police of Bandar Jombang. Moreover, these actions were a form of coercion aiming to force Devid and Kemat admitting that conduct they did not commit, because they were convoluted in answering the questions of the investigators. Bobby P Tambunan additionally mentioned that "according to the investigator who questioned Devid and Kemat named Yudi, the suspects were compounding and convoluted during the investigation process. However, I do personally not confirm that during the investigation process my subordinates did violation of the rights of the suspect. Because principally, every investigator in his work must not merely pursue the suspect's confession by justifying any means. This duty shall be carried out professionally and proportionally."⁹

The actions of the investigators in the Asrori case seems to find conformity with the characteristics of the Crime control model in the criminal justice system. Therefore, the operation of this model adopts the aspects of effectiveness and efficiency. By which during the investigation, investigators shall prioritize the presumption of guilty by which is inconsistent with the characteristics of the Indonesian criminal justice system that adheres to the presumption of innocence with its "due process model" approach by upholding the human rights of the suspects or defendants that shall be respected and treated humanely with the dignity, therefore investigators frequently violate the human rights of the suspects or defendants as a means to pursue

the confession during the investigation process, as asserted by Joseph Goldstein, this fact is a consequence of the total enforcement type of criminal law enforcement. At the level of investigation, the suspects were examined without being assisted by appointed legal advisors, therefore Devid and Kemat who did not understand the rights of suspects might receive treatments led to intimidation by the investigators. The characteristic of Crime control model which prioritizing the repressive function of the criminal justice system as a method for efficiency in law enforcement was conducted the procedure based on the principle of fast and thorough. The function of efficiency in law enforcement is preferred by investigators with an assumption that the quality of fact finding has informal nature, therefore deviations in the investigation process such as violence and torture to obtain information equipped with false confession of the suspects occur. The case of Asrori denoted that the information obtained in the report on the examination was the result of pressure from the investigators which led to the violation of the human rights of the suspects and subsequently impacted the judicial process as the violation started since the beginning of the process, the charge process at the level of prosecution, until the level of trial process. In this regard, it is compelling to observe the decision given by the court to the case of Asrori. The decision of the council of the judges through the Jombang District Court sentenced Devid to 12 years in prison and 17 years to Kemat turned this case compelling, because the confrontation between the value of justice and legal certainty stretched in the decision of the council of judges who sentenced the mistaken defendants to wrongful arrest resulted from the failure of investigators in identifying the victim and determining the suspects by conducted neglection to the presumption of innocence and force the suspects to give confession by the means of physical and psychological pressure with subsequent result of depression and fear of the suspects. Based on the development of facts at the Devid and Kemat trials, it was revealed that the perpetrator of the murder also involved Sugik as the executor of Asrori's murder. Sugik was immediately tried and during his trial the truth led to shock was revealed, according to Sugik, Devid and Kemat never committed murder and they were forced to admit conduct they never committed. However, the Supreme Court has annulled the decision of Jombang District Court which sentenced them to prison during a review process on 4 December 2008.

The annulment of the decision convinces that there was a crucial mistake since the beginning of the process. This mistake was essentially caused by the failure of the investigators in identifying the victim (*error in objecto*) led to false determination of the perpetrator (*error in persona*) and neglected the presumption of innocence. As a result, the lawsuit of the public prosecutor and decision of the judge to Devid and Kemat case were deemed fail to achieve the justice. This case implies a fact that law enforcement officials in carrying out investigation level of the criminal justice process in Indonesia remain neglecting the presumption of innocence which normatively is adopted in the Indonesia criminal justice system and cause violations of the rights of suspects and defendants also known as the miscarriage of justice.

⁷ Yahya Harahap. Pembahasan Permasalahan dan Penerapan KUHAP penyidikan dan Penuntutan Penyidikan dan Penuntutan, Sinar Grafika. 2007. p 41

⁸ Kedaulatan Rakyat 02 October 2008, p.5

⁹ OC Kaligis, *Perlindungan Hukum Atas Hak Asasi Tersangka, Terdakwa, Terpidana Dalam Sistem Peradilan Pidana*. Alumni Bandung. 2003 p. 171.

The Application Of Presumption Of Innocence As The Protection Of Human Rights Of Suspect Or Defendant In Preventing Miscarriage Of Justice In The Indonesian Criminal Justice System

B. Factors that neglect the application of the presumption of innocence and cause miscarriage of justice in the Indonesian criminal justice system.

In the Indonesian criminal justice process, there are various problems in its implementation, one of them is the application of the presumption of innocence as the instrument to protect and guarantee the human rights of suspects or defendants as a means to achieve justice. Such factors that play a key role in the neglect of presumption of innocence which emerge miscarriage of justice in the Indonesian criminal justice system are substance, structure and culture of the Indonesian criminal justice system process. Violation of the rights of suspects or defendants by law enforcement officials as a subsystem of the criminal justice has been widely occurred in various States over the world also known as miscarriage of justice. The power and authority granted to law enforcement official aimed to strive for justice potentially lead to abuse of power and resulted to the miscarriage of justice or failure to uphold justice. The susceptibility of the Indonesian criminal justice system may lead into an opportunity for police, public prosecutors and judges to abuse the power granted by the law as means of enriching themselves. In the criminal justice system, the provisions on the protection of human rights of suspects or defendants are led to the main obligation of the State through the criminal procedure law aimed to conform with the objectives of the criminal procedure law in achieving and ensuring the justice according to humanity. According to Clive Walker,¹⁰ failure to uphold justice may occur when the State violates the rights of suspects or defendants with these following reasons:

- a. inappropriate legal process
- b. sentence given is justified;
- c. laws applied to the case;
- d. treatment to the suspects or defendants is not equal to the rights of other people
- e. when the rights of others are not actively protected by the State from the perpetrator of the crime;
- f. applicable law of the State itself.

Furthermore, Walker¹¹ asserted that the six categories that cause legal failure in upholding justice can lead to an indirect failure (Indirect Miscarriage) which affecting the community as a whole. A sentence made from fabrication can generate demands for the legitimacy of the State which should respect individual rights. In this context, failure to uphold justice will pose threat to the moral integrity of the criminal process. It can even further undermine public confidence in law enforcement. Failure to uphold justice has 4 important characteristics¹² as follows:

- a) Not only limited to court products or in the criminal justice system, but can also occur outside the court, in the form of coercive powers of the law enforcement officials.
- b) Can be institutionalized in law, for example in the form of prohibiting illegal fees.
- c) Includes the susceptibility of the State in carrying out responsibilities.
- d) Failure to enforce justice in relation to human rights.

¹⁰ Walker, Clive. *Miscarriage of justice system in principle and practice*, Blackstone press limited. 1999. Page. 34

¹¹ Ibid 35

¹² Ibid 36

In addition, the reason for neglecting the principle of the presumption of innocence is a culture of mafia in the criminal justice process in Indonesia resulted to miscarriage of justice. Besides, the culture of implementing law is positivist and ignores social values, propriety and the values of justice.

Closing.

Based on the foregoing discussion, it can be concluded as follows:

The Indonesian criminal justice system as stipulated in the Criminal Procedure Code has accommodated and implemented the concepts of ensuring and regulating one of the human rights of suspects or defendants; the presumption of innocence. However, in its application to the criminal justice process has not reached the expectations of the Indonesian people since many cases on the failure to achieve justice or referred to as Miscarriage of Justice continually occurred. The instances of the cases are the Asrori murder cases in Jombang, besides that there were also other cases such as sengkon and karta, the Marsinah case in Sidoarjo, the case of the journalist Udin, the case of Tje Tje Tjudin torture. Factors that neglect the application of the presumption of innocence and cause miscarriage of justice in the Indonesian criminal justice system are the domination of positivist views which ignoring the values of justice, abuse of power by law enforcement officials and the existence of judicial mafia practices in Indonesia.

REFERENCES

1. Luhut Pangribuan. *Lay Judge Dan Hakim Ad hoc suatu stidu teoritis mengenai sistem peradilan pidana Indonesia..2009* UI Press dan Papas sinar sinanti. Jakarta
2. Marc weber Tobias R David Peterson, *Pre-Trial Criminal Procedure, A Survey Of Constitutional Right*. Charles Publiced
3. Mien Rukmini, *Perlindungan HAM Melalui Asas Praduga Tidak Bersalah dan Asas Persamaan Dalam Hukum Pada Sistem Peradilan Pidana Di Indonesia.* .2003, Alumni, Bandung.
4. Muladi, *Restoring The Integrity of the criminal justice system. Eleminating corruption in criminal justice system*, Makalah yang disampaikan dalam UNAFEI.
5. OC Kaligis, *Perlindungan Hukum Atas Hak Asasi Tersangka, Terdakwa, Terpidana Dalam Sistem Peradilan Pidana*. 2003, Alumni Bandung.
6. Walker, Clive. *Miscarriage Of Justice System In Principle And Practice*, Blackstone press limited. 1999.
7. Yahya Harahap. *Pembahasan Permasalahan dan Penerapan KUHAP penyidikan dan Penuntutan Penyidikan dan Penuntutan*, 2007. Sinar Grafika. Jakarta.
8. Law Number 8 of 1981 on Criminal Procedure Code