

The Application of Article 56 Paragraph (1) of the Indonesian Criminal Procedure Code (KUHAP) from a Human Rights Perspective in Relation to the Integrated Criminal Justice System in Indonesia

Sepranadja

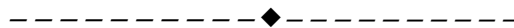
Sekolah Tinggi Hukum Pasundan, Sukabumi, Indonesia

Email: sepranadja@gmail.com

Abstract

Law enforcement aims to promote societal order and legal certainty by clearly defining the roles, responsibilities, and authorities of the institutions tasked with upholding the law, in accordance with their respective jurisdictions. This process extends beyond the mere fulfillment of duties; it involves the comprehensive enforcement of legal norms. The law serves as a mechanism for safeguarding human interests, and to protect these interests effectively, it must be applied equitably. Upholding basic human rights is imperative, and no entity, including the state, has the right to infringe upon an individual's fundamental rights. The adoption of the Miranda Rule/Miranda Principles into Indonesian positive law—through the enactment of Law Number 39 of 1999 on Human Rights and Law Number 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights—has strengthened the rights of suspects and defendants, particularly their right to legal assistance and defense. The Miranda Rule/Miranda Principles are vital to the criminal justice system, particularly in protecting the rights of suspects during interrogation. As a legal state, Indonesia upholds these principles, which are integrated into various judicial laws. These principles emphasize the necessity for law enforcement officers to prioritize the rights of suspects and defendants. Providing legal assistance to suspects or defendants is a fundamental aspect of the criminal justice system, and it is expected that all law enforcement officers conduct their duties in a coordinated manner, adhering to the principles of this system. The presence of legal counsel, as mandated by Article 56 of the Indonesian Criminal Procedure Code (KUHAP), is essential; neglecting this requirement can result in the nullification of the proceedings' outcomes, including investigations, prosecutions, or trials.

Keywords: *Application of Article 56 Paragraph (1), Human Rights, Integrated Criminal Justice System.*



A. INTRODUCTION

Article 1, Paragraph 3 of the 1945 Constitution of Indonesia establishes Indonesia as a legal state (Rechtsstaat) rather than a state governed by sheer power (Machtstaat). This constitutional principle mandates that both government actions and citizens' conduct must be governed by laws and regulations. The intention behind this framework is to harmonize and coordinate societal interests, thereby preventing disruptions to public order.

The law is characterized by its binding and coercive nature, ensuring its effective operation within society. This characteristic is essential for providing a sense of security, fostering an orderly society, and promoting general welfare by

safeguarding all societal interests under the rule of law. As Satjipto Rahardjo articulated, the law exists for the benefit of humanity, not vice versa. Law is a manifestation of human creativity, shaped by experiences and events, and reflects the values and norms inherent in society. It serves as a guideline for human behavior, and thus, it is imperative that the law is designed to serve humanity optimally to achieve order, one of its core objectives. Mochtar Kusumaatmadja further posits that the law's purpose is to establish order and justice.

Law functions as a system of norms, which are prescriptive statements emphasizing the "ought to be" or *das sollen* aspect, including regulations that prescribe proper conduct. Norms are products of intentional human endeavor, and laws containing general rules act as guidelines for individual behavior within society.

The role and existence of law are fundamentally the manifestation and goal of establishing a state, namely creating conditions that promote welfare and security for the entire society. This is one concept within a welfare state, where the government actively intervenes in providing welfare for all its people. Furthermore, Satjipto stated that law has three functions: the creation of norms, the resolution of disputes, and ensuring the continuity of societal life, especially concerning societal changes.

A legal state is significantly influenced by the legal framework that governs it. Lawrence Meir Friedman identifies that a legal system comprises three fundamental elements: the legal structure, legal substance, and legal culture. This system embodies a harmonious integration of primary rules, including customary norms, with secondary rules that define the criteria for the validity and application of these norms.

Juristically and in practice, the subsystems of the Criminal Justice System (CJS), which are the main instruments of law enforcement, do not operate under a unified judicial authority. The police and the public prosecutor's office are fundamental pillars in the investigation and prosecution functions, while correctional institutions handle the execution of sentences under government control. Constitutionally, these three bodies, which perform judicial functions, are executive organs and fall under executive power. However, if judicial power is constitutionally recognized as independent, then the subsystems of judicial power in criminal law enforcement should ideally operate under a unified judicial authority.

Muladi posits that the criminal justice system operates as a judicial network that employs criminal law as its main tool, encompassing substantive criminal law, procedural criminal law, and the enforcement of penal sanctions. The primary objective of implementing law enforcement within this system is to bolster societal order and legal certainty. This objective is achieved by methodically structuring the roles, responsibilities, and powers of law enforcement agencies according to their specific jurisdictions, all within a cooperative framework that supports these overarching goals.

The complexity of law enforcement issues, when viewed from various perspectives, suggests that law enforcement can be influenced by multiple factors. As a system, effective law enforcement occurs when there is harmony between the values embodied in legal rules or regulations and the behavior of individuals as enforcers.

Efforts in law enforcement are not merely about fulfilling obligations within the scope of duties and functions, but they also involve the law enforcement process itself. As Lawrence M. Friedman mentioned, in law enforcement, this can be seen from the elements that influence whether the law operates effectively, including:

1. Legal Structure

The legal structure encompasses all legal institutions, including law-making bodies, law enforcement agencies, and judicial authorities.

2. Legal Substance

Legal substance refers to all regulations or legal products created and produced by the legal structure itself, which can be in the form of written or unwritten laws.

3. Legal Culture

Legal culture comprises the attitudes, behaviors, and customs of people that shape the social force in society, either to comply with or to violate the law. A critical pillar of the legal system is legal awareness. The emergence of legal awareness can lead to a society that has an attitude of compliance or obedience to existing laws.

The three essential components aim to ensure that the law operates effectively and efficiently within the scope and authority granted to enforcement institutions by legislation, which derives its legitimacy from the government and is enacted by legislative bodies responsible for drafting and ratifying these laws.

In Indonesia, the criminal procedure law is codified in Law No. 8 of 1981, known as the Criminal Procedure Code (KUHAP), which serves as the cornerstone of the criminal justice process. This code establishes a framework for legal certainty and justice, thereby providing legal protection to the public. The criminal procedure law encompasses several key principles essential for the administration of criminal justice, including the principles of a speedy trial, simplicity, and low cost; the accusatorial principle; the principle of public trial; the presumption of innocence; the right to legal aid; and the principle of equal treatment before the judiciary.

In the context of law enforcement, the presence of legal advisors (Advocates) is a significant measure by the government to protect the public, particularly those facing legal challenges, as outlined in the Indonesian Advocates Law, Law No. 18 of 2003. Article 1, paragraph 1, defines an advocate as an individual providing legal services both in and out of court, meeting the criteria set forth in this law. Advocates play a critical role as a free, independent, and responsible profession, functioning alongside the judiciary and other law enforcement agencies such as the police and the prosecutor's office. By offering legal services, advocates fulfill their duty to uphold justice for those seeking it. Article 22, paragraph (1) of Law No. 18 of 2003 on Advocates states that advocates are required to provide legal assistance free of charge to those unable to afford it. As a vital part of the justice system, advocates serve as one of the pillars supporting the rule of law and protecting human rights.

Law functions as a tool for social engineering, providing necessary protection and legal safeguards to prevent the abuse of power by law enforcement officials. As

Sudikno Mertokusumo notes, the law's primary purpose is to protect human interests. To effectively safeguard these interests, the law must be implemented and enforced properly. Although law enforcement typically proceeds smoothly, issues can arise when legal violations occur, necessitating the enforcement of the laws that have been violated. The three fundamental objectives of the law are legal certainty (Rechtssicherheit), utility (Zweckmäßigkeit), and justice (Gerechtigkeit).

Conceptually, the essence of law enforcement is to align the values enshrined in legal norms with the actions and behaviors that reflect these values, thereby fostering and maintaining peaceful social interactions. This philosophical framework requires concrete elaboration to be effectively applied.

In the domain of legal aid, the presence of legal institutions, particularly legislation, is crucial. Legislation establishes legal norms that define and guarantee the parameters of law enforcement, thus providing legal protection. Specifically, legal provisions ensuring protection in the provision of legal aid, as stipulated in the Criminal Procedure Code (KUHP), elevate defendants and suspects to equal legal standing, as mandated by Law No. 4 of 2004 on Judicial Authority. Articles 37 to 39 of this law confirm that every individual involved in legal proceedings is entitled to legal aid through an advocate. Advocates are required to provide legal assistance upon request, thereby upholding law and justice.

However, the objectives of the law are often compromised due to the actions of law enforcement officers who do not comply with the regulations outlined in the KUHP, frequently neglecting the rights of suspects or defendants under the Miranda Rule (Miranda Principle). This principle encompasses the constitutional rights of suspects or defendants, including the right to remain silent and the right to legal counsel during criminal proceedings, from the investigation stage through to the trial.

According to Article 56, paragraph (1) of the KUHP, these rights must be protected to ensure a fair trial. Despite this, suspects and defendants, often viewed as the weaker parties in the criminal justice system, do not always receive these rights, highlighting a critical area for improvement in the enforcement of justice, which states:

In the case where a suspect or defendant is accused of committing a crime punishable by the death penalty or a sentence of fifteen years or more, or for those who are indigent and facing a sentence of five years or more, who do not have their own legal counsel, the official concerned at all levels of examination in the judicial process is obligated to appoint legal counsel for them.

The explanation of the provisions in Article 56, paragraph (1) of the KUHP states:

In accordance with the principle of justice that must be carried out in a simple, fast, and low-cost manner, and considering that those threatened with a sentence of less than five years are not subjected to detention except for crimes as stipulated in Article 21, paragraph (4), letter b, the appointment of legal counsel for those threatened with a sentence of five years or more, but less than fifteen years, shall be adjusted to the

availability and development of legal counsel in that area.

The Miranda Rule (Miranda Principle) represents a constitutional right that is widely acknowledged in most legal states, including Indonesia. As a legal state, Indonesia fundamentally respects this principle, as enshrined in its positive law. Article 28D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that every individual is entitled to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. This constitutional guarantee ensures that the state provides these protections and legal certainties to all citizens, irrespective of race, religion, or social status, thereby ensuring equitable treatment for all, including those who may lack access to justice.

The implementation of the Miranda Rule (Miranda Principle) is integrated into Indonesia's Criminal Procedure Code (KUHAP). However, in practice, there are occasions where law enforcement officials fail to adhere to this principle, leading to the infringement of the rights of suspects or defendants, which results in intangible harm. Since the Miranda Rule (Miranda Principle) is a universally recognized constitutional right, any failure to comply with it represents a violation of human rights principles.

Given these issues, this research aims to examine the application of Article 56, paragraph (1) of the KUHAP from a human rights perspective, specifically concerning the Integrated Criminal Justice System in Indonesia. This analysis seeks to assess the effectiveness of the Miranda Rule (Miranda Principle) and evaluate how well it aligns with the broader objectives of promoting justice and protecting human rights within the Indonesian legal framework.

B. METHOD

This study is characterized by a descriptive-analytical research design, wherein facts are presented through data relevant to the issues under investigation. The methodological approach adopted is normative-juridical, which focuses on analyzing existing laws and regulations. The research is conducted in two phases: initially, library research, which entails gathering data from book references and other literary sources; and subsequently, field research, aimed at collecting empirical data from direct observations and interactions. The techniques utilized for data collection are threefold: documentary analysis, interviews, and observations: first, document study (collecting qualitative data by reviewing and analyzing documents); second, interviews; and third, observations. The tools for data collection include both field data and library data. The data analysis uses a qualitative juridical method, which means the analysis is conducted without using statistical formulas.

C. RESULTS AND DISCUSSION

The principle of state administration grounded in law indicates that all actions undertaken by state officials must be rooted in existing legal frameworks. This principle dictates that every action within the sphere of state administration must adhere to established and collectively agreed-upon rules, often referred to as the

"rules of the game." This concept is consistent with A.V. Dicey's articulation of the rule of law, which asserts that a state should be governed by laws rather than by the arbitrary decisions of individuals. Dicey also outlined three fundamental characteristics of the rule of law, which are essential for ensuring legal governance and accountability:

1. Supremacy of Law: This means there should be no arbitrariness, and individuals can only be punished if they breach the law.
2. Equality Before the Law: This principle ensures that both ordinary citizens and officials are equal under the law.
3. Protection of Human Rights: This protection is guaranteed by laws and judicial decisions.

As a governing body, the state must consistently provide services to its citizens to achieve justice, order, and welfare. If citizens face injustice, arbitrariness, and prolonged suffering from state officials or fellow citizens, these issues need to be addressed through legal and political channels. As mentioned above, the state guarantees legal aid for every citizen facing legal issues, explicitly stated in the constitution and laws. Linguistically, the elements of the concept of protection share similar meanings, such as:

1. The element of protective action
2. The element of those providing protection
3. The element of the method of protection

According to Sudikno Mertokusumo, the law functions as a mechanism for safeguarding human interests. To ensure the protection of these interests, it is crucial that the law is implemented fairly. Although law enforcement can generally proceed smoothly and peacefully, violations can still occur.

Legal aid provides essential support to individuals who cannot afford legal services, specifically offering free legal assistance to those in financial need. The protection of human rights, including the rights of suspects, is enshrined in the 1945 Constitution of Indonesia and is further supported by national legislation. Initially, the 1945 Constitution offered limited protections for human rights, but subsequent amendments introduced a dedicated chapter on human rights. The enactment of Law No. 39 of 1999 on Human Rights and Law No. 26 on Human Rights Courts has strengthened Indonesia's legal framework for human rights protection.

Human rights are fundamental, universally recognized, and inherent to all individuals. Law No. 39 of 1999 on Human Rights defines these rights as intrinsic to every person. A.V. Dicey's concept of the rule of law includes the principle of equality before the law, which aligns with the principles of human rights as stated in Article 7 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Article 56 of the Criminal Procedure Code (KUHAP) emphasizes the right of suspects or defendants to legal representation, especially if they are accused of crimes punishable by death, a sentence of 15 years or more, or if they cannot afford legal counsel and face a sentence of 5 years or more. In such cases, judicial authorities are

required to appoint legal counsel. Normatively, the provisions of Article 56 of the KUHAP present several legal challenges that need to be addressed to ensure comprehensive legal protection, including:

1. Every suspect or defendant has the right to be accompanied by legal counsel at all stages of the judicial process. This right aligns with the "Declaration of Human Rights," which asserts that the presence of legal counsel for suspects or defendants is a necessity for individuals. Law enforcement officials who ignore this right contradict human rights values.
2. Law enforcement officials are required to fulfill this right during the judicial process at all stages of examination if the alleged crime carries a potential death penalty or 15 years or more, or for those unable to afford legal counsel facing a sentence of 5 years or more. According to Article 56 of the KUHAP, the presence of legal counsel for suspects is imperative or mandatory, and failure to provide this can result in the examination or investigation being invalid or null and void.
3. Article 56, paragraph (1) of the KUHAP embodies fundamental human rights values and acts as a reference for the application of the Miranda Rule principle in Indonesia. According to this principle, if an investigation, prosecution, or court examination is conducted without the presence of legal counsel for the suspect or defendant, the outcomes of such proceedings are deemed invalid or null and void. This underscores the essential role of legal representation in ensuring the fairness and legality of judicial processes.

In the process of adjudicating criminal cases, the rights of suspects and defendants encompass not only the right to legal aid but also the right to be accompanied by legal counsel during interrogations, the right to receive a fair and impartial judgment from the judiciary, the right to family visits during the investigation and temporary detention periods, among others. These rights are enshrined in Article 28D, paragraph (1) of the 1945 Constitution of Indonesia, which asserts: "Every person shall have the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." Furthermore, Article 18, paragraph (4) of Law No. 39 of 1999 on Human Rights specifies that "every person under examination shall have the right to legal assistance from the time of investigation until a final court decision is reached." The necessity of providing legal counsel to suspects or defendants is also stipulated in Article 54 of Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), which states: "For the sake of defense, a suspect or defendant shall have the right to receive legal assistance from one or more legal counsels, during the time and at every level of examination, according to the procedures established by this law."

Considering these provisions and referring to A.V. Dicey's theory on the characteristics of a legal state, it can be inferred that the state's role is to provide legal protection to its citizens, whether in ordinary circumstances or when they are entangled in legal disputes. As articulated by Machfud MD in Busrizalti (2021), human rights are understood as intrinsic rights inherent in human dignity as creations

of God. These rights are inherent from birth and are not conferred by individuals or the state, meaning that no one, including the state, has the authority to deprive an individual of these fundamental rights. In the context of legal protection for suspects or defendants, international instruments such as Article 7 of the African Charter on Human and Peoples' Rights, Article 8 of the American Convention on Human Rights, and Article 6 of the European Convention on Human Rights, all guarantee the principle of a fair trial, ensuring justice throughout the judicial process from investigation to the final verdict.

Law No. 39 of 1999 on Human Rights emphasizes the importance of investigation over prosecution, and human rights bodies are empowered to investigate allegations of human rights violations. Such violations include any actions not conducted according to the law by law enforcement officials. The process of investigation begins with:

1. Arrest

Human rights violations often occur during arrests and detention processes, as stipulated in Article 11 of Law No. 26 of 2000 on Human Rights Courts.

2. Detention

Compared to the provisions on detention outlined in the *Het Herziene Indonesisch Reglement (HIR)*, the regulations under the Criminal Procedure Code (KUHP) offer more comprehensive protection of human rights. Detention is further addressed in Articles 12 to 17 of Law No. 26 of 2000. However, the KUHP's provisions on detention are not entirely consistent with international conventions ratified by Indonesia. Specifically, Article 9 of the International Covenant on Civil and Political Rights (ICCPR) mandates that a suspect who is arrested must be promptly brought before a judge for a detention hearing. This requirement ensures that the legality of the detention is reviewed promptly, upholding the individual's right to a fair legal process.

3. Search

During searches, people around the targeted location are often disturbed, which indicates a violation of the principle of protecting the tranquility of an individual's residence. Violating this principle (disturbing someone's residence) is considered a serious offense. Article 12 of the Universal Declaration of Human Rights guarantees the right to the inviolability of one's home.

4. Seizure

Seizure constitutes a restriction on human rights concerning property rights. Seizure involves the takeover and control of someone's property, which contradicts fundamental human rights by depriving individuals of their property. The Universal Declaration of Human Rights protects property rights, as stated in Article 17, paragraphs (1) and (2): "Everyone has the right to own property alone as well as in association with others."

A commonly disputed right of suspects is the ability to decide whether or not to respond to questions from investigators, prosecutors, and judges. A common issue

at the investigation stage is whether a suspect is required to answer the investigator's questions. Due to this, it is necessary for suspects or defendants to be accompanied by legal counsel or an advocate.

In the legal process, beginning from the investigation stage, the presence of an advocate or legal counsel is essential. This presence ensures that the investigation is conducted fairly, particularly for suspects who are economically disadvantaged or lack an understanding of the law. The right to legal defense and the accompaniment of legal counsel is fundamental to protecting the interests of suspects throughout the judicial process (advocate) the often neglected during investigations, with suspects sometimes being detained without clear legal reasons and tried and punished without a fair legal process.

Article 56 of the KUHAP emphasizes this point, as reflected in the Supreme Court Decision No. 1565 K/Pid/1991, which :

States that if the conditions for legal representation are not met, such as when the investigator does not appoint or the suspect is not accompanied by legal counsel from the beginning of the investigation, the prosecutor's charges cannot be accepted.

According to Achmad Ali in his book "Menguak Tabir Hukum" (Unveiling the Veil of Law), the purpose of law can be viewed from three perspectives:

1. From the perspective of positive-normative or juridical-dogmatic legal science, where the focus is on legal certainty.
2. From the perspective of legal philosophy, where the focus is on justice.
3. From the perspective of legal sociology, where the focus is on the utility of the law.

Referring to the views expressed by Achmad Ali, one of the purposes of law, when examined from the perspective of positive law, must possess legal certainty. Certainty is an inherent characteristic of the law, particularly concerning written legal norms. Without the element of certainty, the law loses its purpose and cannot effectively serve as a guide for behavior. Legal certainty is frequently emphasized as one of the primary goals of the legal system, ensuring that laws are clear, predictable, and consistently applied.

Legal certainty provides assurance that the law can perform its functions effectively, ensuring that legal certainty acts as a protection provided by legislation to safeguard against arbitrary actions. This means that individuals can obtain what they expect under certain conditions. Without the value of certainty, the law loses its significance; the law, as an instrument, is crucial and intrinsic to every social life. The law is needed to maintain order and harmony in communal life. Without legal regulations, order in society would not be achieved. Therefore, to maintain social order, the law must be upheld.

The Implementation of Article 56 Paragraph (1) of the KUHAP from a Human Rights Perspective in Relation to the Integrated Criminal Justice System in Indonesia

The functioning of law can be observed through three key elements: legal certainty, legal justice, and legal utility. Law must be able to integrate and coordinate societal interests, with the needs of the community prioritized to ensure order and security, thus realizing the law as envisioned by the founders of Indonesia in the 1945 Constitution.

According to Muchsin (as cited in Bambang Slamet Eko Sugistiyoko, 2021), justice is formed by correct thinking, executed fairly and honestly, and with accountability for actions taken. The sense of justice and law must be upheld based on positive law to achieve justice in law, reflecting the societal reality that desires a safe and peaceful community. Justice must be built in accordance with the legal ideals (*Rechtidee*) within a rule of law (*Rechtsstaat*), not a state of power (*Machtstaat*). Law, as a means of protecting human interests, must consider four elements in its enforcement:

1. Legal certainty (*Rechtssicherheit*)
2. Legal utility (*Zweckmassigkeit*)
3. Legal justice (*Gerechtigkeit*)
4. Legal assurance (*Doelmatigkeit*)

Law, as an instrument of social engineering in society, not only functions to maintain order and security but must also provide protection to the community, especially to those needing legal assistance when facing the law. The law must be executed professionally. Legal processes can occur normally, peacefully, and orderly. Violated laws must be upheld through law enforcement, which requires legal certainty. Legal certainty is a justiciable protection against arbitrary actions. Society expects the benefits of legal certainty, as it ensures order, safety, and peace. The public also expects utility in the enforcement of the law.

In the context of applying Article 56, paragraph (1) of the KUHAP, the rights of suspects must always be prioritized and legally protected, including by providing legal representation from legal counsel (advocates). However, the implementation of this provision has not been optimally applied in Indonesia, as there are still instances of law enforcement actions that fail to uphold the law. Law enforcement officers, while working to maintain order and security, must also provide legal protection to suspects or defendants, including safeguarding their rights.

With the adoption of the Miranda Principles into Indonesian positive law, including Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR), Indonesia, as a legal state, is obliged to protect the constitutional rights of its citizens by implementing these universally recognized principles.

The protection of a suspect's constitutional rights under the Miranda Principles includes the examiner's obligation to inform the examinee of their rights before the examination begins. These rights include:

1. The right to remain silent;
2. The right to know that any statement made can be used as evidence in court;
3. The right to be accompanied by legal counsel; and
4. The state will provide legal counsel if the suspect requests it.

Indonesia has incorporated elements of the Miranda Principles into its positive law, as outlined in the KUHAP (Criminal Procedure Code), which includes:

1. Article 54: States that a person has the right to legal assistance for the sake of defense at every stage of the examination process;
2. Article 55: States that a suspect or defendant has the right to choose their own legal counsel.
3. Article 56, Paragraph (1): States that if a suspect or defendant is accused of a crime punishable by the death penalty or a sentence of fifteen years or more, or for those unable to afford legal counsel facing a sentence of fifteen years or more, and who do not have their own legal counsel, the relevant official at all stages of the judicial process is obliged to appoint legal counsel for them;
4. Article 114: States that a person suspected of committing a crime must be informed by the investigator, before the commencement of the examination, of their right to legal assistance or that they are required to be accompanied by legal counsel in their case.

Formally, the incorporation of the Miranda Principles into the KUHAP is clear, but in practice, some law enforcement officers fail to implement these principles. The intent behind Article 56, paragraph (1) of the KUHAP is to ensure a fair examination of suspects or defendants. The presence of legal counsel to support and defend the legal rights of defendants during court proceedings serves as a control mechanism, preventing unlawful actions by law enforcement officers during the judicial process, which could otherwise lead to human rights violations. It also ensures that the examination process is monitored by legal counsel throughout the trial.

The criminal justice system generally refers to the functioning of several law enforcement institutions through a mechanism that includes stages from investigation, prosecution, trial, and the execution of the judge's decision by correctional institutions. The operation of these law enforcement agencies in Indonesia is based on criminal procedural laws, such as Law No. 8 of 1981 on the Criminal Procedure Code (KUHP) and other procedural laws outside of the KUHP.

In Indonesian positive law, the rights of suspects and defendants are regulated not only by Law No. 8 of 1981 on the KUHP but also by Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR), and Law No. 16 of 2011 on Legal Aid. Article 1 (1) of the Legal Aid Law states that Legal Aid is a legal service provided free of charge by Legal Aid Providers to Legal Aid Recipients. Legal Aid Recipients are poor individuals or groups unable to adequately and independently meet their basic rights and facing legal problems. According to SEMA No. 10 of 2010 on the Guidelines for Providing Legal Aid, Article 27 states that those entitled to services from the Legal

Aid Post include individuals unable to afford an advocate's services, especially women, children, and persons with disabilities, in accordance with applicable laws and regulations.

In the criminal justice system, the effectiveness of law enforcement can be seen through the performance of law enforcement officers in carrying out their duties and functions. The criminal justice system is a mechanism within a society to manage crime, aiming to control it within socially acceptable limits. The criminal justice system involves systemic cooperation among its subsystems (Police, Prosecution, Courts, Correctional Institutions, and Advocates), collectively transforming inputs into outputs to achieve the system's goals.

Currently, the implementation of criminal law enforcement in Indonesia does not yet reflect the integrated criminal justice system as described above. This is evident from the lack of synchronization among the subsystems, whether structural, substantial, or cultural.

The functioning of law within the criminal justice system requires cooperation among law enforcement agencies in adhering to the principles of the criminal justice system. Professionalism among the institutions within the criminal justice system must consistently uphold the principles contained in the system, thereby ensuring the realization of the human rights principles, including respect and protection for the rights of suspects or defendants.

Inhibiting Factors in the Implementation of Article 56 Paragraph (1) KUHAP from a Human Rights Perspective in Relation to the Integrated Criminal Justice System in Indonesia

The principle of equality before the law is a manifestation of the rule of law (rechtstaat). The application of this principle requires equal treatment for everyone before the law (gelijkheid van ieder voor de wet). Essentially, the elements inherent in the principle of equality before the law mean equal protection before the law (equal protection under the law) and obtaining equal justice under the law. In practice, the application of the principle of equality before the law as mandated by the constitution has not been fully realized. This is because it is difficult to position the law fairly in a society with different social conditions. Social disparities, whether from political, economic, or legal aspects, are very evident in society.

Legal aid for the poor is an answer to social disparities in accessing justice, so equality before the law as mandated by the constitution can be properly implemented. Legal aid is believed to be one of the means and efforts to achieve a fair trial in the criminal justice process. Achieving the law's goal of creating justice is closely related to the implementation of free legal aid programs provided to the public, especially the underprivileged.

Realizing an honest and fair criminal justice system in the criminal justice process, guided by the principles regulated in Articles 50 to 64 of the KUHAP, includes the rights of suspects or defendants to receive legal aid from legal counsel available at every level of examination and aimed at ensuring quick and equitable

justice for everyone (equality before the law), carried out quickly, inexpensively, and simply.

The benefit of legal aid for suspects or defendants is a subsystem within the integrated criminal justice system. All law enforcement officers conduct law enforcement in an integrated manner and uphold the implementation of the integrated criminal justice system. The existence of legal counsel under Article 56 of the KUHAP is imperative, and ignoring it can result in the invalidity of the results of investigations, prosecutions, or court proceedings, and being legally void. The purpose of enforcing Article 56 KUHAP is to ensure a fair and humane examination. The presence of legal counsel during the investigation acts as a control to prevent arbitrary actions by law enforcement officers.

The application of Article 56, paragraph (1) in the effort to uphold the law is one way to provide legal protection for suspects or defendants and also protect fundamental rights, as stated in the International Covenant on Civil and Political Rights. However, the implementation of this is very difficult due to several obstacles that hinder the implementation or application of Article 56, paragraph (1) KUHAP.

If we refer to the theory presented by Lawrence M. Friedman, one of the principles of the rule of law, which places the law and the provisions of legislation as the basis for every policy and action in the implementation of Article 56, paragraph (1) KUHAP, is legal certainty. Legal certainty for suspects or defendants can be achieved through the approach of the Legal System Theory as proposed by Lawrence M. Friedman, which identifies three core elements in the legal system, namely legal structure, legal substance, and legal culture, which can be further explained as follows:

1. Legal structure
2. Legal substance
3. Legal culture

Legal certainty is the certainty about the law itself. Legal certainty is a product of the law, or more specifically, of legislation. With the advent of the law, comes certainty. Furthermore, Radbruch states that legal certainty must be maintained for the order of a country. Therefore, positive law that regulates the interests of people in society must always be obeyed, even if the positive law is less fair or less achieves the law's goals.

In the context of this research, in the application of Article 56, paragraph (1) of the KUHAP, there are several inhibiting factors, including:

1. Legal Structure

The legal structure is closely related to the enforcers of the laws and regulations within the criminal justice system, including the Police, Prosecution, Courts, Correctional Institutions, and Advocates. There are instances where law enforcement officers do not fulfill their duties and functions according to the legal provisions. In the context of this study, some law enforcement officers fail to respect the rights of suspects or defendants during investigations and examinations, potentially causing harm to these individuals.

2. Legal Substance

The regulations regarding the application of Article 56, paragraph 1 of the KUHAP have been accommodated in various Indonesian laws, from procedural law to implementing regulations.

3. Legal Culture

Legal culture involves societal habits, including a common reluctance to seek legal representation in criminal cases. Many people avoid hiring legal counsel due to the perceived high cost. Additionally, there is a prevalent fear among some community members when dealing with law enforcement officers, affecting them psychologically. However, Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR) provide guarantees for their protection.

Among these three inhibiting factors, law enforcement officers frequently disregard the rights of suspects or defendants in criminal cases. This neglect prevents the effective and efficient implementation of the law, specifically the provisions of Article 56, paragraph (1). The goal of law enforcement within the criminal justice system is to ensure a judicial system that provides certainty, justice, and utility. Additionally, the administration of justice should adhere to the principles of being prompt, affordable, and straightforward.

What are the Legal Consequences of Not Implementing the Provisions of Article 56 Paragraph (1) of the KUHAP at the Investigation and Preliminary Examination Levels (at the Investigator Level)

The position and status of a person before the law are very important in realizing the legal system and the sense of justice in a democratic legal state like Indonesia. As mandated in the provisions of Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "every person has the right to personal, family, honor, dignity, and property protection, as well as the right to security and protection from threats of fear to do something that is a human right," it can be implicitly understood that the state provides protection to every citizen who needs legal assistance as a manifestation of human rights.

In principle, suspects or defendants facing legal proceedings in criminal cases have conflicting legal interests with the state through its law enforcement officers. To protect their rights in these processes, the legal system provides protection through procedural law, one of which is the right of suspects or defendants to be accompanied by legal counsel during the criminal justice process.

The assistance of legal counsel at various stages of the judicial process for suspects or defendants is very important because even though a suspect or defendant's liberty is restricted during the judicial process, they still possess inherent human rights that cannot be disregarded. According to the principle applied in criminal law, a person suspected of committing a crime cannot be considered guilty until a court decision with permanent legal force declares them guilty (presumption of innocence principle). This is mandated in Article 8 paragraph (1) of the Law of the

Republic of Indonesia No. 48 of 2009 on Judicial Power, which states: "Everyone who is suspected, arrested, detained, charged, or brought before a court must be presumed innocent until proven guilty by a court decision with permanent legal force." Similarly, the presumption of innocence is also stipulated in Article 18 paragraph (1) of the Law of the Republic of Indonesia No. 39 of 1999 on Human Rights, which states: "Everyone who is arrested, detained, and charged for allegedly committing a criminal act has the right to be presumed innocent until proven guilty in a court of law and is entitled to all necessary legal guarantees for their defense, in accordance with the provisions of the legislation."

Based on the provisions of these two articles, both under the Judicial Power Law and the Human Rights Law, every person has inherent fundamental rights, which cannot be taken away by others, including the state. In the Human Rights Law, a person's human rights are highly upheld, so a person is entitled to their rights even if they are a suspect or defendant. The law must uphold these rights, hence the principle of the presumption of innocence exists in the law, whereby everyone is equal before the law until it is determined that they are guilty.

The principle of equality before the law is one of the universal human rights principles stated in Article 7 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The principle of equality before the law is a manifestation of the rule of law (*rechtstaat*), and the application of this principle requires equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*). Essentially, the elements inherent in the principle of equality before the law mean equal protection before the law and equal justice under the law. In practice, however, the application of the principle of equality before the law as mandated by the constitution has not been fully realized due to the difficulty of positioning the law fairly in a society with different social conditions. Social disparities, whether in political, economic, or legal aspects, are very evident in society.

Often, the goal of the law in law enforcement is not achieved due to the behavior of law enforcement officers who frequently do not comply with the rules as outlined in the KUHAP, where law enforcement officers often disregard the rights of suspects or defendants. Suspects and defendants often do not receive their rights, such as the right to be accompanied by legal counsel, yet in reality, they are not accompanied by legal counsel at either the investigation or trial stages. Suspects and defendants, as individuals accused of committing criminal acts, are viewed as the weaker party in the criminal justice system. Therefore, to ensure a fair trial in Indonesia, the KUHAP focuses on protecting the rights of suspects and defendants.

Under the Advocate Law, suspects or defendants can use their services, and suspects or defendants, as justice seekers, can use legal counsel services free of charge, as stated in Article 22 paragraph (1) of the Law of the Republic of Indonesia No. 18 of 2003 on Advocates, which reads: "Advocates are obliged to provide legal assistance free of charge to justice seekers who are unable to afford it." Advocates, as one element of the judicial system, are one of the pillars in upholding the rule of law and human

rights.

With the adoption and ratification of the Miranda Rule or Miranda Principles into Indonesian positive law, suspects or defendants should not worry about this because they will be accompanied by legal counsel from the examination stage until a court decision with permanent legal force is obtained. Even if they have not yet obtained or been accompanied by legal counsel, the investigators cannot do much, because in the criminal justice process, an investigator can conduct an investigation of a suspect or defendant after the suspect or defendant is accompanied by legal counsel, and the investigation report is made in the form of an Examination Report (BAP). If the BAP continues to the next stage, the BAP is considered invalid and legally defective.

According to the Miranda Rule or Miranda Principles, the indictment based on the BAP of a suspect who is not accompanied by legal counsel is considered false because the indictment is based on a false BAP of the suspect. Therefore, the indictment is invalid, legally defective, and void. This often happens in practice; the law states what should be, but law enforcement practice does not reflect what should be. This disparity often raises issues that fair law enforcement is often just a discourse without being followed by implementation in the field. Additionally, the regulation of legal substance does not clearly regulate sanctions for law enforcement officers who do not comply with the legislation in law enforcement, such as not informing the suspect or defendant of their right to free legal counsel as mandated in Article 22 paragraph (1) of the Law of the Republic of Indonesia No. 18 of 2003 on Advocates.

The Miranda Rule or Miranda Principles not only address the issue of legal counsel for suspects or defendants but also broadly aim to uphold justice through the fulfillment of basic rights for suspects or defendants.

Although the KUHAP does not regulate the legal consequences for court proceedings that do not fulfill the obligations under Article 56 of the KUHAP, there are some Supreme Court jurisprudence that can be referenced, including:

1. Supreme Court Decision No. 1565 K/Pid/1991 dated September 16, 1993, which essentially states that *"if the investigation requirements are not met, such as the investigator not appointing legal counsel for the suspect from the beginning of the investigation, then the public prosecutor's demands are declared inadmissible"*.
2. Supreme Court Decision No. 545 K/Pid.Sus/2011, which essentially states that *"during the examination, the defendant was not accompanied by legal counsel, while the Examination Report and Statement dated December 15, 2009, were made by an official who did not carry out the actions but by another officer; thus, the Examination Report of the Defendant, the Search Report is invalid and legally defective, so the indictment prepared based on the Examination Report is also invalid and legally defective"*.
3. Supreme Court Decision No. 367 K/Pid/1998 dated May 29, 1998, which essentially states that *"if the defendant is not accompanied by legal counsel at the investigation stage, it is contrary to Article 56 of the KUHAP, so the Investigation Report and the public prosecutor's indictment are void by law, and therefore the public*

prosecutor's demands are inadmissible, even though the court examination was accompanied by legal counsel."

Based on this jurisprudence, it can be concluded that if law enforcement officers do not fulfill their obligation to appoint legal counsel for suspects or defendants as regulated in Article 56 paragraph (1), it can result in the proceedings being void by law or the decision being annulled.

D. CONCLUSION

Implementation of Article 56 Paragraph (1) of the KUHAP from a Human Rights Perspective in Relation to the Integrated Criminal Justice System in Indonesia: This can be seen in the legal objectives themselves. The functioning of the law can be observed through three elements: legal certainty, legal justice, and legal utility. The law must be able to integrate and coordinate societal interests, prioritizing public interest to achieve order and security. The rights of suspects or defendants are constitutional rights, meaning they are protected by law to safeguard and protect human rights.

The Miranda Principles are the implementation of legal provisions that provide protection to suspects or defendants in criminal cases by requiring the presence of legal counsel. The presence of legal counsel is intended to play a controlling role, ensuring that the examination process is free from any improper actions by law enforcement officers during the judicial process, thereby preventing human rights violations. It also serves as a check on the conduct of examinations during court proceedings. In Indonesian positive law, the enforcement of criminal law has not yet reflected the implementation based on an integrated criminal justice system. In the judicial system's operation, there are still law enforcement officers who use authority and power inconsistent with legal provisions, neglecting the rights of suspects or defendants.

Inhibiting Factors in the Implementation of Article 56 Paragraph (1) of the KUHAP from a Human Rights Perspective in Relation to the Integrated Criminal Justice System in Indonesia: The principle of equality before the law is a manifestation of the rule of law (*rechtstaat*). The application of this principle requires equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*). The essence of the principle includes equal protection under the law and equal justice under the law. Implementing Article 56 Paragraph (1) in the effort to uphold the law is a measure to provide legal protection for suspects or defendants and protect fundamental rights, as stated in the International Covenant on Civil and Political Rights. However, achieving this is challenging due to several obstacles, such as law enforcement officers who still exercise authority and power inappropriately, inconsistent with legal provisions. Additionally, some members of the public are reluctant to use legal counsel due to a lack of funds to pay for it. There is also a lack of strict enforcement against law enforcement officers who do not fulfill their duties according to legal provisions.

The objectives of the law are often unmet due to the behavior of law

enforcement officers who frequently do not adhere to the regulations outlined in the KUHAP. Suspects and defendants often do not receive their rights, such as the right to be accompanied by legal counsel. The Miranda Rule or Miranda Principles aim to provide oversight and protection for suspects and defendants during judicial proceedings, ensuring fair trials without infringing on their rights. If violations occur, such as suspects or defendants not being accompanied by legal counsel, the Examination Report (BAP) forming the basis for charges may be declared invalid by law, and court decisions may even be annulled.

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