

## The Principle of Presumption of Innocence in Criminal Law Policy in Indonesia

**Vivin Nurviana**

Independent Researcher

Correspondence: [viviannurmargaret24@gmail.com](mailto:viviannurmargaret24@gmail.com)

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### Abstract

The legal principle of presumption of innocence is a legal principle that gives a person the right as a legal individual to be declared innocent until a court decision has permanent legal force. This legal principle is contained in the *Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 tentang Hukum Acara Pidana* (Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, hereinafter referred to as “*KUHAP*”) and *Undang-Undang Republik Indonesia Nomor 48 Tahun 2009* (Law of the Republic of Indonesia Number 48 of 2009, hereinafter referred to as “*UU No. 48 Tahun 2009*”). However, there are differences in the formulation, for example, in Article 14 Paragraph Two of the International Covenant on Civil Rights and Political Rights of 1966. The principle of presumption of innocence in this international covenant has the formulation “until proven guilty according to law”. The results of the study show that it is clearer that there is a formulation “until a court decision declares the error and obtains permanent legal force” in the *KUHAP* and *UU No. 48 Tahun 2009* compared to the International Covenant on Civil and Political Rights of 1966.

### Keywords:

Principle of Presumption of Innocence; Criminal Law Policy.

### Introduction

The principle of presumption of innocence is the basis of the individualist-liberalist view which has developed from the mid-19th century until now. In the criminal justice system, based on the common law system, this principle is made a requirement for fair and honest practice (due process of law).

This principle is included in the general principles of procedural law. Therefore, it covers the entire dispute process, both in criminal, civil and state administrative cases. However, in its regulation, the legal principles in question are included in the General Explanation of *KUHAP*. As a result, the principle of presumption of innocence is popular in the field of criminal law.

Article 8 paragraph (1) of Law of the *UU No. 48 Tahun 2009* stipulates, “*Setiap orang yang disangka, ditangkap, ditahan, dituntut dan atau dihadapkan di muka sidang pengadilan, wajib dianggap tidak bersalah sampai adanya putusan pengadilan yang menyatakan kesalahannya dan memperoleh kekuatan hukum tetap* (Every person who is suspected, arrested, detained, prosecuted and/or brought before a court, must be deemed innocent until a court decision declares his guilt and obtains permanent legal force)”. Meanwhile, Article 14 Paragraph Two of the 1966 International Covenant on Civil Rights and Political Rights reads, “Every person who is suspected, arrested, detained, charged and/or brought before a court of law, must be considered innocent until proven guilty according to law.”

At the end of the sentence, the 2 (two) legal rules that formulate the principle of presumption of innocence as mentioned above show differences in the use of the phrase. According to Article 8 paragraph (1) of *UU No. 48 Tahun 2009*, “... *wajib dianggap tidak bersalah sampai adanya putusan pengadilan yang menyatakan kesalahannya dan memperoleh kekuatan hukum tetap* (must be considered innocent until a court decision declares his guilt and obtains permanent legal force)”, while Article 14 Paragraph Two of the 1966 International Covenant on Civil and Political Rights stipulates, “... must be considered innocent until proven guilty according to law”.

Based on the differences mentioned above, this article is intended to explain the meaning of the use of the phrases “... must be considered innocent until a court decision declares his guilt and obtains permanent legal force” and “... must be considered innocent until proven guilty according to law.” For this reason, first, this article will discuss the concept of the presumption of innocence. Second, discussing the legal interpretation of the legal principle of presumption of innocence.

### **The Concept of the Principle of Presumption of Innocence**

The legal principle of presumption of innocence is one of the general legal principles that applies to every criminal case procedure. In fact, this legal principle can be applied to all courts in Indonesia. However, because this legal principle is clearly stated in the *KUHAP*, it is commonly involved in criminal cases<sup>1</sup>, with the following formula:

*“Setiap orang yang disangka, ditangkap, ditahan, dituntut dan atau dihadapkan di muka sidang pengadilan, wajib dianggap tidak bersalah sampai adanya putusan pengadilan yang menyatakan kesalahannya dan memperoleh kekuatan hukum tetap (Every person who is suspected, arrested, detained, charged and/or brought before a court hearing, must be considered innocent until a court decision declares his guilt and obtains permanent legal force).”*

Meanwhile, in *UU No. 48 Tahun 2009*, the principle of presumption of innocence is included in Article 8 paragraph (1):

*“Setiap orang yang disangka, ditangkap, ditahan, dituntut, atau dihadapkan di depan pengadilan wajib dianggap tidak bersalah sebelum ada putusan pengadilan yang menyatakan kesalahannya dan telah memperoleh kekuatan hukum tetap (Every person who is suspected, arrested, detained, charged or brought before a court must be deemed innocent until a court decision declares his guilt and has permanent legal force).”*

Regarding the application of the legal principle of presumption of innocence, M. Yahya Harahap explained that suspects must be placed in a human position that has the essence of dignity. The person concerned must be assessed as a subject, not an object. This means that those being examined are humans. On the other hand, the criminal act committed becomes the object of the examination, so that it is towards the fault of the criminal act that the examination is directed. Thus, the suspect must be

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<sup>1</sup> M. Schinggyt Tryan P, Nyoman Serikat P, and Pujijono, “Tinjauan Yuridis Terhadap Pelaksanaan Asas Praduga Tak Bersalah Dalam Proses Peradilan Pidana,” *Diponegoro Law Journal* 5, no. 4 (2016): 5. See also, Moch Choirul Rizal, *Diktat Hukum Acara Pidana* (Kediri: Fakultas Syariah IAIN Kediri, 2021), 6.

considered innocent in accordance with the principle of presumption of innocence until a court decision is obtained which has permanent force.<sup>2</sup>

According to Andi Hamzah, the principle of presumption of innocence or what is also known as the presumption of innocence cannot be interpreted letterlijk (what is written). If this principle is only interpreted that way, then the police's duties will not be able to carry out.<sup>3</sup> This is because the police's perception after the results of the investigation is that they think someone has committed a criminal act. Of course, within the limits set by law, for example, there is sufficient evidence.

### **Examining Editorial Differences in the International Covenant on Civil and Political Rights**

Before there is a court decision that has permanent legal force on a criminal case being examined, the suspect or defendant has the right to be considered innocent. This right is actually not absolute, because it is not a non-derogable right like, for example, the inherent right to life or the right not to be prosecuted for retroactive laws. Although the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945 Constitution of the Republic of Indonesia, hereinafter referred to as "*UUD NRI Tahun 1945*") does not regulate this legal principle, it can be found in the *KUHAP* and *UU No. 48 Tahun 2009*.

The formulation of phrases related to the legal principle of presumption of innocence in the *KUHAP* and *UU No. 48 Tahun 2009* has differences with the formulation in Article 14 of the Second Paragraph of the International Covenant on Civil and Political Rights of 1966. The brief formulation is as follows:

*"Everyone charged with criminal offence shall have the right to be presumed innocent until proved guilty according to law."*

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<sup>2</sup> M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan* (Jakarta: Sinar Grafika, 2015), 134.

<sup>3</sup> Aru, "Asas Praduga Tak Bersalah Tidak Bisa Diartikan Secara Letterlijk," *Hukumonline.Com*, last modified 2006, accessed May 30, 2020, <https://www.hukumonline.com/berita/a/asas-praduga-tak-bersalah-tidak-bisa-diartikan-secara-iletterlijki-ho15745>. See also, Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2011), 14–15.

The above covenant does not state the obligation to assume a person's innocence until it can be proven according to law. The word used is "hukum", not "undang-undang". Apart from that, there is also no confirmation regarding the issue of decisions that have permanent legal force which can be used as a limit to a person's tolerance until they can be said to be guilty.

Regarding proving someone is guilty based on the common law system, it is often stated with the term "proven guilty beyond reasonable doubt". This means that the statement of guilt is based on strong evidence or cannot be doubted. This is clearly different from Indonesia, which adheres to a civil law system which uses the phrase "found guilty on the basis of a decision that has permanent legal force" to justify that the legal subject is guilty according to the law.

In order to avoid these differences in interpretation, the 1966 International Covenant on Civil and Political Rights detailed the scope of legal interpretation of the concept of "the right to be presumed innocent". The matters referred to are divided into 8 (eight) rights, namely: (1) the right to be informed of the type of crime; (2) the right to be given time to prepare a defense and consult with legal advisors; (3) the right to be tried without delay; (4) the right to be tried with the presence of the relevant parties; (5) the right to be provided with legal assistance if the party concerned is deemed incapable; (6) the right to examine and examine witnesses from opponents and related parties; (7) the right to have someone who can translate if necessary; and (8) the right not to be forced to admit his actions or not to make statements that could harm himself.<sup>4</sup> This means that the principle of presumption of innocence begins to apply as long as the suspect or accused has their rights fulfilled as outlined in the covenant above.

Meanwhile, in criminal law policy in Indonesia, provisions regarding decisions having permanent legal force or generally also termed "inkracht van gewijsde", which of course relate to criminal cases, can be found in the explanation of Article 2 paragraph (1) of the *Undang-Undang Republik Indonesia Nomor 22 Tahun 2002 tentang Grasi* (Law of the Republic of Indonesia Number 22 of 2002 concerning

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<sup>4</sup> Aru, "Asas Praduga Tak Bersalah Tidak Bisa Diartikan Secara Letterlijk."

Pardon) as amended by *Undang-Undang Republik Indonesia Nomor 5 Tahun 2010* (Law of the Republic of Indonesia Number 5 of 2010):<sup>5</sup>

“Yang dimaksud dengan “*putusan pengadilan yang telah memperoleh kekuatan hukum tetap*” adalah (What is meant by “a court decision that has obtained permanent legal force” is):

1. *putusan pengadilan tingkat pertama yang tidak diajukan banding atau kasasi dalam waktu yang ditentukan oleh undang-undang tentang hukum acara pidana* (a decision of the court of first instance which is not appealed or cassated within the time specified by the law on criminal procedural law);
2. *putusan pengadilan tingkat banding yang tidak diajukan kasasi dalam waktu yang ditentukan oleh undang-undang tentang hukum acara pidana* (appellate court decisions that are not appealed for cassation within the time specified by the law on criminal procedural law);
3. *putusan kasasi* (cassation decision).”

“Yang dimaksud dengan “*pengadilan*” adalah *pengadilan di lingkungan peradilan umum atau pengadilan di lingkungan peradilan militer yang memutus perkara pidana* (What is meant by “court” is a court within the general justice environment or a court within the military justice environment which decides criminal cases).”

On the other hand, decisions that have permanent legal force include: (1) district court decisions accepted by both parties facing the problem; (2) decisions regarding peace; (3) a *verstek* decision where there is no subsequent filing of a *verzet* or appeal; (4) the high court decision is accepted by both parties and there is no request for cassation; and/or the supreme court's decision in cassation.<sup>6</sup>

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<sup>5</sup> Phalita Gatra, “Konsep Hak Asasi Manusia Yang Digunakan Di Indonesia,” *Hukumonline.Com*, last modified 2019, accessed June 18, 2020, <https://www.hukumonline.com/klinik/a/konsep-hak-asasi-manusia-yang-digunakan-di-indonesia-lt58e0c8234493e>.

<sup>6</sup> Pengadilan Negeri Kuningan, “Eksekusi Putusan Yang Berkekuatan Hukum Tetap (Inkracht),” *Pengadilan Negeri Kuningan*, accessed June 18, 2020, <http://www.pn-kuningan.go.id/hal-eksekusi-putusan-yang-berkekuatan-hukum-tetap-inkracht.html>.

Based on the definition of “court decision that has permanent legal force” above, it is relatively clear and systematic to provide an analysis of the purpose of implementing the principle of presumption of innocence in criminal justice practice in Indonesia. On the other hand, if you look at the brief formulation of the legal principle of presumption of innocence in the 1966 International Covenant on Civil and Political Rights, the potential for differences in interpretation in practice is relatively unavoidable, because it only states “until proven guilty according to law (until proven guilty according to law)” which is detailed later with 8 (eight) rights. This situation actually causes legal uncertainty for the suspect or defendant.

### **Conclusion**

The legal principle of presumption of innocence is a legal principle that gives a person the right as a legal individual to be declared innocent until a court decision has permanent legal force. This legal principle is contained in the *KUHAP* and *UU No. 48 Tahun 2009*.

However, there are differences in the formulation, for example, in Article 14 Paragraph Two of the 1966 International Covenant on Civil and Political Rights. The principle of presumption of innocence in this international covenant has the formulation “until proven guilty according to law”. The results of the study show that it is clearer that there is a formulation “until a court decision declares the error and obtains permanent legal force” in the Criminal Procedure Code and Law no. 48 of 2009 compared to the International Covenant on Civil and Political Rights of 1966.

### **Reference**

- Aru. “Asas Praduga Tak Bersalah Tidak Bisa Diartikan Secara Letterlijk.” *Hukumonline.Com*. Last modified 2006. Accessed May 30, 2020. <https://www.hukumonline.com/berita/a/asas-praduga-tak-bersalah-tidak-bisa-diartikan-secara-iletterlijki-hol15745>.
- Gatra, Phalita. “Konsep Hak Asasi Manusia Yang Digunakan Di Indonesia.” *Hukumonline.Com*. Last modified 2019. Accessed June 18, 2020. <https://www.hukumonline.com/klinik/a/konsep-hak-asasi-manusia-yang->

digunakan-di-indonesia-lt58e0c8234493e.

- Hamzah, Andi. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, 2011.
- Harahap, M. Yahya. *Pembahasan Permasalahan Dan Penerapan KUHAP: Penyidikan Dan Penuntutan*. Jakarta: Sinar Grafika, 2015.
- P, M. Schinggyt Tryan, Nyoman Serikat P, and Pujiyono. "Tinjauan Yuridis Terhadap Pelaksanaan Asas Praduga Tak Bersalah Dalam Proses Peradilan Pidana." *Diponegoro Law Journal* 5, no. 4 (2016).
- Pengadilan Negeri Kuningan. "Eksekusi Putusan Yang Berkekuatan Hukum Tetap (Inkracht)." *Pengadilan Negeri Kuningan*. Accessed June 18, 2020. <http://www.pn-kuningan.go.id/hal-eksekusi-putusan-yang-berkekuatan-hukum-tetap-inkracht.html>.
- Rizal, Moch Choirul. *Diktat Hukum Acara Pidana*. Kediri: Fakultas Syariah IAIN Kediri, 2021.



