

Implementation of the Principle of Due Process of Law in Handling General Crimes in Indonesia

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ABSTRACT

The principle of due process of law is one of the principles of a state based on the rule of law that guarantees the protection of human rights, particularly for suspects or defendants in criminal justice processes. In Indonesia, this principle is enshrined in various legal instruments, including the 1945 Constitution, the Criminal Procedure Code (KUHP), and a number of implementing regulations that emphasize the importance of fair, transparent, and non-arbitrary treatment during the investigation, prosecution, and trial processes. However, the implementation of this principle in handling general crimes still faces various problems, such as abuse of authority by law enforcement officers, criminalization practices, and disparities in the treatment of perpetrators. This study uses a normative juridical approach by analyzing regulations, doctrine, and judicial practices. The results show that although the principle of due process of law has been integrated into the Indonesian legal system, its implementation is not fully consistent. Constraints include weak oversight, lack of understanding among officials, and social and political pressures in case handling. Therefore, strengthening internal and external oversight mechanisms, increasing the capacity of law enforcement officers, and updating regulations with a greater emphasis on procedural standards are necessary. Thus, the application of the principle of due process of law in general crimes can be optimally implemented to achieve legal certainty, justice, and the protection of human rights.

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Introduction

In the perspective of social sciences, crime is understood as a social phenomenon that arises from structural injustice or as a manifestation of the diversity of human behavior, representing reactions to the socio-economic class conditions of individuals or groups in society. Regardless of its origin, individuals who are in economically disadvantaged conditions and pressured by the necessities of life, combined with a lack of moral or spiritual

foundation, tend to think short-term. It can be said that they may justify any means necessary to fulfill their needs (Rahmayanti, 2023).

In criminal law, criminalization is part of criminal policy. Criminal policy refers to the efforts undertaken by the state to combat crime, which essentially constitutes an integral part of social protection aimed at achieving societal welfare (Ismaidar dan Syahranuddin, 2019).

Law cannot remain static in the face of changing cultural values in society; rather, it will continue to develop as it adapts to the evolving cultural dynamics embraced by the community (Siregar, 2024).

The principle of *due process of law* is a fundamental doctrine within the legal system aimed at protecting human rights from arbitrary actions by state authorities. This principle requires that every legal process, particularly in criminal cases, be conducted in accordance with fair, transparent procedures that respect the rights of suspects and defendants.

The Constitution of Indonesia, through Article 28D paragraph (1) of the 1945 Constitution, affirms that every person has the right to recognition, guarantees, protection, and fair legal certainty. This provision aligns with the Criminal Procedure Code (*KUHAP*), which provides the legal foundation for law enforcement officials to act in accordance with proper procedures. However, the implementation of the *due process of law* principle still frequently encounters abuses of authority, such as arrests without official warrants or treatment that violates human rights.

Cases of wrongful arrest serve as concrete examples of the weak implementation of the *due process of law* principle in Indonesia. For instance, the wrongful arrest case of the late Siyono in Klaten in 2016, who allegedly died as a result of actions taken by authorities during the arrest process, illustrates how the fundamental rights of suspects are often neglected, despite constitutional and procedural safeguards.

Moreover, in handling general criminal offenses, there are cases where suspects are processed without legal counsel. Article 56 of the Criminal Procedure Code stipulates that in cases carrying a penalty of more than five years, the defendant must be accompanied by legal counsel. This condition indicates that the principle of *due process of law* has not been fully internalized by law enforcement officials.

Not only at the investigation stage, issues in the implementation of *due process of law* also arise during prosecution. Prosecutors, as *dominus litis*, should assess the feasibility of a case file before submitting it to court. However, there are instances where cases proceed despite weak evidence, thereby potentially harming the defendant. This can be observed in the wrongful arrest case involving four street musicians, including minors, in Cipulir, South Jakarta, who were accused of murder in 2019.

At the trial stage, the principle of *due process of law* requires judges to act impartially, provide equal opportunities to both the prosecution and the defense, and render decisions based on proven legal facts. However, in reality, disparities in judicial decisions for similar cases still occur, raising concerns regarding the consistency of justice. One

example can be seen in narcotics cases where defendants with nearly identical amounts of evidence receive different sentences (Muladi, 2002).

The implementation of the *due process of law* principle is also crucial in protecting victims' rights. In many general criminal cases, victims are often neglected and do not receive adequate legal protection. In fact, the criminal justice system should not only enforce the law against perpetrators but also ensure restorative justice that actively involves victims.

The rationale for applying restorative justice lies in the presence of remorse and acknowledgment of guilt by the perpetrator, followed by an agreement to reconcile between the perpetrator and the victim. In this context, the grounds for eliminating criminal liability can generally be divided into two categories: justifications, which relate to the act itself, and excuses, which are connected to the mental state of the perpetrator (Sahlepi, 2022)..

Method

The type of research used is normative legal research, which focuses on the study of positive legal norms, legal principles, and legal doctrines applicable within the criminal justice system in Indonesia. Normative legal research aims to examine the application of the *due process of law* principle within the framework of statutory regulations as well as its implementation in the handling of general criminal offenses. This approach is chosen because it is relevant for analyzing the conformity between ideal legal norms and the actual practice of law enforcement in the field (Soerjono dan Sri, 2015).

The data collection method in normative legal research is conducted through library research. The data obtained are then analyzed qualitatively by interpreting and examining the relationship between existing legal norms and the practical implementation of the *due process of law* principle (Marzuki, 2014). The analysis is carried out to identify both the conformity and the obstacles in the application of this principle within the criminal justice system in Indonesia.

Results and Discussion

1. Regulations on The Principle of *Due Process of Law* in Handling General Criminal Offenses in Indonesia

Law is necessary even in societies that already have norms and rules, in order to create order in human life through written law accompanied by clear sanctions, in addition to norms and rules whose sanctions are more social or moral in nature. Every community group has rules that must be obeyed by its members in order to achieve welfare (Siregar et.al, 2023).

The Draft Criminal Code (*RUU KUHP*) represents a reform of substantive criminal law. This reform is an effort to realize legal ideals, making the *RUU KUHP* a manifestation of Indonesia's legal identity. Legal reform is not only aimed at improving existing law but also at replacing it with a better system, free from colonial legal paradigms. Such reform serves as a foundation for shaping national character and represents a real condition toward

an ideal one. Thus, the *RUU KUHP* becomes a method for planned social and cultural transformation within society (Gemilang dan Ismaidar, 2024).

The Indonesian criminal law system is entering a new phase of development. One significant reform is the recognition of criminal law from the perspective of achieving justice through restoration or recovery after criminal events and judicial processes, known as restorative justice. This differs from retributive justice, which emphasizes punishment, and compensatory justice, which emphasizes restitution (Meliala et.al, 2024).

In handling criminal offenses, the principle of *due process of law* is fundamentally a concept within the criminal justice system that guarantees every individual the right to be treated fairly in accordance with applicable legal procedures. This principle is crucial as it aligns with Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right of every person to recognition, protection, and fair legal certainty. Therefore, *due process* is not merely a normative principle but a state obligation in protecting human rights.

The implementation of *due process of law* is technically regulated in the Criminal Procedure Code (*KUHAP*), which serves as a guideline for law enforcement officials in handling general criminal cases. *KUHAP* contains provisions regarding the rights of suspects and defendants, including the right to legal assistance, the right to a fair and prompt trial, and the right not to be compelled to incriminate oneself. These provisions are intended to ensure that criminal proceedings are conducted fairly and without arbitrariness.

In addition to the Criminal Procedure Code (*KUHAP*), several laws also strengthen the implementation of due process, such as Law Number 39 of 1999 concerning Human Rights and Law Number 48 of 2009 concerning Judicial Power. Both regulations emphasize that judges are obliged to explore, follow, and understand legal values and the public's sense of justice, so that the principle of due process extends beyond formal procedural aspects to substantive justice.

However, in practice, the application of *due process* often faces obstacles. Procedural violations still occur at the investigation stage, such as arrests without warrants, excessive detention periods, and coercive treatment to obtain confessions. This reflects a gap between legal ideals and practical realities (Hamzah, 2019).

One notable case highlighting the weakness of *due process* is the murder of human rights activist Munir Said Thalib in 2004. The investigation and trial process received widespread criticism for lacking transparency and failing to bring the intellectual perpetrators to justice. This case illustrates that *due process* requires impartial investigation and full respect for victims' rights and public justice.

Violations of the *due process* principle have significant impacts on both the legitimacy of the justice system and public trust in law. Court decisions resulting from flawed procedures risk being annulled or deemed legally invalid (Muladi dan Arief, 2010).

To strengthen the implementation of *due process*, oversight of law enforcement officials is necessary through both internal and external mechanisms. Institutions such as Komnas HAM, Lembaga Perlindungan Saksi dan Korban, and Ombudsman Republik

Indonesia play important roles in monitoring and handling public complaints related to violations of rights in criminal processes.

Although regulations on *due process of law* are clearly stated in *KUHAP* and other laws, their implementation still faces various challenges. Cases such as the Munir murder and wrongful arrests of minors demonstrate that violations of *due process* continue to occur.

2. Implementation of The Principle of *Due Process of Law* in Handling General Criminal Offenses in Indonesia

The principle of *due process of law* guarantees every individual the right to a fair, non-arbitrary legal process in accordance with constitutional mandates. It serves not only as a legal foundation but also as a guideline for law enforcement officials. Its implementation is detailed in Law No. 8 of 1981 on Criminal Procedure (*KUHAP*), which regulates the rights of suspects and defendants, including the right to legal assistance, the right against self-incrimination, and the right to a prompt and fair trial. *KUHAP* functions as the primary instrument to prevent abuse of power by law enforcement authorities. However, in practice, the implementation of *due process* still encounters many challenges. Arrests and detentions are sometimes carried out without proper procedures or exceed legal time limits. Suspects may also face intimidation or coercion to obtain confessions, which contradicts fair trial principles.

A case illustrating weak implementation is the wrongful arrest of Siyono in Klaten in 2016, who allegedly died due to actions taken by authorities during the arrest process. This case demonstrates how fundamental rights are often neglected despite existing legal protections. Similarly, the wrongful arrest of four street musicians, including minors, in Cipulir, South Jakarta, in 2019 highlights the vulnerability of human rights when oversight is weak. Another example is the case of Munir Said Thalib, where the legal process was considered incomplete and lacking transparency, leading to perceptions of impunity. This shows that *due process* is not only about protecting suspects but also about ensuring justice for victims and society.

Violations of *due process* have legal implications. Evidence obtained unlawfully may be inadmissible in court, and decisions resulting from flawed procedures may be invalidated. Moreover, such violations undermine public trust in the legal system. Strengthening the implementation of *due process* requires legal reform, including improving the capacity of investigators, prosecutors, and judges in understanding human rights principles. Oversight institutions such as Komnas HAM, Ombudsman Republik Indonesia, and Lembaga Perlindungan Saksi dan Korban must be more actively involved in supervising criminal justice practices.

3. Urgency of Implementing The Principle of *Due Process of Law* in Handling General Criminal Offenses in Indonesia

The principle of *due process of law* is a fundamental pillar of a rule-of-law state that positions law as a means of protecting human rights, especially in handling general criminal

offenses. It emphasizes that all criminal law enforcement processes must be carried out through fair, rational procedures that respect human dignity. Its urgency becomes more apparent given the persistence of repressive paradigms that prioritize punitive outcomes over procedural justice.

In practice, handling criminal offenses often prioritizes efficiency, such as accelerating investigations and increasing case submissions to court. This approach risks neglecting the rights of suspects, including the right to legal assistance and protection from arbitrary actions. Therefore, *due process of law* acts as a mechanism to control state power and prevent the criminal process from becoming an instrument of oppression (Harahap, 2016).

Conceptually, *due process* should not be understood merely as formal compliance with procedural law. It also includes substantive dimensions, ensuring that law enforcement actions are proportional, objective, and based on legitimate legal grounds. A narrow understanding often results in processes that are “procedurally legal” but “substantively unjust.”

According to Al Azim Muchtar, *due process of law* must be positioned as a constitutional principle rather than merely a procedural technique. Protection of suspects should begin from the earliest stage of the criminal process, even before formal designation as a suspect. This view rejects the justification of rights violations during preliminary stages for the sake of law enforcement (Muchtar, 2017).

In practice, abuse of authority such as disproportionate arrests and detentions still occurs. Al Azim Muchtar emphasizes that such conditions reflect weak internalization of *due process* among law enforcement officials and stresses that coercive state actions must be assessed not only for legality but also for rationality and necessity.

The urgency of *due process* is also evident in evidentiary processes. Evidence obtained through unlawful means is still sometimes used to pursue material truth. However, truth obtained through human rights violations cannot be considered legitimate in a rule-of-law state. Thus, *due process* functions as both an ethical and legal filter in criminal proceedings.

Furthermore, *due process* plays a crucial role in upholding the presumption of innocence. In many cases, suspects are socially judged before a final court decision, reflecting a failure of the justice system to maintain neutrality and objectivity (Atmasasmita, 2018).

Judges play a key role in ensuring the enforcement of *due process*. They must not only examine case files but also evaluate how evidence is obtained and whether law enforcement actions are lawful. Passive judges who ignore procedural violations effectively legitimize such violations.

From a criminal justice system perspective, *due process of law* is an indicator of justice quality rather than an obstacle to law enforcement. Its application strengthens the legitimacy of criminal judgments. Without *due process*, criminal proceedings risk producing decisions that are formally valid but morally and constitutionally problematic (Arief, 2016).

Therefore, the urgency of implementing *due process of law* in handling general criminal offenses in Indonesia is undeniable. This principle is not only a safeguard for suspects but also a foundation for justice and public trust in the legal system. Without it, criminal law risks losing its ethical legitimacy and becoming a repressive instrument of power, contrary to the ideals of the Indonesian rule of law

Conclusion

1. The principle of due process of law has a legal basis in the Indonesian legal system. The 1945 Constitution, specifically Article 28D paragraph (1), guarantees fair legal certainty for everyone. More specific provisions are contained in Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), which affirms the rights of suspects and defendants, such as the right to legal assistance, the right to be clearly informed of the charges, the right not to be forced to confess, and the right to a speedy and non-discriminatory trial. In addition to the KUHAP, Law Number 39 of 1999 concerning Human Rights and Law Number 48 of 2009 concerning Judicial Power also emphasize the state's obligation to implement fair trials, so that the principle of due process is not only formal but also guarantees substantive protection of human rights.
2. Although the legal framework regarding due process is normatively clear, its implementation in the field still faces many challenges. The practice of arrest without a warrant, excessive detention, and torture to obtain confessions are common violations. The wrongful arrest of four street musicians, consisting of minors, in Cipulir, South Jakarta, accused of the 2019 murder of Dicky Maulana; the wrongful arrest of the deceased Siyono in Klaten in 2016, who allegedly died as a result of police misconduct during the arrest; and the unclear resolution of the Munir Said Thalib death case demonstrate that the principle of due process has not been fully implemented by law enforcement officials. This situation raises public doubts about the integrity of criminal justice and highlights the gap between normative rules and legal practice. Therefore, strengthening the capacity of officers, regulatory reform, and transparent and independent oversight mechanisms are needed to ensure the principle of due process is truly realized at every stage of handling general crimes in Indonesia.
3. In the criminal justice system, due process of law is an indicator of the quality of justice, not an obstacle to law enforcement. The application of this principle actually strengthens the legitimacy of criminal decisions. Without due process, the handling of general crimes risks producing decisions that are formally valid but morally and constitutionally problematic. The urgency of implementing due process of law in handling general crimes in Indonesia is non-negotiable. This principle is not merely protection for suspects, but also the foundation for upholding justice and public trust in the law. Without due process of law, criminal law has the potential to lose its ethical legitimacy and become a repressive tool of power, contrary to the ideals of the Indonesian state of law.

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