

# Analysis of the application of the principle of innovation to the persons of violent criminal actions that committed together in public (Decision Study No. 227/Pid.B/2022/PN Kwg)

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## ABSTRACT

The principle of presumption of innocence has a very significant correlation with the principle of human rights because in essence it is application of the concepts of human rights recognition, respect, and protection. Everything that can be achieved and accomplished via action. if the state is actually founded on the rule of material law and a democratic state, and the constitution guarantees the existence of these principles. To ensure that the suspect's human rights are respected, protected, and recognized, and that justice and the law are upheld, the Indonesian Criminal Code must establish and regulate the principle of presumption of innocence. The implementation of criminal justice can result in legal order and legal certainty. This study aims to determine how decision no. 227/Pid.B/2022/PN Kwg influences the application of the presumption of innocence against individuals who commit violent crimes together in public; displays the judge's evaluation of the decision and consideration of the legal decision no. 227/Pid.B/2022/PN Kwg; the research method is normative law analysis.

## ABSTRAK

Asas Praduga tak bersalah pada hakikatnya yakni penerapan prinsip-prinsip pengakuan, penghormatan, dan perlindungan HAM, sehingga memiliki hubungan yang kuat dengan pengertian hak asasi manusia. Semua ini bisa dijalankan serta diwujudkan dalam tindakan. Apabila negara benar-benar dibangun di atas negara hukum materil dan negara demokrasi, serta jika konstitusi menjamin adanya prinsip-prinsip tersebut, maka pemerintahan akan berfungsi dengan baik. Untuk memastikan bahwa HAM tersangka dihormati, dilindungi, dan diakui, serta terpeliharanya keadilan dan hukum, maka KUHP harus menetapkan dan mengatur praduga tak bersalah. Pelaksanaan peradilan pidana dapat menghasilkan ketertiban hukum dan kepastian hukum. Tujuan penelitian ini yaitu mengetahui bagaimana penerapan asas praduga tak bersalah terhadap individu yang melakukan tindak pidana kekerasan secara bersama-sama di muka umum berdasarkan putusan no.227/Pid.B/2022/PN Kwg; menampilkan penilaian hakim terhadap putusan dan pertimbangan terhadap putusan hukum No. 227/Pid.B/2022/PN Kwg, Metode penelitiannya adalah yuridis normatif.

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## I. INTRODUCTION

Implementation in law enforcement, be it prevention, eradication, or actions taken in response to violations of the law. Law enforcement is a community effort in realizing security, order and peace. According to Pancasila and the 1945 Constitution, statutory regulations as the legal basis for steps and actions for law enforcement must be in line with the basic philosophy of the state and the way of life for the Indonesian nation. KUHAP as a form of tool is used by law enforcement. By applying the provisions of the criminal procedure law honestly and precisely, these laws and regulations seek and obtain, or at least approach the material or complete truth of a criminal case.

UU no. 8 of 1981 concerning the Criminal Procedure Code regulates how this criminal procedural law is implemented. The criminal procedural law in the era of HIR, Pancasila State, and the 1945 Constitution, which contained rules governing the maintenance of human dignity, became the basis for the development of the Criminal Procedure Code. The previous criminal procedural law was fundamentally different from the protection of human rights. The KUHAP's acknowledgment of the presumption of innocence is one of the differences. Article 27 of the 1945 Constitution states, "Every citizen has the right to equal position before the law and government and is obliged to obey the law and government without exception". The principle of equality in law is carried out on the basis of the presumption of innocence.

Article 8 paragraph 1 of Law 48 of 2009 concerning Judicial Power regulates the principle of the presumption of innocence as follows: Before a court decision obtains permanent legal force and declares a person guilty, he must first be presumed innocent. This applies to anyone who is suspected, arrested, detained, or brought to court. The purpose of affirming the principle of presumption of innocence is also to calm and stabilize the accused. Think what would happen if the chairman of the first trial stated that he believed the defendant was guilty. This indicates that the defendant's mental state has been characterized as "desperate" since the beginning of the trial. However, such statements clearly amount to mental intimidation or cruelty to the accused. the defendant's freedom to defend himself is hampered by intimidation and mental cruelty by himself.

Article 18 paragraph 1 of RI Law No. 39 of 1999 concerning Human Rights contains provisions on the principle of the presumption of innocence. The provision reads: "Every person who is arrested, detained, and prosecuted for allegedly committing a crime has the right to be presumed innocent, until his guilt is legally proven in court and given all the legal guarantees required in his defense, based on the provisions of the law..

M. Yahya Harahap, S.H. stated in his book, Discussion of Problems and Application of the Criminal Procedure Code of Investigation and Prosecution, "the principle of presumption of innocence is referred to as the principle of indictment or the procedure of indictment from a technical juridical or investigative aspect (accusator principle)". The accusatur principle determines the position of the accused at each level of investigation as a subject; not as an object of investigation. As a result, the accused must be placed in a human position and treated with respect. In the accusator principle, the object of examination is the "mistake" committed by the accused. This is the direction of inspection.

## II. RESEARCH METHODS

### **Research Approach**

A normative juridical approach is used in this study, which takes a law and case approach. The statutory approach is one in which all relevant laws and regulations are examined (researched) in relation to the legal issue under discussion. The case approach is an approach by looking at cases that are related to the problem at hand and have resulted in decisions made by courts that have permanent legal force.

## **Research Specifications**

The research specification is descriptive analysis. Where descriptive analysis is used to examine rules or regulations in accordance with the applicable constitution and legal theories. In this case, with regard to legal issues that are considered in relation to this, it is by examining legal materials both from statutory regulations, books, legal materials sourced from the internet, legal dictionaries, and other materials related to the legal issues being researched.

### 1. Types and Sources of Data

The type of research data is secondary data. Secondary data is classified into three legal documents, among others.

- a. Main Legal Documents: The main legal materials, namely those containing the relevant laws and regulations, are also compiled as an illustration of what is meant. The main legal source used by the author is the Criminal Code.
- b. Secondary Legal Documents: Secondary legal materials are those that help explain, verify, and maintain primary legal materials in this study, as well as strengthen explanations of their contents. This study uses secondary legal sources, namely journals and books on the presumption of innocence.
- c. Tertiary Legal Documents: Tertiary legal materials, namely in addition to providing explanations and guidelines for primary and secondary legal sources, they also provide information for other types of legal sources. Tertiary legal materials can be found through the use of legal dictionaries, language dictionaries, and data research on the Internet.

### 2. Data Collection Techniques

The data collection technique uses a survey, or what is commonly called a literature survey. When conducting research with literature studies, you can collect various sources of books related to this research, such as books on the presumption of innocence, as well as other books which are then processed and linked to primary, secondary and tertiary legal materials in a systematic manner..

### 3. Data Analysis Techniques

Data collected from primary data or secondary data, then analyzed to provide conclusions. The results are presented descriptively to provide a clear understanding and focus on research results.

## **III. RESULT AND DISCUSSION**

### 1. Nature and Function of the Presumption of Innocence in Indonesia.

The principle of presumption of innocence does not exclude the accused from being innocent, but guarantees human rights in the judicial process. This principle is part of human mental life. In every plan, a person knows the good he wants to achieve. The principle of law is an idea or example that does not reflect reality. In contrast to the law, as a way of life (das Sollen), regulates how people need to protect their rights.

The principle of presumption of innocence is the desire or hope that all persons who are prosecuted, suspected, arrested, imprisoned, or tried will be considered innocent until a court decision finds them guilty and has permanent legal force, but in reality this principle is not always the case. The point d'interet point d'action principle, which states that anyone who feels their interests have been violated can file a lawsuit in court, is an example of an abstract legal principle that is usually not contained in certain legal rules or articles. *dubio pro reo*, which states that in case of doubt, the judge must favor the accused, and the principle of restitution in integrum, which states that in the event of a violation of law, rights must be restored. and the principle of *unus testis nullus tertis*, which states that a single witness is not a witness.

General law principles are distinguished from special legal principles by Scholten. Common law principles are principles that apply to all areas of law. In general, civil, criminal and state

administration are governed by principles governing judicial law, which are general provisions in law enforcement and judicial processes in Indonesia. The principle of equality before the law, the principle of presumption of innocence, the principle of *ius curia novit*, the principle of freedom of judges, the principle of *rechtswegering*, and the principle of fast, easy and affordable trials. Specific legal principles include legal principles relating to certain areas of law, such as legal principles regulated in the Civil Code, in particular freedom of contract. In the Criminal Code, the legal principle is "*nullum delictum nulla poena sine praevia lege poenali*", or the principle of legality.

The function of the legal principle in the legal system is to confirm and influence parties that regulate and bind. Because its existence depends on the appointment of legislators and judges. Thus, the principle of presumption of innocence also has a regulatory effect and binds all participants in the trial. In the sense that all parties must follow the principles of naive thinking to achieve order in society. In addition to regulatory and binding functions, principles in law also function as a complement and make the legal system more flexible.

The history of Indonesia's political development illustrates that arrests and detentions by law enforcement officers often end in torture, deprivation of honor, and even death for the sake of political gain from power. According to the new law, suspects' rights will be granted after a confession, which is supposed to be made at the start of an investigation. Such activities should not occur in Indonesia if the apparatus consistently adheres to the presumption of innocence. The provisions of Article 8 paragraph (1) of the law regulate the power of the judiciary in carrying out its duties and responsibilities.

Incorporating the principle of the presumption of innocence into the Criminal Procedure Code as an approach in protecting the rights of suspects from the arbitrary actions of law enforcers. The principle of the presumption of innocence in criminal trials is the result of the hard work of law enforcement officials such as investigators and prosecutors with defendants who often face human rights violations. Therefore, this principle is contained in Human Rights Law No. 39 of 1999. Even though human rights are actually natural rights inherent in humans. It does not require legal legitimacy to be upheld. But the secular and optimistic nature of the state gives rise to this natural human right, which requires a legal basis to regulate life with others.

The judicial process often ignores the rights of the accused which should be protected. Because the crime he suspects cannot always be justified. If the judge's decision has permanent legal force in a case, the facts alleged by the person concerned are deemed to be true. In accordance with its function, the law is a tool in changing society in the hope that the judge's decision will change people's behavior for the better, as a result the state goals set out in paragraph four of the preamble of the 1945 Constitution can be recognized.

2. The application of the principle of the presumption of innocence against perpetrators of criminal acts of violence committed together in public in the Case of the Karawang District Court Decision No. 227/Pid.B/2022/PN Kwg

During the interrogation, investigators gave MUHAMMAD GANJAR NUGRAHA alias ANJAY suspect status, which showed the principle of presumption of innocence. Examination of the suspect investigator, MUHAMMAD GANJAR NUGRAHA alias ANJAY, was accompanied by legal advisers as required by Article 56 of the Criminal Procedure Code. Provisions of the Criminal Procedure Code 117 and 118 regulate the examination of suspect statements.

Article 117 of the Criminal Procedure Code explains, "(1) Statements from the accused and/or witnesses are given to investigators without pressure from anyone and in any form; (2) If the accused informs the investigator of what actually happened with the criminal act being charged, the investigator records this in an official report, which may be in the suspect's own words.

R. Soesilo's comment on article 117 states that "No one may put pressure on someone whose testimony is being examined, let alone pressure or coercion by public officials and the police who are investigating the case. Threats are not only prohibited, but officials who arbitrarily use their power to force others to do, not do or allow anything, are threatened under Article 421 of the Criminal Code with a maximum prison sentence of 2 years and 8 months".

According to Article 118 of the Criminal Procedure Code, "(1) the statement of the suspect and/or witness is recorded in an official report which is signed by the investigator and the statement giver after agreeing on the contents; (2) if the suspect and/or witness refuses to sign his signature, the investigator mentions it in the minutes by stating the reasons".

Regarding the use of the presumption of innocence at the level of examination, M. Yahya Harahap writes in his book, The presumption of innocence is referred to as the "accusatory principle" or accusatory procedure (accusatorial system) from a technical juridical or investigative point of view.

The accusatur principle regulates the position of the accused at each stage of the investigation:

- a. Subject. Thus, the accused must be positioned and treated with human dignity, not as an object of examination;
- b. In the accusator principle, the object of examination is the "mistake" committed by the accused. This is the intended direction of inspection.

With the implementation of the presumption of innocence in the Criminal Procedure Code, it provides guidelines for law enforcement officials in applying the accusatur principle at all levels of examination. Law enforcers avoid the "inquisitor" examination technique which considers the accused as an object that can be treated at will.

During the HIR period, this principle of inquiry was used as the basis for examinations; however, it does not provide reasonable rights or opportunities for the accused in defending himself, his rights, and the truth, because from the start the law enforcement apparatus:

- a. The accused is presumed guilty. It was as if the defendant had been convicted since the first time he was examined by investigators.
- b. The accused is considered as an object of examination without respecting human rights and their right to defend their dignity.

Thus, it is often the case that innocent people are forced to accept the bad luck of being locked up in prison. Like the case of Karta and Sengkon, who served several years in prison, but it turned out that someone else was guilty of the murder he was charged with.

Regarding the rights of the accused, given a set of rights by the Criminal Procedure Code, some of these rights are:

- a. The right to be examined, brought to court, and tried without delay (Article 50 paragraphs (1), (2) and (3) ).
- b. Has the right to be notified in an understandable manner regarding the allegations and charges against him (Article 51 Letters a and b).
- c. Freedom to provide information to investigators and judges (Article 52).
- d. Right to translators (Article 53).
- e. The right to obtain legal assistance at any time and at any level of examination (Article 54).
- f. Berham determines his own legal advisor (Article 55).
- g. Has the right to receive free assistance from a legal adviser selected by the examining authority at all stages of the examination (Article 56).
- h. The right to consult a legal adviser (Article 57 paragraph (1)); right of foreigners to contact and speak with representatives of their country (Article 57 paragraph (2) ).
- i. The right to contact and receive visits from private doctors (Article 58).

- j. The right to be notified to his family or other people who live with the defendant, or people whose assistance is needed in obtaining legal assistance or guarantees of suspension (Article 59 and Article 60).
- k. The right to contact directly or through legal counsel and to receive visits from relatives in matters not related to cases due to work or family interests. (Article 61).
- l. The right to send and receive letters from legal advisers and their families (Article 62 paragraph (1) ).
- m. The right to communicate and receive spiritual visitors (Article 63).
- n. Privileges are tried in open court (Article 64).
- o. Has the right to present witnesses and experts in his favor (Article 65).
- p. S. Right of appeal (Article 67).
- q. Right to compensation and rehabilitation (Article 68).

After examining the defendant and some of the required evidence is complete, the case file is submitted to the public prosecutor for prosecution by the investigator. If the public prosecutor believes that prosecution can be filed based on the findings of the investigation, he must immediately draw up an indictment (Article 139 paragraph (1) of the Criminal Procedure Code).

An indictment is an act of a public prosecutor in handing over a criminal case to a district court which has jurisdiction over that case according to the procedure stipulated in this law. With a request for the case to be reviewed and decided by a judge at a trial court. The public prosecutor has the authority to try every person accused of committing a crime within his jurisdiction by submitting the case to a court authorized to make a decision (Article 137 of the Criminal Procedure Code).

By submitting the case file from the police to the public prosecutor, the suspect becomes a defendant. Defendants are suspects who are tried, examined and prosecuted in court, according to Law no. 8 of 1981 which regulates the Criminal Procedure Code.

The accused must be positioned and treated with respect as a human being during an examination in court (acousatur principle). According to Article 154 paragraph (1) of the Criminal Procedure Code, the accused was brought before the court free. The term "freedom" refers to the absence of bondage without reduction of escort. This is to show that the defendant in the trial is not under pressure and can freely give his statement. Non-fulfillment of these conditions can result in cancellation of the decision by law, as in Article 153 paragraph (3) of the Criminal Procedure Code.

### 3. Case Position

That Sunday, May 15 2022, at around 08.00 WIB witness OTONG SURYANA and several XTC members came from Bandung to Karawang with the aim of having a friendly visit. After the event was over, at around 19.00 WIB witness OTONG SURYANA and other XTC members returned to Bandung and then in the middle of the road to be precise in front of the Karawang PLN Office Jl. Kertabumi Ex. Karawang district. West Karawang Regency Karawang witness OTONG SURYANA and other XTC members stopped to eat. Then suddenly a convoy of children from the Monraker and RPM motorcycle gangs arrived, one of whose members was the witness TAUFAN RAMADHAN MAKKAH alias TOPAN bin H. TOMMY, the defendant MUHAMMAD GANJAR NUGRAHA alias ANJAY bin SUDARMO and witness RIAN ADI PRATAMA alias BOGEL. Then the Monraker and RPM members suddenly stopped and there was a fight with the XTC members. Seeing this, the witness OTONG SURYANA immediately intended to break up the argument, but suddenly several members of the Monraker and RPM started beating the witness OTONG SURYANA. Some of these people included the witness TAUFAN RAMADHAN MAKKAH alias TOPAN bin H.TOMMY hitting witness OTONG SURYANA 2 times to the back using his left hand, the defendant MUHAMMAD GANJAR NUGRAHA alias ANJAY bin SUDARMO punched witness OTONG SURYANA 3 (three) times, and the witness RIAN ADI PRATAMA alias BOGEL hit witness OTONG SURYANA 1 (one) time towards Dada.

In addition, there were members of the RPM who were no longer known to carry out stabbing using celurit.

Whereas as a result of this incident witness OTONG SURYANA according to the results of VISUM ET REPERTUM Number: B/073/SB/PELMED/RSBK/KRW/VI/2022 dated 08 June 2022 made by dr. KIKI PONTIAMA KURNIAWAN, MARS doctor at Bayukarta Hospital with examination results:

- a. The 36-year-old male victim was found to have suffered a minor head injury after being examined.
  - b. On the left temple, left upper eyelid, right forearm, fourth finger of the right hand, left upper leg, there were open wounds caused by sharp violence.
  - c. On the left eye, on the bridge of the nose, on the left upper arm and left forearm, there were injuries caused by blunt violence.
  - d. The injury temporarily hindered the ability to work or earn a living.
4. The Indictment of the Public Prosecutor

The public prosecutor at the Karawang District Prosecutor's Office indicted the suspect whose identity was:

- a. Full name : Muhammad Ganjar Nugraha Alias Anjay Bin Sudarmo;
- b. Place of birth : Karawang;
- c. Age/Date of Birth : 21 Years/7 May 2001;
- d. Male gender;
- e. Nationality : Indonesian;
- f. Place of residence: Kp. Krajan RT 003 RW 009 Kel. Palumbosari district. East Karawang, Kab. Karawang;
- g. Islam;
- h. Occupation: Labor.

Primair Indictment : That the defendant (in separate case files) RIAN ADI PRATAMA alias BOGEL together with witness TAUFAN RAMADHAN MAKKAH alias TOPAN bin H.TOMMY and witness MUHAMMAD GANJAR NUGRAHA alias ANJAY bin SUDARMO on Sunday 15 May 2022 Wib or at least the month of may 2022, located at Jalan Kertabumi Kel Karawang Kulon Kec Karawang Kab Karawang or at least somewhere within the jurisdiction of the Karawang District Court which has the authority to examine and adjudicate this case, Whoever openly and jointly uses violence against people based on the chronology stated previously explained above, the Defendant's actions are as in Article 170 paragraph 2 2nd of the Criminal Code.

Subsidair Indictment: That the defendant (in separate case files) RIAN ADI PRATAMA alias BOGEL together with witness TAUFAN RAMADHAN MAKKAH alias TOPAN bin H.TOMMY and witness MUHAMMAD GANJAR NUGRAHA alias ANJAY bin SUDARMO on Sunday 15 May 2022 Wib or at least the month May 2022, located at Jalan Kertabumi, Kel Karawang Kulon, Kec. Karawang, Kab. Karawang, or at least within the jurisdiction of the Karawang District Court, which may adjudicate and examine this case, the persecution that resulted in serious injury, who committed, who ordered to do and who took part in carrying out the act based on the chronology previously described above, the Defendant's actions are as follows Article 351 paragraph 2 of the Criminal Code Jo 55 paragraph 1 1st of the Criminal Code.

## 5. Judge's Decision

Based on the purpose of punishment in Indonesia, it is not to frighten offenders or to take revenge, but to make criminals aware that their actions are not considered appropriate in society and are contrary to applicable law so that they are expected to be convicted of criminal offenders in the future. will be able to rejoin society and stop committing crimes.

In the trial process, the Panel of Judges did not find anything that could free the Defendant from criminal responsibility. Both as an explanation and a reason for clemency. So the Panel of Judges decided that the actions of the Defendant must be accountable. because there is no reason for forgiveness or justification for the actions of the Defendant as referred to in the Law and it turns out that the actions of the Defendant are contrary to the law, then as a result of the law the Defendant must be declared guilty of his actions and they must be punished with a punishment commensurate with their actions.

By paying full attention to Article 170, Paragraph 2 of the Second Criminal Code, Law no. 8 of 1981 concerning the Criminal Procedure Code, and other related laws, the Panel of Judges decided:

- a. Stating that the Defendant MUHAMMAD GANJAR NUGRAHA Alias ANJAY has been proven legally and convincingly guilty of the crime of "in public with violence against a person causing serious injury" as stated in the Primary indictment;
- b. As a result, the defendant was sentenced to 2 years and 8 months in prison;
- c. Requires that the period of detention and arrest of the accused be reduced from the sentence handed down;
- d. Ordering the Defendant to remain in custody;
- e. Identification of evidence as follows: - 1 piece of black long-sleeved T-shirt with the words RPM to be taken and destroyed;
- f. Charged court costs to the defendant in the amount of IDR 2,000.00;

#### IV. CONCLUSION

The following conclusions can be drawn by the authors based on the previous discussion: (a). Because the principle of the presumption of innocence is essentially the embodiment of the principles of recognition, respect and protection of human rights, and because it is the most essential element of a material rule of law state, it must be codified as a legal norm in criminal law procedural policies. So that in its implementation in criminal justice it really serves as a guideline and legal basis by the criminal justice apparatus in the framework of creating a statutory environment both at the formulation stage and at the implementation stage. The criminal law policy in the application of criminal law is to serve and protect the community and enable people to fulfill their obligations according to the laws in force in the Unitary State of the Republic of Indonesia. The purpose of criminal law policy is to protect society from criminal acts that threaten security and public order. (b). Application of the principle of presumption of innocence against perpetrators of violent crimes committed together in public according to the decision of the Karawang District Court No. 227/Pid.B/2019/PN Kwg started at the police investigation stage which placed MUHAMMAD GANJAR NUGRAHA alias ANJAY in the suspect category. In addition, the examination of the accused was carried out using the accusatur principle, which places the accused at each level of examination as a subject, not an object of examination. Thus the accused must be seated and treated as a human being with dignity. On the contrary, the "mistakes" committed by the accused become the subject of investigation in the accusatur principle.

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