Advocates’ Role toward the Protection of Criminal Suspects' Rights in the Investigation Process at the Area of Bengkulu Regional Police Department

By:
Boy Akmal, Herlambang, Antory Royan Adyan

Abstract

The aims of this study were to analyze the role of advocates in the protection of criminal suspects’ rights who died in the process of investigation in the area of Bengkulu Regional Police Department, and to analyze the constraints faced by advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police Department. The method used in this study was empirical legal research. This study used primary and secondary data collections. The results showed; that the role of advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police Department, has not been implemented because in the process of examination of the suspect before he died was not accompanied by advocates by making a statement of unwillingness to be accompanied by advocate, after the suspect died of the suspect's family who died reported the death of suspects in the investigation process in police custody room of Bengkulu Selatan Police Resort to Profession and Security Unit accompanied by the advocates. Constraints faced by advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police Department include: the number of advocates were inadequate to perform legal assistance to the suspect, the lack of government attention to outreach activities of legal assistance to people who are weak, and lack of understanding of suspects of the importance of advocates’ roles in assisting a suspect at the time of the investigation process, as well as the attitude of investigators who do not understand the role of advocate in the process of inquiry and investigation.

Keywords: Roles of Advocates, Protection of Suspects’ Right, Investigation Process
A. Introduction

1. Background

The Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of 1945, as stated in Article 27 paragraph (1) of the 1945 Constitution, which states that "all citizens have equal status before the law and in government and shall abide by the law and the government without any exception".

Law has strongly regulated human actions, and the law has the nature to create a balance between the interests of the citizens. Thus the law has force and binding nature, although an element of coercion is not the most important element in the law, as not all acts or prohibition may be imposed. In this case, imposing interpreted as a command with a sanction if it is not adhered to, and the sanction took the form of an affliction that can provide deterrence to the offender.

One of the suspects’ rights is to have legal assistance, especially for those who do not understand the law even for those with middle to lower social class, in which it necessary to be aware of the rights of suspects, especially those who are underprivileged and for those who do not understand the law. Every community needs someone (figure) who is reliable, trustworthy whose signature and seal provide a guarantee and as strong evidence. Someone (figure) in question is a lawyer/advocate, where a lawyer or an advocate is a person who provides legal assistance or legal advice to clients/litigants.

Advocates are needed in conjunction with law enforcement process, including taking part in guaranteeing an individual's right to be considered and not to be ignored or enforce the legal principle of presumption of innocence, where the suspect is considered not guilty before the court to issue permanent law. In the Indonesian legal system, advocates is law enforcer where the presence of advocate to ensure the enforcement process do not violate human rights and in accordance with the provisions of
applied law, so that acts of discrimination and arbitrary conducted by law enforcement can be avoided.

With the enactment of Law No. 8 of 1981 on Criminal Proceedings is a real form of guarantee and legal protection against human dignity, as in Article 50, which gives the legal right based on law and legislation to the suspect/defendant, namely: Eligible to be examined immediately by investigators. Entitled immediately put on trial and is entitled immediately prosecuted and received a court decision (speedy trial right) and in addition to the rights of a suspect or defendant has the right to defense and legal aid is regulated in Article 51 through Article 57 Criminal Procedure Code.

Code of Criminal Procedure in force in Indonesia adheres to the important principle, namely the principle of Justice Fast, simple and Ringgan fee, so in completing the criminal case of law enforcement work in a professional manner in accordance with the mechanism and the time that has been specified by promoting legal certainty to the suspects.

According to Andi Hamzah: "The purpose of the Code of Criminal Procedure is to seek and obtain or at least close to the truth material, is the truth of the detail of a criminal case by applying the provisions of the Criminal Procedure Code honestly and precisely with the aim to find who the perpetrators can be charged committing an offense, and further requested the examination and judgment of a court to find out whether proven that a crime has been committed and whether the person charged was to blame."  

Although the goal in berlakukannya procedural law is clear as the opinion of Andi Hamzah such but in practice there's also the actions of law enforcement officers who harm the suspect, as was widely reported in the mass media, there are still many occurrence of acts of violence committed by law

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1Andi Hamzah, 2001, the Criminal Procedure Code Indonesia, Sinar Grafika, Jakarta, Hal. 7
enforcement officers against suspects in the process criminal investigations and other law enforcement officers actions were detrimental to suspect this is caused unfulfilled rights of a suspect in the investigation process.  

B. Identification of problems  
1. How is the role of lawyers in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police?  
2. Constraints are faced by advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police?  

C. Research methods  
According Soerjono Soekanto, empirical legal research, the research by trying to see how the parties related to responsive and consistent in using the rules concerned.  

According to Ade Saptomo this empirical research pertained to the legal effectiveness of research which is legal research want to examine the effectiveness of a rule perndang law. MakaPenelitian empirical law is a kind of research with non-doctrinal approach, the research in the form of empirical studies to find theories about the process and about the workings of law in the society or often called socio-legal research.  

D. Results and Discussion  
1. Protection of the Rights Advocate Role In Suspect Who Died In Investigation Process In Area Regional Police Bengkulu  
Law authorizes the police to enforce the law in various ways that exist. Police duties within the scope of penal
policy fall within the applicable policy, namely the domain of application of criminal law tends repressive. Law enforcement officers in carrying out their duties during the process of the investigation, of course, must come through the correct legal procedures in accordance with Law No. 8 of 1981 on Criminal Procedural Law and other legislation. Thus, the ideology of Indonesia as a legal state really materialized. In the criminal procedure law there is the presumption of innocence, as contained in Article 8 of Law No. 48 Year 2009 concerning Judicial Authority.

"Every person suspected, arrested, detained, prosecuted, and / or appear before the court shall be presumed innocent until there is a court ruling that declared his guilt and has obtained permanent legal force",

Rooted in the presumption of innocence and reasonable it is clear that the suspect in the criminal justice process required to get their rights. Book legislation Criminal Law (Criminal Code) has been raised and put suspects in a fair position. Laws must be enforced. However, in the implementation of law enforcement against the suspect should not be "stripped" the rights of suspects are attached to him. Judicial rights set out in the Criminal Procedure Code shall be provided to the self suspects. Criminal Procedure Code has been clearly and firmly, related rights of suspects (Articles 50 to 68 Criminal Code), and law enforcement officials shall respect the rights of juridical according to the Criminal Procedure Code has been awarded the State, the suspect, in the settlement of the criminal case as they are implied in the provisions of the Criminal Procedure Code,

Advocates role not only resolve issues or conflicts between individuals or legal entities only. Advocates also acts as a media liaison between the community and the authorities, or even between
citizens and the state. Advocates role ensures that suspects who are dealing with the law can be processed in accordance with the provisions of applicable law. The role in practice is still formalistic, because there are rights of suspects who have not been met, meaning that they need for the study and evaluation of the performance and optimize the role of advocate for the legal protection of the rights of suspects who are dealing with the law.

The purpose of this was granted to the accused is to avoid mistakes and arbitrariness of the law enforcement agencies that can harm the suspect. With the defense or counsel from the investigation stage to the stage of court proceedings, the defense can see and listen to the course of the examination conducted on the suspect. Legal aid issues as the rights of suspects or also arranged in various other laws and regulations, such as: 1) Article 18 paragraph (4) of Law No. 39 of 1999 on Human Rights, which states: "Every person who checked entitled to legal assistance from the moment the investigation until the court decision is final and binding"; 2) Article 37, Law No. 48 Year 2009 regarding Judicial Power, which states: "

Based on the research field that the role of lawyers in protecting the rights of suspects in the investigation process in the region of Bengkulu Provincial Police has been implemented to the fullest, even though not fully implemented. Because in the process of investigation of suspects in South Bengkulu Police suspect the theft of motor vehicles is not accompanied by the Advocate. This is because the suspect has not been willing to make a statement didampingin by advocates of the process of the investigation. While the role of advocate after the suspect died in Bengkulu Police penyidikandi process is already performing well, due to the reporting in Bengkulu Police
Propam committed by the suspect's family who died has been accompanied by an advocate.

Basically, the role of lawyers in protecting the rights of suspects in the investigation process in the region of Bengkulu Provincial Police is providing legal assistance to their clients in court and out of court as assist, represent, defend. In the process of the police investigation in the role of a lawyer is as a companion for the right - the right of the suspect/client had not violated by police investigators, as though somehow a suspect/client being examined had the same rights before the law like other communities.

The role of legal counsel in the investigation process which includes how to position the case, because in that case the position punishable by five years and above will be mandatory accompanied legal counsel. Legal adviser who accompanied suspects were appointed by the Regional Police investigators Bengkulu through the letter of appointment, which essentially contains regarding the request to assist the suspect in the investigation process. Then about how the role of legal counsel in the investigation process that includes the rights, responsibilities, authority, measures and actions in assisting the suspect in the investigation process.

2. Obstacles faced by advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Regional Police

Constraints faced by advocates in protecting the rights of suspects who died in the investigation process in the region of Bengkulu Provincial Police, namely:
1. Inadequate number of lawyers to do legal aid for suspects.
2. Lack of understanding of the importance of the role of advocate suspect in
assisting the suspect at the time of the inspection process.

3. Lack of government attention to the activities of legal aid counseling free to the public.

4. Investigators who do not understand the role of advocate in the process of inquiry and investigation.

Given the difficulties faced by lawyers in the protection of the rights of suspects in the investigation process in the Regional Police Bengkulu as above, education advocates must be able to produce a legal practitioner of a mature, berkeperibadian, dignity, uphold the oath of profession, respect the law and justice as well as understand and implement the provisions and the principles that hung in the professional code of ethics advocates. Capabilities, education curriculum advocates should be able to produce a legal practitioner who not only understand the legal theories in depth but, more importantly, must be proficient to apply the legal theories into practice the true reality. Justice does not always mean that everyone should be treated equally regardless of the important differences that objectively exist in every individual. In theory fairness helpful in describing the constitutive elements of the legal system applicable state and objectives of government policy relating to legal aid which is applied to any person or group of poor people in an effort to implement the principle of equality.

Implementation of legal aid is basically a process when an investigator tells the right of suspects to have legal representation at the initial inspection in accordance with Article 114 of the Criminal Procedure Code, which reads: "In the case of a suspected of committing a crime before the commencement of the examination by the investigator, the investigator shall inform him of his right to legal aid or that he was in his case it shall be accompanied by legal counsel as referred to in Article 56. "Therefore, if the investigators did not tell right of suspects to have legal representation, the legal aid does not materialize or be an error in its implementation.

Legal aid is a human right, especially suspects, especially for people belonging to the poor or disadvantaged, which, if not met then it means that human rights have been
infringed upon. Therefore we need a fair legal process (due process of law) through a national criminal procedural law more humane and taking into account the rights of suspects. The role of counsel in this case is very important as an instrument of supervision and control of the possibility of irregularities in the practice of law enforcement.

The provision of legal aid in criminal proceedings is a principle of law state. It is the right of a person involved in a criminal case to be made preparations for his defense and to receive counseling about reliable way to enforce your rights as a suspect and defendant. As was written in the law no. 48 of 2009, concerning Basic Provisions on Judicial Power, Article 37 states that: "Every person who lodged the case are entitled to legal aid".

E. Cover

1. Conclusion

a. The role of lawyers in protecting the rights of suspects before dying in the process of investigation in the area of Regional Police Bengkulu, has not been implemented because, in the process of examination of the suspect before she died not didampingin by advokatdengan make a statement not willing to be accompanied advocate, after the suspect passed the victim's family, please take a power of attorney to the advocate to be accompanied by an advocate in reporting on Bid Propam Bengkulu Police.

b. Constraints are faced by advocates in protecting the rights of suspects who died in the process of investigation in the area of Bengkulu Provincial Police as follows:

a. Inadequate number of lawyers to do legal aid for suspects.

b. Lack of understanding of the importance of the role of advocate suspect in assisting the suspect at the time of the inspection process.

c. Lack of government attention to the activities
of legal aid counseling free to the public.

d. Investigators who do not understand the role of advocate in the process of inquiry and investigation.

2. **Suggestion**

Should be disseminated to the general public so that people know the legal process is done by providing guidance and counseling to the community that aims to increase public awareness about the importance of law enforcement. In providing legal assistance to suspects in the investigation level should be a legal representative to coordinate with the suspect or the investigator. This needs to be done so that the case is being faced by the suspect quickly completed and strength gain legal decisions of the judges are fixed.

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**Daftar Pustaka**

**Buku**


**Perturan Perundang-undangan**

- Undang-Undang No.18 Tahun 2003 Tentang Advokat
- Undang-Undang No. 48 Tentang Kekuasaan Kehakiman
- Undang-Undang No. 16 Tahun 2011 Tentang Bantuan Hukum