

# The Urgency of Implementing 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 (KUHAP), 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 optimal, ensuring legal certainty, justice, and the protection of human rights.

**Keywords:** Due Process of Law, Handling, and General Crimes.

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## Introduction

From a social science perspective, 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 socio-economic class conditions of individuals or groups within society. Regardless of its origins, individuals who are in economically vulnerable conditions and pressured by the necessities of life, compounded by weak moral or religious values, tend to think short-term and may justify any means necessary to fulfill their needs, as explained by Rahmayanti in her criminological study (Rahmayanti, 2023).

In criminal law, criminalization constitutes part of criminal policy. Criminal policy refers to efforts undertaken by the state to combat crime, which essentially form an integral part of social protection efforts aimed at achieving public welfare, as stated by Barda Nawawi Arief (2016).

Law cannot remain static amid changing cultural values within society; rather, it develops in accordance with social and cultural transformations embraced by the community.

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 and transparent legal procedures while respecting the rights of suspects and defendants.

The Indonesian Constitution, through Article 28D paragraph (1) of the 1945 Constitution, affirms that every person has the right to recognition, guarantees, protection, and fair legal certainty (The 1945 Constitution of the Republic of Indonesia). This provision is reinforced by the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana), which provides the legal framework for law enforcement officers to act in accordance with established procedures, as elaborated by Andi Hamzah in his discussion on Indonesian criminal procedure law (Andi Hamzah, 2019). However, the implementation of the due process of law principle is frequently confronted with 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 application of the due process of law principle in Indonesia. One such case involved the wrongful arrest of the late Siyono in Klaten in 2016, who allegedly died as a result of actions taken by officers during the arrest process, as documented in the Komnas HAM Annual Report (Komnas HAM, 2017). This case illustrates how fundamental rights of suspects are often neglected, even though constitutional and procedural criminal law safeguards are clearly established.

Additionally, in handling general criminal offenses, there are cases where suspects are processed without legal counsel. Article 56 of Law Number 8 of 1981 concerning Criminal Procedure mandates that in cases carrying a sentence of more than five years, the defendant must be accompanied by legal counsel (Law No. 8 of 1981). This condition indicates that the principle of due process of law has not been fully internalized by law enforcement officials.

Problems in implementing due process of law are not limited to the investigation stage but also occur during prosecution. Prosecutors, as *dominus litis*, are responsible for assessing the feasibility of case files before submitting them to court. However, there are instances where cases proceed despite weak evidence, potentially disadvantaging defendants. An example is the wrongful arrest case of four street musicians, including minors, in Cipulir, South Jakarta, who were accused of murder in 2019, as reported by Tempo.co (Tempo.co, 2025).

At the trial stage, the principle of due process of law requires judges to act impartially, provide equal opportunities to prosecutors and defendants, and render decisions based solely on proven legal facts. However, disparities in sentencing for similar cases raise questions regarding consistency in the application of justice.

The implementation of the due process of law principle is also crucial for the protection of victims' rights. In many general criminal cases, victims are often overlooked and fail to receive adequate legal protection. In fact, the criminal justice system should not only enforce

the law against offenders but also ensure restorative justice that actively involves victims, as emphasized by Muladi and Barda Nawawi Arief (2010).

The rationale for applying restorative justice lies in the presence of remorse and acknowledgment of guilt by the offender, followed by an agreement between the offender and the victim to pursue reconciliation. In general, grounds for the elimination of punishment may be classified into justifications (related to the act) and excuses (related to the mental state of the offender), as discussed by M. Yahya Harahap (2016).

Based on the foregoing background, this study further elaborates on the issue under the title: “The Implementation of the Principle of Due Process of Law in Handling General Criminal Offenses in Indonesia.”

## **Literature Review**

The principle of due process of law is a fundamental element of a state governed by the rule of law, functioning as both a limitation on state power and a mechanism for protecting human rights. Within the criminal justice system, this principle requires that law enforcement actions be conducted lawfully, fairly, and without arbitrariness. Muladi (2002) emphasizes that justice in criminal proceedings must not only be procedural but also substantive, reflecting respect for human dignity. Similarly, Romli Atmasasmita (2018) explains that a modern criminal justice system must balance effective law enforcement with the protection of individual rights.

In Indonesia, the enactment of the Criminal Procedure Code (KUHAP) marked an important reform in strengthening procedural safeguards. Andi Hamzah (2019) notes that KUHAP was designed to replace the colonial procedural system and to better guarantee the rights of suspects and defendants, including the presumption of innocence and the right to legal counsel. Within the broader framework of criminal policy, Barda Nawawi Arief (2016) argues that criminal law enforcement must remain aligned with social protection objectives and human rights principles. This perspective is further reinforced by Muladi and Barda Nawawi Arief (2010), who advocate for a criminal justice approach that integrates both retributive and restorative dimensions.

However, despite adequate normative regulations, challenges persist in implementation. M. Yahya Harahap (2016) highlights that procedural violations during investigation may undermine the legitimacy of the entire judicial process. Soerjono Soekanto and Sri Mamudji (2015) describe this as a gap between law in the books and law in action. Reports from Komnas HAM (2017) further indicate that procedural violations and human rights abuses in criminal proceedings remain a concern.

Overall, existing literature suggests that Indonesia has established a sufficient legal framework to support the principle of due process of law. Nevertheless, consistent enforcement, strengthened oversight mechanisms, and the internalization of human rights values within law enforcement institutions remain essential to ensure its effective implementation.

## **Research Methodology**

### **3.1 Type of Research**

This study employs normative legal research. Normative legal research focuses on examining positive legal norms, legal principles, and legal doctrines applicable within the criminal justice system. According to Soerjono Soekanto and Sri Mamudji (2015), normative legal research is conducted by analyzing legal materials as primary data, emphasizing statutory regulations and legal concepts rather than empirical field data.

This approach aims to analyze the application of the principle of due process of law within the framework of Indonesian legislation and its implementation in the handling of general criminal offenses. The normative method is particularly relevant because this research examines the conformity between the ideal legal norms (*das sollen*) and their practical

implementation (*das sein*) in the criminal justice system, as explained by Peter Mahmud Marzuki (2014).

The research adopts several approaches, including the statutory approach (statute approach), the conceptual approach (conceptual approach), and the case approach (case approach). The statutory approach is used to analyze relevant legal instruments, such as the 1945 Constitution, Law Number 8 of 1981 concerning Criminal Procedure (KUHAP), Law Number 39 of 1999 concerning Human Rights, and Law Number 48 of 2009 concerning Judicial Power. The conceptual approach is employed to examine doctrines and theories related to due process of law, criminal policy, and restorative justice, drawing upon scholarly opinions such as those of Barda Nawawi Arief (2016) and Muladi (2002). Meanwhile, the case approach analyzes notable cases that reflect weaknesses in the implementation of due process principles.

### **3.2 Data Collection Method**

Data in normative legal research are collected through library research. Legal materials are categorized into primary, secondary, and tertiary legal sources.

Primary legal materials consist of statutory regulations, including the 1945 Constitution, the Criminal Procedure Code (KUHAP), and other related legislation governing human rights and judicial authority. Secondary legal materials include legal textbooks, academic journals, scholarly articles, and expert opinions relevant to criminal law and criminal procedure law, such as works by Andi Hamzah (2019) and M. Yahya Harahap (2016). Tertiary legal materials include legal dictionaries and other supporting references that assist in clarifying legal terminology.

The collected data are analyzed qualitatively through legal interpretation and systematic analysis. The analysis seeks to identify the extent to which the principle of due process of law has been normatively regulated and how far it has been consistently implemented in practice. The method of analysis emphasizes logical reasoning, coherence between legal norms, and consistency in judicial application.

Through this methodological framework, the research aims to provide a comprehensive legal analysis of the implementation and urgency of the due process of law principle in handling general criminal offenses in Indonesia.

## **Discussion**

### **4.1 Regulations Concerning The Principle Of Due Process of Law in Handling General Criminal Offenses in Indonesia**

Law is necessary even in societies that already possess norms and social rules, because written law with enforceable sanctions ensures order in human life beyond norms whose sanctions are merely social or moral in nature. Every community has rules that must be obeyed by its members in order to achieve social welfare (Siregar, 2023).

The Draft Criminal Code (RUU KUHP) represents a material reform of Indonesian criminal law. This reform constitutes an effort to realize the nation's legal ideals and may be viewed as a manifestation of Indonesian legal identity. Legal reform is not merely about revising existing law but about replacing outdated legal paradigms—particularly those inherited from the colonial era—with a more appropriate and progressive system. Thus, the Draft Criminal Code serves as a method of planned social and cultural transformation aimed at shaping the character of the nation (Ismaidar, 2024).

The Indonesian Criminal Law System has entered a new phase of development. One significant reform is the incorporation of criminal law perspectives oriented toward achieving justice through improvement and restoration after criminal proceedings, known as restorative justice. This approach differs from retributive justice, which emphasizes punishment, and compensatory justice, which emphasizes restitution (Sahlepi, 2024).

In handling criminal offenses, the principle of due process of law fundamentally represents a concept within the criminal justice system that guarantees every person the right to be treated fairly in accordance with applicable legal procedures. This principle is aligned with

Article 28D paragraph (1) of the 1945 Constitution, which affirms the right of every person to recognition, guarantees, protection, and fair legal certainty. Therefore, due process is not merely a normative principle but a constitutional obligation of the state to protect human rights.

The implementation of the due process of law principle is technically regulated in the Criminal Procedure Code (KUHAP), which serves as a guideline for law enforcement officials in handling general criminal offenses. KUHAP contains provisions regarding the rights of suspects and defendants, including the right to legal counsel, the right to an honest and prompt examination, and the right not to be compelled to provide self-incriminating statements. Through these provisions, criminal proceedings are expected to operate fairly and free from arbitrary actions.

In addition to KUHAP, several statutes strengthen the application of due process, including Law Number 39 of 1999 concerning Human Rights and Law Number 48 of 2009 concerning Judicial Power. These regulations emphasize that judges are obliged to explore, follow, and understand the legal values and sense of justice within society, ensuring that due process encompasses not only procedural fairness but also substantive justice.

However, in practice, the implementation of due process continues to face obstacles. Procedural violations at the investigation stage, such as arrests without warrants, detention beyond statutory limits, and coercive treatment to obtain confessions, demonstrate a gap between legal ideals and practical realities (Hamzah, 2019).

One case highlighting the weak implementation of due process is the death of human rights activist Munir Said Thalib in 2004. The investigation and trial process received significant criticism for lacking transparency and failing to bring the alleged intellectual perpetrators to justice. In fact, due process requires thorough, non-discriminatory investigations and full respect for victims' rights and the public's right to justice.

Violations of the due process principle impact both the legitimacy of the judicial system and public trust in law. Court decisions resulting from procedurally flawed processes risk annulment or being declared legally invalid (Muladi, 2010).

To strengthen the application of due process, supervision of law enforcement officials is necessary, both through internal and external mechanisms. Institutions such as the National Commission on Human Rights (Komnas HAM), the Witness and Victim Protection Agency (LPSK), and the Ombudsman play important roles in monitoring and receiving public complaints related to alleged rights violations in criminal proceedings.

Although regulations concerning due process of law are clearly stipulated in KUHAP and other statutes, implementation in practice continues to encounter challenges. Cases such as the murder of Munir and the wrongful arrest of four street musicians, including minors, demonstrate that violations of due process remain frequent.

#### **4.2 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 legal process, free from arbitrariness and conducted in accordance with legal provisions. As mandated by Article 28D paragraph (1) of the 1945 Constitution, every person has the right to recognition, guarantees, protection, and fair legal certainty. This principle functions not only as a constitutional foundation but also as operational guidance for law enforcement authorities.

The implementation of due process is further elaborated in Law Number 8 of 1981 concerning Criminal Procedure (KUHAP). KUHAP regulates the rights of suspects and defendants, including the right to legal assistance, the right not to be compelled to provide self-incriminating statements, and the right to a prompt and straightforward examination. KUHAP serves as the primary legal instrument to prevent repressive actions or abuse of authority by law enforcement officials.

Nevertheless, the implementation of due process in Indonesia still faces various challenges. Arrests and detentions are sometimes conducted without clear legal procedures or

exceed statutory time limits. In some cases, suspects experience intimidation or torture to obtain confessions, which directly contradicts the principle of a fair trial.

A notable example illustrating weak implementation is the wrongful arrest of the late Siyono in Klaten in 2016, who allegedly died as a result of actions taken by officers during the arrest process. This case demonstrates how fundamental rights of suspects are often neglected despite constitutional and procedural safeguards.

Similarly, the wrongful arrest of four street musicians, including minors, in Cipulir, South Jakarta, in 2019 for the alleged murder of Dicky Maulana, a 20-year-old youth, reveals how easily individual rights can be violated in the absence of strict supervision.

Another significant case is the death of human rights activist Munir Said Thalib in 2004. The investigation and judicial process were widely criticized for failing to hold the intellectual perpetrators accountable. Komnas HAM assessed that the legal process lacked transparency and ignored several procedures, creating an impression of impunity. This illustrates that due process concerns not only the protection of suspects but also the rights of victims and the broader public to obtain justice.

Legal implications arising from violations of due process are substantial. Evidence obtained unlawfully may be declared inadmissible in court, and judicial decisions resulting from flawed procedures may be annulled. Moreover, such violations diminish public trust in law enforcement institutions and damage the credibility of the criminal justice system.

Strengthening the implementation of due process of law requires comprehensive legal reform, including enhancing the capacity of investigators, prosecutors, and judges in understanding human rights principles. Additionally, oversight mechanisms must be reinforced. Institutions such as Komnas HAM, the Ombudsman, and the Witness and Victim Protection Agency (LPSK) should play a more active role in supervising criminal justice practices. Public complaint mechanisms regarding alleged due process violations must be followed up promptly and transparently.

## **Conclusion**

The principle of due process of law has a firm legal foundation within the Indonesian legal system. The 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1), guarantees every person the right to fair legal certainty. More specific provisions are contained in Law Number 8 of 1981 concerning Criminal Procedure (KUHAP), which affirms the rights of suspects and defendants, including the right to legal assistance, the right to be clearly informed of the charges, the right not to be compelled to confess, and the right to a prompt and non-discriminatory trial process. In addition to KUHAP, Law Number 39 of 1999 concerning Human Rights and Law Number 48 of 2009 concerning Judicial Power further reinforce the state's obligation to administer fair trials. Thus, the principle of due process is not merely formal in nature but also ensures substantive protection of human rights.

Although the normative legal framework concerning due process is clearly established, its implementation in practice continues to face significant challenges. Practices such as arrests without warrants, detention beyond statutory time limits, and torture to obtain confessions remain recurring violations. The wrongful arrest of four street musicians, including minors, in Cipulir, South Jakarta, in 2019 in connection with the murder of Dicky Maulana, the wrongful arrest of the late Siyono in Klaten in 2016—who allegedly died as a result of actions taken by officers during the arrest process—and the unresolved issues surrounding the death of Munir Said Thalib all demonstrate that the principle of due process has not been fully implemented by law enforcement authorities. This condition has generated public doubt regarding the integrity of the criminal justice system and reveals a gap between normative regulations and legal practice. Therefore, strengthening the capacity of law enforcement officials, reforming regulatory frameworks, and establishing transparent and independent oversight mechanisms are essential to ensure that the principle of due process of law is fully realized at every stage of handling general criminal offenses in Indonesia.

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