

# THE FULFILLMENT OF THE RIGHTS OF SUSPECTS AND THE ACCUSED IN THE CRIMINAL JUSTICE PROCESS

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## ABSTRACT

This research aims to know the fulfillment of the rights of the suspect and the defendant the process of criminal justice in the city of Makassar and obstacles faced in giving the law enforcement apparatus fulfillment for the suspect and the accused as the fulfillment of human rights for suspects in Makassar city. Implementation of the fulfillment of the rights of suspects and defendants have done well, especially in terms of rights provides information, right to obtain health services, and the right to get visits. But there are some rights that is still less than optimal due to several obstacles, i.e. the right to legal assistance and the right to conduct worship for suspects and defendants. Constraints faced by the authorities in terms of the fulfillment of the rights of suspects and accused persons referred to in the conclusions of the first is in terms of the fulfillment of the right to legal assistance, the refusal by a suspect, fearing it will cost you, the lack of number of Advocates in Makassar city, led to the granting of legal aid less than optimal, and the lack of Government attention to the legal counselling activities in the home country's Arrest Class I Makassar. In terms of the fulfillment of the right to conduct worship services, the lack of human resources available either at Police Resort Cities of Makassar and in State Custody Homes Class Makassar that HE was able to furnish the activities become acts of worship in terms of ustadz and clergy unable to attend religious worship activities to fill. And there are a number of suspects and accused persons who do not want to communicate by the apparatus, so it makes the apparatus difficulty experienced in conducting worship rights for the fulfilment of the suspect and the accused.

*Keywords: Rights of Suspects-The Accused-Criminal Justice.*

## INTRODUCTION

### Background

The basic existence of the Constitution is the General or other governmental approvals (consensus) among the people of mayo Rita's building with regard to the State. The Constitution is a shared consensus or general agreement all citizens. The Organization was needed by the residents the politics so that their interests can be protected or shared is promoted through the establishment and use of a mechanism called the State. The founder of the State has mandated that the State of the Republic of Indonesia (RI) is a country based on law (Rechtsstaat) and not a country on the basis of sheer power (Machsstaat), this was confirmed again in article 1 paragraph (3) of the Constitution of the Republic of Indonesia in 1945 which was written: "the State of the Republic of Indonesia is a country of laws". The consequences of a State law is the whole community's activity without exception should not be or contradicts the norms applicable law and any act that violates the law will be penalized in accordance with the law. In the criminal justice system embraced Indonesia explained that there are 4 (four) components, namely the police as investigators, Prosecutors and investigators as the public prosecutor, the court adjudicating the matter as a function of and Advocate for legal aid-giver to someone involved legal issues, this component has the overall working relationship and separated from one another by a so-called criminal justice system that is integrated (integrated criminal justice system).

The success of a criminal justice process relies heavily on evidence the successful revealed or discovered. In the process of the trial, especially concerning or the defendant, many cases are not revealed because of suspect votes cannot support law. Therefore, as an expression of pique, suspects and defendants often get less reasonable treatment from investigators, especially if the suspect or defendant comes from a middle class citizen down.

Act No. 39 of 1999 gives a definition that human rights are a set of rights that is inherent in the nature of human beings and the existence of God and his grace is mandatory in high esteem respected, and protected by the State, law and Government, and everyone for honor as well as the protection of the dignity and the dignity of the human being; Thus an unnatural treatment of suspects is an act that does not respect human rights. Moreover, the concept of currently, no longer is oriented to a treatment that his nature was retaliatory, but rather is directed towards the construction of the Building of prisons based on Pancasila Citizens implemented by integrated between Builder, built, and the community to improve the quality Of Construction of prisons in order to realize the mistakes, improve themselves, and not repeat the crime so that it can be accepted by the

community, the environment can be actively involved in the development, and can live in reasonably good as citizens and responsible.

Hereinafter in article 114 also mentioned that the Criminal Code "in a seems right to do a criminal act before the commencement of examination by the investigator, the investigator is obliged to inform him of his right to legal assistance in their subjects or that he was accompanied by legal counsel mandatory as referred to in article 56."

As a daycare, house arrest suspect countries have legal aid unit, which is responsible for providing legal aid to suspects or accused persons during the process still in the stage of the trial. Program services include legal assistance and legal guidance to the citizens of is intended for accomplished legal awareness so as to solve the problems related to the criminal act on him. Other objectives that form the attitude man be self-contained prisoners behavior is fully responsible.

### **Research Issue**

Background to the above, the Authors formulated the problem how can the fulfillment of the rights of suspects and the accused in the criminal justice process in the city of Makassar?

### **Research Objectives**

Problem formulation based on the above, the authors set the goal of research is to know the fulfillment of the rights of the suspect and the process of criminal justice in the city of Makassar.

## **THE RESEARCH RESULTS**

### **A. The fulfillment of the rights of suspects and the accused in the criminal justice process in the city of Makassar**

Talk about meeting the rights of suspects and defendants during her vetting process in criminal justice, certainly is very broad in scope. As has been discussed earlier in chapter II, that is 27 and 37 suspects accused of rights set forth in the book of the law of criminal procedure. However we won't do the discussion towards the fulfillment of the rights referred to in the literature review, because there are very many. In order of effectiveness research, the author will do research on the aspects that are common and

important course. As for the scope of the discussion to be examined as a recommendation when the title of research proposal thesis includes the right to obtain legal assistance, the right to annotate family visitation rights/privileges granted health someone's right to conduct worship. Following are the results of the research the author associated with the fulfillment of the rights for suspects and defendants in the criminal justice process in the city of Makassar.

First, the author will expose regarding getting legal aid to suspects and the accused. Legal aid arrangements in Indonesia has actually existed since the Netherlands Indies Government. This can be seen in HIR (Het Reglement Herziene Islands) criminal procedure provisions of law applicable to Bumiputeras or RO (Riglemen Of De Rechtelijke Organisatie) or the provisions of criminal law that applies to The Europe, the HIR, setting the legal aid does not, however, expressly governed implicitly from the formulation of some Reason i.e. in article 120 RD, article 250 letter in HIR.

Legal aid at the time of this defendant for bumiputeras HIR, its position is quite warranted by the Chairman of the District Court. The defence is only available on the trial proceedings only and even then, if appealed. While the defendant is liable for criminal penalties of death, giving the defense still is given wills of the defendants even without, as for the Europe to him were given the right to a legal advisor accompanied alas appealed by the defendant on all levels of examination.

Basically the question of legal assistance there is no setting him specifically in the Constitution, but the subject of legal aid can be seen in the position of citizens in General contained in article 27 to Article 34 of the Constitution of 1945, while at the time of the enactment of the RIS Constitution 1949 and the 1950 Constitution, the question of legal aid can be seen in article 7, paragraph (4) of the basic human rights and freedoms, which States that "everyone has the right to obtain legal assistance which seriously from the judge who determined to that end, against acts contrary to the fundamental rights granted to him under the law. "

Regulation on legal aid had started to set up specifically in 1970. This can be seen with the publication of law No. 14 of 1970 concerning Key provisions the power of Justice, such legislation in stating unequivocally about the principles and basis of legal aid, namely in articles 35, 36, and article 37 of the law, but the law was changed to the Act No. 4 of 2004

concerning the powers of the Judiciary. Legal aid in this legislation is set out in Chapter VII namely Articles 37 to article 40 that specifies as follows:

1. Article 37: "everyone who snagged a lawsuit entitled legal aid".
2. Article 38: "in criminal cases a person suspects since then made the arrest and detention of or has the right to call and ask for the assistance of advocates".
3. Article 39: "in providing legal assistance as in article 37, the advocate must help the settlement of the lawsuit by upholding law and justice".
4. Article 40: "provisions as stipulated in article 37 and article 38 of the Act is set out in"

Legal aid is essential in creating a fair life and protect human rights. Where legal aid is granted aims to protect the rights of society in terms of the legal issue in order to avoid snagging of all kinds of actions that could harm it or arbitrary actions of law enforcement officers. The importance of legal protection of suspects, as the party is suspected of committing a criminal offence, with regard to the problem of the lack of understanding of the law by the suspect that could have been someone who was actually innocent to be entangled by law of law-related.

Research carried out at Police Resort City of Makassar city, carried out on May 13, 2014. Based on the data obtained, the Authors found that the number of detainees who are still being held until May 2014 more or less amounted to 50 (fifty) prisoners. Units that deal with related issues of detainees at Police Resort City of Makassar city named TAHTI UNIT or the length of the Detention Unit and the evidence. At the same time, the author did data collection in the form of an interview with Baddolahi as the head of the Police Unit Reskrim Resort City of Makassar city. Related to the question of the fulfilment of the rights of suspects, expressed that "the fulfillment of the right to obtain legal assistance to suspects at Police Resort City of Makassar city has done well. This is done during the process of examination of the suspect. In fulfillment of this legal assistance, sufficient authorities helped by the existence of various legal aid Institute (LBH) in Makassar city, so Police Resort City of Makassar can coordinate in any fulfillment get legal aid for prisoners. "

Responding to the comment above, the authors can conclude that the process of fulfilling the right to obtain legal assistance have been carried out properly. To get the accuracy of the data, the authors also conducted interviews with other apparatus. On the same occasion, the author also did an

interview with Mr. Iqbal Usman, as investigators Unit III criminal acts of Corruption in the Police Department's Resort City of Makassar. Fulfillment related assistance laws, expressed that "the process of mentoring is done at the time of the inspection process is a series of formalities are carried out in the framework of the fulfilment of the rights of defendants as mandated rules that apply".

In response to the opinion of the above, the authors suggested that what is meant by the above authorities are less precise. It is a given that the fulfillment of the rights of suspects are not only related to the question of running a mere statute provisions, but also the implementation of that law enforcement can be done correctly so as not to give rise to an error of law or the application of violence against suspects is causing harm to the suspect. If the granting of legal aid is only considered as something purely a formality, the issue then was the lack of assurance of quality of legal aid provided. When handling a case law requires involvement of an advocate since the beginning to prepare for handling the matter and defense well. It is the authors consider to be the fulfillment of the right half of the heart.

Next up on May 13, 2014, the author also do some research on the House State Prisoners Class I city of Makassar. The author does against some of the suspects in the country's Detention Houses hold on Class I results the Makassar, shows the following data:

**Table 1:**

**The data number of occupants Prisoner Class I Makassar**

<b>No.</b>	<b>Resident Status</b>	<b>The Amount Of</b>	<b>The Percentage Of</b>
1.	Prisoners	940	89%
2.	Inmates	117	11%
The Amount Of		1057	100%

**Data Source: Prison Skunder Makassar May 2014.**

The above data shows that the residents on rumsah prisoner class I a Makassar city dominated by detainees with the presentation reaches 89% of 1057 inmates people. While the remaining 11% was settled by convicts. This amount can be the difference given that House detainees Makassar city is essentially a place of residence for the prisoners that are still yet to be inmates, i.e. those that are still in the process of criminal justice inspection, while the inmates placed on rumsah prisoner Makassar city is sanctions convicts are usually only in the form of confinement under 1 year or those who transferred from the correctional facility because the rest of the prison is not more than 1 year. The transition of residents was conducted in the framework of the effectiveness of coaching against inmates. Because the number of inmates who more and more so to be able to do the process of coaching with good then for the rest of the inmates under 1 years in prison will be transferred to House Arrest Class I A Makassar.

Table 2:

Data related to the fulfillment of the Rights of the suspect in terms of legal aid in the State Custody Homes Class I Makassar city and State police's Resort City of Makassar

No	The Response Of The Suspect	The Amount Of	The Percentage Of
1.	Does not require legal assistance	9	18%
2.	Lawyers in Hard contact	4	8%
3.	Have no money/economics	16	32%
4.	Do Not Know The Procedure Of Legal Aid	21	42%
The Amount Of		50	100%

**Source: The primary data sources: Prison Class I Polrestabes Makassar Makassar and**

Based on the data above, you can conclude that there are many factors that affect the fulfillment of the right to obtain legal assistance for suspects in State Custody Homes Class I Makassar. 18 percent of

respondents, argued that he did not need legal assistance. When Writers conduct interviews with inmates who suggested the reason for this, it turns out they are the usual suspects who fall into the category recidivis, which have already done the crime and on hold, so that the procedure is a formality that according to need not be done. In addition they also assume that any form of advocacy conducted against him will not change the situation, because they mostly suspect did the crime because it caught my hands.

Further research was done in the form of an interview on 14 may 2014 with Rustam, as the head of the Unit of legal aid and Detention Home Ministry Class I city of Makassar. Related about the fulfillment of the right to obtain legal assistance, he argued that "the Suspects who were in the house arrest Class 1 Makassar is the surrogate custody from Police Sectors throughout the City of Makassar. Prisoners who are in prisons in the fulfilment of the right to legal assistance are still fulfilled. The unit is the unit that provides BHP Ministry and as a legal counselor for the suspects who are in prisons. Legal aid than most of the prisoners is a legal advisor in a message/presented by families of prisoners itself. "

In response to the above comment, the next Writer to question the suspect's compliance related capabilities of the economy less, he argued that "to do the fulfillment of rights against a suspect who has the ability of weak economy, usually held the prodeo lawyers conducted by the police. As a daycare, we tried to provide here only legal assistance if any suspect who is still less understand related case law that. In addition, we also hold the legal counseling related to the fulfillment of the rights of suspects, accused and convicted person, as them so that when proceeding to the next stage review process they have understanding of the related legal proceedings related to the case that ensnare them."

Things that are put forth above, presumably very good related fulfillment of suspects. Daycare as a suspect, the Rutan has made efforts to optimally advance by holding the extension related rights of suspects, accused and convicted person. Surely expected with implementation of this extension, prisoners were routinely getting armed and able to monitor the process of independently, and find out things you can do if his rights are ignored in the proceedings until the Court decision, consisting of the law anyway.

Of a series of research done above, either the author interviews as well as collecting data, skunder can be concluded that the implementation of

the fulfillment of the right to legal assistance in the city of Makassar, Police in the Resort City of Makassar and House Arrest Class I Makassar, was done well.

Furthermore with regards to the right provides information in criminal justice proceedings. The investigation is a preliminary examination in the police force. One of the tasks of the Police investigator is conducting the examination of alleged criminal acts. The checks done by the Investigators in the course of investigation is an activity to obtain information, clarity and of the suspect and or witnesses and evidence as well as goods or about the elements of a criminal offence has occurred so that the person's role or position as well as evidence in the criminal offence become evident and poured in the news of the proceedings (BAP). Already a general assessment that the Police services in the community so low, professionalism among police shows no clear evidence. Investigators often consider that torture is the best and easiest way to get to rummage in the description of a suspect. Not rare violence by investigators from the national police to the suspect in the inspection to obtain a recognition of certain crimes. It is seen by many in the news media about the suspect who suffered torture while on hold. The use of violence by investigators in the examination of the suspect was not justified, especially that can lead to death, as opposed to the task and powers of investigators. It also is contrary to human rights (human rights). Violence in the examination is expressly prohibited as set in article 117, paragraph 1 of the law of criminal procedure (Criminal Code) stated that: "the description of the suspect and or witnesses to investigators given without pressure from anyone or in any form".

The national police as an instrument of State to enforce the law and maintain security and order in the community did not escape the attention of the public, the Police Authority is vast and sometimes feels indefinitely into the spotlight of society. This is due to the chance of occurrence of human rights violations is so large by officials of the national police when currently running tasks. The task of law enforcement is a very heavy task that must be administered by a police officer. In its interaction with the community, a member of the police had to deal with a variety of individual behavior. Problems arise when the community considers the violence that is used the police has exceeded the limit. With regard to the rights of suspects and provides information to convict the author does do this interview with Baddolahi as the head Unit Reskrim Polrestabes Makassar city, he points out that in the process of examination of suspect law authorize the police to

enforce the law by way of preventive or repressive form of coercion and. In the process of investigation the police tend to be repressive, this tendency is closely linked to police led to the use of as one of the ways to overcome the obstacles in the investigation to obtain a confession or information about a crime suspect. However, in the process of examination, investigators usually perform an analysis of the existence of the alleged lie a series of events given by the suspect. Police investigators have been trained to be able to identify the truth or lie a series of events that allegedly criminal act based on the results of the sports scene of the matter and of witnesses. As the parties have experience in criminal investigation, investigators can usually figure out quickly forms a lie put forth by a suspect, but investigators with confidence in analyzing CRIME SCENES and sporting results entanglement witnesses, certainly the investigator can at least conclude a red thread events. The use of violence is usually done in the form of emphasis description when the suspect started the convoluted in giving answers to questions that start cornering him. In these circumstances the investigator will attempt to do the efforts of emphasis through questions that can make the suspects confess lies.

Related to this the authors assume that this can be justified as long as violence is not done as an emotional Act of impingement investigators in the criminal case that disclosure of success be handled. Gather evidence and chronological truth of an event is for criminal investigators, in order that the truth may be released ahead of his trial.

Furthermore the author conducting research related to the fulfillment of family visitation rights/person for a suspect or accused. In terms of suspects or defendants detained in custody while the polrestabas or at the prisoner's home country, the right of getting visits always are allowed during the visit performed during hours as set forth at prisoners polrestabas Makassar city and Home Town of Makassar detention.

From the author's interviews with some of the detainees and defendants, they confirmed that the right to receive visits have been carried out properly. This can be seen when the writer did some research, that the flurry of guards prisoner either in detention Houses and Makassar Polrestabas Class I A Makassar city while examined the stuff or visitors who wish to visit family or clients. This examination is an act perpetrated by the authorities of anticipation, just in case there is not to stuff which is contrary to the regulations and conditions that apply.

In terms of the right to healthcare, the authors observe that these rights have been implemented very well. Results of field research that writers do, is seen parked ambulance and several vehicles availability of medical personnel either at police resort cities of Makassar and house arrest Class I A city of Makassar. The fulfillment of this right necessarily implemented as soon as possible given that the suspect or accused shall be ascertained in a healthy state before you can undergo the process of the trial.

Next in terms of rights to conduct worship services, the authors conducted a study on different days, i.e. on Friday May 16, 2014 and Sunday 18 may 2014. Research conducted on those days carried out in order to conduct research related to the implementation of the activities of worship on prisoner detention Houses and Makassar Polrestabes Class I A city of Makassar.

On research the author did, in a big City Resort Makassar police and house arrest Class I A Makassar city, facilities for carrying out acts of worship are adequate, i.e. the availability of Mosques as a place of worship for a Muslim inmate and there is also a room worship that was designed to resemble a church as a place of worship for Christians and Catholics. The current house arrest Class I a Makassar has no prisoners of Hindus and Buddhists, so facilities not yet available permanently. However, implementation of the fulfillment of the rights of prisoners who are Buddhists and Hindus are usually done by bringing the leaders of the religion in question to carry out acts of worship. In addition, if the suspect in question like to perform acts of worship, provided a special place to worship encompasses implementation progress with wisdom.

## **CONCLUSION AND RECOMENDATIONS**

### **Conclusion**

Based on the results of the study and discussion of the above, the authors conclude that:

1. Police in the Resort City of Makassar Police and State Custody Homes Class I a Makassar city has been carrying out the fulfillment of the rights of suspects and defendants with either, especially in terms of rights provides information, right to obtain health services, and the right to get visits. However there are some fulfillment which is still less than optimal

due to some constraints, i.e. the right to legal assistance and the right to carry out the service of the suspect and the accused.

2. Constraints faced by the authorities in terms of the fulfillment of the rights of suspects and accused persons referred to in the first conclusion is In terms of the fulfillment of the right to obtain legal assistance:
  - The refusal by a suspect, fearing it will cost you.
  - The lack of number of Advocates in Makassar city, led to the granting of legal aid less than Optimal;
  - The lack of Government attention to the legal counselling activities in the home country's Arrest Class I Makassar.

## **Recommendations**

Based on the above conclusions, the authors provide recommendations in the writing of this is in terms of the fulfillment of the right to obtain legal assistance, expected to be more active in apparatus made the granting of legal aid to suspects and the accused, because most of the suspects did not understand the legal process they face. In terms of the fulfillment of the exercise of worship, needs to be done regularly so that the suspect or the accused can be closer with the creator and given a smooth in dealing with issues that are ".

## **REFERENCES**

- Alam, A. S, 2002, *Kejahatan, Penjahat dan Sistem Pemidanaan*, Makassar Lembaga Kriminologi Universitas Hasanuddin. Abdussalam, 2006. *Prospek Hukum Pidana Indonesia (Dalam Mewujudkan Keadilan Masyarakat)*, Restu Agung, Jakarta.
- Abidin, Zainal. 2005, *Pemidanaan, Pidana dan Tindakan Dalam Rancangan KUHP 2005*. Elsam, Jakarta.
- Ansorie Sabuan. 1990, *Hukum Acara Pidana*, Angkasa, Bandung.
- Chazawi Adami, 2002. *Pelajaran Hukum Pidana, Bagian 1; Stelsel Pidana, Teori-Teori Pemidanaan & Batas Berlakunya Hukum Pidana*, PT Raja Grafindo, Jakarta.
- Darwan Prinst, *Pemberantasan Tindak Pidana Korupsi*, PT. Citra Aditya Bakti, Bandung, 2002.

- Djoko Prakoso. 1987, Penyidik, Penuntut Umum, Hakim dalam Proses Hukum Acara Pidana, Bina Aksara, Jakarta.
- Faisal Salam, Moch. 2002, Hukum Acara Pidana Militer di Indonesia, CV. Mandar Maju, Bandung.
- Hamzah, Andi, 1994, Sistem Pidana dan Pemidanaan Indonesia Dari Retribusi di Reformasi, Pradaya Paramita, Jakarta.
- Hamzah, A. 2002, Hukum Acara Pidana, Sinar Grafika, Jakarta.
- Harahap M. Yahya. 2002. Pembahasan Permasalahan dan Penerapan KUHAP. Jakarta. . Sinar Grafika, Ed. 2. Cet, 4.
- Kanter E.Y & S.R. Sianturi, 2002. *Azas-Azas Hukum Pidana Di Indonesia Dan Penerapannya*, Storia Grafika, Jakarta.
- Karjadi, M. dan Soesilo, R. 1997. Kitab Undang-Undang Hukum Acara Pidana dengan Penjelasan Resmi dan Komentar. Bogor: Politeia.
- Laden Marpaung, Asas-Teori-Praktik Hukum Pidana, Jakarta, Sinar Grafika, 2005.
- Lamintang, P.A.F. 1997. Dasar-Dasar Hukum Pidana Indonesia. Bandung: Sinar Baru.
- Poernomo, Bambang. 1986, Pelaksanaan Pidana Penjara dengan Metode Sistem Pemasyarakatan, Penerbit Liberty, Yogyakarta.
- R. Soesilo. 1991. Kitab Undang-Undang Hukum Pidana serta Komentarnya Pasal demi Pasal, Politea, Bogor.
- Simorangkir, J.C.T., Erwin, Rudy, T, dan Prasetyo, J.T. 2000. Kamus Hukum. Sinar Grafika: Jakarta.
- Wirjono Prodjodikoro, 1981, Hukum Acara Pidana di Indonesia, Sumur Bandung, Bandung.
- Wisnubroto, Al. 2005, Pembaharuan Hukum Acara Pidana, Citra Aditya Bakti, Bandung.