

# Compared to the Justice Procedure Act and the Kuhap Provision Providing Free Legal Advice to Suspects

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**Abstract:** The aim of the research is to examine the comparison of jinayat procedural law with kuhap in providing free legal advice to suspects, the method used is normative juridical with statutory and conceptual approaches, primary legal material: Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law and Laws Number 8 of 1981 concerning Criminal Procedure Law, secondary legal materials: journal articles, books, etc. The analysis technique used is descriptive analysis and the interpretation used is grammatical and systematic interpretation. The results of the research show that in the procedural law of jinayat a person who is given the assistance of a legal advisor is threatened with 60 (sixty) lashes or 1200 (one thousand two hundred) grams of pure gold as a fine or 60 (sixty) months in prison or more or for those who cannot afford it. Meanwhile, the criminal procedure law limits the provision of legal advice to only suspects who face a prison sentence of five years or more and the death penalty or a sentence of fifteen years. In the future, the suggestion in this article is that the concept of free legal advisory assistance provided by the state must be provided to all suspects.

**Keywords:** Criminal Procedure Code, legal aid, legal advisor

**Abstrak:** Tujuan penelitian adalah untuk mengkaji perbandingan hukum acara jinayat dengan kuhap dalam memberikan nasihat hukum secara cuma-cuma kepada tersangka, metode yang digunakan adalah yuridis normatif dengan pendekatan undang-undang dan konseptual, bahan hukum primer: Qanun Aceh Nomor 7 Tahun 2013 tentang Hukum Acara Jinayat dan Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, bahan hukum sekunder: artikel jurnal, buku, dan lain-lain. Teknik analisis yang digunakan adalah analisis deskriptif dan interpretasi yang digunakan adalah interpretasi gramatikal dan sistematis. Hasil penelitian menunjukkan bahwa dalam hukum acara jinayat seseorang yang diberi bantuan penasehat hukum diancam dengan pidana cambuk sebanyak 60 (enam puluh) kali atau denda sebesar 1200 (seribu dua ratus) gram emas murni atau denda sebesar 60 (seribu dua ratus) gram emas murni. enam puluh) bulan penjara atau lebih atau bagi mereka yang tidak mampu. Sedangkan hukum acara pidana membatasi pemberian nasihat hukum hanya kepada tersangka yang terancam pidana penjara lima tahun atau lebih dan pidana mati atau pidana lima belas tahun. Ke depan, saran dalam pasal tersebut adalah konsep bantuan penasehatan hukum gratis yang diberikan negara harus diberikan kepada seluruh tersangka.

**Kata Kunci:** KUHAP, bantuan hukum, penasihat hukum

## Introduction

During the 20th century, legal aid developed rapidly. On the one hand, since the 1940s and 1950, a stronger and more comprehensive basis for the role of the state in providing legal aid has been created, so that legal aid is no longer a charitable act but becomes part of fulfilling citizens' rights in terms of political and social rights, and

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economics<sup>1</sup>. On the other hand, efforts by civil institutions to provide legal aid have also increased. "Everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as an equal treatment before the law", according to Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter known as the 1945 Constitution of the Republic of Indonesia) without differentiate between ethnicity, religion, or status in life. including people who are unable to gain access to justice so that their rights to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law can be realized. To create a legal system and a sense of justice in our society, a person's role and position before the law is very important.

Until now, Law Number 8 of 1981 concerning Criminal Procedure Law or abbreviated (KUHAP) still strictly regulates the provision of legal aid as explained in the provisions of Article 54, Article 55, and Article 56 of the Criminal Procedure Code which explains that the provision of legal aid starts from the preliminary examination level at the investigation level up to the examination at the court hearing based on Article 56 which states: 1) Right to Get a Lawyer: Suspects usually have the right to get a lawyer or attorney. If suspects cannot afford their own attorneys, the legal system usually provides defense attorneys who can defend them for free or at a reasonable cost; 2) Legal Notice: Suspects have the right to be informed of their rights, including the right to remain silent, the right to an attorney, and other rights that may apply in a legal context. 3) Defense Preparation: Legal aid also includes preparation for defense in legal proceedings, which includes making arguments, conducting legal research, and preparing for trial. 4) Right to Trial: During the trial, suspects have the right to be represented by their own attorneys or by attorneys provided by the state. The lawyer is responsible for defending the suspect. 5) Legal Assistance Throughout the Process: Legal assistance for suspects is not only limited to trials. This also includes the stages of investigation, arrest, investigation, and other legal processes that may involve the suspect<sup>2</sup> The basic right recognized in many legal systems around the world is legal assistance for suspects or defendants in criminal cases to ensure that everyone faced with the legal process has the right to understand and defend themselves<sup>3</sup>. Meanwhile, the assistance of legal advisors in Aceh is regulated in Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law. Legal aid is provided free of charge by the state.

Criminal procedural law is specifically regulated in Aceh. This is because Aceh is a unique province in Indonesia. Aceh has advantages in administering government because of the characteristics of the Acehnese people's struggle to gain independence and the dynamics of state administration after Indonesia's independence<sup>4</sup>. In Article 16 Paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh, it is stated that Aceh has special privileges that enable the implementation of religious life in the form of implementing Islamic law for people who embrace this religion while maintaining harmony between people. religious people; implementation of high-quality education and improvement of local content materials in accordance with Islamic law; and the role of local ulama<sup>5</sup>.

<sup>1</sup> Zainuddin Zainuddin dan Faizal Riza, "Melindungi Nelayan Dari Persoalan Hukum Melalui Lembaga Bantuan Hukum," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 2 (2021), <https://doi.org/10.30596/dll.v6i2.7835>.

<sup>2</sup> Agung Mas Triwulandari, "Problematika Pemberian Bantuan Hukum Struktural Dan Non Struktural Kaitannya Dengan Asas Equality Before The Law," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020), <https://doi.org/10.30641/kebijakan.2020.V14.539-552>.

<sup>3</sup> Eka N.A.M. Sihombing, "Eksistensi Paralegal dalam Pemberian Bantuan Hukum bagi Masyarakat Miskin," *Jurnal Ilmiah Penegakan Hukum* 6, no. 1 (2019), <https://doi.org/10.31289/jiph.v6i1.2287>.

<sup>4</sup> Muhammad Fadhlil dan Mukhlis Mukhlis, "Pelaksanaan Putusan Jarimah Maisir Menurut Qanun Nomor 7 Tahun 2013 Tentang Hukum Acara Jinayat," *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana* 2, no. 3 (2018), <https://doi.org/10.22373/Pidana.v7i2.15586>.

<sup>5</sup> EA Irwanda dan Muh Din, "Kekuatan Alat Bukti Perkara Zina dalam Perspektif Kitab Undang-Undang Hukum Acara Pidana dan Qanun Hukum Acara Jinayat," *Jurnal Ilmiah Mahasiswa Bidang Hukum* 2, no. 1 (2020), <https://doi.org/10.22373/Hukum.v7i2.15586>.

In the implementation of Islamic law in Aceh, the written rules are Qanun Hukum Jinayat. It is not surprising that in the explanation there are four (four) main principles used to make the qanun, namely originating from the Al-Qur'an and the Sunnah of the Prophet;<sup>6</sup> interpreting or understanding the Al-Qur'an and Hadith must be connected with the local (customary) conditions and needs of the Acehnese people in particular, as well as the regulations that apply within the framework of the Republic of Indonesia; and try to always follow the new rules.

In this article, 3 previous studies were found, namely, the first article entitled "Legal Assistance in Jinayat Cases (A Study in the Jurisdiction of the Banda Aceh Syar'iyah Court)" written by Gibran Zulian Qausar, the results showed that the factor that caused the suspect or defendant not to be accompanied by a legal advisor was that the perpetrator of the jinayat refused to be accompanied by a legal advisor, differences in interpretation between the perpetrator's rights and the obligations of law enforcement officers regarding the appointment of a legal advisor, there was no clarity to whom the legal assistance should be appointed. The obstacles found in the implementation of legal assistance in jinayat cases were Article 62 of the Qanun on Jinayat Procedure which had multiple interpretations, Supreme Court Regulation Number 1 of 2014 did not implicitly mention legal assistance in jinayat cases, Governor Regulation Number 10 of 2019 Contradicted other regulations. The second article, entitled "The Role of the Borneo Community Advocacy Network Legal Aid Institution in Providing Legal Aid for the Underprivileged" written by Muhammad Ramdhani Asni, the results of the study show "The role of the Borneo Community Advocacy Network Legal Aid Institution in providing legal aid to the underprivileged is to provide-assistance to justice seekers for the community in the form of litigation and non-litigation. Litigation within the scope of the company and non-litigation within the scope of non-courts without cost or Prodeo."

The article entitled "Providing Legal Aid to the Third Poor Community Who Are Suspects in the Qanun Jinayat (A Study in the Jurisdiction of the Banda Aceh Sharia Court)" written by Maulida, the results of the study show "that the factors causing the failure to provide legal aid to jinayat suspects properly include several factors, neglect of rights and obligations, social stratification, education, and lack of awareness and obedience to the law. The results of the study also show that the small number of recipients of law to the poor in jinayat cases, due to constraints on human resources, facilities, infrastructure, and minimal budget." Of the three articles found, it turns out that they only discuss the rules of the Qanun Jinayah, while articles discussing the comparison of legal aid according to the Criminal Procedure Code and the Qanun Jinayah have not been found, so this article is new and different from previous research.

From this background, this article will formulate the problem, namely how to provide free legal advice to suspects with the threat of 5 years imprisonment between the jinayat procedural law and the criminal procedural law and what the legal implications are if they are not accompanied by an advisor according to the Criminal Procedure Code and the Jinayat Procedural Law.

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<sup>6</sup>Laila Mufida, "Penolakan Masyarakat Aceh terhadap Pergub Nomor 5 Tahun 2018 tentang Pelaksanaan Hukum Acara Jinayat," *Al-Muamalat: Jurnal Hukum dan Ekonomi* 6, no. 1 (2021), <https://doi.org/10.22373/Muamalat.v7i2.155692>.

## Research Methods

The research methods used are normative juridical<sup>7</sup>, statutory approaches, and conceptual approaches. Primary legal materials: Aceh Qanun Number 7 of 2013 concerning Jinayat Procedural Law and Law Number 8 of 1981 concerning Criminal Procedure Law, secondary legal materials: journal articles, books, etc. The analysis technique used is descriptive analysis, legal material collection techniques using literature studies that have relevance to the laws and regulations that regulate the object of this research<sup>8</sup>. Meanwhile, the legal interpretation used is a systematic and grammatical interpretation<sup>9</sup>.

## Results and Discussion

In developing countries, the need for a responsive legal development strategy is usually the driving force for the legal aid movement. Every effort made by various social groups in society to influence the formation, conceptualization, application, and institutionalization of law in a political process is called legal development. The need for responsive legal development arises from the awareness that positivist-instrumentalist law produces an orthodox pattern of people's needs and feelings of justice. A legal development strategy that places the law as the commander of justice is the only way to achieve legal products that are more responsive to the demands of various social groups and individuals in society<sup>10</sup>. These principles are designed to ensure that Everyone is presumed innocent until proven guilty and that they have the right to defend themselves in the legal system. This legal protection is in line with the principles of human rights and justice<sup>11</sup>.

Criminal Procedure Code	Jinayat Proceeding Law
Article 56 1) If a suspect or defendant is suspected or accused of committing a crime that is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated and who are threatened with a sentence of five years or more who do not have their legal advisor, the relevant officials at all levels of examination in the judicial process are obliged to appoint legal advisors for them. 2) Every legal advisor appointed to act as intended in paragraph (1), provides his assistance free of charge.	Article 56 paragraph (1) letter e "Get legal assistance at every level of examination"  Article 60 "For the purposes of defense, the suspect or defendant has the right to receive legal assistance at every level of examination according to the procedures specified in this Qanun."  Article 62 1) In the event that the Suspect or Defendant is suspected or accused of committing Jarimah, he is threatened with 'Uqubat Hudud or the threat of 60 (sixty) lashes or 1200 (one thousand two hundred) grams of pure gold as a fine or

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana, 2013). 12.

<sup>8</sup> Muh Sutri Mansyah dkk., "Immunity Rights of Experts Who Provide Statements in Trials," *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 2 (28 Desember 2023): 163–78, <https://doi.org/10.15294/digest.v4i2.75767>.

<sup>9</sup> Muh Sutri Mansyah dkk., "LPSK Integration At The Investigation Stage In Fulfilling The Rights Of Victims Of Sexual Violence," *Hukum Volkgeist* 8, no. 2 (2024), <https://doi.org/10.35326/volkgeist.v8i2.5265>.

<sup>10</sup> Agus Raharjo, Angkasa Angkasa, dan Rahadi Wasi Bintoro, "Akses Keadilan Bagi Rakyat Miskin (Dilema dalam Pemberian Bantuan Hukum oleh Advokat)," *Mimbar Hukum* 27, no. 3 (2015), <https://doi.org/10.22146/jmh.15881>.

<sup>11</sup> Yusuf Saefudin, "Implementasi Pemberian Bantuan Hukum Bagi Rakyat Miskin Di Jawa Tengah Berdasarkan Undang-Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum," *Jurnal Idea Hukum* 1, no. 1 (2015), <https://doi.org/10.20884/1.jih.2015.1.1.7>.

	<p>60 (sixty) months in prison or more or for those who are unable to have their own legal advisor who is threatened with 20 (twenty) lashes or 400 (four hundred) grams of pure gold as a fine or 20 (twenty) months in prison, the relevant official at all levels of the examination process The judiciary is obliged to appoint a Legal Advisor for them.</p> <p>2) Every legal advisor appointed to act as intended in paragraph (1), provides assistance in accordance with the Legislative Regulations.</p>
	<p style="text-align: center;">Article 63</p> <p>1) A suspect or accused subject to detention has the right to contact his legal advisor in accordance with the provisions of this Qanun.</p> <p>2) Suspects or Defendants who are foreign nationals and Muslims who are subject to detention have the right to contact and speak with representatives of their country in dealing with the case process.</p>
	<p style="text-align: center;">Article 115</p> <p>(1) Before the examination begins, the investigator is obliged to inform the suspect of his right to obtain legal assistance or that he must be accompanied in his case by a legal advisor as intended in Article 62.</p>

In Table 1 above there are differences between the Criminal Procedure Code and the Jinayat Procedural Law in providing legal guidance. In the Criminal Procedure Code there is a requirement that if you are accompanied by a legal advisor, that is, people who are suspected/accused of a crime are threatened with the death penalty or a sentence of fifteen years or more, or for those who are incapacitated who are threatened with a sentence of five years must be accompanied by a legal advisor <sup>12</sup>. Meanwhile, the Jinayat Procedural Law stipulates that legal assistance can be provided free of charge if the suspect is suspected or accused of committing Jarimah which is threatened with 'Uqubat Hudud or the threat of 60 (sixty) lashes or 1200 (one thousand two hundred) grams of pure gold as a fine or 60 ( sixty) months in prison or more or for those who are unable to have their own legal counsel who are threatened with 20 (twenty) lashes or 400 (four hundred) grams of pure gold as a fine or 20 (twenty) months in prison. Both the Criminal Procedure Code and the Jinayat Procedural Law impose special requirements for a person to be accompanied by a legal advisor free of charge. Meanwhile, threats under five years have no obligations or juridical implications. According to Yahya Harahap, Article 56 of the Criminal Procedure Code is a human right

<sup>12</sup>Rachmad Abduh dan Faisal Riza, "Pemberian Bantuan Hukum Kepada Masyarakat Miskin yang Mengajukan Gugatan Melalui Pos Bantuan Hukum di Pengadilan Agama," *EduTech: Jurnal Ilmu Pendidikan dan Ilmu* 4, no. 2 (2018), <https://doi.org/10.30596/edutech.v4i2.2274>.

that is in accordance with the Universal Declaration of Human Rights which emphasizes that the presence of a legal advisor accompanying the suspect or defendant is an inherent value in humans, thus ignoring this is contrary to human rights values<sup>13</sup>.

Based on the provisions contained in Article 56 of the Criminal Procedure Code, these are mandatory, not implementing them will have legal consequences. As is known, the defendants in this case are incapacitated people who were very visible during the examination process, and they are threatened with a minimum prison sentence of 8 years. Based on Article 56 of the Criminal Procedure Code, the defendant must receive assistance from legal advisors appointed by the investigator, either free or without charge.<sup>14</sup> However, the fact is that the defendants did not have legal advisors during the investigation process. They were not even given the rights of the Defendant. When a legal official offers legal advisory services, even though the defendant sometimes does not accept them, the obligations of Article 56 of the Criminal Procedure Code have been fulfilled.

Article 56 of the Criminal Procedure Code, which is supposed to be the state's protection for poor people in obtaining justice, contains two weaknesses<sup>15</sup>, namely:

There are no sanctions for law enforcement officers if this article is violated. Ideally, an article with a position like this must be supported by clear rules if there is negligence or violation of the rights guaranteed in the article, as stated by Maria Farida Indrati that a legal norm can be a single legal norm and can also be a legal norm in pairs. A single legal norm is an order (*das solen*) about how a person should behave<sup>16</sup>. Paired legal norms are legal norms that consist of two legal norms, namely primary and secondary legal norms. Primary legal norms are instructions (*das solen*) about how someone should act or behave, while secondary legal norms are legal norms that contain procedures for dealing with them if the primary legal norms are not fulfilled or obeyed. Primary legal norms are not fulfilled or obeyed<sup>17</sup>. These secondary legal norms provide guidelines for law enforcers to act if a primary legal norm is not obeyed and this primary legal norm is not obeyed and this norm contains sanctions for someone who does not comply with a provision in the primary legal norm<sup>18</sup>.

If the above statement is linked to Article 56 of the Criminal Procedure Code, it appears to be a single norm because it is not followed by legal consequences if this norm is not respected<sup>19</sup>. According to Mochtar Kusumaatmadja, it gives the meaning that the word obligation must be accompanied by a legal consequence, if the obligation is not fulfilled, which meaning is as follows: obligation is basically an obligation (which is ordered or determined by law) to do or not do certain actions, which if not fulfilled will give rise to certain legal consequences for the bearer of the obligation<sup>20</sup>.

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<sup>13</sup>M Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali: Edisi Kedua* (Jakarta: Sinar Grafika, 2006). 20.

<sup>14</sup>Oki Wahyu Budijanto, "Peningkatan Akses Bantuan Hukum Kepada Masyarakat Miskin (intensify access of law aids to the poor)," *Jurnal Penelitian Hukum De Jure* 16, no. 4 (2017), <https://doi.org/10.30641/dejure.2016.V16.463-475>.

<sup>15</sup>Iwan Wahyu Pujiarto, Syafruddin Kalo, dan Edy Ikhsan, "Pelaksanaan Pemberi Bantuan Hukum Dikaitkan Dengan Undang-Undang No. 16 Tahun 2011 Tentang Bantuan Hukum," *Arena Hukum* 8, no. 3 (2015), <https://doi.org/10.21776/ub.arenahukum.2015.00803.2>.

<sup>16</sup>Muh Sutri Mansyah dkk., "Immunity Rights of Experts Who Provide Statements in Trials," *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 2 (28 Desember 2023): 163–78, <https://doi.org/10.15294/digest.v4i2.75767>.

<sup>17</sup>Muh Sutri Mansyah, Achmad Busro, dan Yunanto Yunanto, "Revealing the Integrity of Investigators in Handling Cases of Crimes by Witnesses Perpetrated (Case Study of Alleged Criminal Acts of Vandalism in Central Buton Regency)," *Asia Pacific Fraud Journal* 7, no. 2 (25 Desember 2022): 163, <https://doi.org/10.21532/apfjournal.v7i2.260>.

<sup>18</sup>Maria Farida Indrati, *Ilmu Perundang-Undangan (Jenis, Fungsi, dan Materi Muatan)* (Yogyakarta: Kanisius, 2007). 40.

<sup>19</sup>Muh Sutri Mansyah dan La Ode Bunga Ali, "Perlindungan Hukum Korban Kejahatan Yang Berkedok Platform Digital Investasi Ilegal" 1, no. 1 (Juni 2023), <https://doi.org/10.35326/judicatum.v1i1.3252>.

<sup>20</sup>Mochtar Kusumaatmadja, *Pengantar Ilmu Hukum (Suatu Pengenalan Pertama Ruang Lingkup Berlakunya Ilmu Hukum)*, Pertama (Bandung: Alumnii, 1999). 201.

Based on a study of previous Supreme Court decisions which have become jurisprudence, the explanation is as follows:

- a. Interim Decision of the Tegal District Court Number 34/Pid.b/1995/PN.Tgl dated 26 June 1995 which stated that the Panel of Judges at the Tegal District Court decided that the Police Headquarters' investigation into the wood smuggling case with the Defendant Aki (Oh Pek Kie) alias Pontjodiyono was invalid according to the law because during the investigation process the Defendant was not accompanied by a legal advisor. The decision of the Tegal District Court is based on considerations which basically explain the following:
  - 1) During the investigation by the Police Headquarters Investigator, the Defendant was not accompanied by a legal advisor as mandated by Article 56 paragraph (1) of the Criminal Procedure Code.
  - 2) Whereas even though the Defendant has made a Statement Letter dated 17-1-1995 stating that he does not need to be accompanied by a legal advisor, taking into account the phrase "mandatory" in Article 56 paragraph (1) of the Criminal Procedure Code, the Panel is of the opinion that the appointment of a legal advisor to accompany the Defendant is mandatory, whether requested or not requested by the Defendant.
  - 3) That by not implementing Article 56 paragraph (1) of the Criminal Procedure Code, the results of the investigation in this matter are invalid.
  - 4) Because the public prosecutor's indictment in this case was prepared on the basis of an invalid examination, the indictment is invalid.
  - 5) That is therefore sufficient reason for the Tribunal to declare that the Indictment Letter is "Unacceptable"<sup>21</sup>.
- b. Republic of Indonesia Supreme Court Decision Number 1565 K/Pid/1991 dated 16 September 1993 which basically stated, "If the requirements of the request are not fulfilled, such as the Investigator not appointing a Legal Advisor for the Suspect from the start of the investigation, then the Public Prosecutor's claim is declared unacceptable"<sup>22</sup>.
- c. In the decision of the Supreme Court of the Republic of Indonesia Number 367 K/Pid/1998 dated 29 May 1998, it was decided that the investigation and Public Prosecutor's BAP were null and void and the Public Prosecutor's demands could not be accepted, even if the examination at the court hearing was accompanied by a Legal Advisor<sup>23</sup>.

The legal implications of Article 56 of the KUHAP are similar to Article 62 of the Jinayat Procedural Law, but this article has not found in the rules of the Jinayat procedural law the legal implications if you are not accompanied by a legal advisor, on the other hand, the KUHAP has not yet regulated these legal implications, but based on expert opinions and decisions judge, then it has implications that the trial process of a suspect/accused is invalid<sup>24</sup>.

The Criminal Procedure Code and the Jinayat Procedural Law should not limit someone who has the right to be provided with legal advisory assistance by the state, in order to prevent abuse of authority by law enforcement officials. Apart from that, the human rights of suspects or defendants, in the constitution, are expressly guaranteed

<sup>21</sup>Kuffal HMA, *Penerapan KUHAP dalam Praktik Hukum* (Malang: UMM Press, 2010). 10.

<sup>22</sup>Kirana Intaniasari, "Akibat Hukum Para Terdakwa Yang Tidak Didampingi Penasehat Hukum Dalam Perkara Tindak Pidana Kehutanan," *Verstek* 8, no. 2 (30 Agustus 2020), <https://doi.org/10.20961/jv.v8i2.44088>.

<sup>23</sup>Intaniasari. 30.

<sup>24</sup> Muh Sutri Mansyah, "Urgensi Perlindungan Fisik Terhadap Penyidik Tindak Pidana Korupsi," *Jurnal Hukum Progresif* 11, no. 1 (30 April 2023): 58–70, <https://doi.org/10.14710/jhp.11.1.58-70>.

protection as regulated in Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states "every person is free from discriminatory treatment and has the right to receive protection from discriminatory treatment." Legal aid has an important position in efforts to fulfill the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law. Therefore, the provisions in 28A to Article 28J can be considered to be the norms underlying legal aid as a right protected by the Constitution. Law Number 39 of 1999 concerning Human Rights, Article 1 paragraph (1) states that human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gift that must be respected, upheld and protected. by the state, law, government and every person for the sake of honor and protection of honor and dignity. The state's recognition of human rights is because every person is born free with the same and equal dignity, thus placing a person with the right to recognition, guarantees, protection fair legal treatment, legal certainty, and equal treatment in the eyes of the law.

Therefore, every violation of human rights must have a legal mechanism available to be submitted to the Court as regulated in Article 7 which states "Everyone has the right to use national legal remedies and international forums for all violations of human rights guaranteed by Indonesian law and international law. regarding human rights that have been accepted by the Republic of Indonesia"<sup>25</sup>. Furthermore, in article 17 which is related to the right to obtain justice (access to justice) it is stated that "every person, without discrimination, has the right to obtain justice by submitting an application, complaints, and lawsuits, whether criminal, civil or administrative, and tried through a free and impartial judicial process, in accordance with procedural law which guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision"<sup>26</sup>. further in Article 18 paragraph (4) states that "every person being questioned has the right to receive legal assistance from the time of the investigation until a decision is made that has permanent legal force"<sup>27</sup>. So if the 1945 Constitution of the Republic of Indonesia and the Human Rights Law can be the basis for providing free legal assistance from investigation to trial and there are no requirements such as not requiring a minimum of five years before legal assistance is provided by the state, the same absolutely unlimited and so both the Criminal Procedure Code and the Jinayat Procedural Law need to be amended regarding the provision of legal aid because of its relationship to the suspect's constitutional rights.

The comparison between criminal law and the Criminal Procedure Code shows a conflict with the theory of justice in fulfilling rights and obligations. In the context of criminal cases<sup>28</sup>, suspects are not only burdened with the obligation to be tried by law enforcement officers but also the obligation to ensure the fulfillment of the suspect's rights. According to Aristotle in Apeldoorn<sup>29</sup>, justice can be found in his writings, in the book Nicomachean ethics, politics and rhetoric. Specifically in his book Nicomachean Ethics, we

<sup>25</sup>Raharjo, Angkasa, dan Rahadi Wasi Bintoro, "Akses Keadilan Bagi Rakyat Miskin (Dilema dalam Pemberian Bantuan Hukum oleh Advokat)." 21.

<sup>26</sup> Muh Sutri Mansyah dkk., "Penyuluhan Hukum Tentang Pencegahan Dan Penindakan Kekerasan Dalam Rumah Tangga," *RAMBIDEUN: Jurnal Pengabdian Kepada Masyarakat* 7, no. 2 (1 Agustus 2024): 148–54, <https://doi.org/10.51179/pkm.v7i2.2433>.

<sup>27</sup>Nopiana Mozin dan Maisara Sunge, "Pemberian Edukasi Dan Bantuan Hukum Terhadap Anak Korban Kekerasan," *Jurnal Ius Constituendum* 6, no. 1 (2021), <https://doi.org/10.26623/jic.v6i1.2485>.

<sup>28</sup> Muh Sutri Mansyah dkk., "Penyuluhan Hukum Pencegahan Kekerasan dalam Rumah Tangga sebagai Upaya Penanggulangan Kejahatan," *TAAWUN* 4, no. 01 (15 Januari 2024): 93–101, <https://doi.org/10.37850/taawun.v4i01.625>.

<sup>29</sup> Muh Sutri Mansyah dkk., "Data Protection for Sexual Violence Victims in the Court Case Tracking Information System," *Jurisprudentie* 11, no. 1 (2024), <https://doi.org/10.24252/jurisprudentie.v11i1.46451>.



see that justice is seen from the perspective of Aristotle's legal philosophy even though as the core of his legal philosophy, "because law can only be identified"<sup>30</sup>. Aristotle divides justice, namely "distributive" justice is justice that is given to everyone according to their achievements, while "commutative" justice is this justice given to everyone equally without distinguishing their achievements, this is related to the role of exchanging goods and services. Aristotle divides justice into distributive justice and commutative justice.

Distributive justice is asking everyone to get the justice they deserve, so that it is proportional. The definition of fair here is if everyone gets their rights proportionally. "Distributive justice" is related to the determination of rights and the distribution of fair rights in the relationship between society and the state, namely what the state must give to its citizens. The rights granted can be in the form of commodities that cannot be divided "(undivided goods)", namely shared benefits such as protection, administration and physical public facilities and various other rights, which can be enjoyed by citizens or citizens in the process without disturbing the rights of others. So the Defendant should be given rights and obligations in a balanced manner<sup>31</sup>.

## Conclusion

Criminal procedure law and criminal procedure law have differences in providing legal assistance to suspects with a five-year prison sentence. Both the Criminal Procedure Code and the Criminal Procedure Code do not have legal implications if law enforcement officers do not provide legal advice, so the suggestion in this article going forward is to regulate the legal implications if free legal advice is not provided, such as being sanctioned by law enforcement officers, the letters in determining the suspect being null and void, and cannot be accepted so that the suspect obtains justice, besides that the concept of free legal advisory assistance provided by the state must be provided for all criminal cases and does not need to use certain conditions such as the threat of imprisonment for five years or the threat of lashing 60 (sixty) times or a fine of 1,200 (one thousand two hundred) grams of pure gold or imprisonment for 60 (sixty) months or more must not be enforced and this norm must be abolished because its purpose is to protect the human rights of suspects from threats and violence and is contrary to the theory of justice in fulfilling rights and obligations. in the context of criminal cases, suspects are not only burdened with the obligation to be tried by law enforcement agencies but also to ensure the fulfillment of the suspect's rights.

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<sup>30</sup> Muh Sutri Mansyah, "The Judge's Paradigm in Deciding Criminal Cases of Sexual Violence from A Victimological Perspective," *Buana Gender : Jurnal Studi Gender Dan Anak* 1, no. 2 (2024), <https://doi.org/10.22515/bg.v9i1.8666>.

<sup>31</sup> La Ode Adnan dkk., "Penyuluhan Hukum Pemberian Bantuan Hukum Bagi Masyarakat Kurang Mampu," *Journal Of Human And Education (JAHE)* 4, no. 1 (16 Januari 2024): 121-28, <https://doi.org/10.31004/jh.v4i1.531>.

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