

The Role of Advocates in the Protection of Human Rights on the Criminal Justice System

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Abstract: The purpose of this study was to know the role of advocates in the protection of human rights in the criminal justice system, to analyze the implementation of human rights protection in the provision of legal assistance by advocates in the criminal justice system and to analyze what factors influence the effectiveness of human rights protection in the criminal justice system.

Keywords: The Role of Advocates, Human Rights, Criminal Justice System

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I. INTRODUCTION

The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, guaranteeing all citizens' rights together with their position in law and government with no exceptions.

A legal state must fulfill several elements, namely: (Sri Sumantri, 1992: 29)

1. The government in carrying out its duties and obligations must be based on laws or regulations.
2. There is a guarantee of human rights (citizens).
3. There is a division of power within the country.
4. There is supervision from judicial bodies.

In the 1945 Constitution of the Republic of Indonesia, through several articles regulating human rights, namely Chapter XA starting Article 28 A, 28 B, 28 C, 28 D, 28 E, 28 F, 28 G, 28 H, 28 I, up to Article 285.

The regulation and enforcement of human rights in the rule of law is absolutely necessary, especially in Indonesia. In addition, there needs to be increased legal awareness in the community, so that each member lives up to their rights and obligations, and indirectly enhances the development of attitudes towards law enforcement, law enforcement, justice and protection of human dignity, order and legal certainty in accordance - The Basic State of the Republic of Indonesia in 1945. (Soerjono Soekanto, 1986: 113).

The law enforcement officers we know in Law Number 18 of 2003 concerning Advocates are police, prosecutors, judges and advocates. In Article 5 of the law it is affirmed that lawyers are free, independent and guaranteed by laws and regulations. Thus advocates have a strong position to be able to play a role in protecting the legal rights of the community in the criminal justice system implemented.

Status advocates as law enforcers, are advocates as one of the instruments in the judicial process that has an equal position with other law enforcers in upholding law and justice. What is meant by an advocate as a free profession is without pressure, threats, obstacles, without fear, or treatment that undermines the dignity of the profession. This freedom is carried out in accordance with the professional code of ethics and legislation.

An advocate is one of the four pillars in chess in the nation's judiciary in Indonesia is a profession that is very unique because there are weaknesses and advantages to it. The function of an advocate as a person or institution representing the interests of citizens in relation to the government. In the ideals that accompany this function, weaknesses in negative things accompany the journey of the advocate profession.

The existence of advocates individually and in organizations, must be able to become a driving factor (Impetus majority) in the realization of an integrated justice system.

Procedural justice, substantial justice, fairness of results, should be seen and become a philosophical foundation for the birth of a law. In such a framework of thinking, the actual birth of Law No. 18 of 2003 concerning Advocates is an important philosophical foundation in the effort to realize a free, independent and responsible advocate profession.

For an advocate, the form of protection of human rights in the criminal justice system is concretized in the form of "providing legal assistance" to the suspect or defendant to the maximum and correctly based on the applicable legal basis.

The ineffectiveness of the protection of human rights in the criminal justice system is a challenge for an advocate to increase the weight of legal assistance he gives to suspects or defendants starting from the investigation process in the police, to the trial in the District Court.

Various things need to be studied on the issue of legal assistance in the context of human rights protection, the role of advocates in optimizing the protection of human rights in the criminal justice system for poor citizens according to Article 22 of Law Number 18 Year 2003 concerning Advocates.

What is expected by the community is that the provision of legal assistance by an advocate should be carried out on the basis of good morality and great responsibility by upholding professional ethics. This is the norm (*das sollen*) which will be tested in reality in the field (*das sein*).

II. STATEMENT OF THE PROBLEM

1. What is the role of advocates in the protection of human rights in the criminal justice system?
2. How is the implementation of human rights protection in the provision of legal assistance by lawyers in the criminal justice system?
3. What factors influence the effectiveness of human rights protection in the criminal justice system?

III. THEORETICAL FRAMEWORK

A. Advocate and Law Enforcement

1. History of Indonesian Advocate Organizations

The history of important advocate organizations is presented as part of knowing, among others, how and when the advocate organizations have been formed and what ideas have arisen from the formation of these advocate organizations.

The root of the word advocate comes from the Latin word *advocatus*, which means, among others, helping someone in a case, a witness who alleviates. Another meaning also in Latin words is *advocare*, which means someone who helps, maintains, defends others. Someone who provides legal advice and assistance and speaks for others before the court. Someone who studies law and has been recognized for practice, who gives advice to clients and speaks for the person before the court. An assistant, advisor or speaker for cases.

Advocate words have been known since the Middle Ages (5th-15th century) which are called church advocates (*berkelijke advocateh, duivel advocateh*), namely advocates whose job is to provide all kinds of objections and or advice in a sacred statement for someone who has died. (Lasdin Wlas, 1989: 89-90).

Advocate organizations in Indonesia originated in the era of colonialism and at that time the number of advocates was still limited. Advocates are only found in cities that have *Landraad* (district court) and *Raad Van Justitie* (court council), namely a judicial institution formed by the Dutch colonial government based on *Staatsblaad* 1847 No. 23 concerning Regulations and Regulations for Organizational Development in Indonesia or abbreviated as RO.

Nationally, the forerunner of an advocate organization in Indonesia only appeared around 53 years ago, precisely on March 4, 1963, in Jakarta during a national legal seminar at the University of Indonesia. The advocate organization formed at that time was the Indonesian Advocates Association, abbreviated as PAI, and was followed by the establishment of PAI organizations in the regions.

A year later, namely in the first Deliberation / Advocate Congress that took place at the Lake Toba Hotel in Solo. On August 30, 1964, it was officially announced the establishment of the Indonesian Advocates Association, abbreviated as PERADIN, in lieu of PAI, PERADIN membership was voluntary and there was no compulsion to enter PERADIN.

It is not surprising that in the end the professions of advocates grow in Jakarta, such as (Lasdin Wlas: 1989: 103))

- a. Legal Aid and Service Center (PUSBADHI)
- b. Advocate Communication and Study Forum (FOSKO ADVOKAT)
- c. Association of Indonesian Legal Counselors (HPHI)
- d. Develop Legal Aid (BBH)
- e. PERNAJA
- f. Kosgoro Legal Aid Institute

On November 10, 1985, a new forum for the advocate profession, the Indonesian Advocates Association (IKADIN) was formed as the only forum for the Advocate profession with the position of Chairperson of IKADIN given to Harjono Tjitrosoebono (currently Chairman of the DPADIN DPP). This can be said as the concession given by the government to PERADIN.

In the view of Philippo Nonet and Philippe Selzink in Otje Salman and F. Susanto (2004: 97), Law Number 18 Year 2003 is a responsive law, namely a legal order capable of answering social needs and aspirations, in this case the aspirations of the advocate so that advocates can carry out their profession more freely and responsibly.

It should be noted that before the ratification of Law Number 18 Year 2003 concerning Advocates, there was one more advocate organization formed, namely the Indonesian Sharia Lawyers Association (APSI). In Article 28 paragraph (1) the Law on Advocates is said as follows:

"The Advocate Organization is the only free and independent advocate profession established in accordance with the provisions of this law with the intent and purpose of improving the quality of advocates".

Furthermore, in Article 32 paragraph (3) it is said:

"In the meantime the duties and authority of the Advocate Organization as referred to in this law are jointly carried out by the Indonesian Advocates Association (IKADIN), the Indonesian Advocates Association (AAI), the Indonesian Legal Counsel (IPHI), the Indonesian Advocates and Lawyers Association (HAPI), Indonesian Lawyers' Union (SPI), Association of Indonesian Legal Consultants (AKMI), Association of Capital Market Consultants (HKPM) and Indonesian Sharia Lawyers Association (APSI) "

2. Advocates' Roles and Tasks Under the Advocate Law

The role and duties of advocates can be seen in the Law of Advocates. In Article 1 paragraph (1), the provisions concerning the roles and duties of advocates are fully read as follows:

"Advocates are people who provide legal services both inside and outside the court that meet the requirements of the provisions of this law."

Through the legal services provided, Advocates carry out their professional duties for the sake of upholding justice based on law for the benefit of justice seekers. Advocates as one of the elements of the justice system is one of the pillars in upholding the supremacy of law and human rights.

The scope of the Advocates' work related to the court above is called litigation work, a field that Advocates have previously worked on, so that many people misunderstand that Advocates' work is only limited to that field. In fact it is said that the Advocate's work is only fully related to the lawsuit case, an understanding that can arise because the world of Advocates is only related to civil matters (H. Fauzie Yusuf Hasibuan, 2007: 9).

However, in actual developments there are still many Advocate jobs outside the field of litigation, called Non-Litigation work (Nonlitigations work). These fields are:

- a. Providing legal services (Legal service)
- b. Legal advice with the role of legal adviser
- c. Legal opinion
- d. Prepare and compile contracts (Legal drafting)
- e. Providing legal information
- f. Defending and protecting human rights
- g. Providing free legal assistance (*pro bono legal aid*) to poor and disadvantaged communities

With the existence of Law No. 18 of 2003 concerning Advocates or popularly known as Advocate Law, the profession and ethics of the Advocate profession become clear in our society. We understand that people really need legal services from an advocate.

Advocate profession is known as a noble profession (*officium mobile*) because it requires defense to all people regardless of race, color, religion, culture, socio-economic, rich poor, political beliefs, gender and ideology. Advocate profession is a respectable profession because of the professionalism in it. Besides that advocate profession is not solely for earning a living, but in it there is an idealism (such as the value of justice and truth) and morality that is highly upheld.

Article 1 paragraph (3) of the 1945 Constitution confirms that the State of Indonesia is a legal state. To realize this provision, it is necessary to develop a comprehensive national legal system which includes law-making activities, implementation or application of law, justice for violations of law, correctional and legal education and management of legal information.

To become a professional advocate, Luhut M.P. Pangaribuan in Abdul Wahid and Anang Sulistyono, (1997: 103) mentioned four factors that should be owned by advocates, namely:

- 1) Have broad insight
- 2) Have proven technical capabilities;
- 3) Having sensitivity to the values and morals contained in society and its dynamics;
- 4) Having courage, especially in the current situation where justice and human rights are "luxury goods" which sometimes require sacrifice.

In the general explanation and explanation of Article 5 paragraph (1) of Law Number 18 Year 2003 concerning Advocates, it is emphasized that advocates as free, independent and responsible professions are important, in addition to judicial institutions and other law enforcement agencies such as police, prosecutors and courts .

In the future, the advocate profession will develop rapidly because the community's need for legal assistance is grounded. The people who dispute and choose legal remedies need advocate services as the main alternative to accompanying them to be judged at the district court offices in their respective places.

3. Legal Aid is the Right of Citizens

The right to legal assistance has been universally accepted as guaranteed in the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights (ICCPR). Article 16 and Article 26 The ICCPR guarantees that all people have the right to legal protection and must be avoided forms of discrimination While Article 14 paragraph (3) of the ICCPR provides conditions related to legal assistance, namely 1) justice interests, and 2) cannot afford to pay an advocate.

The definition of legal aid here is to provide legal advice for free, including in the case of defense at the court proceedings. The defense is not interpreted as a "blind" defense such as defending a mistake or a violation of law committed by a defendant or suspect, so that he can be free from all lawsuits. The expected defense is an effort to get the fairest justice in the form of appropriate punishment based on the severity of the mistake or violation committed.

Indonesia's criminal justice system requires suspects / defendants to be given legal assistance as stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). In the case of a serious criminal offense committed by a suspect / defendant who threatens death penalty or fifteen years or more, or a suspect / defendant who is incapable from an economic standpoint and threatened with a sentence of five years or more, "mandatory" legal assistance is provided free of charge.

The provision of legal assistance is not only limited when attending a hearing in the Court but begins when the initial process is carried out. The Indonesian Criminal Procedure Code provides an opportunity for legal assistance starting from the detention or arrest of suspects or defendants at all levels of examination. The suspect / defendant is given the right to contact and speak with his lawyer or attorney, even if the suspect / defendant talks with his lawyer can not be heard by other parties except for certain cases.

This legal aid is also expected to prevent unfair and inhuman treatment of suspects / defendants who are classified as poor. This is called "due process of law" or a fair legal process. The suspect / defendant is protected by his rights as a person who faces a lawsuit and is pressed for trial. For this reason, a Presumption of Innocence should be accompanied or advocated by an advocate since being detained, examined, interrogated and tried. The suspect / defendant must know in what capacity he is detained and what is the basis of the lawsuits against him. Likewise the suspect's family or defendant must be informed of the demands and reasons for detention. Thus, a suspect or defendant must be treated humanely and protected by his human rights. (Frans Hendra Winarta, 2000: 43).

The elaboration of the above provisions is expressly stated in the Criminal Law Book (KUHAP), especially articles 54 to Article 57 concerning the provisions governing the rights of suspects or defendants to obtain legal assistance. Whereas in articles 69 to article 74 concerning the provisions governing the procedure for advocates to deal with suspects / defendants, namely:

- 1) Legal assistance can be given from the time the suspect / defendant is detained.
- 2) Legal assistance can be provided at each level of examination.
- 3) Advocates have the right to speak with suspects at each level of examination and at any time their defense interests.
- 4) Talks between advocates and suspects are not heard by investigators and prosecutors except for offenses related to state security.
- 5) Minutes of news are given to suspects / advocates for defense purposes, and
- 6) Advocates have the right to send and receive letters from suspects or defendants.

Advocate profession is known as a noble profession (*afficiium nobile*) because it requires defense to all people regardless of race, color, religion, culture, socio-economic background, rich / poor, political beliefs, gender and ideology. (Frans Hendra Winarta, 2000: 97).

Actually the issue of legal assistance to the people in Indonesia has long been a concern of the government as stated in the basic principles in Law Number 19 of 1964 concerning the Basic Provisions of Judicial Power (State Gazette of 1964 Number 107 dated October 13, 1964). In Chapter VI Articles 26-27, it was then replaced with Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power. As amended by Law Number 35 of 1999, and finally with the amendment to the 1945 Constitution of the Republic of Indonesia, it has brought important changes to the implementation of judicial power so that it is necessary to make adjustments to form a new judicial power law namely Law Number 4 of 2004 concerning Judicial Power (State Gazette of 2004 Number 8 dated January 15, 2004).

Experts argue that one of the important objectives in the legal aid program is to support the development of a unified national legal system. Besides that, it also wants to achieve a greater sense of responsibility from the bureaucratic officers in carrying out their functions as servants of the community.

Legal assistance must be directed at harmony between order and freedom which creates a peace that is the goal of the law. Order will be achieved by the existence of legal certainty, while freedom will exist if legal equality is used, both of which are legal duties sociologically so legal assistance must be carried out continuously as an organized specialization.

In the course of time the Legal Aid Institute (LBH) in Indonesia became an element of resistance to the authoritarianism of the New Order regime. For this reason, LBH also supports the pro-democracy movement and the enforcement of Human Rights (HAM). After the new order regime collapsed, LBH faced reality and another challenge was rebuilding a strong civil society as a pillar of democratic life.

It was explained in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP) and Law Number 4 of 2004 concerning Judicial Power, that there is a necessity to provide legal assistance to the community because it is a citizen right as the following articles:

- 1) For the benefit of a defense, the suspect or defendant has the right to receive legal assistance from one or more legal counsel during the time and at each level of examination according to the procedures specified in this law (Article 54 of Law Number 8 Year 1981).
- 2) To get the legal counsel Article 54, the suspect or defendant has the right to choose his own legal counsel (Article 55 of Law Number 8 of 1981).
- 3) In the case of a suspect or defendant suspected or charged with a crime that is threatened with capital punishment or a fifteen-year or more criminal sanction or for those who are not capable of being punished with five years or more who do not have their own legal counsel, the official concerned at all the level of examination in the judicial process must appoint legal counsel for them (Article 56 paragraph (1) of Law Number 8 of 1981).
- 4) Suspects or defendants charged with detention have the right to contact their legal counsel in accordance with the provisions of this Law (Article 57 paragraph (1) of Law Number 8 of 1981). Foreign suspects or defendants who are subject to detention have the right to contact and speak with their country's representatives in the face of the case process. (Article 57 paragraph (2) of Law Number 8 Year 1981).
- 5) In the event that a person is suspected of committing a criminal offense before the examination begins by the investigator, the investigator must inform him of his right to obtain legal assistance or that he in his case must be accompanied by a legal advisor as referred to in Article 58 (Article 114 of Act Number 8 of 1981)
- 6) Every person involved in a case has the right to obtain legal assistance (Article 37 of Law Number 4 of 2004).
- 7) In a criminal case a suspect from the time of arrest and / or detention has the right to contact and request advocate assistance (Article 38 of Law No. 4 of 2004).
- 8) In providing legal assistance as intended in Article 38, Advocates must assist in resolving cases by upholding law and justice (Article 39 of Law No. 4 of 2004).

According to Andi Hamzah (2004: 88), the legal advisor (read an advocate) must remain bound to the code of ethics of an advocate, namely he must uphold the Pancasila, law and justice. He may not for example teach a suspect to deny if a suspect has admitted his mistake, or for example teaching a suspect so that he pretends to be crazy so he can escape the law suit in accordance with Article 44 of the Criminal Code. Besides that, a legal advisor must also uphold the secrets of his client. For example, he may not divulge his client's confession to the other party (public prosecutor).

Adnan Buyung Nasution (1981: 5) argues that basically the meaning and purpose of legal aid are two things, firstly, that effective legal assistance is an essential condition for the functioning and integrity of the judiciary to run well, and secondly that legal aid is a demand of feeling humanity. The definition of legal assistance above is a narrow understanding, namely legal aid is associated with a judicial process. Legal assistance is defined as all forms of service delivery to the community, so that they can enjoy all the rights granted by law.

B. Protection of Community Legal Rights in the Criminal Justice System

1. Concept and Basics of Human Rights Philosophy

Human rights (HAM) are essentially natural rights inherent in every human being from birth. This understanding implies that human rights are the gift of Allah the Creator to his servants. Given that human rights are a gift of God, there is no body that can revoke that right from the hands of the owner. Likewise, no one is permitted to seize it, nor is there any power which may render it secure. (Sukarno Aburaerah, 2011).

The concept of the rule of law turns out to be very closely related between the rule of law and human rights issues, so that it can be said that the rule of law is as a forum, and human rights as content (Mien Rukmini, 2007: 37).

It is also very important and relevant if the implementation or implementation of human rights is upheld in the implementation of criminal justice, and then it is a problem that must be assessed based on the concept of Human Rights (HAM). The issue of human rights is a national and international issue that has been discussed and requires serious attention, because it involves the problem of human life as a whole.

2. Human rights protection under Law No. 39 of 1999 concerning Human Rights

The uprightness of human rights always has a positive correlational relationship with the establishment of a legal state because of the close relationship between the enforcement of human rights on the one hand and law enforcement on the other.

The enforcement of human rights in Indonesia has been in line with the 1986 UN declaration which stated that human rights are both a goal and a means of development. The participation of the people in development is not just an aspiration, but the key to the overall human rights to development itself. And it is the duty of international and national development agencies to place human rights as the focus of development (Darji Darmodiharjo and Shidarta, 1995: 164).

In Article 1 paragraph (1) Law Number 39 of 1999 concerning Human Rights reads as follows:

"Human Rights are a set of rights that are inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, protected by the State, law and government, and every person for honor and protection of dignity human".

Human rights violations are every act of a person or group of people including state apparatus whether intentional or unintentional or negligence which illegally reduces, deters, limits and / or revokes the human rights of a person or group of people guaranteed by law or do not obtain fair and correct legal settlement based on the applicable legal mechanism.

3. Human Rights Implementation in the Examination of Suspects and Criminal Defendants

Regarding the application of human rights in the criminal justice process, the author argues that the most important thing to consider is the principle of equal treatment before the law without any discrimination, and the principle of presumption of innocence. Basically, the two principles must be complementary, in line and harmonious, and then implemented in regulations, for the sake of law and justice. Without the implementation of these two principles it is impossible for a fair and correct trial to be realized.

Protection of the rights of suspects / defendants in the criminal justice process, based on the Principle of the Presumption of Guilt and the Principle of Equation in the Law. A suspect / defendant is not necessarily truly guilty as reported, reported or charged. Everyone is considered innocent until a judge's decision remains that he is guilty (presumption of innocence). That is where the importance of human rights to suspects / defendants lies. In that connection, what if someone had suffered because of a long-lasting examination that suffered while he was innocent. Therefore another principle adopted by criminal procedural law (KUHAP) is the principle of fast justice or *Contante Justitie* or speedy trial, meaning that the suffering / birth of the suspect / defendant is due to not be protracted.

4. Suspect and Defendant Rights under Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHAP) Law No. 39 of 1999 concerning Human Rights and Law No. 4 of 2004 concerning Judicial Power.

In the provisions of Indonesian law, the principle of protecting human rights is stated in Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code (KUHAP) also contained in Law No. 14 of 1970 concerning Basic Provisions of Judicial Power as amended by Law No. 35 of 1999 and finally by Law No. 4 of 2004 concerning 2004 concerning Judicial Power. There are several principles, among others:

- a. The same treatment for each person before the law by not making a difference in treatment - Article 5 paragraph (1) Law No. 4 of 2004
- b. Arrest, detention, searches and seizures are only carried out based on written orders by officials authorized by law and only in the case and by means regulated by law - Article 7 of Law No. 4 of 2004
- c. Anyone who is suspected, arrested, detained, prosecuted and / or confronted before a court hearing, must be considered innocent until a court ruling declares a mistake and obtains permanent legal force - Article 8 of Law no. 4 of 2004.
- d. To someone who is arrested, detained, prosecuted or tried without reason based on law and / or because of an error regarding his person or the law applied must be compensated and rehabilitated from the level of investigation and law enforcement officials who intentionally or because of negligence caused the legal

- principle is violated, prosecuted, convicted and or subject to administrative penalties - Article 9 (1) and (2) Law No. 4 of 2004
- e. Courts that must be carried out quickly, simply and with low costs and free, honest and impartial should be applied consistently in all levels of justice - Article 4 (2) Law No. 4 of 2004
 - f. Every person involved in a case must be given the opportunity to obtain legal assistance which is solely given to carry out the interests of his defense - Article 37 of Law No. 4 of 2004.
 - g. To a suspect, from the moment of arrest and / or detention in addition to being obliged to be notified of the charges and the legal basis of what was indicted against him, he must also be informed of his rights including the right to contact and ask for legal counsel - Article 38 of Law no. 4 of 2004.
 - h. The court checks criminal cases with the presence of the accused - Article 18 (1) Law No. 4 of 2004.
 - i. The court hearing is open to the public, except in matters stipulated in the law - Article 19 (1) Law No. 4 of 2004
 - j. Supervision of the implementation of court decisions is carried out by the Chair of the Court - Article 36 (2) Law No. 4 of 2004.

In Law No. 39 of 1999 concerning Human Rights Article 18 paragraph (4) expressly states that "every person who is questioned has the right to receive legal assistance from the time of the investigation until the existence of a court decision that has a permanent legal force." Thus the right to obtain justice is included in the human rights section.

5. The Study of the Principle of Presumption is Not Guilty and the Principle of Equality in Law in the Criminal Justice Process

The importance of protecting human rights in the implementation of the Indonesian criminal justice system has actually been recognized in the Criminal Procedure Code. According to the provisions of Article 117 paragraph (1), the information of the suspect and / or witness to the investigator is given without pressure from anyone or in any form. With the existence of this article, the examination by investigators for the purpose of investigation must be appropriate and must respect human rights.

The principle of equality in the law and the principle of presumption of innocence are important human rights to be considered. In essence civil and political rights have the character of protecting individuals against abuse by the authorities. Thus, to implement civil and political rights is sufficient to regulate the role of government through legislation. (Dardji Darmodiharjo, CS. 1981: 80-81).

The principle of equality in the Law (Equality before the law) expressed in Article 27 paragraph (1) of the 1945 Constitution as Human Rights, in its implementation must be in line with the pattern of view of the Pancasila. Thus the implementation of the Principle of Equation in law, based on Article 27 paragraph (1) of the 1945 Constitution is a right for everyone without any difference. For this reason, it must be realized in all applicable laws and regulations in Indonesia, including the laws governing the criminal justice process.

Law enforcement in the process of examination and criminal justice starting from the stage of investigation, prosecution and trial must apply equally to everyone involved. The principle of equality in the law based on Article 27 paragraph (1) of the 1945 Constitution must be consistently implemented. Likewise in the elaboration and application of the Guilty Principle of Guilt in the Criminal Justice system, according to the authors, the relationship between them must be harmonious, in line with the enforcement of suspects and defendants' human rights.

IV. DISCUSSION

This dissertation emphasizes the protection of human rights against suspects and defendants in criminal cases. The purpose of criminal justice is to decide whether a person is guilty or not, where criminal justice is carried out by procedures that are bound by strict rules of proof that cover all constitutional boundaries and end in the process of examination at the Court. Criminal case examinations in the Court of the Indonesian Criminal Justice System are listed in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) Chapter XVI.

Research conducted at the Makassar Polrestabes Criminal Investigation Unit and 5 (five) Polsek included Ujung Pandang Sub-District Police, Mariso Police Station, Tamalate Police Station, Manggala Police Station and Rappocini Police Station with 40 police investigating respondents, with ten questions concerning rights protection. basic suspects and defendants in criminal cases. The results are as follows:

Table 1. Protection of human rights against suspects and defendants in criminal cases

No	Description	Proportion of Answer		Information
		Yes	No	
1	Implemented the presumption of innocence principle?	36	4	
2	The suspect / defendant was accompanied by an Advocate during the investigation	35	5	
3	The suspect was told about what was alleged and his right to get legal assistance?	36	4	
4	Arrest / detention using a letter of assignment?	36	4	
5	Detention of more than 24 hours?	8	32	
6	Are there mental stresses during investigation?	3	37	
7	There is violence treatment (viotence) in the investigation process?	0	40	
8	Is there torture in the investigation process?	1	39	
9	The principle of presumption of innocence is put forward in the process of investigation?	40	0	
10	The contents of the investigation report are read out by the Investigator?	33	7	

Data source: Makassar Polrestabes

Table 1 shows that the investigators in the Makassar Polrestabes Police and 14 Polsek in the Makassar Polrestabes area have relatively implemented the provisions mandated by the Criminal Procedure Code concerning the protection of the rights of suspects and defendants in criminal cases during the investigation and investigation process.

To analyze the implementation of the investigation and investigation of the police against suspected criminals in Makassar City handled by the Makassar Police and Police, related to the rights of suspects and defendants as mentioned in the Criminal Procedure Code between Article 50 to Article 68 as the translation of human rights the suspects and defendants, the police, both the Makassar Police and the sub-district police have sought legal assistance from Advocates at the time of the investigation of the suspects who were threatened with death penalty or fifteen years or for those who could not be threatened five years or more for free Article 56 of the Criminal Procedure Code. The Advocate Office which actively assists the Polrestabes Makassar police and its police in providing legal assistance to suspects includes Posbakum Makassar Class I A District Court and also from other Legal Aid Institutions (LBH).

Requests for legal assistance from the Makassar Polrestabes and its Polsek for criminal case investigations to Posbakum Makassar PN are increasing from year to year as in table 2 below.

Table 2. Number of requests for Legal Aid from the Makassar Polrestabes and Polsek in 2016 - 2017.

No	Police	Legal Aid Request						Information
		2012	2013	2014	2015	2016	2017	
1	Polrestabes Makassar	-	-	4	10	34	30	*Place data collection from investigators as many as 40 respondents
2	Polsek Ujung Pandang	-	-	-	-	9	3	
3	Polsek Wajo	-	-	-	-	7	4	
4	Polsek Makassar	1	-	-	3	10	5	
5	Polsek Mariso	-	-	-	-	11	9	
6	Polsek Mamajang	-	-	-	-	-	-	
7	Polsek Bontoala	-	-	-	-	4	2	
8	Polsek Ujung Tanah	-	-	-	-	-	-	
9	Polsek Tallo	-	-	-	-	3	8	
10	Polsek Panakkukang	-	-	-	8	19	3	
11	Polsek Biringkanaya	-	-	-	2	10	-	
12	Polsek Tamalate	2	1	-	14	41	17	
13	Polsek Tamalanrea	1	-	-	-	-	-	
14	Polsek Manggala	-	-	1	6	32	30	
15	Polsek Rappocini	-	-	1	9	43	11	
	Total	4	1	6	52	227	122	

Data source: Legal Aid PostMakassar District Court

The request for testimony by the Posbakum Makassar Advocate during the stage II submission of the Police Polrestabes Investigator to the Public Prosecutor continued to increase from year to year as in table 3 below.

Table 3. Submission of Phase II of the Defendant from the Police Investigator to the Public Prosecutor and witnessed by the Posbakum Advocate.

Year	Number of cases	Information
2012	132	Type of case:
2013	113	1. KAMNEGTIBUN (State Security and Public Order)
2014	179	2. OHARDA (People, Property and Objects)
2015	226	3. TPUL (Other General Crimes)
2016	314	
2017	Not yet reported	

Data source: Makassar District Attorney

According to Article 140 of the Criminal Procedure Code, if the Public Prosecutor believes that the investigation from the Investigator can be prosecuted, then he will immediately make a letter or deed containing the formulation of the accused crime, which can be concluded from the investigation from the Investigator which is the basis of the judge to conduct an examination at a court hearing.

The development of the number of criminal cases that were tried in the Makassar I A District Court can be seen in table 4 the number of criminal cases decided by the Makassar Special Class I A District Court where some of the cases were accompanied free of charge by the Posbakum Advocate Makassar District Court.

Table 4. Number of Criminal Cases decided by Makassar Special Class I A District Court 2012-2017.

Year	Number of Criminal Cases that have been decided by the Court	Information
2012	-	Data for 2012 does not exist because at that time it did not use the CTS (Case Tracftict System) system. The CTS system was used in 2013
2013	2043	
2014	2091	
2015	1947	
2016	2328	
2017	2024	

Data source: Criminal Section of Makassar District Court

The number of criminal cases handled by Posbakum for free (prodeo) since 2012 as table 5 below.

Table 5. Number of Criminal Cases handled by the Posbakum PN Makassar Advocates for free (prodeo) in 2012-2017.

Year	Number of Free Criminal Cases (Prodeo)		Total
	Adult	Child	
2012	65	1	66
2013	53	1	54
2014	120	49	169
2015	228	166	394
2016	306	104	410
2017	465	75	540
	1.237	396	1.633

Data source: Legal Aid Post (Posbakum) Makassar District Court

Table 5 number of criminal cases handled by Posbakum Advocates Makassar Special Class I A District Courts which are accompanied free of charge (prodeo) show an increase every year. This shows that Advocates in Makassar have taken a large role in carrying out efforts to protect human rights, namely suspects and defendants in criminal cases in the criminal justice system.

Free criminal and civil case assistance (prodeo) is also carried out by the Posbakum PN Advocate. Makassar, a member of PERADI (Indonesian Advocates Association) was also conducted by another Legal Aid Institute (LBH) which is domiciled in Makassar.

For the work of providing free assistance (prodeo) on criminal and civil cases in the court, it is necessary to have sincerity and readiness of Advocates who are willing to sacrifice to fight for the protection of the rights of suspects and defendants because they will be preoccupied with cases that do not pay fees as an eye Advocate's livelihood. The strength of the Posbakum Advocate personnel of the Makassar District Court since

its establishment in 2012 until now, which works to help disadvantaged communities in criminal and civil cases in the Makassar Special Class I A District Court as in table 6 below.

Table 6. Number of Makassar Civil Service District Advocates for 2012-2017.

Year	Number of PERADI Advocate Personnel	Qualification		Information
		Senior	Junior	
2012	4	4	-	Junior is an apprentice advocate Senior is an Advocate who has an Advocate Office in Makassar
2013	6	6	-	
2014	6	6	-	
2015	10	6	4	
2016	15	7	8	
2017	16	8	8	
	57	37	20	

To guarantee respect and protection of Human Rights in the criminal justice process, the legal advisory function (read Advocates) is very important as a companion to the suspect and defendant in order to maintain their rights in accordance with the provisions of the applicable legislation stated in Law No. 8 of 1981 concerning Article 50 to 68 KUHAP, namely Chapter VI of suspects and defendants.

In Law No. 18 of 2003 concerning Advocates who regulate the position, function and role of legal counsel (read Advocates) so that they can carry out their duties well and are dedicated and have high integrity, and not only act for the victory of their clients, but must be broad-minded in the interests of justice and national interests .

Juridically, the rights of suspects and defendants have been regulated in articles of Law No. 8 of 1981 concerning the Criminal Procedure Code, but its application is inadequate because of "juridical obstacles", for example Law No. 8 of 1981 does not further regulate the legal consequences if there is a violation of these matters, meaning that Law No. 8 of 1981 has not been effective. This indicates that there are still gaps and deficiencies in the settings.

V. CONCLUSION

1. The role of Advocates in the protection of human rights is very important and needed by justice seekers through the provision of legal aid services carried out by Advocates in accordance with the prevailing laws and regulations.
2. The implementation of human rights protection, in the form of providing legal aid services optimally, has been carried out by Advocates, but the results of the achievements have not been as expected.
3. The factors that influence the effectiveness of legal protection through efforts to provide legal assistance are:

- a. Internal obstacles

The obstacle comes from the Advocate himself in the form of not having sufficient financial means to support the activities of providing legal assistance to disadvantaged communities through the provision of legal assistance (free of charge).

- b. External obstacles

These obstacles come from outside conditions, for example poor management of the trial, so that there are frequent delays in court proceedings. Other obstacles, for example, are Police Investigators who do not understand Advocates' main tasks and functions, thus preventing Advocates who will provide legal assistance services to suspects and defendants in police investigations and investigations. Likewise, there are still human rights violations in the process of investigation and investigation in the Police.

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