Juridical Analysis of Non-Fulfillment of the Access Principle to the Legal Counsel in Theft Criminal Cases

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Abstract
The purpose of the study is to know juridical analysis of non-fulfillment of the access principle to the legal counsel in theft criminal cases. The type of this research is Normative Legal Research using a Legislative and a Conceptual Approaches. The Public Prosecutor's indictment cannot be accepted as it was made based on an invalid (legally flawed) Investigation Report (BAP) and was not in accordance with the right of due process of law. Legal aid and the defendant must be accompanied by a legal advisor as regulated in Article 56 of the Criminal Procedure Code so that this creates a gap for the legal advisor in filing an exception and the exception becomes the judge's consideration in making a decision that the public prosecutor's indictment is null and void (Null and Void), as for example in the Interim Decision of the Tapak Tuan District Court Number 106/ Pid.B /2019/ PN.Ttn, which is threatened with imprisonment for a maximum of 7 (seven) years in accordance with the provisions of Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) Criminal Code. However, during the investigation process, he was not accompanied by a legal advisor, making the Investigation Report (BAP) being invalid as well as null and void.

I. Introduction

Security and social order will be created and maintained if every member of society obeys the rules that exist in the society itself, so that the rules are obeyed, and sanctions are needed for violators (Friedman & Hayden, 2017). The rules of social life that are regulatory and coercive to ensure social order are called legal regulations (Ramdayani et al., 2019). The part of the overall law in force in a country that provides the basics and rules for determining actions that may not be carried out/prohibited with the threat of sanctions in the form of certain penalties for those who violate these rules is called Criminal Law (Moeljatno, 2002; Tamin, 2018)

The concrete form of criminal law is outlined in criminal legislation. Criminal acts define as the acts that are prohibited and punishable by punishment for anyone who commits them (Saleh, 2018). Criminal law is oriented towards revealing material truth or the truth about the occurrence of a criminal incident in order to determine the perpetrator (legal subject) who is responsible for the criminal incident (Burchard, 2023; Butt, 2023). Meanwhile, the aim of criminal procedural law is to seek and obtain or at least the complete truth of a criminal case by applying the provisions of criminal procedural law honestly and precisely by looking for perpetrators who can be accused of committing a legal violation (Arief, 2021). Realizing the implementation of a constitutional state requires intervention as it is the state's obligation to guarantee everyone's right to obtain justice (Sasmita et al., 2023; Zurnetti & Muliati, 2022).

Generally, it relates to allegations of criminal acts that begin with an investigation process, where the investigation process is carried out by investigating officials appointed by law (Heath, 2008; Kartika & Affila, 2022; Laia, 2022). In this case, the police or other institution are given authority based on law based on Article 1 number 5 of Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) (Saputra et al., 2023; Sopian et al., 2023). An investigation is carried out to search for and discover an incident that is suspected of being a criminal act in order to determine whether an investigation can be carried out or not. Then, based on Article 1 point 2 of the Criminal Procedure Code, if investigators in the investigation process find that there is sufficient initial evidence of a criminal act, then the next stage of an investigation to search for and collect evidence is carried out to shed light on the criminal act that occurred and to find the suspect.

After the investigation has fulfilled the formal and material requirements, it continues to the prosecution stage, which is carried out by the Public Prosecutor as an embodiment of the Republic of Indonesia Prosecutor's Office as an institution in the field of prosecution. The prosecution process by the Public Prosecutor is closely related to the investigation process carried out by investigators as outlined in the case file. In fact, during the preliminary examination (investigation) a definite

direction was made towards the preparation of an indictment, here it was proven that investigation and prosecution cannot be separated, they can only be differentiated (Hamzah, 2012).

Then, if the suspect has been determined, the provisions of Article 56 paragraph (1) of the Criminal Procedure Code apply, which regulates that "in the event that the suspect or defendant is suspected or accused of committing a criminal act, which is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated, they are threatened with a sentence of five years or more who do not have their own legal advisor, the officials concerned at all levels of examination in the judicial process are obliged to appoint legal advisors for them.

The Indonesian legal system and the 1945 Constitution guarantee equality before the law, including the right to be accompanied by an advocate in the Indonesian legal system. Legal aid is closely related to equality before the law and access to legal counsel to achieve justice for everyone. Legal aid is a human right, which is part of the constitutional right as legal aid to every citizen. The state must guarantee the provision of legal aid to the poor or underprivileged so that no one is denied access to justice, which is a constitutional mandate based on Law Number 16 of 2011 concerning Legal Aid (hereinafter referred to as the Legal Aid Law).

Related to this condition, the facts were found in the field that attracted the attention of the writer regarding the criminal case of theft committed by the suspect Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al., who violated Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) subsidiary Article 362 of the Criminal Code in conjunction with Article 64 paragraph (1) with the highest criminal threat, namely imprisonment for 7 (seven) years. Based on research on the Interim Decision of the Tapak Tuan District Court Number 106/Pid.B /2019/PN Ttn. It was found that the suspect or accused during the investigation process was not accompanied by a legal advisor or without the appointment of a legal advisor to accompany the suspect during the investigation process. This may be based on a statement that the suspect does not need to be accompanied by a legal advisor, but the provisions of Article 56 paragraph (1) of the Criminal Procedure Code require investigators to first appoint a legal advisor, which aim to accompany the suspect or accused. However, despite this condition, the South Aceh District Prosecutor's Office (Tapak Tuan) through the appointed Public Prosecutor continued to carry out the prosecution process until the case was finally dismissed.

2. Research Method

The type of research used in this research is the Normative Legal Research method, which provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations explaining areas of difficulty, and predicting future development (Abraham Ethan Martupa Sahat, 2023; Nichlatus et al., 2022). The type of

approach in this research is the Legislative Approach (Statute Approach) and Conceptual Approach. The Legislative Approach is an approach that examines all laws and regulations related to the legal issue being handled (Marzuki, 2022). Meanwhile (Conceptual Approach) comes from the views and doctrines that develop in legal science, where researchers try to find ideas that can result to relevant legal concepts to the legal issues being faced (Marzuki, 2022).

3. Results and Discussion

Judge's Consideration Declaring that the Public Prosecutor's Indictment is Null by Law (Null and Void) in the Interim Decision of the Perpetrator of the Theft Criminal Case on Behalf of the Defendant Salman Alfatjri Bin (late) Syamsudin aka Agam et al.

When preparing an indictment for a public prosecutor based on Article 143 paragraph 2 of the Criminal Procedure Code, the public prosecutor in preparing an indictment must be dated and signed and contain full name, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation of the suspect; a careful, clear, and complete description of the criminal act charged by stating the time and place the crime was committed.

In the public prosecutor's indictment as intended in Article 143 paragraph (3) of the Criminal Procedure Code, the criminal indictment against a person that is made or compiled must be careful, clear, and complete and/or made or compiled from documents or examination actions in accordance with the law. With the legal process, Article 56 paragraph (1) of the Criminal Procedure Code regulates the following in cases where the suspect or defendant faces allegation of committing a criminal offense punishable by death penalty or a sentence of fifteen years or more, or for those who cannot afford legal representation and are threatened with five years or more of imprisonment, it is threatened that officials involved at all levels of the judicial process appoint legal counsel to represent them.

In the event that a criminal offense is suspected and charged against a suspect or defendant, it is punishable by the death penalty or fifteen (15) years or more and a penalty of five years. Therefore, during the investigation process at all levels, a legal advisor must be accompanied and if the suspect or defendant is unable to provide legal advisors, the official concerned is burdened with the obligation to appoint an investigator for investigation where the suspect is not accompanied by a legal advisor in accordance with the framework of Article 115 of the Criminal Procedure Code, provisions in Article 56 paragraph (1) The Criminal Procedure Code states that in the event that a suspect or defendant is suspected or accused of committing a criminal offense that is punishable by the death penalty or a sentence of fifteen years or more or for those who are incapacitated and are threatened with a sentence of five years or more, who do not have their own legal counsel. Concerned officials at all levels of examination in the judicial process are

obliged to appoint legal advisors for them.

If considering at the provisions of Article 56 paragraph (1) of the Criminal Procedure Code, the suspect/defendant must first qualify for one of the alternative elements as follows the suspect or defendant is suspected or accused of committing a crime, which is punishable by the death penalty; or the threat of a sentence of fifteen years or more; or for those who cannot afford it who are threatened with a sentence of five years or more.

As the author explains, there is an "or" phrase, so it is not necessary to fulfill all the qualifications of the suspect/defendant. Furthermore, the element that must also be fulfilled, which follows after fulfilling the previous element, is "those who does not have his own legal advisor. The author relates to the case in the name of **Salman Alfatjri Bin (late) Syamsudin aka Agam and the defendant Muhammad Syaripuddin Bin (late) H. Ramlan aka Din Ompong aka Din Bos,** who was suspected or accused in his indictment of violating Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code subs Article 362 in conjunction with Article 64 paragraph (1) of the Criminal Code. In this case, the author will only briefly explain the provisions in Article 363 Paragraph (1) 4th of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code because the article is applied using the subsidiarity method, with the provision that heavier criminal threats are placed in the primary position of Article 363 Paragraph (1) 4th of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code concerning the Crime of Theft with Aggravation because it was committed by two or more people in league.

The provisions of Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code regulate that "Theft committed by two or more people with an alliance so that it is seen as an act continues to be subject to a maximum imprisonment of 7 (seven) years." In this case, the author did not describe the material elements contained in the article, but examined the provisions on the threat of imprisonment threatened in the article above, which was later linked to the provisions of Article 56 paragraph (1) of the Criminal Procedure Code.

Considering at the provisions of Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code, it can be seen that the threat of imprisonment is a maximum imprisonment of 7 (seven) years. Then, based on the facts revealed, defendant I was only unemployed and defendant II only worked as a driver, so if this is related to the qualification provisions of the suspect/defendant in Article 56 paragraph (1) of the Criminal Procedure Code, this authentically fulfills the elemental provisions "for those who are unable to be threatened with sentenced to five years or more who do not have their own legal counsel."

As in Article 1 of Law Number 16 of 2011 concerning Legal Aid that it is a legal service provided by legal aid providers free of charge to legal aid

recipients. Meanwhile, Article 2 states that recipients of legal aid are poor people or groups of people.

Furthermore, Article 56 paragraph (1) of the Criminal Procedure Code can be seen that this provision is of an imperative nature, marked by the words "mandatory" in the article. Therefore, if the suspect/accused has met the qualifications as stated, then the relevant officials in all the level of examination in the judicial process is obliged to appoint a legal advisor for them. The level of examination referred to is at the investigation, prosecution, and trial stages. However, in the trial process in the interim decision of the Tapak Tuan District Court Number 106/Pid.B/2019/PN Ttn. on behalf of Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al., whose case files came from the South Aceh Police (Tapak Tuan), the author found facts relating to the provisions of Article 56 paragraph (1) of the Criminal Procedure Code, namely on behalf of the Defendant Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al., they are threatened with imprisonment for a maximum of 7 (seven) years in accordance with the provisions of Article 363 Paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code; On behalf of the defendant, Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al. did not have their own legal advisor. This can be seen from the absence of a power of attorney or appointment from the suspect to choose his legal advisor as reflected in the judge's consideration; in the case file, there is only a general notification letter regarding the suspect's rights by investigators as stipulated in Articles 50-68 of the Criminal Procedure Code; and there is a statement letter from the defendant Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al. regarding the statement that he temporarily does not need to be accompanied by a legal advisor.

By looking at these facts, the provisions of Article 56 paragraph (1) of the Criminal Procedure Code have been ignored, the following is the author's analysis as follows the absence of a legal advisor appointment from the South Aceh Police (Tapak Tuan) investigator indicates that the provisions of Article 56 paragraph (1) of the Criminal Procedure Code are not being implemented; the letter of notification of the suspect's rights as described in the interim decision is only a notification of the suspect's rights in general as regulated in the Criminal Procedure Code, but not the implementation of Article 56 paragraph (1) of the Criminal Procedure Code and a statement letter from the suspects regarding not requiring to be accompanied by a legal advisor should be made after a letter of appointment of a legal advisor from the investigator which is then responded to with a letter of willingness to accompany the suspect by the appointed legal advisor.

This results being invalid or null and void as stated in Supreme Court decision No. 1565K/Pid/1991 because it is contrary to procedural law (*undue process*) (Harahap, 2009). During the investigation process, a legal advisor should be appointed to accompany the investigation process so that the suspect's rights are guaranteed in order to achieve balance in the legal

process.

In the case of this position, the public prosecutor in carrying out the prosecution process does not pay attention to the provisions of the Jurisprudence of the Supreme Court of the Republic of Indonesia. In its decision dated 16 September 1993 No.1565K/Pid/1991, which states that if the requirements of the request are not fulfilled, such as the investigator not appointing a legal advisor "For the suspect from the beginning of the investigation, the Public Prosecutor's demands were declared unacceptable." Thus, the indictment was canceled because it did not comply with the provisions of Article 143 paragraph 2 letter b of the Criminal Procedure Code which resulted in the public prosecutor's indictment No. Case Reg: PDM-21/L.19.8/12/2019 dated 09 December 2019 being null and void and the case examination could not be continued. The Public Prosecutor's indictment cannot be accepted because it was made based on an invalid (legally flawed) Investigation Report (BAP) and does not comply with the right of due process of law.

Legal Consequences of Failure to Fulfill the Principle of Access to Legal Counsel in the Theft Criminal Case on Behalf of the Defendant Salman Alfatjri Bin (late) Syamsudin aka Agam et al.

With regard to the legal consequences of not fulfilling the Access Principle to Legal Counsel by not carrying out the obligation to appoint legal advisors for suspects in criminal cases of theft in the name of Salman Alfatjri Bin (late) Syamsudin aka Agam and Muhammad Syaripuddin Bin (late) H Ramlan aka Din Ompon aka Din Bos in accordance with Article 56 paragraph (1). The KUHAP does not clearly regulate the legal consequences in the KUHAP. However, on the other hand, these provisions are imperative, but there are no provisions that regulate the legal consequences of not implementing these provisions.

Legal obligations without legal consequences or clear legal implications result in the implementation of the fulfillment of these obligations depending subjectively on the legal awareness of the officials concerned, so that in practice, there is no uniformity in the attitude of every authorized official at all levels, be it investigators, public prosecutors, or judges in providing legal consequences for non-implementation of the provisions as in Article 56 paragraph (1) of the Criminal Procedure Code.

In the case of theft criminal case in the names of Salman Alfatjri Bin (late) Syamsudin aka Agam (Defendant I) and Muhammad Syaripuddin Bin (late) H Ramlan aka Din Ompon aka Din Bos (Defendant II) who were suspected of violating the provisions of Article 363 Paragraph (1) to 4th of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code concerning the theft criminal case with aggravation because it was committed by two or more people in partnership. There is a statement signed by the suspect/defendant that for the time being, there is no need to be accompanied by a legal advisor. In the investigation report (BAP) of

Defendant I and Defendant II during the investigation at the investigative level by the Indonesian National Police, they did not comply with the provisions of Article 56 paragraph (1) of the Criminal Procedure Code. In fact, it is the obligation of the investigator to provide an explanation to Defendant I and Defendant II, as regulated in Article 114 of the Criminal Procedure Code, which is quoted as follows: In the event that a person is suspected of committing a criminal act before the investigation begins by the investigator, the investigator is obliged to inform him of his right to obtain law assistance or that he must be accompanied by a Legal Advisor as intended in Article 56 of the Criminal Procedure Code.

In relation to the provisions of Article 114 of the Criminal Procedure Code, there are two obligations, namely that the investigator is obliged to notify the defendant of their right to receive legal assistance and the defendant must be accompanied by a legal advisor as regulated in Article 56 of the Criminal Procedure Code, thus the BAP of defendant I and defendant II does not follow the provisions of the criminal procedure law, thus violating the human rights of the defendants and not carrying out a fair legal process (due process of law).

Regarding a fair legal process, due process of law, which is the aim of criminal law, is related to a fair legal process, the essential elements that must be present in its implementation, Tobias and Petersen wrote that due process of law is minimal elements of a fair legal process (due process of law), which is hearing suspects and defendants, legal counsel, defense, evidence from a fair and impartial court. Enforcement in holding dues process of law is the prevention of crime from arbitrary actions, so it is more oriented towards procedural justice.

A fair legal process (due process of law) cannot be separated from the criminal justice system, and is also related to the legal aid. Heri Tahir wrote that: "the criminal justice system is a forum for a fair legal process, so it is impossible to talk about a fair legal process without the existence of a criminal justice system." Conversely, a fair legal process is essentially the spirit of the criminal justice system itself, which is characterized by the protection of the rights of suspects and defendants" (Heri Tahir, 2010).

Regarding to this reality in judicial legal practice, HMA Kuffal mentioned that there are two opinions. The judges who accept that the presence of a statement letter from the suspect/accused not requiring to be accompanied by a legal advisor can invalidate the obligations of law enforcement as regulated in Article 56 paragraph (1) of the Criminal Procedure Code based on the reasons explained in the explanation of Article 56 paragraph (1) of the Criminal Procedure Code, namely the appointment of legal advisors is adjusted to developments and conditions in the availability of legal advisors and/or because Article 56 of the KUHAP does not regulate sanctions for violations of obligations as stipulated in Article 56 of the KUHAP and the other hand, there are judges who impose sanctions for violations of the provisions regarding the obligation to appoint legal advisors by handing

down decisions in the form of determining that the public prosecutor's indictment cannot be accepted or the indictment is canceled or declared null and void. For the opinion that the violation of the provisions of Article 56 paragraph (1) of the Criminal Procedure Code is what occurred in the Tegal District Court decision Number: 34/ Pid.B /1995/PN. On June 26th, 1995 in the name of the defendant OH PEK KIE aka PONCODIYONO, who was charged with committing a criminal act of corruption causing losses to the state of IDR 34.000.000.000,00 (thirty-four billion rupiah) with a maximum penalty of life imprisonment or 20 years' imprisonment and/or fine of IDR 30.000.000,00. In this decision, the Panel of Judges determined that the Public Prosecutor's indictment could not be accepted because it was made based on an invalid (legally flawed) Investigation Report (BAP). The panel of judges was of the opinion and considered that the BAP prepared by the National Police Headquarters was the result of an invalid investigation because during the investigation the suspect was not accompanied by a legal advisor, whereas according to Article 56 paragraph (1) of the Criminal Procedure Code, the appointment of a legal advisor is a necessity whether requested by the suspect because the indictment was made based on an invalid investigative BAP, and the indictment cannot be accepted (Kuffa, 2010).

As a result, the legal consequences of the Access Principle to Legal Counsel as a legal consequence of the provisions of Article 56 paragraph (1) of the Criminal Procedure Code viewed from the perspective of the strict law approach or formalistic legal thinking according to M. Yahya Harahap contains several legal aspects, one of which the aspects of Human Rights values (Harahap, 2009). According to the declaration universal human rights that the presence of legal advisors for accompanying the suspect/defendant is an inherent value in humans, thus ignoring this right is contrary to human rights values attached to the suspect/defendant (Löfquist, 2020; Mikołajczyk, 2023). In order to create good law enforcement that is sourced from the ideals of our country as a rule of law country uphold the supremacy of law, running a process law both from the level of inquiry and investigation then forwarded to the Prosecution process and leads to a trial process in court obliged to submit and obey the correct legal process (*the right of due process of law*) is very needed (Muñoz, 2022; Yarulin & Pozdnyakov, 2021). This is not only for the sake of guaranteeing upholding human rights (HAM) inherent in oneself Suspect or Defendant, but also to create correct law enforcement that originates from our country as a country that upholds the law supremacy (Boiko et al., 2020; Holmes, 2020; Simuziya, 2021).

Fulfillment of the right to receive assistance of *Asas Access to Legal Counsel* legal advisor in process justice at the examination level is the obligation of the official concerned. If the criminal act is alleged against the defendant, such as threatened with the death penalty or more than 15 years, or those who cannot afford it are threatened with a sentence of 5 years or more if they do not have legal counsel.

So that the officials concerned at all levels of the investigation are obliged to appoint legal advisors for those accused. Based on the provisions of Article 56 paragraph (1) of the Criminal Procedure Code, as a fulfillment of the Principle of Access to Legal Counsel, the presence and availability of legal counsel is imperative, if ignoring, it will cause in the results of the examination being invalid and null and void. The provisions of Article 56 paragraph (1) of the Criminal Procedure Code as a human rights guideline are Miranda's benchmark Rule or Miranda Principle (Kafrawi, 2016a, 2016b; Kim & Ryu, 2019; Muammar & Baharuddin, 2022). This Miranda Rule standard is enforced in Supreme Court Decision No. 1565 K/Pid/1991, which states that 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, the public prosecutor's demands are declared unacceptable.

The author in this case adheres to a legalistic understanding formal prioritizing the principle of Access to Legal Counsel Article 56 paragraph (1) of the Criminal Procedure Code that is imperative for the sake of certainty in the implementation and enforcement of the law with fair and equitable examinations in accordance with applicable laws and regulations. The application of the principle of Access to Legal Counsel Article 56 paragraph (1) of the Criminal Procedure Code is explained by PAF Lamintang that a legal advisor who has accompanied a suspect in an examination at the investigative level does not have to remain accompanying the suspect until the examination in court. If the defendant is in court not accompanied by a legal advisor, then according to the provisions stipulated in Article 56 of the Criminal Procedure Code, the judge is obliged to appoint a legal advisor for the defendant (PAF Lamintang, 1984). Therefore, the application of the principle of Access to Legal Counsel in Article 56 paragraph (1) of the Criminal Procedure Code must be implemented and is imperative.

In connection with the Interim Decision of the Tapak Tuan District Court Number 106/Pid.B/2019/PN Ttn dated January 14th, 2020 in the name of Salman Alfatjri Bin (late) Syamsuddin aka Agam**,** et al., they are threatened with a maximum imprisonment of 7 (seven) years in accordance with the provisions of Article 363 paragraph (1) 4 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. But in the investigation process, he was not accompanied by a legal advisor, resulting in the Examination Report (BAP) becoming invalid and null and void by law with the consideration of the panel of judges who accepted the exception filed by the defendants/their legal advisors regarding the non-implementation of the provisions of Article 56 paragraph (1) of the Criminal Procedure Code, where there was no appointment of a legal advisor from the South Aceh Police Investigator (Tapak Tuan) even though there was a statement letter, that no need to be accompanied by a legal advisor from the suspect. Then, if it was related to the existence of previous decisions, such as the Tegal District Court decision Number: 34/Pid.B/1995/PN.Tgl. dated June 26th,1995 in the name

of the defendant OH PEK KIE aka PONCODIYONO, and the Supreme Court Decision No. 1565 K/Pid/1991 can have the same legal consequences, namely that the investigation carried out by the investigator during the investigation stage is invalid and the prosecution process of the public prosecutor is declared not acceptable because in the process of law enforcement, the procedure does not create a fair legal process of law, which requires fair and impartial laws in accordance with procedural standards that apply to countries that uphold the law. The administration of criminal justice in accordance with the KUHAP is related to criminal justice procedures, which are based on due process of law and the administration of criminal justice in accordance with the KUHAP to achieve substantive justice.

4. Conclusion

The judge's consideration stated that the public prosecutor's indictment was null and void in the interim decision of the perpetrator of the theft criminal case on behalf of the defendant Salman Alfatjri Bin (late) Syamsudin aka Agam et al because it did not comply with the provisions of Article 143 paragraph 2 letter b of the Criminal Procedure Code, which resulted in a letter the public prosecutor's indictment Case Reg No: PDM-21/L.19.8/12/2019 dated December 09th, 2019 is null and void and the case examination cannot be continued. The Public Prosecutor's indictment cannot be accepted as it was made based on an invalid (legally flawed) Investigation Report (BAP) and not in accordance with the right of due process of law. Legal assistance and the defendant must be accompanied by a legal advisor as regulated in Article 56 of the Criminal Procedure Code so that this creates a gap for the legal advisor in filing an exception and the exception is considered by the judge in making a decision that the public prosecutor's indictment is null and void. Related to the Interim Decision of the Tapak Tuan District Court Number 106/Pid.B/2019/PN Ttn dated January 14th, 2020 in the name of Salman Alfatjri Bin (late) Syamsuddin aka Agam, et al, the threat of imprisonment is a maximum of 7 (seven) years in accordance with provisions of Article 363 Paragraph (1) 4th of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code. However, in the investigation process, he was not accompanied by a legal advisor, resulting in the Examination Minutes (BAP) becoming invalid and null and void with the consideration of the panel of judges who accepted the exception submitted by the defendants/their legal advisors regarding the non-implementation of the provisions of Article 56 paragraph (1) of the Criminal Procedure Code, where there was no appointment of a legal advisor from the South Aceh Police Investigator (Tapak Tuan) even though there was a statement letter. Besides, there was no need to be accompanied by a legal advisor from the suspect, if the terms or conditions were formal as regulated in Article 56 paragraph (1) of the Criminal Procedure Code. If it is not implemented, it could result in the legal consequences of the investigation carried out by the Investigator being invalid or null and void so that the

public prosecutor's demands cannot be accepted.

References

Abraham Ethan Martupa Sahat. (2023). METAMORFOSIS METODE PENELITIAN HUKUM. *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan*, *2*(4).

Arief, I. . (2021). Pertimbangan Yuridis Putusan Bebas & Upaya Hukum Kasasi Perkara Pidana. In *Jakarta: Mekar Cipta Lestari*.

Boiko, I. V., Mekh, Y. V., Soloviova, O. M., Somina, V. A., & Cherviakova, O. B. (2020). Universal human rights and state sovereignty. *International Journal of Criminology and Sociology*, *9*. https://doi.org/10.6000/1929-4409.2020.09.367

Burchard, C. (2023). Criminal Law Exceptionalism as an Affirmative Ideology, and its Expansionist Discontents. *Criminal Law and Philosophy*, *17*(1). https://doi.org/10.1007/s11572-021-09614-4

Butt, S. (2023). Indonesia's new Criminal Code: indigenising and democratising Indonesian criminal law? *Griffith Law Review*, *32*(2). https://doi.org/10.1080/10383441.2023.2243772

Friedman, L. M., & Hayden, G. M. (2017). American law: An introduction. In *American Law: An Introduction*. https://doi.org/10.1093/acprof:oso/9780190460587.001.0001

Hamzah, A. (2005). Hukum Acara Pidana Indonesia. In *Hukum Acara Pidana Indonesia*.

Harahap, Y. (2009). Pembahasan, Permasalahan dan Penerapan KUHAP; Penyidikan dan Penuntutan. In *Sinar Grafika*.

Heath, T. J. (2008). Number, distribution and concentration of Australian veterinarians in 2006, compared with 1981, 1991 and 2001. *Australian Veterinary Journal*, *86*(7). https://doi.org/10.1111/j.1751-0813.2008.00314.x

Heri Tahir. (2010). Proses Hukum yang Adil Dalam Sistem Peradilan Pidana di Indonesia. In *Cetakan Pertama*.

Holmes, B. (2020). Non-universal Human Rights? How Article 6 (2) of the International Covenant on Civil and Political Rights Undermines Human Rights. *International Human Rights Law Review*, *9*(1). https://doi.org/10.1163/22131035-00901004

Kafrawi, M. F. (2016a). Application Of The Miranda Principle In Terms Of Presenting The Legal Counsel For Criminal Suspects In Indonesia. *Pattimura Law Journal*, *1*(1). https://doi.org/10.47268/palau.v1i1.8

Kafrawi, M. F. (2016b). Application Of The Miranda Principle In Terms Of Presenting The Legal Counsel For Criminal Suspects In Indonesia. *Pattimura Law Journal*, *1*(1). https://doi.org/10.47268/palau.v1i1.2016.8

Kartika, T., & Affila. (2022). IMPLEMENTATION OF THE DEATH PENALTY IN NARCOTIC CRIMINAL CASES (CASE STUDY OF DECISION NUMBER 203/PID.SUS/2019/PN.BLS.). *Awang Long Law Review*, *5*(1). https://doi.org/10.56301/awl.v5i1.576

Kim, M., & Ryu, S. (2019). Forensic Miranda Principle and Procedural Justice. *KOREAN CRIMINOLOGICAL REVIEW*, *30*(4). https://doi.org/10.36889/kcr.2019.12.31.4.303

Kuffa. (2010). Penerapan Kuhap Dalam Praktik Hukum. In *Penerapan KUHAP Dalam Praktik Hukum*.

Laia, L. (2022). POLITICAL STUDY OF LAW LAW NUMBER 8 OF 1981 CONCERNING THE CRIMINAL PROCEDURE CODE IN TERMS OF PRETRIAL LEGAL ASPECTS. *PENA LAW: International Journal of Law*, *1*(2). https://doi.org/10.56107/penalaw.v1i2.43

Löfquist, L. (2020). Is there a universal human right to electricity? *International Journal of Human Rights*, *24*(6). https://doi.org/10.1080/13642987.2019.1671355

Marzuki, P. M. (2022). Penelitian Hukum: Edisi Revisi, Jurnal Penelitian Hukum. In *Jakarta: Kencana Perdana Media Group*.

Mikołajczyk, B. (2023). Universal human rights instruments and digital literacy of older persons. *International Journal of Human Rights*, *27*(3). https://doi.org/10.1080/13642987.2022.2131772

Moeljatno. (2002). Asas - Asas Hukum Pidana. In *Jakarta: Rineka Cipta*.

Muammar, M., & Baharuddin, W. (2022). Prinsip Miranda Rule Sebagai Hak Asasi Tersangka Dalam Sistem Peradilan Pidana Indonesia. *PATTIMURA Legal Journal*, *1*(3). https://doi.org/10.47268/pela.v1i3.7504

Muñoz, R. F. (2022). Harnessing Psychology and Technology to Contribute to Making Health Care a Universal Human Right. *Cognitive and Behavioral Practice*, *29*(1). https://doi.org/10.1016/j.cbpra.2019.07.003

Nichlatus, S., Abdul, S., Hasbullah, R., Ardiyan, A., Setiawan, M., Agus, M., Pandi, R., Moch, R., Rizal, C., Zahro', F., Dermawan, R., Sidiq, M. F., Rezki, W., Qamaria, S., & Kamil, H. (2022). Ragam Metode Penelitian Hukum. *Lembaga Studi Hukum Pidana*.

P.A.F Lamintang. (1984). *Kitab Undang-Undang Hukum Acara Pidana Dengan Pembahasan Secara Yuridis Menurut Yurisprudensi dan Ilmu Pengetahuan Hukum Pidana*.

Ramdayani, S. S., Kharisma, B., & Wibowo, K. (2019). Local Government Spending on Social Protection, Security Order, and Crime. *Jurnal Economia*, *15*(2). https://doi.org/10.21831/economia.v15i2.26828

Saleh, R. (2018). Perbuatan Pidana dan Pertanggungjawaban Pidana. In *Dasar-Dasar Hukum Pidana*.

Saputra, R., Setiodjati, J. P., & Barkhuizen, J. (2023). Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States). *Journal of Indonesian Legal Studies*, *8*(1). https://doi.org/10.15294/jils.v8i1.67632

Sasmita, R. P. R., Suseno, S., & Jaya, P. Y. (2023). The concept of reasons for eliminating corporate crime in criminal law in Indonesia. *Heliyon*, *9*(11). https://doi.org/10.1016/j.heliyon.2023.e21602

Simuziya, N. J. (2021). Universal human rights vs cultural & religious variations: an African perspective. *Cogent Arts and Humanities*, *8*(1). https://doi.org/10.1080/23311983.2021.1988385

Sopian, S., Kusno, K., Siregar, A. A., Risdalina, R., & Panjaitan, B. (2023). Criminal Law Review of Meth Sales Transactions Which are Evidenced by Police Officers According to Law Number 35 of 2009 Concerning Narcotics in the Jurisdiction of the Bukit Tinggi Police. *Journal of Social Research*, *2*(4). https://doi.org/10.55324/josr.v2i4.794

Tamin, B. Y. (2018). Discretion as to the object of the criminal law of corruption in Indonesia. *International Journal of Engineering and Technology(UAE)*, *7*(4). https://doi.org/10.14419/ijet.v7i4.9.20627

Yarulin, I., & Pozdnyakov, E. (2021). Are Universal Human Rights Universal? *Politeja*, *18*(2(71)). https://doi.org/10.12797/politeja.18.2021.71.03

Zurnetti, A., & Muliati, N. (2022). Customary criminal law policy on domestic violence settlement through restorative justice. *Cogent Social Sciences*, *8*(1). https://doi.org/10.1080/23311886.2022.2090083