



# A STUDY ON THE APPLICATION OF THE PRESUMPTION OF INNOCENCE PRINCIPLE IN THE INVESTIGATION PROCESS WITHIN THE JURISDICTION OF THE KUNINGAN RESORT POLICE

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## Abstract

**Background.** The principle of presumption of innocence, from both a legal and technical investigative standpoint, is the cornerstone of the inquisitorial system. This system views a suspect not merely as an object but as a subject of the investigation, affording them the dignity and respect befitting a human being.

**Objective.** This study aims to examine how the principle of presumption of innocence is applied during the investigative process at the Kuningan Resort Police. It also identifies and analyzes the facilitating and inhibiting factors affecting its implementation.

**Methods.** This research uses a normative juridical method, focusing on legal principles and existing positive law. This approach is primarily an inventory of current legal statutes.

**Findings.** The findings indicate that the Kuningan Resort Police, through the performance of its investigators, has applied the presumption of innocence principle, although not yet optimally. The principle's role in law enforcement is present but requires further improvement.

**Conclusion:** The Criminal Procedure Code (KUHAP) provides a set of rights that law enforcement officials are obligated to respect and protect. The presumption of innocence is the fundamental principle of a fair legal process (*due process of law*). This encompasses at least four key guarantees: (a) protection from arbitrary actions by state officials; (b) the exclusive authority of the court to determine a defendant's guilt; (c) the requirement for open court proceedings; and (d) the provision of full defense rights for suspects and defendants.

**Keywords:** Criminal Procedure Code, Presumption of Innocence



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## INTRODUCTION

### The Evolving Landscape of Crime and Legal Principles in Indonesia

The evolution of crime in Indonesia demonstrates a persistent upward trend in both frequency and severity. Despite ongoing efforts to mitigate and prevent criminal activities, societal deviance from established legal norms remains a significant issue (Santosa, 2010). The

existence of citizens who disregard the law or misinterpret their rights and obligations often leads to legal transgressions. However, it is inappropriate to presume guilt without a thorough and careful investigation due to the fundamental principle of the presumption of innocence (Atmasasmita, 2006). This principle dictates that an individual is considered innocent until proven guilty by a court of law, as stated in the Law on Judicial Power.

### **Objectives of Criminal Law and the Concept of a Criminal Act**

The primary purpose of criminal law is to safeguard individuals from criminal acts, and this objective must be upheld meticulously. It is crucial to prevent scenarios where criminals evade justice due to flawed investigations or, conversely, where innocent people are unjustly prosecuted and punished because of procedural errors (Hamzah, 2010). Moeljatno (2009) defined a criminal act as "a deed prohibited by a legal rule, which is accompanied by a specific criminal sanction for anyone who violates that prohibition."

### **The Indonesian Criminal Procedure Code (KUHAP)**

The Indonesian Criminal Procedure Code (KUHAP), enacted in 1981, serves as a cornerstone of national legal reform. It not only outlines the procedures for criminal proceedings but also establishes the rights and obligations of all parties involved. This legislation also incorporated the criminal procedure law of the Supreme Court, replacing previous regulations. The introduction of KUHAP aimed to improve legal clarity and enhance the conduct of law enforcement officials, ensuring their actions remain within their designated authority. This legal framework seeks to align with the public's evolving legal consciousness, fostering order and legal certainty. Ultimately, it ensures that both **suspects** and **defendants** are granted their rightful protections throughout the criminal justice process (Bahri, 2014).

### **The Role of Police Investigation and the Presumption of Innocence**

Police investigations are preceded by preliminary inquiries, which act as a filter to determine if a full investigation is warranted. This screening function establishes the police as the "gatekeeper in the process" of the criminal justice system (Faal, 2002). At the investigative stage, the presumption of innocence is a non-negotiable principle that investigators must apply. It safeguards a suspect's fundamental human rights until a legally binding court decision is reached. The inclusion of this principle in the explanation of KUHAP confirms its status as a foundational legal tenet for both the code and all law enforcement personnel.

Based on these observations, this research focuses on the application of the presumption of innocence during the investigative process within the jurisdiction of the Kuningan Police Resort. The study seeks to address two key research questions:

1. How is the principle of the presumption of innocence applied during the investigative

process at the Kuningan Police Resort?

2. What are the supporting and inhibiting factors influencing the application of the presumption of innocence?

## **LITERATURE REVIEW**

### **The Principle of the Presumption of Innocence and Its Implications**

The presumption of innocence is a fundamental legal principle holding that an individual is considered innocent until proven guilty in a court of law. At its core, this principle represents a modern criminal justice system's function of centralizing authority and preventing vigilantism or personal retribution. According to Nico Keijzer, a common misconception is that a suspect or defendant is factually innocent. Instead, the principle means they are not yet *legally* found guilty and are not required to prove their own innocence. Their guilt must be determined through a fair trial where they are given the opportunity to defend themselves and are treated with the same dignity as an innocent person.

### **Burden of Proof and the Rights of the Accused**

Oemar Senoadji notes that the presumption of innocence is most evident in the issue of the burden of proof. It is the prosecutor's responsibility to prove the defendant's guilt, with some exceptions such as proving insanity, which may be placed on the defendant, or specific cases requiring reverse burden of proof where the defendant must prove their innocence.

A crucial consequence of upholding the presumption of innocence is that an accused individual should not be treated as if they are already guilty, even if they are subject to legal arrest or detention. All parties, including law enforcement officials, must respect the human rights of the suspect or defendant.

This principle's acknowledgment in criminal procedure law serves two main purposes:

1. Protection: It provides a safeguard for individuals accused of a crime, ensuring their human rights are respected throughout the legal process.
2. Guidance: It directs law enforcement officers to limit their actions during an investigation, recognizing that suspects retain their human dignity.

According to Packer, the presumption of innocence is a guide for legal professionals on how to conduct a process, not a prediction of the outcome. However, it can also be seen as a predictive tool, guiding authorities to disregard a "presumption of guilt" when dealing with suspects. This requires officials to look beyond the initial factual appearance of a case. Therefore, it is important to note that a "presumption of guilt" is factual and descriptive, while the "presumption of innocence" is normative and legal.

## **The Acquisitoir Principle and the Role of Investigation**

From a technical and legal standpoint, the presumption of innocence aligns with the *acquisitoir* principle, which treats a suspect as a subject of the investigation, not an object. This means the suspect's human dignity, status, and self-worth must be respected. The object of the investigation under this principle is the crime itself, or the criminal act committed by the suspect, and the investigation should be directed toward uncovering that.

This investigative activity is closely tied to the authority of the police in enforcing the law. The process is more effective when it adheres to the presumption of innocence, as stipulated in Article 8, Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power. This law states that "Every person who is suspected, arrested, detained, prosecuted, or brought before a court must be considered innocent until there is a final and binding court decision that declares his guilt."

According to Article 1, Point 2 of the Indonesian Criminal Procedure Code (KUHAP), investigation is a series of actions taken by an investigator, as regulated by law, to find and collect evidence. This evidence serves to clarify the criminal act and identify the suspect. Every police officer, as an investigator, is authorized to receive reports, gather information and evidence, question suspects, and conduct other legal actions. They can also perform arrests, searches, and seizures under the direction of a senior investigator.

## **METHOD**

This study utilizes a normative legal research methodology. The analysis is twofold: first, it involves a systematic examination of legal principles to establish a foundational understanding of the legal system, and second, it investigates specific legal principles and sanctions within criminal law. The central research question addresses the implementation of the presumption of innocence during police investigations. The study's scope is confined to the jurisdiction of the Kuningan Resort Police. The main goal is to provide a detailed and analytical assessment of how this fundamental principle is applied in practice during the investigative phase.

## **DISCUSSION**

### **Discussion of the Investigative Process and Suspects' Rights under the Principle of Presumption of Innocence**

Article 1, section 2 of the Indonesian Criminal Procedure Code (KUHAP) defines an investigation as a series of actions by an investigator to gather evidence and clarify a criminal act, ultimately identifying a suspect. In general criminal cases, the police are the authorized

investigators, unless a special law dictates otherwise. Any actions that restrict an individual's freedom and human rights must be strictly proportional to the needs of the investigation. This is crucial to prevent investigators from resorting to arrest or detention without proper justification.

Article 1, section 20 of the KUHAP states that an arrest is a temporary deprivation of a suspect's or defendant's freedom, carried out when there is sufficient evidence for the purpose of investigation, prosecution, and/or trial, and in accordance with the law. Thus, an arrest is a part of the investigative process and can only be carried out or ordered when there is sufficient evidence.

The grounds for an arrest are outlined in Article 17, which stipulates that an arrest can only be made if there is a strong suspicion that the suspect has committed a criminal act, and this suspicion is based on sufficient preliminary evidence. The execution of an arrest is governed by Article 18, which requires that police officers performing the arrest must carry and show an official arrest warrant. Without a valid warrant, a suspect has the right to refuse the arrest, as the warrant is an imperative formal requirement. This provision is designed to prevent arrests by unauthorized individuals and to uphold legal certainty. An arrest warrant must clearly state the suspect's identity, a brief reason for the arrest, a summary of the alleged crime, and the location of the interrogation.

In cases of *flagrante delicto* (caught in the act), an arrest can be made without a warrant, but the suspect must be immediately handed over to the nearest investigator. A copy of the arrest warrant must be provided to the suspect's family immediately after the arrest. Oral notification is invalid and in violation of Article 18, section 3. Failure to provide a copy of the warrant allows the family to file a pre-trial motion challenging the legality of the arrest and to seek compensation.

Failure to comply with these requirements renders the detention unlawful, potentially allowing the suspect or their heirs to file a claim for compensation (Article 59 KUHAP).

Some legal scholars, such as R.O. Tambunan, argue that the position of legal counsel during an investigation, as regulated by Article 115 KUHAP, is problematic. They contend that this article does not establish equal standing between investigators and legal counsel, as counsel are often seen as a hindrance to the investigation. Yahya Harahap argues that to align Article 115 KUHAP with the philosophical and constitutional principles of human dignity and the rule of law, the word "may" should be interpreted as a right of the investigator only in highly limited circumstances. A suspect must be treated as a human being with dignity—a subject, not an object. The investigation should focus on the alleged crime, and the suspect must be considered

innocent until a final court verdict proves otherwise.

Human rights of suspects and defendants, as reflected in Articles 52 and 117 of the KUHAP, imply that any testimony must be given freely. Investigators and judges are prohibited from coercing statements, and any evidence obtained through such means is considered legally invalid.

The recognition of the presumption of innocence is closely tied to the rights of legal counsel and the duty of investigators. It is a principle that requires investigators to respect and uphold human rights. Consequently, a suspect or defendant (who is presumed innocent) holds an equal position to the police and prosecutors, and their rights must be respected. To support the presumption of innocence, the KUHAP grants suspects a set of rights that legal officials must honor and protect.

These legally recognized rights, including the right to a prompt interrogation, the right to a defense, the rights of a detained person, and the rights of a defendant in court—establish suspects as equals to law enforcement officials, empowering them to demand fair treatment as outlined in the KUHAP.

### **Application of the Presumption of Innocence in Investigations at Kuningan Resort Police**

The integrated criminal justice system in Indonesia aims to combat crime through coordinated efforts among law enforcement agencies: the police, prosecutor's office, Supreme Court, and correctional institutions. Judicial review by a judge, particularly through pre-trial hearings, serves as a crucial check on the actions of the police and prosecutors, ensuring the legality of arrests and investigations.

Criminal Procedure Law is the framework that regulates the roles and functions of these components, preventing overlaps and ensuring a cohesive system. Investigations are exclusively the authority of the Indonesian National Police, as stipulated by Law No. 2 of 2002. This law grants investigators the authority to take compulsory measures against anyone suspected of a crime.

The Police's investigative duties must adhere to Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), which strongly upholds human rights, especially those of suspects and defendants. Unlike the previous code (HIR), the KUHAP provides clear regulations on suspects' rights related to the presumption of innocence.

Article 50 of the KUHAP ensures a suspect's right to a prompt investigation and the timely submission of their case to the prosecutor and subsequently to court. Article 51 further mandates that a suspect has the right to be clearly informed of the charges against them in a language they understand, enabling them to prepare their defense.

The presumption of innocence provides suspects with fundamental rights during detention. They cannot be detained beyond the legally specified time limit and must be treated humanely without abuse, as they are considered innocent until proven guilty by a final court verdict. This principle also guarantees suspects the right to defend themselves against accusations and be protected from arbitrary actions. A suspect is not a guilty person but merely someone suspected of a crime.

As part of their right to a defense, suspects can present counter-evidence, including a de charge witnesses and expert witnesses (Article 65 in conjunction with Article 116, sections 3 and 4 KUHAP). Furthermore, the burden of proof rests with the prosecutor, not the suspect (Article 66 KUHAP), and the suspect is entitled to fair treatment. These rights, enshrined in the KUHAP, are a form of protection, with legal aid playing a vital role in balancing the suspect's position against that of law enforcement officials.

The application of the presumption of innocence is intended to protect the rights of suspects. While the law mandates this principle, its implementation faces both supporting and hindering factors. A lack of effective oversight and control by relevant authorities, as well as a need for increased professionalism among law enforcement officials, are significant challenges. Public legal awareness is also crucial for a high-quality criminal justice process.

Despite legal frameworks, cooperation among law enforcement, the public, and the government remains a challenge in practice. Police investigators face several specific obstacles in Kuningan:

1. **Limited Witness Participation:** Witnesses are often reluctant to cooperate due to fear or the complexity of the process, which hinders the collection of crucial evidence.
2. **Low Education Levels:** Many investigators have low educational attainment, impacting their professionalism.
3. **Insufficient Personnel:** The limited number of investigators, especially given the high crime rate in Kuningan, slows down the investigative process.
4. **Inadequate Income:** Low salaries for investigators can be a disincentive and may contribute to corruption.
5. **Limited Budget:** Insufficient operational funds for investigations can severely hamper law enforcement efforts.
6. **Lack of Infrastructure:** Inadequate facilities and equipment also hinder optimal performance.

To address the gap between legal theory and practice regarding the presumption of innocence, solutions must be both juridical and non-juridical. Juridical solutions involve

reforming and updating existing laws, particularly the KUHAP, to ensure equal treatment for all and to include clear sanctions for violations of human rights by law enforcement. Non-judicial solutions require broader improvements influenced by political, cultural, and economic factors to fully realize the principle.

Several non-judicial obstacles, such as issues related to forced measures and arrests, are evident in practice. The legal basis for the presumption of innocence is found in Law No. 14 of 1970 (amended by Law No. 4 of 2004) concerning Judicial Power, which states that anyone suspected, arrested, detained, or prosecuted must be considered innocent until a final court decision proves them guilty. This principle is also implicitly present in the general explanation of KUHAP (point 3c) and explicitly stated in Law No. 39 of 1999 on Human Rights.

As a manifestation of this principle, the burden of proof lies with the prosecutor, who must legally prove the defendant's guilt. The accusatorial system is upheld at every stage of the process, and the KUHAP provides suspects and defendants with a set of human rights that must be protected by law enforcement officials.

## CONCLUSION

In the investigative process, an investigator must proactively uphold and facilitate a suspect's rights. However, a significant obstacle is the lack of investigator professionalism, which can lead to ambiguity regarding a suspect's legal status. Therefore, it is recommended that the Kuningan Resort Police enhance the professional capacity of its investigators. This can be achieved by providing opportunities for further education and training to improve their knowledge and skills in criminal investigation. Such measures would enable them to perform their duties professionally and in a manner consistent with legal standards. Furthermore, to effectively address the rising crime rate, it is crucial that the Kuningan Resort Police increases its number of personnel within its jurisdiction.

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