

**PERLINDUNGAN HAK TERSANGKA DALAM PERSPEKTIF
ASAS PRESUMPTION OF INNOCENCE : STUDI
KOMPARATIF KUHAP DAN THAILAND CRIMINAL
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JURNAL

**Diajukan Untuk Memenuhi Syarat
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Oleh:

ALFI AQILA NASWA LUBIS
NPM. 2206200562



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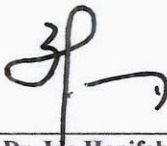
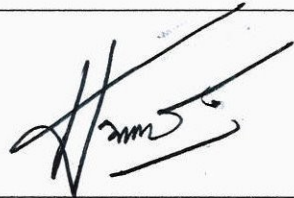
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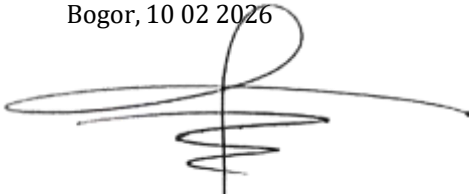
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PROTECTION OF THE RIGHTS OF SUSPECTS FROM THE PERSPECTIVE OF THE PRINCIPLE OF PRESUMPTION OF INNOCENCE: A COMPARATIVE STUDY OF THE KUHAP AND THE CRIMINAL PROCEDURE CODE OF THAILAND

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Abstract. This study examines the protection of suspects' rights from the perspective of the presumption of innocence through a comparative analysis between the Indonesian Criminal Procedure Code (KUHAP) and the Thai Criminal Procedure Code (CPC). This research employs normative legal research methods by analyzing primary and secondary legal materials. The findings indicate that although both legal systems recognize the presumption of innocence as a fundamental principle, differences exist in the mechanisms for protecting suspects' rights and prosecutorial authority. Indonesia emphasizes procedural safeguards through strict state control, while Thailand provides greater opportunities for victim participation in prosecution. Furthermore, the enactment of Law Number 1 of 2023 concerning the Criminal Code strengthens the presumption of innocence as a fundamental principle in Indonesian substantive criminal law. This study concludes that comparative analysis offers important insights for strengthening human rights protection within criminal justice systems.

Keywords: Protection of the Rights of Suspects, Comparative Law, Presumption of Innocence.

I. INTRODUCTION

Law enforcement constitutes a fundamental foundation in creating a just, orderly, and civilized social, national, and state life. In every criminal justice process, the protection of human rights particularly the rights of suspects becomes a highly essential aspect. This is grounded in the basic principle that every individual has equal standing before the law and is entitled to fair treatment. One of the main principles underpinning the respect for suspects' rights is the presumption of innocence, which guarantees that every person suspected or accused of committing a criminal offense must be considered innocent until proven guilty through a lawful and fair judicial process.[1]

The principle of presumption of innocence serves as a crucial pillar in modern criminal justice systems and is recognized and respected in both national and international legal instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, as well as various constitutions and statutory regulations of states. In the Indonesian context, this principle is affirmed in the 1945 Constitution of the Republic of Indonesia and receives normative reinforcement in both substantive criminal law and criminal procedural law. Through Law Number 1 of 2023 concerning the Criminal Code, the presumption of innocence is emphasized as a fundamental principle of national criminal law, while its

procedural implementation is reflected in the Criminal Procedure Code (KUHAP),[2] which serves as the main reference for Indonesia's criminal justice system. KUHAP provides limitations and guarantees for the protection of suspects' rights from the stages of arrest, detention, and examination to the trial process. Such protections include the right not to be immediately presumed guilty, the right to legal counsel, the right to a fair examination, and protection from treatment or actions that degrade human dignity.[3]

On the other hand, the development of globalization and the increasing intensity of international relations present both challenges and opportunities to conduct comparative studies of legal systems in other countries, with the aim of realizing law enforcement that aligns with international standards. Thailand, as one of the countries in Southeast Asia with its own criminal law system, offers an interesting perspective regarding the protection of suspects' rights under its Criminal Procedure Code (CPC). Thailand's Criminal Procedure Code also recognizes the principle of presumption of innocence and regulates suspects' rights within the criminal justice process, although the approaches, legal structures, and norms applied differ from those under Indonesia's KUHAP. Therefore, a comparative study between Indonesia's KUHAP and Thailand's Criminal Procedure Code is necessary to identify similarities and differences, as well as to evaluate the extent to which the protection of suspects' rights can be effectively

implemented within two legal systems shaped by different social, cultural, and historical backgrounds.

The urgency of this comparative study is driven by various current dynamics and issues in the practice of criminal law enforcement in both Indonesia and Thailand. Violations of the presumption of innocence are still frequently found at various stages of criminal case handling, such as the dissemination of suspects' identities through the media before a final and binding court decision, acts of torture during the investigation process, and the excessive use of detention. Similar conditions are also observed in Thailand's legal system, where challenges in implementing the protection of suspects' rights often relate to institutional pressure on law enforcement agencies, limited access to legal assistance, and the influence of local social and cultural systems.

Studying the comparison of the two criminal justice systems is not merely a formal-normative examination of written rules, but also an analysis of the underlying philosophy, practical implementation, and obstacles encountered in practice. It is expected that this comparative study will identify more progressive models for the protection of suspects' rights, as well as provide lessons that can be adapted to strengthen national legal systems, particularly in ensuring and upholding human rights for every individual who comes into contact with the law.[4]

Within the Indonesian legal framework, the Criminal Procedure Code (KUHAP) was designed as an instrument of criminal procedural law reform that emphasizes a balance between the state's interest in law enforcement and the protection of suspects' rights. This balance is reflected in the limitation of law enforcement authority and the strengthening of control mechanisms, such as the role of the *Judge Commissioner*, the availability of pretrial proceedings (*praperadilan*), and the suspect's right to challenge alleged violations of their rights. However, efforts to protect suspects' rights often encounter practical challenges, including limited implementation, low awareness among law enforcement officials, and a prevailing legal culture that tends to punish first rather than uphold the principle of the presumption of innocence. It should be emphasized that Indonesia's criminal procedural law has recently undergone reform with the enactment of Law Number 20 of 2025 on the Criminal Procedure Code, which now serves as the prevailing positive law replacing previous regulations. Although this law normatively strengthens the protection of suspects' rights, its effectiveness in practice still requires further assessment. A similar condition can be observed in Thailand's legal system, where the Criminal Procedure Code (CPC) normatively regulates suspects' rights, yet its implementation continues to face various challenges, particularly with regard to access to legal counsel, detention time limits, and the attitudes of law enforcement authorities toward suspects from minority or vulnerable groups.

The comparative approach reflected in this study is intended to analyze, examine, and evaluate the effectiveness of protecting suspects' rights based on the principle of presumption of innocence under both Indonesia's KUHAP

and Thailand's Criminal Procedure Code. This research systematically elaborates the normative framework for the protection of suspects' rights, practical implementation, and the factors influencing such protection in each country. Furthermore, the articulation of the similarities and differences identified is expected to provide constructive recommendations for improving the criminal justice systems in both Indonesia and Thailand.

This study is also expected to contribute to the development of legal scholarship, particularly in the fields of criminal procedural law and human rights, while offering practical insights for law enforcement officers, academics, and policymakers. On a broader level, the protection of suspects' rights is not merely a technical legal issue, but is closely related to efforts to realize a rule of law state that upholds the principles of justice, democracy, and respect for human dignity. With the increasing openness brought about by globalization and international interaction, comparative legal system studies such as this become a strategic step toward creating a humane criminal justice system that is responsive to universal human rights values.

At this point, it is clear that the protection of suspects' rights from the perspective of the presumption of innocence principle is an indispensable requirement in modern criminal justice systems. The comparative effort between Indonesia's KUHAP and Thailand's Criminal Procedure Code represents a progressive step toward identifying an ideal formulation for the protection of suspects' rights, both normatively and practically. Moreover, the existence and quality of protection for suspects' rights serve as one of the main benchmarks of the credibility of a criminal justice system, as well as a reflection of the state's commitment to respecting and upholding human rights and the principle of justice in law enforcement.

II. RESEARCH METHODS

Research methods can be understood as systematic ways to identify research topics and formulate appropriate research titles, serving as a foundational guide for the direction of a study. (Sihombing and Hadita, 2022) Essentially, research methodology is a body of knowledge that regulates how legal research is conducted systematically, providing guidance for researchers in studying, analyzing, and understanding the object of research. This study employs a normative legal research approach, which focuses on literature review and the examination of primary and secondary legal sources. The research positions law as a system of norms by discussing doctrines and principles within legal science. Normative legal research emphasizes the inventory of positive law, legal principles and doctrines, legal reasoning in concrete cases, legal systematics, the degree of legal synchronization, comparative law, and legal history. The data sources used in this study consist of secondary data derived from official documents, books, and research reports.[5]

III. RESULTS AND DISCUSSION

3.1 Protection of Suspects' Rights under the Principle of Presumption of Innocence According to the Indonesian Criminal Procedure Code (KUHAP).

The protection of suspects' rights under the principle of presumption of innocence in the Indonesian Criminal Procedure Code (KUHAP) constitutes a fundamental foundation of Indonesia's criminal justice system, aimed at upholding justice and respecting human rights. This principle, commonly known as the presumption of innocence, affirms that every person who is suspected, arrested, detained, prosecuted, or brought before a court must be considered innocent until a court decision declaring their guilt has obtained permanent legal force.[6]

In the context of criminal procedural law, the concept and explanation of the presumption of innocence can be found in statutory regulations, particularly Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), General Explanation point 3 letter (c), which remains in force and has not yet been replaced by a new Criminal Procedure Code.

In the development of national criminal law, the principle of presumption of innocence does not solely derive from KUHAP, but has also been explicitly reaffirmed in substantive criminal law through Law Number 1 of 2023 concerning the Criminal Code. Article 3 letter (c) of Law No. 1 of 2023 stipulates that every person who is suspected, arrested, detained, prosecuted, and/or tried must be presumed innocent before a court decision with permanent legal force is rendered. This provision strengthens the status of the presumption of innocence as a fundamental principle binding all stages of criminal proceedings in Indonesia.[7]

In its implementation, KUHAP provides comprehensive protection to ensure that suspects' rights are safeguarded throughout the legal process. Such protections include, among others, the right to prompt examination, the right to legal counsel, the right to provide statements freely without coercion, the right to be informed of the charges against them, and the right to be treated fairly without arbitrary actions by law enforcement authorities. Articles 50 to 68 of KUHAP specifically regulate these rights.[8]

The previous Criminal Procedure Code (KUHAP) also guaranteed that during the investigative process, investigators were prohibited from using physical coercion, violence, or torture, as reflected in the existence of pretrial control mechanisms (*praperadilan*) designed to ensure that law enforcement actions remain within the boundaries of law and human rights. However, with the enactment of the new Criminal Procedure Code under Law Number 20 of 2025, this protective approach has undergone a significant paradigm shift from a formal-procedural orientation toward the strengthening of principled and substantive protection of suspects' rights. The new Criminal Procedure Code positions the principle of *presumption of innocence* as the primary controlling norm governing the actions of law enforcement authorities.

This is explicitly reflected in Article 91 of the Code, which stipulates that, in designating a suspect, investigators are prohibited from engaging in any conduct that gives rise to a

presumption of guilt, and that a suspect must not be treated as if they are guilty prior to a final and binding court judgment. This provision demonstrates that the orientation of law enforcement under the new Criminal Procedure Code no longer merely emphasizes procedural speed, but also seeks to ensure the protection of suspects' human rights through the consistent application of the principle of *due process of law*. The application of the presumption of innocence also entails protection of the suspect's dignity and reputation. Prior to a final and binding court decision, law enforcement officers, the public, and the mass media are prohibited from treating suspects as if they were already guilty. Violations of this principle such as excessive publicity, disclosure of a suspect's identity or image, or engaging in "trial by the press" may cause significant moral and material harm to suspects and their families. Therefore, the protection of privacy forms an integral part of suspect protection under the presumption of innocence.

Furthermore, KUHAP grants suspects the right to compensation and rehabilitation if they are ultimately declared not guilty. This right serves as a guarantee against losses resulting from detention, prosecution, or other procedures that are later proven unfounded. The primary objective of this regulation is to ensure that the legal process does not merely aim to punish, but also to provide justice and safeguard human rights for every individual without exception.[9]

In practical criminal justice proceedings, the presumption of innocence also functions as a moral guideline for judges, prosecutors, and investigators in exercising their duties and authority. Judges are required to maintain objectivity, assess evidence carefully, and remain uninfluenced by public opinion. Investigators are prohibited from pursuing confessions alone and must instead secure sufficient evidence before determining a person's status as a suspect. Criminal punishment must not be based on prejudice, but on legally tested facts before a court. Investigators are obliged to continuously respect suspects' rights, including the right to remain silent and the right against self-incrimination.

The protection of suspects' rights under KUHAP is further reinforced by other regulations, such as Law Number 48 of 2009 on Judicial Power and Law Number 39 of 1999 on Human Rights. Article 8 paragraph (1) of the Judicial Power Law reiterates that every person who is suspected, [3] arrested, detained, prosecuted, or brought before a court must be presumed innocent until a court decision declaring their guilt has obtained permanent legal force. This provision strengthens KUHAP's position as a human rights protection instrument within the national criminal justice system.[10]

Nevertheless, the practical application of the presumption of innocence faces challenges, including power interference, media pressure, and insufficient understanding of human rights principles among law enforcement officers. These challenges may result in violations such as torture during investigations, disproportionate detention, or restrictions on access to legal assistance. To address this, KUHAP provides pretrial mechanisms to review the legality of arrests, detentions, termination of investigations, and prosecutions. Pretrial institutions function as safeguards to prevent suspects

from becoming victims of arbitrary law enforcement actions.[11]

Technological developments and the current era of disruption also necessitate adaptation and reinforcement of the presumption of innocence. Social media pressure, rapid information dissemination, and societal tendencies to judge cases prior to court decisions pose real challenges to protecting suspects' rights. Legislative improvements and public as well as institutional education must be strengthened to ensure consistent implementation of this principle.

Ultimately, the protection of suspects' rights under the presumption of innocence in KUHP is not only crucial for suspects individually, but also for society at large. It functions as a system of checks and balances to ensure equilibrium between the state's interest in law enforcement and the protection of individual human rights. Its broader consequence is the enhancement of public trust in a clean, professional, and just judiciary.

3.2 Protection of Suspects' Rights under the Principle of Presumption of Innocence According to the Thai Criminal Procedure Code.

The protection of suspects' rights under the principle of presumption of innocence in Thailand's Criminal Procedure Code (CPC) is based on the fundamental principle that every person accused of a criminal offense must be considered innocent until a court decision declares otherwise with permanent legal force. This principle, enshrined in the Constitution of Thailand and reinforced in the CPC, affirms that no individual may be treated as guilty merely because they have been charged, prior to convincing proof before a court.[12]

In practice, the CPC and the Thai Constitution regulate suspects' rights in detail to ensure effective protection within criminal proceedings. These rights include the right to a fair and speedy trial without undue delay, the right to legal counsel, the right to clear information regarding the charges faced, and the right against self-incrimination. Furthermore, law enforcement officers and state authorities are prohibited from treating suspects as if they were already proven guilty prior to a final court judgment.

The presumption of innocence also imposes an obligation on public prosecutors to prove the suspect's guilt beyond reasonable doubt. In other words, the burden of proof rests entirely with the prosecution, while suspects are not required to prove their innocence. This serves as a balancing mechanism given the extensive state resources available to prosecutorial authorities.[13]

The Thai CPC provides additional safeguards concerning the duration and quality of investigations and trials. Investigations must be conducted promptly, continuously, and fairly to prevent unjustified delays or procedural deviations. Detention must be based on strong legal grounds and limited in duration, while suspects are entitled to apply for bail in accordance with the law. These provisions aim to prevent abuse of authority that may unjustifiably restrict suspects' liberty.[14]

Regarding treatment, the Thai CPC requires that suspects be treated with dignity and respect for their fundamental

human rights throughout the proceedings. Acts of violence, torture, or degrading treatment are strictly prohibited and may result in the exclusion of evidence or sanctions against offending officials. Protection of privacy and restrictions on prejudicial publicity prior to judicial decisions also form part of respect for the presumption of innocence.

Despite these safeguards, implementation challenges remain in Thailand, particularly concerning early access to legal counsel and limited awareness of suspects' rights among law enforcement officers. Cultural differences and a more inquisitorial legal tradition further influence the application of this principle, necessitating institutional capacity-building to ensure consistent protection.

Overall, the presumption of innocence under the Thai CPC operates not merely as a formal legal norm, but as a principle supported by rights and mechanisms ensuring fair, timely, and humane criminal proceedings. This framework reflects Thailand's effort to balance effective law enforcement with respect for human rights.

3.3 Comparative Study of the Protection of Suspects' Rights under the Principle of Presumption of Innocence in Indonesia and Thailand

A comparison of the protection of suspects' rights under the principle of presumption of innocence in Indonesia and Thailand reveals significant similarities and differences, both normatively and in practical implementation. This comparative study is essential for understanding how the principle is applied within two legal systems shaped by distinct social, cultural, and institutional contexts, as well as for identifying opportunities for reform.[15]

The principle of *presumption of innocence* is recognized as a fundamental principle in the criminal procedural law systems of both Indonesia and Thailand. This principle affirms that any person designated as a suspect must be treated as innocent until a court decision with final and binding legal force is rendered. Such recognition is reflected in the constitutional provisions and statutory regulations of each country as a manifestation of respect for human rights within the criminal justice process.(Syarif,2024)

The regulation of the protection of suspects' rights within the Indonesian legal system is comprehensively reflected in the Criminal Procedure Code (KUHP). These guarantees include the right to prompt examination, the right to legal counsel from the earliest stage of the criminal process, the right not to be compelled to provide self-incriminating statements, the right to fair and humane treatment, as well as the right to compensation and rehabilitation if the suspect is declared not guilty. The pretrial mechanism (*praperadilan*) also functions as a form of judicial control aimed at preventing abuses of authority by law enforcement officials.

However, notable differences emerge in the mechanisms of protection and access to rights. Indonesia's KUHP provides comprehensive procedural safeguards, including prompt examination, access to legal counsel, the right against self-incrimination, protection from torture, and the right to compensation if acquitted. It also establishes pretrial

mechanisms to control potential abuse of authority by law enforcement.[7]

The regulation of the principle of *presumption of innocence* within Thailand's legal system is governed by the Criminal Procedure Code (CPC) through a different approach. The protection of suspects' rights is also normatively recognized, including the right to defense and fair treatment. The fundamental distinction lies in the criminal prosecution mechanism, which is not solely vested in the public prosecutor but also allows for victim participation through *private prosecution* and *joint prosecution*. While this prosecutorial model strengthens the position of victims within the criminal justice process, it simultaneously has the potential to affect the position of suspects due to increased psychological pressure and heightened subjectivity during trial proceedings.

The burden of proof in the legal systems of both Indonesia and Thailand is equally placed on the public prosecutor under the standard of *beyond reasonable doubt*. The obligation to establish guilt rests entirely with the prosecution, while the suspect is not burdened with proving their innocence. This arrangement demonstrates that the principle of *presumption of innocence* has been normatively and consistently applied in both legal systems.

The implementation of the principle of *presumption of innocence* in Indonesia and Thailand continues to face various challenges. In Indonesia's criminal justice system, the practice of disseminating suspects' identities by the mass media and actions by law enforcement officials that do not fully respect suspects' rights are still frequently observed. Such conditions may give rise to *trial by the media*, despite the existence of pretrial mechanisms under the Criminal Procedure Code as a means of control. Similar obstacles are also found in Thailand's criminal justice practice, particularly with regard to limited early access to legal counsel and the influence of an inquisitorial approach during the investigative process.

The protection of suspects' privacy and the restriction on the publication of accusations prior to a final and binding court judgment constitute crucial issues in both legal systems. Normative provisions in this regard have not yet been fully observed in law enforcement practice, thereby potentially diminishing the substantive meaning of the principle of *presumption of innocence*.

Comparative analysis shows that Indonesia's legal system places greater emphasis on procedural protection through limitations on law enforcement authority and judicial oversight mechanisms. In contrast, Thailand's legal system highlights participatory justice by involving victims in the criminal prosecution process. These differing approaches result in distinct characteristics in the protection of suspects' rights, both in terms of institutional structure and the dynamics of judicial proceedings.

The protection of suspects' rights under the principle of *presumption of innocence* in Indonesia and Thailand has been normatively well recognized; however, it continues to face serious challenges at the implementation stage. Strengthening respect for the presumption of innocence requires enhanced professionalism among law enforcement officials, effective oversight mechanisms, and the development of a legal culture

that recognizes suspects as legal subjects possessing inherent dignity and human rights that must be protected.

IV. CONCLUSIONS

The protection of suspects' rights under the principle of *presumption of innocence* is normatively recognized as a fundamental principle in the criminal justice systems of both Indonesia and Thailand. Philosophically, criminal procedure law is not designed as a repressive instrument merely to process reported persons, suspects, defendants, or convicts, but rather as a mechanism to limit state power and prevent arbitrariness by law enforcement authorities. Therefore, the principles of criminal procedure must be formulated in a written, clear, firm, and formal manner to ensure legal certainty, accountability of authority, and the protection of human rights, all of which inherently rest upon the *presumption of innocence* as a core prerequisite of *due process of law*. Indonesia, through the Criminal Procedure Code (KUHAP), emphasizes procedural safeguards and judicial oversight over the exercise of law enforcement powers, while Thailand, through its Criminal Procedure Code, adopts a participatory justice approach by allowing greater involvement of victims in the prosecution process. These differences influence the position and experience of suspects within criminal proceedings, although both legal systems similarly place the burden of proof entirely on the public prosecutor under the standard of *beyond reasonable doubt*. In practice, however, the implementation of the *presumption of innocence* in both systems continues to face challenges, particularly in relation to media pressure, access to legal counsel, and the legal culture of law enforcement authorities, indicating that stronger protection of suspects' rights requires consistent law enforcement and enhanced professionalism within judicial institutions.

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